



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART I

#### CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

##### *General*

#### **1 The charge to tax.**

- (1) Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets.
- (2) Companies shall be chargeable to corporation tax in respect of chargeable gains accruing to them in accordance with [<sup>F1</sup>section 2 of CTA 2009] and the other provisions of the Corporation Tax Acts[<sup>F2</sup>, subject to the exception in subsection (2A)].

[<sup>F3</sup>(2A) But companies are chargeable to capital gains tax, and not corporation tax, in respect of chargeable gains accruing to them to the extent that those [<sup>F4</sup>gains are—

- (a) ATED-related gains in respect of which the companies are chargeable to capital gains tax under section 2B, or
- (b) NRCGT gains in respect of which the companies are chargeable to capital gains tax under section 14D or 188D.]]

- (3) Without prejudice to [<sup>F5</sup>subsections (2) and (2A)], capital gains tax shall be charged for all years of assessment in accordance with the following provisions of this Act.

#### **Textual Amendments**

**F1** Words in s. 1(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 359](#) (with [Sch. 2 Pts. 1, 2](#))

**F2** Words in s. 1(2) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 25 para. 2\(2\)](#)

*Status: Point in time view as at 16/11/2017.*

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- F3** S. 1(2A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 2\(3\)](#)
- F4** Words in s. 1(2A) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 2](#)
- F5** Words in s. 1(3) substituted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 2\(4\)](#)

### *Capital gains tax*

## **2 Persons and gains chargeable to capital gains tax, and allowable losses.**

- (1) Subject to any exceptions provided by this Act, and without prejudice to sections 10 and 276, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment [<sup>F6</sup>if the residence condition is met].

[<sup>F7</sup>(1A) The residence condition is—

- (a) in the case of an individual, that the individual is resident in the United Kingdom for the year in question,
- (b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is resident in the United Kingdom,
- (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is resident in the United Kingdom during any part of the year in question, and
- (d) in any other case, that the person is resident in the United Kingdom when the gain accrues.]

[<sup>F8</sup>(1B) If the year is a split year as respects an individual, the individual is not chargeable to capital gains tax in respect of any chargeable gains accruing to the individual in the overseas part of that year.

(1C) But subsection (1B)—

- (a) does not apply to chargeable gains in respect of which the individual would have been chargeable to capital gains tax under section 10, had the individual been not resident in the UK for the year, and
- (b) is without prejudice to section 10A.]

- (2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment [<sup>F9</sup>or, where subsection (1B) applies, the UK part of that year], after deducting—

- (a) any allowable losses accruing to that person in that year of assessment [<sup>F10</sup>or that part (as the case may be)], and
- (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing to that person in any previous year of assessment (not earlier than the year 1965-66).

[<sup>F11</sup>(2A) Where subsection (1B) applies, the amounts that may be deducted under subsection (2)

- (a) include any allowable NRCGT losses accruing to the person in the overseas part of the tax year concerned (see section 14B(4)).

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(2B) The amounts that may be deducted under subsection (2)(b) include any allowable NRCGT losses (other than group losses, as defined in section 188E(4)) accruing to the person in a tax year (“year P”) previous to the year mentioned in subsection (2) (a) (so far as those losses have not been allowed as a deduction from chargeable gains accruing in year P or any previous year.)]

(3) Except as provided by section 62, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains accruing in any earlier year of assessment, and relief shall not be given under this Act more than once in respect of any loss or part of a loss, and shall not be given under this Act if and so far as relief has been or may be given in respect of it under the Income Tax Acts.

[<sup>F12</sup>(4) If chargeable gains are treated by virtue of section 87 or 89(2) as accruing to a person in a tax year (“the relevant deemed gains”)—

- (a) subsection (2) has effect as if the relevant deemed gains had not accrued, and
- (b) the amount on which the person is charged to capital gains tax for that year is the sum of—

- (i) the amount given by subsection (2) as it has effect by virtue of paragraph (a), and
- (ii) the amount of the relevant deemed gains.

(5) In subsection (4) the reference to section 87 or 89(2) is to that section read, where appropriate, with section 10A.]

[<sup>F13</sup>(7) Where in any year of assessment—

- (a) there are amounts treated as accruing to a person by virtue of section <sup>F14</sup>... 86,
- (b) two or more of those amounts, or elements of them—
  - (i) relate to different settlements, <sup>F15</sup>...
  - <sup>F15</sup>(ii) .....

(c) losses are deductible from the amounts or elements mentioned in paragraph (b) above <sup>F16</sup>... but are not enough to exhaust them all, the deduction applicable to each of the <sup>F17</sup>... amounts shall be the appropriate proportion of the aggregate of those losses.

The “appropriate proportion” is that given by dividing the <sup>F17</sup>... amount in question by the total of the <sup>F17</sup>... amounts.

[ Nothing in this section applies in relation to an ATED-related gain chargeable to, or <sup>F18</sup>(7A) an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B.]

[ Except where otherwise specified (see subsections (2A) and (2B)), nothing in this <sup>F19</sup>(7B) section applies in relation to an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D or 188D.]

<sup>F20</sup>(8) .....

#### Textual Amendments

- F6** Words in s. 2(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 75\(2\)](#)
- F7** S. 2(1A) inserted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 75\(3\)](#)

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- F8** S. 2(1B)(1C) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 93\(2\)](#)
- F9** Words in s. 2(2) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 93\(3\)\(a\)](#)
- F10** Words in s. 2(2)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 93\(3\)\(b\)](#)
- F11** S. 2(2A)(2B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 3\(2\)](#)
- F12** S. 2(4)(5) substituted for s. 2(4)-(6) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(2\)](#)
- F13** S. 2(6)-(8) inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 2\(4\)](#)
- F14** Words in s. 2(7)(a) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 2](#)
- F15** S. 2(7)(b)(ii) and preceding word omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(3\)\(a\)](#)
- F16** Words in s. 2(7)(c) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(3\)\(b\)](#)
- F17** Words in s. 2(7) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(3\)\(c\)](#)
- F18** S. 2(7A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 3](#)
- F19** S. 2(7B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 3\(3\)](#)
- F20** S. 2(8) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(4\)](#)

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

- C1** S. 2(1) applied (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [22\(1\)\(a\)](#)
- C2** S. 2(1) extended by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 850](#) (as inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\)](#), [21](#))
- C3** S. 2(2)-(2B) excluded (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 20\(11\)](#)

#### <sup>F21</sup>**2A Taper relief.**

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#### Textual Amendments

- F21** S. 2A omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 25](#)

#### <sup>F22</sup>**2B Persons chargeable to capital gains tax on ATED-related gains**

- (1) A person (other than an excluded person) (“P”) is chargeable to capital gains tax in respect of any ATED-related chargeable gain accruing to P in a tax year on a relevant high value disposal.

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- (2) A person is “excluded” if the person is an individual, the trustees of a settlement or the personal representatives of a deceased person and—
  - (a) the gain accrues on a disposal of any partnership assets and the person is a member of the partnership, or
  - (b) the gain accrues on a disposal of any property held for the purposes of a relevant collective investment scheme and the person is a participant in relation to the scheme.
- (3) Capital gains tax is charged on the total amount of ATED-related chargeable gains accruing to P in the tax year on relevant high value disposals, after deducting ring-fenced ATED-related allowable losses in relation to that year.
- (4) Subsections (5) to (7) apply in relation to an ATED-related allowable loss accruing to P in a tax year on a relevant high value disposal.
- (5) The loss is not allowable as a deduction from ATED-related chargeable gains accruing in any earlier tax year on relevant high value disposals.
- (6) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.
- (7) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.
- (8) The only deductions which can be made from ATED-related chargeable gains are those permitted by this section.
- (9) See section 57A and Schedule 4ZZA for how to compute—
  - (a) the ATED-related gain or loss accruing on a relevant high value disposal, and
  - (b) the gain or loss accruing on a relevant high value disposal which is not ATED-related.
- (10) In this section—
  - “participant”, in relation to a relevant collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000;
  - “relevant collective investment scheme” means a collective investment scheme within the meaning of Part 17 of that Act (see section 235 of that Act) other than—
    - (a) a unit trust scheme within the meaning of that Part (see section 237(1) of that Act), or
    - (b) an open-ended investment company within the meaning of that Part (see section 236(1) of that Act);
  - “ring-fenced ATED-related allowable losses”, in relation to a tax year, means—
    - (a) any ATED-related allowable losses accruing to P in the tax year on relevant high value disposals, and
    - (b) so far as they have not been allowed as a deduction [<sup>F23</sup>from chargeable gains accruing in any previous tax year,] any ATED-related allowable losses accruing to P in any previous tax year (not earlier than the tax year 2013-14) on such disposals.

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### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

**F23** Words in s. 2B(10) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 4](#)

### Modifications etc. (not altering text)

**C4** S. 2B(3) excluded (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 20\(12\)](#)

## 2C “Relevant high value disposal”

- (1) A disposal on which a gain or loss accrues to P is a “relevant high value disposal” if conditions A to D are met.
- (2) Condition A is that the disposal is of the whole or part of a chargeable interest (“the disposed of interest”).
- (3) Condition B is that the disposed of interest has, at any time during the relevant ownership period, been or formed part of a single-dwelling interest.
- (4) Condition C is that—
  - (a) P, or
  - (b) if the disposed of interest is a partnership asset, the responsible partners, or
  - (c) if the disposed of interest is held for the purposes of a relevant collective investment scheme, the person who has day-to-day control over the management of the property subject to the scheme,
 has or have been within the charge to annual tax on enveloped dwellings with respect to that single-dwelling interest on one or more days in the relevant ownership period which are not relievable days in relation to the interest.
- (5) Condition D is that the amount or value of the consideration for the disposal exceeds the threshold amount (see section 2D).
- (6) In this section and section 2D—
 

“chargeable interest” has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act (chargeable interest));

“dwelling” has the same meaning as in that Part (see section 112 of that Act);

“relevant collective investment scheme” has the same meaning as in section 2B;

“the relevant ownership period” means the period which begins—

  - (a) if an election has been made under paragraph 5 of Schedule 4ZZA, with the day on which P acquired the chargeable interest or, if later, 31 March 1982, and
  - (b) in any other case, with the day on which P acquired the chargeable interest or, if later, [<sup>F24</sup>6 April in the relevant year],

and ends with the day before the day on which the disposal occurs;

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[<sup>F25</sup>“the relevant year” means—

- (a) in Case 1 in paragraph 2 of Schedule 4ZZA, 2013;
- (b) in Case 2 in that paragraph, 2015;
- (c) in Case 3 in that paragraph, 2016;]

“relievable day” means a day which is “relievable” by virtue of any of the provisions mentioned in section 132 of the Finance Act 2013 (ATED: effect of reliefs) and in respect of which a claim has been made under section 106(3) of that Act;

“the responsible partners” has the same meaning as in section 96 of that Act;

“single-dwelling interest” has the same meaning as in Part 3 of that Act; and a reference to being “within the charge” to annual tax on enveloped dwellings with respect to a single-dwelling interest is to be read in accordance with section 170(2) of that Act.

(7) For the purposes of Condition C—

- (a) Part 3 of the Finance Act 2013 applies, in relation to any part of the relevant ownership period falling before 1 April 2013, as if section 94(8)(a) of that Act (first chargeable period for ATED) read “the period beginning with 31 March 1982 and ending with 31 March 1983”, and
- (b) when determining whether any day falling before [<sup>F26</sup>1 April in the relevant year] is a relievable day, the definition of “relievable day” in subsection (6) above is to read as if the words “and in respect of which a claim has been made under section 106(3) of that Act” were omitted.

#### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

**F24** Words in s. 2C(6) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 2\(2\)](#)

**F25** Words in s. 2C(6) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 2\(3\)](#)

**F26** Words in s. 2C(7)(b) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 2\(4\)](#)

## 2D “The threshold amount”

(1) This section applies to determine “the threshold amount” in relation to a disposal which meets Conditions A to C in section 2C (“the current disposal”).

(2) If—

- (a) the current disposal is not a part disposal of an asset, and
- (b) P has not made any relevant related disposals,

the threshold amount is [<sup>F27</sup>£500,000], subject to subsection (5) (joint interests).

(3) If paragraphs (a) and (b) of subsection (2) do not both apply, the threshold amount is the relevant fraction of [<sup>F28</sup>£500,000], subject to subsection (5) (joint interests).

(4) “The relevant fraction” is—

C TMV

where—

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“C” is the amount or value of the consideration for the current disposal;

“TMV” is what would be the market value, at the time of the current disposal, of a notional asset comprising—

- (a) the disposed of interest (see section 2C(2)),
- (b) if the current disposal is a part disposal, any part of the chargeable interest held by P that remains undisposed of immediately following that part disposal,
- (c) any chargeable interest (or part of a chargeable interest) which was the subject of a relevant related disposal, and
- (d) any chargeable interest (or part of a chargeable interest) held by P at the time of the current disposal which, if P had disposed of it at that time, would have been the subject of a relevant related disposal.

(5) If the disposed of interest is a share of the whole of—

- (a) a chargeable interest, or
- (b) a part of a chargeable interest,

subsections (2) and (3) have effect as if the references to [F29“£500,000”] were to the joint share fraction of that amount.

(6) The joint share fraction is the fraction of the whole of the chargeable interest or part represented by the disposed of interest.

(7) “Relevant related disposal”, in relation to the current disposal, means any disposal by P which—

- (a) meets Conditions A to C in section 2C in circumstances where the single-dwelling interest referred to in Condition C is—
  - (i) the single-dwelling interest by virtue of which Condition C is met in relation to the current disposal, or
  - (ii) another single-dwelling interest in the same dwelling as that interest, and
- (b) was made in the period of 6 years ending with the day on which the current disposal occurs, but not before 6 April 2013.

#### **Textual Amendments**

- F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)
- F27** Sum in s. 2D(2) substituted (with effect in relation to disposals occurring on or after 6 April 2016 in accordance with Sch. 8 para. 4(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 4\(2\)](#)
- F28** Sum in s. 2D(3) substituted (with effect in relation to disposals occurring on or after 6 April 2016 in accordance with Sch. 8 para. 4(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 4\(3\)](#)
- F29** Sum in s. 2D(5) substituted (with effect in relation to disposals occurring on or after 6 April 2016 in accordance with Sch. 8 para. 4(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 4\(4\)](#)

## **2E Restriction of losses**

(1) This section applies where (ignoring this section)—

- (a) a disposal would be a relevant high value disposal, but for a failure to meet condition D in section 2C,



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- (b) if it were a relevant high value disposal, an ATED-related loss would accrue to a person (other than an excluded person) in a tax year on the disposal, and
  - (c) the total of the sums allowable as a deduction under section 38 in relation to the disposal exceeds the threshold amount in relation to the disposal.
- (2) For the purposes of this Act—
- (a) the disposal is to be treated as a relevant high value disposal (and section 57A and Schedule 4ZZA apply accordingly), and
  - (b) the ATED-related loss which accrues on the disposal is to be restricted to the amount which would have been that loss had the consideration for the disposal been £1 greater than the threshold amount in relation to the disposal.
- (3) In a case where paragraph 2 of Schedule 4ZZA applies (calculation of gains or losses on disposals of assets held on 5 April 2013 [<sup>F30</sup>etc]), the reference in subsection (1) (c) to the disposal is to be read as a reference to the notional disposal referred to in paragraph 3(2) of that Schedule (disposal on which notional [<sup>F31</sup>post-commencement] gain or loss accrues).
- (4) Nothing in subsection (2)(b) restricts any loss which is not ATED-related, or affects any gain (whether or not ATED-related), accruing on the relevant high value disposal.
- (5) In this section—
- “excluded” has the meaning given by section 2B(2);
  - “the threshold amount” has the meaning given by section 2D.

#### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

**F30** Word in s. 2E(3) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 5\(a\)](#)

**F31** Word in s. 2E(3) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 5\(b\)](#)

## 2F Tapering relief for gains

- (1) This section applies to an ATED-related gain which accrues on a relevant high value disposal and is chargeable to capital gains tax by virtue of section 2B.
- (2) There is excluded from the gain so much of it as exceeds five-thirds of the difference between—
  - (a) the amount or value of the consideration, and
  - (b) the threshold amount (within the meaning of section 2D) in relation to the disposal.
- (3) But where the relevant fraction is less than 1, subsection (2) has effect as if the amount determined under that subsection were the relevant fraction of that amount.
- (4) “The relevant fraction”—
  - (a) in a case where the ATED-related gain is determined in accordance with paragraph 3 of Schedule 4ZZA, has the meaning given by paragraph 3(4) of that Schedule, and

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- (b) in a case where the ATED-related gain is determined in accordance with paragraph 6 of that Schedule, has the same meaning as in paragraph 6(5)(a) of that Schedule.
- (5) Nothing in this section restricts any gain which is not ATED-related, or affects any loss (whether or not ATED-related), accruing on the relevant high value disposal.]

#### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

### 3 Annual exempt amount.

- (1) An individual shall not be chargeable to capital gains tax in respect of so much of his taxable amount for any year of assessment as does not exceed the exempt amount for the year.
- [<sup>F32</sup>(1A) Subsection (1) does not apply to an individual for a tax year if section 809B of ITA 2007 (claim for remittance basis to apply) applies to the individual for that year.]
- [<sup>F33</sup>(2) The exempt amount for a tax year is [<sup>F34</sup>£11,100].]
- [<sup>F35</sup>(3) If there is a relevant increase in [<sup>F36</sup>CPI] in relation to a tax year—
- (a) the exempt amount is to be increased in accordance with Steps 1 and 2, and
  - (b) subsection (2) has effect from then on (for that and subsequent tax years) as if it referred to the increased amount,
- unless Parliament otherwise determines.
- (3A) There is a relevant increase in [<sup>F37</sup>CPI] in relation to a tax year if the [<sup>F38</sup>consumer prices index] for the September before the start of the tax year is higher than it was for the previous September.
- (3B) Steps 1 and 2 are—
- Step 1* Increase the exempt amount for the previous tax year by the same percentage as the percentage of the relevant increase in [<sup>F39</sup>CPI].
- Step 2* If the result of Step 1 is not a multiple of £100, round it up to the nearest multiple of £100.
- (4) If there is a relevant increase in [<sup>F40</sup>CPI] in relation to a tax year, the Treasury must before the start of that tax year make an order showing the amount arrived at as a result of Steps 1 and 2.]
- [<sup>F41</sup>(5) For the purposes of this section an individual's taxable amount for any year of assessment [<sup>F42</sup>is (what would apart from this section be) the total of the amounts for that year on which that individual is chargeable to capital gains tax in accordance with either (or both) of—
- (a) section 2 (gains, other than ATED-related gains and NRCGT gains, chargeable to capital gains tax), and
  - (b) section 14D (NRCGT gains chargeable to capital gains tax).]

*Status: Point in time view as at 16/11/2017.*

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- (5A) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment is equal to or less than the exempt amount for that year, no deduction shall be made for that year in respect of—
- (a) any allowable losses carried forward from a previous year; or
  - (b) any allowable losses carried back from a subsequent year in which the individual dies.

- (5B) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment exceeds the exempt amount for the year, the deductions made for that year in respect of allowable losses falling within subsection (5A)(a) or (b) above shall not be greater than the excess.

- [<sup>F43</sup>(5BA) In this section, “adjusted net gains”, in relation to a tax year and an individual, means—
- (a) if the residence condition is met (see section 2(1A)) and the year is not a split year as respects the individual, the section 2 adjusted net gains;
  - (b) if the residence condition is not met, the section 14D adjusted net gains;
  - (c) if the residence condition is met and the year is a split year as respects the individual, the total of the section 2 adjusted net gains (if any) and the section 14D adjusted net gains (if any).]

- (5C) [<sup>F44</sup>In subsection (5BA) “section 2 adjusted net gains”, in relation to an individual and a tax year, means the amount given in the individual's case by—]

- (a) taking the amount for that year from which the deductions for which section 2(2)(a) and (b) provides are to be made;

- [<sup>F45</sup>(aa) if section 16ZB (certain chargeable gains charged on remittance basis) applies for that year, deducting the amount of the relevant gains (within the meaning of that section),]

- (b) deducting [<sup>F46</sup>(from the amount mentioned in paragraph (a), as reduced under paragraph (aa))] only the amounts falling to be deducted in accordance with section 2(2)(a); and

- (c) [<sup>F47</sup>if section 2(4) applies for that year,], adding whichever is the smaller of the exempt amount for that year and the amount [<sup>F48</sup>mentioned in section 2(4) (b)(ii)].]

- [<sup>F49</sup>(5D) In subsection (5BA) “section 14D adjusted net gains”, in relation to an individual and a tax year, means the amount given in the individual's case by—

- (a) taking the amount from which the deductions provided for by paragraphs (a) and (b) of subsection (2) of section 14D are to be made, and

- (b) deducting only the amounts falling to be deducted in accordance with paragraph (a) of that subsection.]

<sup>F50</sup>(6) .....

- (7) For the year of assessment in which an individual dies and for the next 2 following years, [<sup>F51</sup>subsections (1) to [<sup>F52</sup>(5D)]] above shall apply to his personal representatives as they apply to an individual.

- [<sup>F53</sup>(7A) As they apply by virtue of subsection (7) above—

- (a) subsection (5A) has effect with the omission of paragraph (b), and
- (b) subsection (5B) has effect with the omission of the words “or (b)”.]

- (8) Schedule 1 shall have effect as respects the application of this section to trustees.

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### Textual Amendments

- F32** S. 3(1A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 56\(2\)](#)
- F33** S. 3(2) substituted (with effect in accordance with s. 8(4) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 8\(2\)](#)
- F34** Sum in s. 3(2) substituted (for the tax year 2015-16) by [Finance Act 2014 \(c. 26\)](#), [s. 9\(1\)](#)
- F35** S. 3(3)(3A)(3B)(4) substituted for s. 3(3)(4) (with effect in accordance with s. 8(6) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 8\(3\)](#)
- F36** Word in s. 3(3) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F37** Words in s. 3(3A) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F38** Words in s. 3(3A) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(b\)](#)
- F39** Words in s. 3(3B) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F40** Words in s. 3(4) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F41** S. 3(5)(5A)(5B)(5C) substituted for s. 3(5) (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 3](#)
- F42** Words in s. 3(5) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(2\)](#)
- F43** S. 3(5BA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(3\)](#)
- F44** Words in s. 3(5C) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(4\)](#)
- F45** S. 3(5C)(aa) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 56\(3\)\(a\)](#)
- F46** Words in s. 3(5C)(b) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 56\(3\)\(b\)](#)
- F47** Words in s. 3(5C)(c) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 26\(3\)\(a\)](#)
- F48** Words in s. 3(5C)(c) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 26\(3\)\(b\)](#)
- F49** S. 3(5D) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(5\)](#)
- F50** S. 3(6) repealed (with application in accordance with Sch. 28 para.7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 3\(2\)](#), [Sch. 43 Pt. 3\(7\)](#)
- F51** Words in s. 3(7) substituted (with application in accordance with Sch. 28 para.7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 3\(3\)](#)
- F52** Word in s. 3(7) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(6\)](#)
- F53** S. 3(7A) inserted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 3\(4\), 8](#)

### Modifications etc. (not altering text)

- C5** S. 3 amended (for the year 1993-1994) by [S.I. 1993/760](#), [art. 2](#)  
 S. 3 modified (for the year 1993-1994) by [1993 c. 34](#), [s. 82](#)
- C6** S. 3 excluded (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 109\(2\)\(b\)](#)
- C7** S. 3(2) sum amended (for the year 1994-95) by [Finance Act 1994 \(c. 9\)](#), [s. 90](#)
- C8** S. 3(2) sum amended (for the year 1996-97) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1995 \(S.I. 1995/3033\)](#), [art. 2](#)

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- C9 S. 3(2) sum amended (for the year 1997-98) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1996 \(S.I. 1996/2957\)](#), [art. 2](#)
- C10 S. 3(2) sum amended (for the year 1998-99) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1998 \(S.I. 1998/757\)](#), [art. 2](#)
- C11 S. 3(2) sum amended (for the year 1999-2000) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1999 \(S.I. 1999/591\)](#), [art. 2](#)
- C12 S. 3(2) sum amended (for the year 2000-01) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2000 \(S.I. 2000/808\)](#), [art. 2](#)
- C13 S. 3(2) sum amended (for the year 2001-02) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2001 \(S.I. 2001/636\)](#), [art. 2](#)
- C14 S. 3(2) sum amended (for the year 2002-03) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2002 \(S.I. 2002/702\)](#), [art. 2](#)
- C15 S. 3(2) sum amended (for the year 2003-04) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2003 \(S.I. 2003/842\)](#), [art. 2](#)
- C16 S. 3(2) sum amended (for the year 2005-06) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2005 \(S.I. 2005/721\)](#), [art. 2](#)
- C17 S. 3(2) sum amended (for the year 2007-08) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2007 \(S.I. 2007/942\)](#), [art. 2](#)
- C18 S. 3(3) excluded (for the tax year 2011-12) by [Finance Act 2011 \(c. 11\)](#), [s. 8\(5\)](#)
- C19 S. 3(3) excluded (for the tax year 2012-13) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(6\)](#)
- C20 S. 3(3) excluded (for the tax year 2014-15) by [Finance Act 2014 \(c. 26\)](#), [s. 8\(2\)](#)
- C21 S. 3(3) excluded (for the tax year 2015-16) by [Finance Act 2014 \(c. 26\)](#), [s. 9\(2\)](#)

### **[<sup>F54</sup>3A Reporting limits**

- (1) Where in the case of an individual—
  - (a) the amount of chargeable gains accruing to him in any year of assessment [<sup>F55</sup>or, if that year is a split year as respects the individual, the UK part of that year] does not exceed the exempt amount for that year, and
  - (b) the aggregate amount or value of the consideration for all chargeable disposals of assets made by him in that year [<sup>F56</sup>or, as the case may be, that part of the year] does not exceed four times the exempt amount for that year,a statement to that effect is sufficient compliance with so much of any notice under section 8 of the Management Act as requires information for the purposes of establishing the amount in which he is chargeable to capital gains tax for that year.
- (2) For the purposes of subsection (1)(a) above—
  - <sup>F57</sup>(a) .....
  - (b) the amount of chargeable gains accruing to an individual in a year of assessment [<sup>F58</sup>(or the UK part of such a year)] for which [<sup>F59</sup>a deduction falls to be made in respect of allowable losses is the amount before the deduction].
- (3) For the purposes of subsection (1)(b) above a “chargeable disposal” is any disposal other than—
  - (a) a disposal on which any gain accruing is not a chargeable gain, or
  - (b) a disposal the consideration for which is treated by virtue of section 58 [<sup>F60</sup>(spouses and civil partners)] as being such that neither a gain nor a loss would accrue.
- (4) Subsection (1) above applies to personal representatives (for the year of assessment in which the individual in question dies and for the next 2 following years) as it applies to an individual.

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(5) Subsection (1) above applies to the trustees of a settlement in accordance with Schedule 1.

[ Subsection (1) does not apply to an individual for a tax year if—

- <sup>F61</sup>(5A) (a) section 809B of ITA 2007 (claim for remittance basis to apply), or  
 (b) section 16ZB below (certain chargeable gains charged on remittance basis),  
 applies to the individual for that year.]

(6) In this section “exempt amount” has the meaning given by section 3 (read, where appropriate, with Schedule 1).]

#### Textual Amendments

- F54** S. 3A inserted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 1](#)
- F55** Words in s. 3A(1)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 94\(2\)\(a\)](#)
- F56** Words in s. 3A(1)(b) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 94\(2\)\(b\)](#)
- F57** S. 3A(2)(a) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 27\(a\)](#)
- F58** Words in s. 3A(2)(b) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 94\(3\)](#)
- F59** Words in s. 3A(2)(b) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 27\(b\)](#)
- F60** Words in s. 3A(3)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [106](#)
- F61** S. 3A(5A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 57](#)

#### <sup>F62</sup> Rates of capital gains tax

(1) This section makes provision about the rates at which capital gains tax is charged, but is subject to section 169N (rate in case of claim for entrepreneurs' relief) [<sup>F63</sup>and section 169VC (rate in case of claim for investors' relief)].

(2) Subject to the following provisions of this section [<sup>F64</sup>and section 4BA], the rate of capital gains tax

- <sup>F65</sup>(a) in respect of upper rate gains accruing to a person in a tax year, is 18%, and  
 (b) in respect of gains accruing to a person in a tax year which are not upper rate gains, is 10%].

<sup>F66</sup>(2A) In this section “upper rate gains” means—

- (a) residential property gains (see section 4BB),  
 (b) NRCGT gains (see section 14D), and  
 (c) carried interest gains (see subsections (12) and (13)).]

<sup>F67</sup>(3) The rate of capital gains tax in respect of gains accruing in a tax year to the trustees of a settlement or the personal representatives of a deceased person—

- (a) in respect of upper rate gains, is 28%, and  
 (b) in respect of gains which are not upper rate gains, is 20%.]

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- [<sup>F68</sup>(3A) The rate of capital gains tax in respect of gains chargeable under section 2B accruing to a person in a tax year is 28%.]
- [<sup>F69</sup>(3B) The rate of capital gains tax is 20% in respect of—
- (a) gains chargeable under section 14D accruing to a company in a tax year, and
  - (b) gains chargeable under section 188D accruing in a tax year to the relevant body of an NRCGT group (as defined in that section).]
- (4) If income tax is chargeable at the higher rate [<sup>F70</sup>, the default higher rate, the savings higher rate][<sup>F71</sup>, the Scottish higher rate] or the dividend upper rate in respect of any part of the income of an individual for a tax year, the rate of capital gains tax
- [<sup>F72</sup>(a) in respect of upper rate gains accruing to the individual in the tax year, is 28%, and
- (b) in respect of gains accruing to the individual in the tax year which are not upper rate gains, is 20%].
- (5) If no income tax is chargeable at the higher rate [<sup>F70</sup>, the default higher rate, the savings higher rate][<sup>F71</sup>, the Scottish higher rate] or the dividend upper rate in respect of the income of an individual for a tax year, but the amount on which the individual is chargeable to capital gains tax exceeds the unused part of the individual's basic rate band, the rate of capital gains tax on the excess is [<sup>F73</sup>(subject to section 4BA) 20%].
- [<sup>F74</sup>(6) Subsection (6A) applies for the purposes of subsection (5) where—
- (a) there is an excess as mentioned in that subsection (“the higher-rate excess”), and
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year includes any special rate gains, that is, gains which are—
    - (i) chargeable to capital gains tax at the rate in section 169N(3), or
    - (ii) chargeable to capital gains tax at the rate in section 169VC(2).
- (6A) Where this subsection applies—
- (a) if the total amount of the special rate gains exceeds the unused part of the individual's basic rate band, the higher-rate excess is to be treated as reduced by the amount by which the special rate gains exceed that unused part;
  - (b) if not, the higher-rate excess is to be treated as consisting of gains other than the special rate gains.]
- (7) [<sup>F75</sup>Any reference in this section] to the unused part of an individual's basic rate band is a reference to the amount by which the basic rate limit exceeds the individual's Step 3 income.
- (8) For the purposes of this section, “the Step 3 income” of an individual means the individual's net income less allowances deducted at Step 3 of the calculation in section 23 of ITA 2007 for the purpose of calculating the individual's income tax liability.
- (9) Section 989 of ITA 2007 (the definitions) applies for the purposes of this section [<sup>F76</sup>and section 4BA] as it applies for income tax purposes.
- [<sup>F77</sup>(12) In subsection (2A)(c) “carried interest gains” means—
- (a) gains treated as accruing under section 103KA(2) or (3), and
  - (b) gains accruing to an individual as a result of carried interest arising to the individual where—

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- (i) the individual performs investment management services directly or indirectly in respect of an investment scheme under arrangements not involving a partnership,
  - (ii) the carried interest arises to the individual under the arrangements, and
  - (iii) the carried interest does not constitute a co-investment repayment or return.
- (13) For the purposes of subsection (12)(b)—
- (a) “carried interest”, in relation to any arrangements, has the same meaning as in section 809EZB of ITA 2007 (see sections 809EZC and 809EZD of that Act);
  - (b) carried interest “arises” to an individual if it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007;
  - (c) “arrangements”, “investment management services” and “investment scheme” have the same meanings as in that Chapter (see sections 809EZA(6) and 809EZE of that Act);
  - (d) “co-investment repayment or return” has the same meaning as in section 103KA.]]

#### Textual Amendments

- F62** Ss. 4, 4A substituted (with effect in accordance with Sch. 1 para. 12 of the amending Act) for s. 4 by [Finance \(No. 2\) Act 2010 \(c. 31\), Sch. 1 para. 2](#) (with [Sch. 1 para. 18](#))
- F63** Words in s. 4(1) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(2\)](#)
- F64** Words in s. 4(2) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(3\)\(a\)](#)
- F65** Words in s. 4(2) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(3\)\(b\)](#)
- F66** S. 4(2A) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(4\)](#)
- F67** S. 4(3) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(5\)](#)
- F68** S. 4(3A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 25 para. 5](#)
- F69** S. 4(3B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 7 para. 6](#)
- F70** Words in s. 4(4)(5) inserted (with effect in relation to tax year 2017-18 and subsequent tax years) by [Finance Act 2016 \(c. 24\), s. 6\(23\)](#); [S.I. 2016/1161, regs. 2, 3](#)
- F71** Words in s. 4(4)(5) inserted (with effect in accordance with Sch. 38 para. 15(4) of the amending Act) by [Finance Act 2014 \(c. 26\), Sch. 38 para. 15\(2\)](#)
- F72** Words in s. 4(4) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(6\)](#)
- F73** Words in s. 4(5) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(7\)](#)
- F74** S. 4(6)(6A) substituted for s. 4(6) (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(8\)](#)
- F75** Words in s. 4(7) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(9\)](#)
- F76** Words in s. 4(9) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 83\(10\)](#)



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**F77** S. 4(12)(13) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(12\)](#)

#### **[<sup>F62</sup>4A Section 4: special cases**

- (1) Subsection (2) applies if for a tax year—
  - (a) a person is entitled, by virtue of section 539 of ITTOIA 2005 (gains from contracts for life insurance etc), to relief by reference to the amount of a deficiency, or
  - (b) the residuary income of an estate is treated, by virtue of section 669(1) and (2) of that Act (reduction in residuary income: inheritance tax on accrued income), as reduced so as to reduce a person's income by any amount for the purposes of extra liability.
- (2) Section 4(7) is to have effect as if the person's Step 3 income for the year were reduced by the amount of the deficiency mentioned in subsection (1)(a) or the amount mentioned in subsection (1)(b) (as the case may be).
- (3) Subsections (4) and (5) apply if, by virtue of section 465 of ITTOIA 2005 (gains from contracts for life insurance etc), a person's total income for a tax year is deemed to include any amount or amounts.
- (4) Section 4(7) is to have effect as if the person's Step 3 income for the year included not the whole of the amount or amounts concerned but only the annual equivalent within the meaning of section 536(1) of that Act or the total annual equivalent within the meaning of section 537 of that Act (as the case may be).
- (5) If—
  - (a) relief is given under section 535 of that Act, and
  - (b) the calculation under section 536(1) or 537 of that Act (as the case may be) does not involve the higher rate of income tax,section 4(4) and (5) [<sup>F78</sup>and section 4BA(1)] are to have effect as if no income tax were chargeable at the higher rate [<sup>F79</sup>, the Scottish higher rate] or the dividend upper rate in respect of the person's income.]

#### **Textual Amendments**

- F62** Ss. 4, 4A substituted (with effect in accordance with Sch. 1 para. 12 of the amending Act) for s. 4 by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 2](#) (with [Sch. 1 para. 18](#))
- F78** Words in s. 4A(5) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(13\)](#)
- F79** Words in s. 4A(5) inserted (with effect in accordance with Sch. 38 para. 15(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 38 para. 15\(3\)](#)

#### **[<sup>F80</sup>4B Deduction of losses etc in most beneficial way**

- (1) Where it is necessary to determine—
  - (a) from which chargeable gains an allowable loss accruing to a person is to be deducted, or
  - (b) which allowable losses are to be deducted from any chargeable gains accruing to a person,

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(including in a case falling within subsection (2)), the losses concerned may be used in whichever way is most beneficial to that person.

- (2) Where the gains accruing to a person in a tax year are (apart from this section) chargeable to capital gains tax at different rates, the exempt amount under section 3 may be used in respect of those gains in whichever way is most beneficial to that person.
- (3) This section is subject to any enactment which contains a limitation on the gains from which allowable losses may be deducted.]

#### Textual Amendments

**F80** S. 4B substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 7](#)

#### [<sup>F81</sup> 4BA Rates, and use of unused basic rate band, in certain cases

- (1) This section applies where an individual is chargeable to capital gains tax in respect of gains accruing in a tax year and—
  - (a) no income tax is chargeable at the higher rate [<sup>F82</sup>, the default higher rate, the savings higher rate], the Welsh higher rate or the dividend upper rate in respect of the income of the individual for the tax year,
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year (“the chargeable gains amount”) exceeds the unused part of the individual’s basic rate band, and
  - (c) all or part of the chargeable gains amount consists of upper rate gains.
- (2) In the following provisions of this section “the available gains” means the gains on which the individual is chargeable to capital gains tax for the tax year, excluding any special rate gains.
- (3) The available gains not used by the individual under subsection (4) are to be charged to capital gains tax—
  - (a) to the extent that they consist of upper rate gains, at the rate in section 4(4)(a);
  - (b) to the extent that they consist of gains which are not upper rate gains, at the rate in section 4(5).
- (4) The individual may, subject to subsection (5) (which limits the overall amount that can be used under this subsection)—
  - (a) use any of the available gains that are upper rate gains to be charged at the rate in section 4(2)(a);
  - (b) use any of the available gains that are not upper rate gains to be charged at the rate in section 4(2)(b).
- (5) The total amount of gains used under subsection (4) must equal the qualifying amount.
- (6) The “qualifying amount” is the unused part of the individual’s basic rate band less the total amount of any special rate gains.
- (7) If special rate gains are included in the chargeable gains amount, subsection (4) applies only if the unused part of the individual’s basic rate band exceeds the total amount of the special rate gains.

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(8) In this section—

“upper rate gains” has the same meaning as in section 4;

“special rate gains” has the same meaning as in section 4(6);

“the unused part of the individual's basic rate band” has the same meaning as in section 4.

#### Textual Amendments

**F81** Ss. 4BA, 4BB inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(14\)](#) (with [s. 83\(18\)\(19\)](#))

**F82** Words in s. 4BA(1) inserted (with effect in relation to tax year 2017-18 and subsequent tax years) by [Finance Act 2016 \(c. 24\)](#), [s. 6\(23\)](#); S.I. 2016/1161, [regs. 2, 3](#)

### **4BB Residential property gain or loss**

(1) For the purposes of the charge to capital gains tax, a residential property gain or loss is a gain or loss which accrues on the disposal of a residential property interest.

(2) But a residential property gain or loss does not accrue on a non-resident CGT disposal.

(3) In this Act “disposal of a residential property interest” means—

(a) a disposal of a UK residential property interest, or

(b) a disposal of a non-UK residential property interest.

(4) Schedule B1 gives the meaning in this Act of “disposal of a UK residential property interest”.

(5) Schedule BA1 gives the meaning in this Act of “disposal of a non-UK residential property interest”.

(6) See section 57C and Schedule 4ZZC for how to compute—

(a) the residential property gain or loss accruing on the disposal of a residential property interest, and

(b) the gain or loss accruing on the disposal of a residential property interest which is not a residential property gain or loss.]

#### Textual Amendments

**F81** Ss. 4BA, 4BB inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(14\)](#) (with [s. 83\(18\)\(19\)](#))

### **<sup>F83</sup>5 Accumulation and discretionary settlements.**

.....

#### Textual Amendments

**F83** S. 5 repealed (with effect in accordance with s. 120(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. III\(29\)](#)

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**F846 Other special cases.**

.....

**Textual Amendments**

**F84** S. 6 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 3](#)

**F857 Time for payment of tax.**

.....

**Textual Amendments**

**F85** S. 7 repealed (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 115(12), [Sch. 29 Pt. VIII\(14\)](#)

*Corporation tax*

**8 Company’s total profits to include chargeable gains.**

- (1) Subject to the provisions of this section and [<sup>F86</sup>Chapter 7 of Part 4 of CTA 2010], the amount to be included in respect of chargeable gains in a company’s total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting—
  - (a) any allowable losses accruing to the company in the period, and
  - (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting [<sup>F87</sup>period—
    - (i) any allowable losses previously accruing to the company while it has been within the charge to corporation tax, and
    - (ii) any allowable NRCGT losses previously accruing to the company.]
- (2) For the purposes of corporation tax in respect of chargeable gains, “allowable loss” [<sup>F88</sup>does not include a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it.]

- <sup>F89</sup>(2A) .....
- <sup>F89</sup>(2B) .....
- <sup>F89</sup>(2C) .....

- (3) Except as otherwise provided by this Act or any other provision of the Corporation Tax Acts, the total amount of the chargeable gains to be included in respect of chargeable gains in a company’s total profits for any accounting period shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions—
  - (a) as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person’s gain; or

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- (b) as to the time when any such amount is to be treated as accruing, being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.
- (4) Subject to subsection (5) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts; but—
- (a) this subsection shall not affect the references to income tax in section 39(2); and
- (b) in so far as those enactments operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.
- [<sup>F90</sup>(4A) Nothing in this section applies in relation to an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B.]
- [<sup>F91</sup>(4B) Subject to subsection (1)(b)(ii), nothing in this section applies in relation to an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D or 188D.]
- (5) This Act as it has effect in accordance with this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving 2 individuals is relevant for both of them in relation to capital gains 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.
- (6) Where assets of a company are vested in a liquidator under section 145 of the <sup>M1</sup>Insolvency Act 1986 or Article 123 of the <sup>M2</sup>Insolvency (Northern Ireland) Order 1989 or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

#### Textual Amendments

- F86** Words in s. 8(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 226](#) (with [Sch. 2](#))
- F87** Words in s. 8(1)(b) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 8\(2\)](#)
- F88** Words in s. 8(2) substituted (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 27(2)(a)
- F89** S. 8(2A)-(2C) repealed (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 27(2)(b), [Sch. 27 Pt. 2\(2\)](#)
- F90** S. 8(4A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 6](#)
- F91** S. 8(4B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 8\(3\)](#)

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

**C22** S. 8(1) modified (22.7.2004) by Finance Act 2004 (c. 12), s. 133(3)

**Marginal Citations**

**M1** 1986 c. 45.

**M2** S.I.1989/2405 (N.I.19).

*Residence etc.*

**F929 Residence, including temporary residence.**

.....

**Textual Amendments**

**F92** S. 9 omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), Sch. 45 para. 148(2)

**10 Non-resident with United Kingdom branch or agency.**

(1) Subject to any exceptions provided by this Act, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment [<sup>F93</sup>if the residence condition is not met (see section 2(1A)) but the person] is carrying on a trade in the United Kingdom through a branch or agency, and shall be so chargeable on chargeable gains accruing on the disposal—

- (a) of assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time when the capital gain accrued, or
- (b) of assets situated in the United Kingdom and used or held for the purposes of the branch or agency at or before that time, or assets acquired for use by or for the purposes of the branch or agency.

(2) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency.

<sup>F94</sup>(3) .....

(4) This section shall not apply to a person who, by virtue of [<sup>F95</sup>Part 2 of TIOPA 2010 (double taxation relief)], is exempt from income tax <sup>F96</sup>... chargeable for the chargeable period in respect of the profits or gains of the branch or agency.

(5) This section shall apply as if references in subsections (1) and (2) above to a trade included references to a profession or vocation, but subsection (1) shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.

(6) In this Act, unless the context otherwise requires, “branch or agency” means any factorship, agency, receivership, branch or management, but does not include any person within the exemptions in section 82 of the Management Act (general agents and brokers).

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#### Textual Amendments

- F93** Words in s. 10(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 76](#)
- F94** S. 10(3) repealed (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(2\)\(a\)](#), [Sch. 43 Pt. 3\(6\)](#)
- F95** Words in s. 10(4) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 41](#) (with [Sch. 9 paras. 1-9, 22](#))
- F96** Words in s. 10(4) repealed (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(2\)\(b\)](#), [Sch. 43 Pt. 3\(6\)](#)

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

- C23** S. 10 extended (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 79\(5\)](#)
- C24** S. 10 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 22\(1\)\(b\)\(3\)](#)
- C25** S. 10 extended by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), reg. 850 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))

#### [<sup>F97</sup>10A Temporary non-residents.

- (1) This section applies if an individual (“the taxpayer”) is temporarily non-resident.
- (2) The taxpayer is chargeable to capital gains tax as if gains and losses within subsection (3) were chargeable gains or, as the case may be, losses accruing to the taxpayer in the period of return.
- (3) The gains and losses within this subsection are—
  - (a) chargeable gains and losses that accrued to the taxpayer in the temporary period of non-residence,
  - (b) chargeable gains that would be treated under section 13 as having accrued to the taxpayer in that period if the residence assumption were made,
  - (c) losses that would be allowable in the taxpayer's case under section 13(8) in that period if that assumption were made, and
  - (d) chargeable gains that would be treated under section 86 as having accrued to the taxpayer in a tax year falling wholly in that period if the taxpayer had been resident in the United Kingdom for that year.
- (4) The residence assumption is—
  - (a) that the taxpayer had been resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, or
  - (b) if that tax year was a split year as respects the taxpayer, that the gain or loss had accrued to the company in the UK part of it.
- (5) But—
  - (a) a gain is not within subsection (3) if, ignoring this section, the taxpayer is chargeable to capital gains tax in respect of it (and could not cease to be so chargeable by making a claim under section 6 of TIOPA 2010), and

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- (b) a loss is not within subsection (3) if the test in paragraph (a) would be met if it were a gain.
- (6) Subsection (2) is subject to sections 10AA and 86A.
- (7) To determine the losses mentioned in subsection (3)(c)—
- (a) calculate separately, for each tax year falling wholly or partly in the temporary period of non-residence, the portion of sum A that does not exceed sum B, and
  - (b) add up all those portions.
- (8) For the purposes of subsection (7)—
- “sum A” is the aggregate of the losses that were not available in accordance with section 13(8) for reducing gains accruing to the taxpayer by virtue of section 13 in the relevant tax year, but would have been available if the residence assumption had been made, and
- “sum B” is the amount of the gains that did not accrue to the taxpayer by virtue of section 13 in that tax year but would have so accrued if that assumption had been made.
- (9) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the taxpayer for the year of return, any foreign chargeable gains falling within subsection (3) by virtue of paragraph (a) of that subsection that were remitted to the United Kingdom at any time in the temporary period of non-residence are to be treated as remitted to the United Kingdom in the period of return.
- (10) Part 4 of Schedule 45 to the Finance Act 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (11) In this section—
- “foreign chargeable gains” has the meaning given by section 12(4);
- “remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007;
- “the year of return” means the tax year that consists of or includes the period of return.

#### **Textual Amendments**

**F97** Ss. 10A, 10AA substituted for s. 10A (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 119](#)

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

- C26** S. 10A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 23](#)
- C27** S. 10A applied (with modifications) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), reg. 85P (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))
- C28** S. 10A (as it has effect where the year of departure as defined in [Finance Act 2013 \(c. 29\)](#), Sch. 45 Pt. 4 is the tax year 2012-13 or an earlier tax year) amended (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 9](#)



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## 10AA Section 10A: supplementary

- (1) Section 10A(2) does not apply to a gain or loss accruing on the disposal by the taxpayer of an asset if—
  - (a) the asset was acquired by the taxpayer in the temporary period of non-residence,
  - (b) it was so acquired otherwise than by means of a relevant disposal that by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued,
  - (c) the asset is not an interest created by or arising under a settlement, and
  - (d) the amount or value of the consideration for the acquisition of the asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 153(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).
- (2) “Relevant disposal” means a disposal of an asset acquired by the person making the disposal at a time when that person was resident in the United Kingdom and was not Treaty non-resident.
- (3) Subsection (1) does not apply if—
  - (a) the gain is one that (ignoring section 10A) would fall to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or part of another asset, and
  - (b) that other asset meets the requirements of paragraphs (a) to (d) of subsection (1), but the asset in respect of which the gain actually accrued or would actually accrue does not.
- (4) Nothing in any double taxation relief arrangements is to be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any chargeable gains treated under section 10A as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).
- (5) Nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made prevents any assessment for the year of departure from being made in the taxpayer's case at any time before the end of the second anniversary of the 31 January next following the year of return (as defined in section 10A).]

### Textual Amendments

**F97** Ss. 10A, 10AA substituted for s. 10A (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 119](#)

## [<sup>F98</sup>10B Non-resident company with United Kingdom permanent establishment

- (1) Subject to any exceptions provided by this Act, the chargeable profits for the purposes of corporation tax of a company not resident in the United Kingdom but carrying on a trade in the United Kingdom through a permanent establishment there include chargeable gains accruing to the company on the disposal of—
  - (a) assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time the gain accrued, or

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- (b) assets situated in the United Kingdom and used or held for the purposes of the permanent establishment at or before the time the gain accrued or acquired for use by or for the purposes of the permanent establishment.
- (2) Subsection (1) does not apply unless the disposal is made at a time when the company is carrying on a trade in the United Kingdom through a permanent establishment there.
- (3) This section does not apply to a company that, by virtue of [<sup>F99</sup>Part 2 of TIOPA 2010 (double taxation relief)], is exempt from corporation tax for the chargeable period in respect of the profits of the permanent establishment.
- [ This section applies to an overseas life insurance company in the case of its long-term  
<sup>F100</sup>(3A) business with the omission from subsection (1)(b) of the words “situated in the United Kingdom and”.]
- [<sup>F101</sup>(4) In this section—
- (a) references to a trade include an office, and
- (b) references to carrying on a trade include holding an office.]]

#### Textual Amendments

- F98** S. 10B inserted (with effect in accordance with s. 149(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 149\(4\)](#)
- F99** Words in s. 10B(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 42](#) (with [Sch. 9 paras. 1-9, 22](#))
- F100** S. 10B(3A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 73](#)
- F101** S. 10B(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 360](#) (with [Sch. 2 Pts. 1, 2](#))

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

- C29** S. 10B applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 22\(1\)\(c\)\(4\)](#)
- C30** S. 10B extended by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), reg. 85O](#) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294, regs. 1\(1\), 21](#))

#### [<sup>F102</sup>11 Visiting forces and official agents

- (1) If section 833 of ITA 2007 (visiting forces and staff of designated allied headquarters) applies to an individual throughout a period, the period is not treated for capital gains tax purposes as—
- (a) a period of residence in the United Kingdom, or
- (b) creating a change of the individual's residence or domicile.
- (2) If an individual is entitled to immunity from income tax by virtue of section 841 of ITA 2007 (which provides immunity from income tax for official agents of Commonwealth countries or the Republic of Ireland etc), the individual is entitled to the same immunity from capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.
- (3) “A member of the staff of a mission” is to be read in accordance with the Diplomatic Privileges Act 1964.]

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#### Textual Amendments

**F102** S. 11 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 297](#) (with [Sch. 2](#))

#### [<sup>F103</sup>12 Non-UK domiciled individuals to whom remittance basis applies

[<sup>F104</sup>(1) This section applies to foreign chargeable gains accruing to an individual in a tax year (“the foreign chargeable gains”) if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.]

[<sup>F105</sup>(1A) But it does not apply to foreign chargeable gains accruing to an individual in the overseas part of a split year as respects that individual, regardless of the part of the year (the overseas part or the UK part) in which the foreign chargeable gains are remitted.]

(2) Chargeable gains are treated as accruing to the individual in any tax year in which any of the foreign chargeable gains are remitted to the United Kingdom.

[<sup>F106</sup>(2A) If that tax year is a split year as respects the individual, the chargeable gains are treated as accruing to the individual in the part of the year (the overseas part or the UK part) in which the foreign chargeable gains are so remitted.]

(3) The amount of chargeable gains treated as accruing is equal to the full amount of the foreign chargeable gains so remitted in that year [<sup>F107</sup>or, where applicable, that part of the year].

(4) In this section “foreign chargeable gains” means chargeable gains accruing from the disposal of an asset which is situated outside the United Kingdom.

(5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.]

#### Textual Amendments

**F103** S. 12 substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 60](#) (with [Sch. 7 para. 84\(1\)\(2\)](#))

**F104** S. 12(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 17](#) (with [Sch. 46 para. 26](#))

**F105** S. 12(1A) inserted (with effect in accordance with s. 59(3) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 59\(2\)](#)

**F106** S. 12(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 95\(2\)](#)

**F107** Words in s. 12(3) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 95\(3\)](#)

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

**C31** S. 12 applied by [Income Tax Act 2007 \(c. 3\)](#), [s. 809F\(4\)\(6\)](#) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#))

**C32** S. 12 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)](#)

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### 13 Attribution of gains to members of non-resident companies.

- (1) This section applies as respects chargeable gains accruing to a company—
- (a) which is not resident in the United Kingdom, and
  - (b) which would be a close company if it were resident in the United Kingdom.

[<sup>F108</sup>(1A) But this section does not apply if the gain is

- [<sup>F109</sup>(a) an ATED-related gain chargeable to capital gains tax by virtue of section 2B (capital gains tax on ATED-related gains), <sup>F110</sup> ...
- (b) an NRCGT gain chargeable to capital gains tax by virtue of section 14D or 188D (capital gains tax on NRCGT gains)] [<sup>F111</sup>, or
- (c) a chargeable gain treated as accruing under section 103KA(2) or (3) (carried interest gains)].]

- (2) Subject to this section, every person who at the time when the chargeable gain accrues to the company is resident <sup>F112</sup>... in the United Kingdom [<sup>F113</sup>and] [<sup>F114</sup>is a participator] in the company, shall be treated for the purposes of this Act as if a part of the chargeable gain had accrued to him.

[<sup>F115</sup>(3) That part shall be equal to the proportion of the gain that corresponds to the extent of the participator's interest as a participator in the company.

[<sup>F116</sup>(3A) Subsection (2) does not apply in the case of a participator who is an individual if—

- (a) the tax year in which the chargeable gain accrues to the company is a split year as respects the participator, and
- (b) the chargeable gain accrues to the company in the overseas part of that year.]

- (4) Subsection (2) above shall not apply in the case of any participator in the company to which the gain accrues where the aggregate amount falling under that subsection to be apportioned to him and to persons connected with him does not exceed [<sup>F117</sup>one quarter] of the gain.]

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

<sup>F118</sup>(a) .....

- [<sup>F119</sup>(b) a chargeable gain accruing on the disposal of an asset used, and used only—
- (i) for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (ii) for the purposes of the part carried on outside the United Kingdom of a trade carried on by the company partly within and partly outside the United Kingdom,] or

<sup>F120</sup>(c) .....

[<sup>F121</sup>(ca) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of economically significant activities carried on by the company wholly or mainly outside the United Kingdom, or

(cb) a chargeable gain accruing to the company on a disposal of an asset where it is shown that neither—

- (i) the disposal of the asset by the company, nor
- (ii) the acquisition or holding of the asset by the company,

formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax, or]

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- (d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section [F122 10B].

[F123 (5A) Where—

- (a) an amount of tax is paid by a person in pursuance of subsection (2) above, and
- (b) an amount in respect of the chargeable gain is distributed (either by way of dividend or distribution of capital or on the dissolution of the company) before the end of the period specified in subsection (5B) below,

the amount of tax (so far as neither reimbursed by the company nor applied as a deduction under subsection (7) below) shall be applied for reducing or extinguishing any liability of that person to income tax, capital gains tax or corporation tax in respect of the distribution.

(5B) The period referred to in subsection (5A)(b) above is the period of three years from—

- (a) the end of the period of account of the company in which the chargeable gain accrued, or
- (b) the end of the period of twelve months beginning with the date on which the chargeable gain accrued,

whichever is earlier.

F124 ..... ]

[F125 (6) .....

- (7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as [F126 neither reimbursed by the company nor applied under subsection (5A) above for reducing any liability to tax]) shall be allowable as a deduction in the computation under this Act of a gain accruing on the disposal by him of [F127 any asset representing his interest as a participator in the company].

[F128 (7A) In ascertaining for the purposes of subsection (5A) or (7) above the amount of capital gains tax or income tax chargeable on any person for any year on or in respect of any chargeable gain or distribution—

- (a) any such distribution as is mentioned in subsection (5A)(b) above and falls to be treated as income of that person for that year shall be regarded as forming the highest part of the income on which he is chargeable to tax for the year;

F129 (b) .....

F129 (c) .....

F129 (d) ..... ]

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

- (9) If [F130 a person who is a participator in the company] at the time when the chargeable gain accrues to the company is itself a company which is not resident in the United Kingdom but which would be a close company if it were resident in the United Kingdom, an amount equal to the amount apportioned under subsection (3) above out of the chargeable gain [F131 to the participating company's interest as a participator in the company to which the gain accrues shall be further apportioned among the

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participants in the participating company according to the extent of their respective interests as participants, and subsection (2) above shall apply to them accordingly in relation to the amounts further apportioned, and so on through any number of companies].

- (10) The persons treated by this section as if a part of a chargeable gain accruing to a company had accrued to them shall include [<sup>F132</sup>the trustees of a settlement who are participants][<sup>F133</sup>in the company, or in any company amongst the participants in which the gain is apportioned under subsection (9) above,] if when the gain accrues to the company the trustees are [<sup>F134</sup>not resident] in the United Kingdom.

<sup>F135</sup>(10A) . . . . .

<sup>F136</sup>(10B) A chargeable gain that would be treated as accruing to a person under subsection (2) above shall not be so treated if—

- (a) it would be so treated only if assets that are assets of a pension scheme were taken into account in ascertaining that person's interest as a participant in the company, and
- (b) at the time the gain accrues a gain arising on a disposal of those assets would be exempt from tax by virtue of [<sup>F137</sup>section 271(1)(c) or (1A)].

In paragraph (a) above “assets of a pension scheme” means assets held for the purposes of a fund or scheme to which any of the provisions mentioned in paragraph (b) above applies.]

- (11) If any tax payable by any person by virtue of subsection (2) above is paid by the company to which the chargeable gain accrues, or in a case under subsection (9) above is paid by any such other company, the amount so paid shall not for the purposes of income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

<sup>F138</sup>(11A) For the purposes of this section the amount of the gain or loss accruing at any time to a company that is not resident in the United Kingdom shall be computed (where it is not the case) as if that company were within the charge to corporation tax on capital gains.]

<sup>F139</sup>(12) In this section “participant”, in relation to a company, has the meaning given by [<sup>F140</sup>section 454 of CTA 2010].

(13) In this section—

- (a) references to a person's interest as a participant in a company are references to the interest in the company which is represented by all the factors by reference to which he falls to be treated as such a participant; and
- (b) references to the extent of such an interest are references to the proportion of the interests as participants of all the participants in the company (including any who are not resident <sup>F141</sup>... in the United Kingdom) which on a just and reasonable apportionment is represented by that interest.

(14) For the purposes of this section, where—

- (a) the interest of any person in a company is wholly or partly represented by an interest which he has under any settlement (“his beneficial interest”), and
- (b) his beneficial interest is the factor, or one of the factors, by reference to which that person would be treated (apart from this subsection) as having an interest as a participant in that company,

the interest as a participant in that company which would be that person's shall be deemed, to the extent that it is represented by his beneficial interest, to be an interest

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of the trustees of the settlement (and not of that person), and references in this section, in relation to a company, to a participator shall be construed accordingly.

F142(15) . . . . . ]

#### Textual Amendments

- F108 S. 13(1A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 7](#)
- F109 Words in s. 13(1A) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 10](#)
- F110 Word in s. 13(1A)(a) omitted (with effect in accordance with s. 32(5) of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 32\(2\)\(a\)](#)
- F111 S. 13(1A)(c) and preceding word inserted (with effect in accordance with s. 32(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 32\(2\)\(b\)](#)
- F112 Words in s. 13(2) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 77\(2\)](#)
- F113 Word in s. 13(2) substituted (with effect in accordance with Sch. 7 para. 105 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 103](#)
- F114 Words in s. 13(2) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(2\)](#)
- F115 S. 13(3)(4) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(3\)](#)
- F116 S. 13(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 96](#)
- F117 Words in s. 13(4) substituted (with effect in accordance with s. 62(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 62\(2\)](#)
- F118 S. 13(5)(a) repealed (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(4\)](#), [Sch. 41 Pt. V\(30\)](#)
- F119 S. 13(5)(b) substituted (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [s. 80\(3\)](#) (with Sch. 3)
- F120 S. 13(5)(c) omitted (with effect in accordance with s. 34(6) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [s. 35\(2\)](#)
- F121 S. 13(5)(ca)(cb) inserted (with effect in accordance with s. 62(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 62\(3\)](#)
- F122 Word in s. 13(5)(d) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)
- F123 S. 13(5A)(5B) substituted for s. 13(5A) (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [s. 80\(4\)](#) (with Sch. 3)
- F124 Words in s. 13(5B) repealed (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(16\)](#)
- F125 S. 13(6) repealed (with effect in accordance with Sch. 41 Pt. 5(30) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(30\)](#)
- F126 Words in s. 13(7) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(5\)\(a\)](#)
- F127 Words in s. 13(7) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(5\)\(b\)](#)
- F128 S. 13(7A) inserted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(6\)](#)
- F129 S. 13(7A)(b)-(d) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 4](#)
- F130 Words in s. 13(9) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(7\)\(a\)](#)

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- F131** Words in s. 13(9) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(7\)\(b\)](#)
- F132** Words in s. 13(10) substituted (with effect in accordance with Sch. 12 para. 8(2) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 8\(1\)](#)
- F133** Words in s. 13(10) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(8\)](#)
- F134** Words in s. 13(10) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 77\(3\)](#)
- F135** S. 13(10A) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 2 para. 28](#)
- F136** S. 13(10B) inserted (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 80\(5\)](#) (with [Sch. 3](#))
- F137** Words in s. 13(10B)(b) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\), s. 284\(1\), Sch. 35 para. 39](#) (with [Sch. 36](#))
- F138** S. 13(11A) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 122\(4\)](#)
- F139** S. 13(12)-(15) inserted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(9\)](#)
- F140** Words in s. 13(12) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 227](#) (with [Sch. 2](#))
- F141** Words in s. 13(13)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 77\(4\)](#)
- F142** S. 13(15) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 178](#)

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

- C33** S. 13 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [24](#)

**[<sup>F143</sup>13A Section 13(5): interpretation**

- (1) For the purposes of section 13(5)(b) a disposal of an asset is to be regarded as a disposal of an asset used for the purposes of a trade carried on wholly outside the United Kingdom by a company if—
  - (a) the asset is accommodation, or an interest or right in accommodation, which is situated outside the United Kingdom, and
  - (b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.
- (2) For the purposes of subsection (1)(b) each of the following is “a relevant period”—
  - (a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or
  - (b) if the company has been the beneficial owner of the accommodation (or interest or right) for a period longer than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company has been the beneficial owner of the accommodation (or interest or right).
- (3) The reference in subsection (1)(b) to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but—
  - (a) as if sections 266, 268 and 268A were omitted, and



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- (b) as if, in section 267(1), the reference to an accounting period were a reference to a relevant period as defined by subsection (2) above.
- (4) For the purposes of section 13(5)(ca) activities carried on by a company are “economically significant activities” if they are activities which consist of the provision by the company of goods or services to others on a commercial basis and involve—
- (a) the use of staff in numbers, and with competence and authority,
  - (b) the use of premises and equipment, and
  - (c) the addition of economic value, by the company, to those to whom the goods or services are provided,
- commensurate with the size and nature of those activities.
- (5) In subsection (4) “staff” means employees, agents or contractors of the company.]

#### Textual Amendments

**F143** S. 13A inserted (with effect in accordance with s. 62(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 62\(4\)](#)

## 14 Non-resident groups of companies.

(1) This section has effect for the purposes of section 13.

[<sup>F144</sup>(2) The following provisions—

- (a) section 41(8),
- (b) section 171 (except subsections (1)(b) and (1A)),
- (c) section 173 (with the omission of the words “to which this section applies” in subsections (1)(a) and (2)(a) and “such” in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),
- (d) section 174(4) (with the substitution of “ at a time when both were members of the group” for “in a transfer to which section 171(1) applied”), and
- (e) section 175(1) (with the omission of the words “to which this section applies”),

shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to companies which are members of a group of companies.]

(3) [<sup>F145</sup>Section 179 (except subsections (1)(b) and (1A))] shall apply for the purposes of section 13 as if for any reference therein to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the United Kingdom.

(4) For the purposes of this section —

- (a) a “non-resident group” of companies—
  - (i) in the case of a group, none of the members of which are resident in the United Kingdom, means that group, and
  - (ii) in the case of a group, 2 or more members of which are not resident in the United Kingdom, means the members which are not resident in the United Kingdom;
- (b) “group” shall be construed in accordance with section 170 <sup>F146</sup> ... .

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#### Textual Amendments

- F144** S. 14(2) substituted (with effect in accordance with Sch. 29 para. 16(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 16(2)** (with [Sch. 29 para. 46\(5\)](#))
- F145** Words in s. 14(3) substituted (with effect in accordance with Sch. 29 para. 16(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 16(3)** (with [Sch. 29 para. 46\(5\)](#))
- F146** Words in s. 14(4)(b) repealed (with effect in accordance with Sch. 29 para. 16(5), Sch. 40 Pt. 2(12) Note 2 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 16\(4\)](#), **Sch. 40 Pt. II(12)** (with [Sch. 29 para. 46\(5\)](#))

### [<sup>F147</sup>14A Section 13: non-UK domiciled individuals

- (1) This section applies if—
- (a) by virtue of section 13, part of a chargeable gain that accrues to a company on the disposal of an asset is treated as accruing to an individual in a tax year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) The part of the chargeable gain treated as accruing to the individual (“the deemed chargeable gain”) is a foreign chargeable gain within the meaning of section 12 if (and only if) the asset is situated outside the United Kingdom.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
- (a) treat any consideration obtained by the company on the disposal of the asset as deriving from the deemed chargeable gain, and
  - (b) unless the consideration so obtained is of an amount [<sup>F148</sup>at least] equal to the market value of the asset, treat the asset as deriving from the deemed chargeable gain.
- (4) If—
- (a) the deemed chargeable gain is a foreign chargeable gain (within the meaning of section 12),
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year mentioned in subsection (1), and
  - (c) any of the deemed chargeable gain is remitted to the United Kingdom in a tax year after that year,

the chargeable gain treated under section 12(2) as accruing may not be reduced or extinguished under section 13(8).]

#### Textual Amendments

- F147** S. 14A inserted (with effect in accordance with Sch. 7 para. 105 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 104**
- F148** Words in s. 14A(3)(b) inserted (with effect in accordance with Sch. 27 para. 15(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 27 para. 12**

*Status: Point in time view as at 16/11/2017.*

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## *[<sup>F149</sup>UK residential property: non-resident CGT*

### **Textual Amendments**

**F149** Ss. 14B-14H and cross-heading inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 11](#)

### **14B Meaning of “non-resident CGT disposal”**

(1) For the purposes of this Act a disposal made by a person is a “non-resident CGT disposal” if—

- (a) it is a disposal of a UK residential property interest [<sup>F150</sup>(within the meaning given by Schedule B1)], and
- (b) condition A or B is met.

But see also [<sup>F151</sup>subsections (5) and (6)].

(2) Condition A is—

- (a) in the case of an individual, that the individual is not resident in the United Kingdom for the tax year in question (see subsection (3)),
- (b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is not resident in the United Kingdom,
- (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is not resident in the United Kingdom during any part of the tax year in question, and
- (d) in any other case, that the person is not resident in the United Kingdom at the relevant time.

(3) In subsection (2)—

- (a) “the tax year in question” means the tax year in which any gain on the disposal accrues (or would accrue were there to be such a gain);
- (b) “the relevant time” means the time at which any gain on the disposal accrues (or would accrue were there to be such a gain).

(4) Condition B is that—

- (a) the person is an individual, and
- (b) any gain accruing to the individual on the disposal would accrue in the overseas part of a tax year which is a split year as respects the individual.

(5) A disposal by a person of a UK residential property interest is not a non-resident CGT disposal so far as any chargeable gains accruing to the person on the disposal—

- (a) would be gains in respect of which the person would be chargeable to capital gains tax—
  - (i) under section 10(1) (non-resident with UK branch or agency), or
  - (ii) under section 2 as a result of subsection (1C) of that section (corresponding provision relating to the overseas part of a split year),or
- (b) would be gains forming part of the person's chargeable profits for corporation tax purposes by virtue of section 10B (non-resident company with UK permanent establishment).

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[ A disposal of a UK residential property interest is not a non-resident CGT disposal <sup>F152</sup>(6) if section 356OC(1) of CTA 2010 (gains etc on certain disposals treated as trading profits for corporation tax purposes) or section 517C of ITA 2007 (gains etc on certain disposals treated as trading profits for income tax purposes) applies in relation to it.]

#### Textual Amendments

- F150** Words in s. 14B(1)(a) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 11 para. 2](#)
- F151** Words in s. 14B(1) substituted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(6\)\(a\)](#) (with savings in 2017 c. 32, s. 39(1)(2))
- F152** S. 14B(6) inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(6\)\(b\)](#) (with savings in 2017 c. 32, s. 39(1)(2))

#### <sup>F153</sup>14C Meaning of “disposal of a UK residential property interest”

.....

#### Textual Amendments

- F153** [S. 14C](#) omitted (with effect in accordance with s. 83(17) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 11 para. 3](#)

#### 14D Persons chargeable to capital gains tax on NRCGT gains

(1) A person is chargeable to capital gains tax in respect of any chargeable NRCGT gain accruing to the person in the tax year on a non-resident CGT disposal.

See also section 188D(1).

(2) Capital gains tax is charged on the total amount of chargeable NRCGT gains accruing to the person in the tax year, after deducting—

- (a) any allowable losses accruing to the person in the tax year on disposals of UK residential property interests, and
- (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous tax year, any allowable losses accruing to the person in any previous tax year (not earlier than the tax year 1965-66) on disposals of UK residential property interests.

(3) In subsection (2), the reference to chargeable NRCGT gains does not include any such gains which accrue to a member of an NRCGT group.

(4) The only deductions that can be made from chargeable NRCGT gains to which subsection (2) applies are those permitted by this section.

This is subject to section 62(2AA) (carry-back of losses accruing in year of death).

(5) See section 57B and Schedule 4ZZB for how to determine—

- (a) whether an NRCGT gain (or loss) accrues on a non-resident CGT disposal, and
- (b) the amount of any NRCGT gain (or loss) so accruing.

*Status: Point in time view as at 16/11/2017.*

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

**C34** S. 14D(2) excluded (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 20\(13\)](#)

**14E Further provision about use of NRCGT losses**

- (1) Subsections (2) to (4) apply in relation to an allowable NRCGT loss accruing to a person in a tax year on a non-resident CGT disposal.
- (2) The loss is not allowable as a deduction from chargeable gains accruing in any earlier tax year.  

This is subject to section 62(2) and (2AA) (carry-back of losses accruing in year of death).
- (3) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.
- (4) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.

**14F Persons not chargeable under section 14D if a claim is made**

- (1) A person is not chargeable to capital gains tax under section 14D in respect of a chargeable NRCGT gain accruing to the person on a non-resident CGT disposal if the person—
  - (a) is an eligible person in relation to the disposal, and
  - (b) makes a claim under this section with respect to the disposal.
- (2) A diversely-held company which makes a non-resident CGT disposal is an eligible person in relation to the disposal.
- (3) A scheme (see subsection (7)) which makes a non-resident CGT disposal is an eligible person in relation to the disposal if condition A or B is met.
- (4) Condition A is that the scheme is a widely-marketed scheme throughout the relevant ownership period.
- (5) Condition B is that—
  - (a) an investor in the scheme is an offshore fund, an open-ended investment company or an authorised unit trust (“the feeder fund”),
  - (b) the scheme is a widely-marketed scheme throughout the alternative period, after taking into account—
    - (i) the scheme documents relating to the feeder fund, and
    - (ii) the intended investors in the feeder fund, and
  - (c) the scheme and the feeder fund have the same manager.
- (6) A company carrying on life assurance business (as defined in section 56 of the Finance Act 2012) which makes a non-resident CGT disposal is an eligible person if immediately before the time of the disposal the interest in UK land which is the subject of that disposal is held for the purpose of providing benefits to policyholders in the course of that business.

*Status: Point in time view as at 16/11/2017.*

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- (7) In this section “scheme” means any of the following—
- (a) a unit trust scheme;
  - (b) a company which is an open-ended investment company incorporated by virtue of regulations under section 262 of the Financial Services and Markets Act 2000;
  - (c) a company incorporated under the law of a territory outside the United Kingdom which is, under that law, the equivalent of an open-ended investment company.
- (8) In this section “the relevant ownership period”, in relation to a scheme, means—
- (a) the period beginning with the day on which the scheme acquired the interest in UK land which (or part of which) is the subject of the non-resident CGT disposal and ending with the day on which that disposal occurs, or
  - (b) if shorter, the period of 5 years ending with the day on which that disposal occurs.
- (9) For the purposes of subsection (5), the “alternative period”, in relation to a scheme, is the shorter of—
- (a) the relevant ownership period, and
  - (b) the period beginning when the feeder fund first became an investor in the scheme and ending with the date of the disposal.
- (10) In this section—
- “diversely-held company” means a company which is not a closely-held company;
  - “interest in UK land” has the same meaning as in Schedule B1;
  - “open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act).
- (11) In Schedule C1—
- (a) Part 1 sets out the rules for determining whether or not a company is a closely-held company;
  - (b) Part 2 sets out how to determine whether or not a scheme is a widely-marketed scheme at any time.

## **14G Section 14F: divided companies**

- (1) This section applies where a company which makes a non-resident CGT disposal—
- (a) is a divided company, and
  - (b) would, without this section, be an eligible person for the purposes of section 14F in relation to the disposal.
- (2) In determining for the purposes of section 14F whether or not the company is an eligible company in relation to the disposal, the company is to be treated as if it were a closely-held company if the conditions in subsection (3) are met.
- (3) The conditions are that—
- (a) the gain or loss accruing on the disposal is primarily or wholly attributable to a particular division of the company, and
  - (b) if that division were a separate company, that separate company would be a closely-held company.

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- (4) For the purposes of this section a company is a “divided company” if, under the law under which the company is formed, under the company's articles of association or other document regulating the company or under arrangements entered into by or in relation to the company—
- (a) some or all of the assets of the company are available primarily, or only, to meet particular liabilities of the company, and
  - (b) some or all of the members of the company, and some or all of its creditors, have rights primarily, or only, in relation to particular assets of the company.
- (5) References in this section to a “division” of a divided company are to an identifiable part of the company that carries on distinct business activities and to which particular assets and liabilities of the company are primarily or wholly attributable.

#### **14H Section 14F: arrangements for avoiding tax**

- (1) Subsection (2) applies where—
- (a) arrangements are entered into, and
  - (b) the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 14D as a result of a person not being an eligible person in relation to the disposal by virtue of subsection (2) (diversely-held companies) or, as the case may be, subsection (3) (widely-marketed schemes) of section 14F (persons not chargeable under section 14D if a claim is made).
- (2) The arrangements (or that part of the arrangements) are to be disregarded in determining whether or not the company is an eligible person by virtue of that subsection.
- (3) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

## **PART II**

### GENERAL PROVISIONS RELATING TO COMPUTATION OF GAINS AND ACQUISITIONS AND DISPOSALS OF ASSETS

#### **CHAPTER I**

##### INTRODUCTORY

#### **15 Computation of gains.**

- (1) The amount of the gains accruing on the disposal of assets shall be computed in accordance with this Part, subject to the other provisions of this Act.
- (2) Every gain shall, except as otherwise expressly provided, be a chargeable gain.

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## 16 Computation of losses.

- (1) Subject to [<sup>F154</sup>sections 261B, 261D and 263ZA] and except as otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.
- (2) Except as otherwise expressly provided, all the provisions of this Act 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 Act to an allowable loss shall be construed accordingly.
- [<sup>F155</sup>(2A) A loss accruing to a person in a year of assessment shall not be an allowable loss for the purposes of this Act unless, in relation to that year, he gives a notice to an officer of the Board quantifying the amount of that loss; and sections 42 and 43 of the Management Act shall apply in relation to such a notice as if it were a claim for relief.]
- (3) A loss accruing to a person in a year of assessment [<sup>F156</sup>where the residence condition is not met (see section 2(1A))] shall not be an allowable loss for the purposes of this Act unless, under section [<sup>F157</sup>2B,] 10[<sup>F158</sup>, 10B, 14D or 188D] he would be chargeable to tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.
- [<sup>F159</sup>(3A) If the person is an individual and the year is a split year as respects that individual, subsection (3) also applies to a loss accruing to the individual in the overseas part of that year.]
- [<sup>F160</sup>(4) . . . . .]

### Textual Amendments

- F154** Words in s. 16(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 298](#) (with [Sch. 2](#))
- F155** S. 16(2A) inserted (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 113\(1\)](#)
- F156** Words in s. 16(3) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 78](#)
- F157** Word in s. 16(3) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 8](#)
- F158** Words in s. 16(3) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 12](#)
- F159** S. 16(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 97](#)
- F160** S. 16(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 61](#)

### Modifications etc. (not altering text)

- C35** S. 16 excluded (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 42\(2\)](#)
- C36** S. 16 excluded by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 85Z4](#) (as inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))



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## [<sup>F161</sup>16ZA] Losses: non-UK domiciled individuals

- [<sup>F162</sup>(1) An individual may make an election under this section in respect of—
- (a) the first tax year in which section 809B of ITA 2007 (claim for remittance basis) applies to the individual, or
  - (b) the first tax year in which that section applies to the individual following a period in which the individual has been domiciled in the United Kingdom.
- (2) Where an individual makes an election under this section in respect of a tax year, the election has effect in relation to the individual for—
- (a) that tax year, and
  - (b) all subsequent tax years.
- (2A) But if after making an election under this section an individual becomes domiciled in the United Kingdom at any time in a tax year, the election does not have effect in relation to the individual for—
- (a) that tax year, or
  - (b) any subsequent tax year.
- (2B) Where an election made by an individual under this section in respect of a tax year ceases to have effect by virtue of subsection (2A), the fact that it has ceased to have effect does not prevent the individual from making another election under this section in respect of a later tax year.
- (3) If an individual does not make an election under this section in respect of a year referred to in subsection (1)(a) or (b), foreign losses accruing to the individual in—
- (a) that tax year, or
  - (b) any subsequent tax year except one in which the individual is domiciled in the United Kingdom,
- are not allowable losses.]
- (4) Sections 42 and 43 of the Management Act (procedure and time limit for making claims), except section 42(1A) of that Act, apply in relation to an election under this section as they apply in relation to a claim for relief.
- (5) An election under this section is irrevocable.
- (6) In this section “foreign loss” means a loss accruing from the disposal of an asset situated outside the United Kingdom.

[ Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of this <sup>F163</sup>(7) section.]

### Textual Amendments

- F161** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 62](#)
- F162** S. 16ZA(1)-(3) substituted (with effect in accordance with Sch. 8 para. 3(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 3\(2\)](#)
- F163** S. 16ZA(7) inserted (with effect in accordance with Sch. 8 para. 3(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 3\(3\)](#)

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## **16ZB Individual who has made election under section 16ZA: foreign chargeable gains remitted in tax year after tax year in which accrue**

- (1) This section applies to an individual for a tax year (“the applicable tax year”) if—
- [<sup>F164</sup>(a) the individual has made an election under section 16ZA in respect of a tax year before the applicable year,
  - (aa) the election has effect in relation to the individual for the applicable year,
  - (b) foreign chargeable gains accrued to the individual in or after the tax year in respect of which the election was made but before the applicable year, and]
  - (c) by reason of the remission of any of the foreign chargeable gains to the United Kingdom, chargeable gains are treated under section 12 as accruing to the individual in the applicable tax year [<sup>F165</sup>or a part of the applicable tax year] (“the relevant gains”).
- (2) Section 2(2) or (4) has effect for the applicable tax year as if the relevant gains had not accrued.
- (3) The amount on which the individual is charged to capital gains tax for the applicable tax year is (instead of the amount given by section 2(2) or (4)(b), as reduced under section 3) the sum of—
- (a) the adjusted taxable amount, and
  - (b) the amount of the relevant gains.
- (4) “The adjusted taxable amount” is—
- (a) if section 3(1) (annual exempt amount) does not apply to the individual for the applicable tax year, the amount given by section 2(2) or (4)(b) as it has effect by virtue of subsection (2), and
  - (b) otherwise, so much of that amount as exceeds the exempt amount for the applicable tax year (within the meaning of section 3).
- (5) In subsection (1) “foreign chargeable gains” has the meaning given by section 12(4).
- (6) For the purposes of subsection (1)(c) foreign chargeable gains are remitted to the United Kingdom if they are regarded as so remitted for the purposes of section 12.

### **Textual Amendments**

**F161** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by

[Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 62](#)

**F164** S. 16ZB(1)(a)(aa)(b) substituted for s. 16ZB(1)(a)(b) (with effect in accordance with Sch. 8 para. 4(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 4\(1\)](#)

**F165** Words in s. 16ZB(1)(c) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 98](#)

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

**C37** S. 16ZB excluded (with effect in accordance with Sch. 8 para. 3(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 3\(5\)](#)

## **16ZC Individual who has made election under section 16ZA and to whom remittance basis applies**

- (1) This section applies to an individual for a tax year if—

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- [<sup>F166</sup>(a) the individual has made an election under section 16ZA in respect of the tax year or any earlier tax year,
  - (b) the election has effect in relation to the individual for the tax year, and
  - (c) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the tax year.]
- (2) The following steps apply for the purpose of calculating the amount on which the individual is to be charged to capital gains tax for the tax year.

*Step 1*

Deduct any relevant allowable losses from the chargeable gains referred to in subsection (3) in the order in which they appear there (starting with paragraph (a) of that subsection).

If allowable losses are deductible from the chargeable gains referred to in subsection (3)(b) but are not enough to exhaust them all—

- (a) those chargeable gains are to be ordered according to the day on which they accrued,
- (b) the losses are to be deducted from those gains in reverse chronological order (starting with the last chargeable gain to accrue), and
- (c) if allowable losses are deductible from chargeable gains that accrued on a particular day but are not enough to exhaust all of the chargeable gains that accrued on that day, the amount deducted from each of those chargeable gains is the appropriate proportion of the losses.

In paragraph (c) “the appropriate proportion”, in relation to a chargeable gain, is the amount of that gain divided by the total amount of the chargeable gains that accrued on the day in question.

*Step 2*

Treat the amount referred to in section 2(2) or (4)(a) or 16ZB(3)(a) as being equal to—

- (a) the amount it would be if there were no relevant allowable losses, minus
- (b) the total amount deducted under Step 1 from chargeable gains within subsection (3)(a) or (c).

- (3) The chargeable gains are—
- (a) foreign chargeable gains accruing to the individual in the tax year, to the extent that they are remitted to the United Kingdom in that year [<sup>F167</sup>or, if that year is a split year as respects the individual, in the UK part of that year],
  - (b) foreign chargeable gains accruing to the individual in that year, to the extent that they are not so remitted in that year [<sup>F168</sup>or they are so remitted in that year but it is a split year as respects the individual and they are so remitted in the overseas part of the year], and
  - (c) chargeable gains accruing to the individual in that year (other than foreign chargeable gains).
- (4) Chargeable gains treated as accruing under section 87 or 89(2) (read, where appropriate, with section 10A) are not within any paragraph of subsection (3).
- (5) Chargeable gains treated as accruing under section 12 are not within subsection (3)(c).
- (6) For the purposes of subsection (3) foreign chargeable gains are remitted to the United Kingdom if they are regarded as so remitted for the purposes of section 12.

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(7) In this section—

“relevant allowable losses” means the allowable losses that section 2(2) provides may be deducted from chargeable gains accruing to the individual in the tax year [<sup>F169</sup>or a part of the tax year], and

“foreign chargeable gains” has the meaning given by section 12(4).

#### Textual Amendments

- F161** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 62](#)
- F166** S. 16ZC(1)(a)-(c) substituted (with effect in accordance with Sch. 8 para. 5(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 5\(1\)](#)
- F167** Words in s. 16ZC(3)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 99\(2\)\(a\)](#)
- F168** Words in s. 16ZC(3)(b) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 99\(2\)\(b\)](#)
- F169** Words in s. 16ZC(7) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 99\(3\)](#)

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

- C38** S. 16ZC excluded (with effect in accordance with Sch. 8 para. 3(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 3\(5\)](#)

### 16ZD Section 16ZC: supplementary

- (1) This section applies if section 16ZC applies to an individual for a tax year.
- (2) Any allowable loss deducted under step 1 of section 16ZC(2) is to be regarded (for the purposes of section 2(2)(b)) as allowed as a deduction from chargeable gains accruing to the individual in the tax year.
- (3) If a deduction is made under step 1 of section 16ZC(2) from a foreign chargeable gain within section 16ZC(3)(b), the amount of the foreign chargeable gain is reduced by the amount deducted.]

#### Textual Amendments

- F161** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 62](#)

### [<sup>F170</sup>16A Restrictions on allowable losses

- (1) For the purposes of this Act, “allowable loss” does not include a loss accruing to a person if—
  - (a) it accrues to the person directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
  - (b) the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage.
- (2) For the purposes of subsection (1)—

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“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

“tax advantage” means—

- (a) relief or increased relief from tax,
- (b) repayment 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,

and for the purposes of this definition “tax” means capital gains tax, corporation tax or income tax.

(3) For the purposes of subsection (1) it does not matter—

- (a) whether the loss accrues at a time when there are no chargeable gains from which it could otherwise have been deducted, or
- (b) whether the tax advantage is secured for the person to whom the loss accrues or for any other person.]

#### Textual Amendments

**F170** S. 16A inserted (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 27\(3\)](#)

## 17 Disposals and acquisitions treated as made at market value.

(1) Subject to the provisions of this Act, a person’s acquisition or disposal of an asset shall for the purposes of this Act 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, and in particular where he acquires or disposes of it by way of gift or on a transfer into settlement by a settlor or by way of distribution from a company in respect of shares in the company, 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 in connection with his own or another’s loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another’s services or past services in any office or employment or of any other service rendered or to be rendered by him or another.

(2) 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.

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

**C39** S. 17 excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 7\(4\)](#)

**C40** S. 17 excluded (with saving) (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 11\(2\)](#)

**C41** S. 17 excluded (15.1.2001) by [Transport Act 2000 \(c. 38\), s. 275\(1\), Sch. 26 para. 24\(1\)](#) (with [Sch. 26 para. 24\(2\)](#)); S.I. 2000/3376, art. 2

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- C42** S. 17 excluded (15.1.2001) by [Transport Act 2000 \(c. 38\)](#), s. 275(1), **Sch. 26 para. 31(1)** (with [Sch. 26 para. 31\(2\)](#)); S.I. 2000/3376, art. 2
- C43** S. 17 restricted (E.W.S.) (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), **Sch. 10 para. 25**; S.I. 2005/1909, art. 2, [Sch.](#)
- C44** S. 17 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 13 para. 39(1)**
- C45** S. 17 excluded (8.9.2008 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 7 para. 7(2)**; S.I. 2008/2358, arts. 2(1), 3(1)
- C46** S. 17 restricted (30.9.2013) by [The BRB \(Residuary\) Limited \(Tax Consequences\) Order 2013 \(S.I. 2013/2242\)](#), arts. 1, **3(b)**
- C47** S. 17(1) excluded (3.1.1995) by [The Ports \(Northern Ireland\) Order 1994 \(S.I. 1994/2809 \(N.I. 16\)\)](#), arts. 1(2), **18(4)**
- C48** S. 17(1) excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), **ss. 653(3)**, 1329(1) (with [Sch. 2 Pts. 1, 2](#), [Sch. 2 para. 94](#))

## 18 Transactions between connected persons.

- (1) This section 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 17(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 subsection (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 subsection (1) above, being a disposal made at a time when they are connected persons.
- (4) Subsection (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 subsection (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 subsection (7) below, in a case where the asset mentioned in subsection (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 subsection (2) above, deemed to be equal to the market value of the asset) that market value shall be—
  - (a) what its market value would be if not subject to the right or restriction, minus—
  - (b) 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, in the case

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

## **19 Deemed consideration in certain cases where assets disposed of in a series of transactions.**

- (1) For the purposes of this Act, in any case where—
- (a) by way of 2 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 2 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 section 20, 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 subsection (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 section 58 applies, nothing in subsection (1) above shall affect the amount which, for the purposes of this Act, is the consideration for that disposal.
- (3) Subject to subsection (5) below, any reference in this section to a material transaction is a reference to a transaction by way of gift or otherwise; and, for the purposes of this section, 2 or more material transactions are linked if they occur within the period of 6 years ending on the date of the last of them.
- (4) This section 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 section 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 171, 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 section referred to as an “inter-group transfer”.

- (6) In any case where—

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- (a) a company (“company A”) disposes of an asset by way of a material transaction, and
- (b) company A acquired the asset after 19th March 1985 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 19th March 1985 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 subsection (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 subsection (1) above shall have effect with respect to company A.

## **20 Original market value and aggregate market value for purposes of section 19.**

- (1) This section has effect for determining the original market value of assets and the aggregate market value of assets as mentioned in subsection (1)(b) of section 19.
- (2) Expressions used in this section have the same meaning as in that section.
- (3) 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 section 19, would be deemed to be the consideration for that transaction for the purposes of this Act; 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 Act to be the consideration for the transaction concerned (whether by virtue of the previous operation of section 19, or by virtue of any other provision of this Act).
- (4) Subject to subsections (6) to (9) below, in relation to any transaction in a series of linked transactions—
  - (a) any reference in this section or section 19 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 Act 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 section 19 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.
- (5) The reference in subsection (4)(a) above to considering all the assets together includes a reference not only to considering them as a group or holding or collection of



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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.

- (6) 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 subsections (4) and (5) 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 subsection (7) 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.
- (7) If, before the first of the transactions referred to in paragraph (b) of subsection (6) 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.
- (8) In the application of subsection (6) 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.
- (9) In subsection (8) above “securities” includes any assets which are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

## CHAPTER II

### ASSETS AND DISPOSALS OF ASSETS

#### *General provisions*

#### **21 Assets and disposals.**

- (1) All forms of property shall be assets for the purposes of this Act, whether situated in the United Kingdom or not, including—
- (a) options, debts and incorporeal property generally, and
  - [<sup>F171</sup>(b) currency, with the exception (subject to express provision to the contrary) of sterling,]
  - (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.
- (2) For the purposes of this Act—
- (a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and
  - (b) there 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

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making a disposal, any description of property derived from the asset remains undisposed of.

#### Textual Amendments

**F171** S. 21(1)(b) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 9](#)

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

**C49** S. 21(2)(b) applied by [1970 c. 9](#), [Sch. 3ZC para. 12\(2\)](#) (as inserted (retrospective to 11.7.2019 and with effect in accordance with [Sch. 7 para. 4\(1\)\(a\)](#) of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 7 para. 2](#))

**C50** S. 21(2) applied (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), [Sch. 3 para. 4\(2\)](#)

**C51** S. 21(2) applied by [1970 c. 9](#), [Sch. 3ZB para. 14\(5\)](#) (as inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 49 paras. 6, 8](#))

## 22 Disposal where capital sums derived from assets.

- (1) Subject to sections 23 and 26(1), and to any other exceptions in this Act, there is for the purposes of this Act 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 subsection applies in particular to—
- (a) capital sums received by way of compensation for any kind of damage or injury to assets or for the loss, destruction or dissipation of assets or for any depreciation or risk of depreciation of an asset,
  - (b) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, assets,
  - (c) capital sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights, and
  - (d) capital sums received as consideration for use or exploitation of assets.
- (2) In the case of a disposal within paragraph (a), (b), (c) or (d) of subsection (1) above, the time of the disposal shall be the time when the capital sum is received as described in that subsection.
- (3) In this section “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.
- [<sup>F172</sup>(4) Subsection (1) does not apply where a company receives, or becomes entitled to receive—
- (a) a capital distribution within the meaning of section 122 (see instead subsection (1) of that section), or
  - (b) a distribution to which the charge to corporation tax on income under Part 9A of CTA 2009 (company distributions) applies or would apply were the distribution not exempt for the purposes of that Part.]

#### Textual Amendments

**F172** S. 22(4) inserted (with effect in accordance with [Sch. 3 paras. 5, 7](#) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 3 para. 4\(2\)](#) (with [Sch. 3 para. 6\(3\)](#))

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

**C52** S. 22 excluded (27.7.1993) by 1993 c. 37, s. 12, Sch. 2 Pt. I para.17

## **23 Receipt of compensation and insurance money not treated as a disposal.**

(1) If the recipient so claims, receipt of a capital sum within paragraph (a), (b), (c) or (d) of section 22(1) derived from an asset which is not lost or destroyed shall not be treated for the purposes of this Act as a disposal of the asset if—

- (a) the capital sum is wholly applied in restoring the asset, or
- (b) (subject to subsection (2) below), the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum, or
- (c) (subject to subsection (2) below), the amount of the capital sum is small, as compared with the value of the asset,

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

(2) If the allowable expenditure is less than the consideration for the disposal constituted by the receipt of the capital sum (or is nil)—

- (a) paragraphs (b) and (c) of subsection (1) above shall not apply, and
- (b) if the recipient so elects (and there is any allowable expenditure)—
  - (i) the amount of the consideration for the disposal shall be reduced by the amount of the allowable expenditure, and
  - (ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the disposal or any subsequent occasion.

In this subsection “allowable expenditure” means expenditure which, immediately before the disposal, was attributable to the asset under paragraphs (a) and (b) of section 38(1).

(3) If, in a case not falling within subsection (1)(b) above, a part of a capital sum within paragraph (a) or paragraph (b) of section 22(1) derived from an asset which is not lost or destroyed is applied in restoring the asset, then if the recipient so claims, that part of the capital sum shall not be treated as consideration for the disposal deemed to be effected on receipt of the capital sum but shall be deducted from any expenditure allowable under Chapter III of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

(4) If an asset is lost or destroyed and a capital sum received by way of compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is within one year of receipt, or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed the owner shall if he so claims be treated for the purposes of this Act—

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

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- (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received by way of compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) above.
- (5) A claim shall not be made under subsection (4) above if part only of the capital sum is applied in acquiring the new asset but if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, then the owner shall if he so claims be treated for the purposes of this Act—
- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
  - (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection.
- [<sup>F173</sup>(6) If a building (“the old building”) is destroyed or irreparably damaged, and all or part of a capital sum received by way of compensation for the destruction or damage, or under a policy of insurance of the risk of the destruction or damage, is applied by the recipient in constructing or otherwise acquiring a replacement building situated on other land (“the new building”), then for the purposes of subsections (4) and (5) above each of the old building and the new building shall be regarded as an asset separate from the land on which it is or was situated and the old building shall be treated as lost or destroyed.
- (7) For the purposes of subsection (6) above:
- (a) references to a building include references to any permanent or semi-permanent structure in the nature of a building; and
  - (b) the reference to a sum applied in acquiring the new building does not include a reference to a sum applied in acquiring the land on which the new building is situated; and
  - (c) all necessary apportionments shall be made of any expenditure, compensation or consideration, and the method of apportionment shall be such as is just and reasonable.
- (8) This section shall apply in relation to a wasting asset with the following modifications:
- (a) paragraphs (b) and (c) of subsection (1) above, and subsection (2) above, shall not apply; and
  - (b) in subsections (1) and (3) above, the amount of the expenditure from which the deduction is to be made shall be the amount which would have been allowable under Chapter III of this Part if the asset had been disposed of immediately after the application of the capital sum.]

#### **Textual Amendments**

**F173** S. 23(6)(7)(8) substituted for s. 23(6) (with effect in accordance with Sch. 39 para. 3(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 3\(2\)](#)

*Status: Point in time view as at 16/11/2017.*

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

- C53** S. 23(4) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 3(1)(3)
- C54** S. 23(4) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 3(1)-(3) (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.
- C55** S. 23(4)(5) modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), Sch. 7 para. 10(1)(3) (with Sch. 7 para. 9(1))
- C56** S. 23(5) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 3(2)(3)
- C57** S. 23(5) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 3(1)-(3) (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

## **24 Disposals where assets lost or destroyed, or become of negligible value.**

- (1) Subject to the provisions of this Act and, in particular to <sup>[F174]</sup>sections 140A(1D), 140E(7) and 144], the occasion of the entire loss, destruction, dissipation or extinction of an asset shall, for the purposes of this Act, constitute a disposal of the asset whether or not any capital sum by way of compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.

<sup>[F175]</sup>(1A) A negligible value claim may be made by the owner of an asset (“P”) if condition A or B is met.

(1B) Condition A is that the asset has become of negligible value while owned by P.

(1C) Condition B is that—

- (a) the disposal by which P acquired the asset was a no gain/no loss disposal,
- (b) at the time of that disposal the asset was of negligible value, and
- (c) between the time when the asset became of negligible value and the disposal by which P acquired it, each other disposal (if any) of the asset was a no gain/no loss disposal.]

<sup>[F176]</sup>(2) <sup>[F177]</sup>Where a negligible value claim is made:]

- (a) this Act shall apply as if the claimant had sold, and immediately reacquired, the asset at the time of the claim or (subject to paragraphs (b) and (c) below) at any earlier time specified in the claim, for a consideration of an amount equal to the value specified in the claim.
- (b) An earlier time may be specified in the claim if:
  - (i) the claimant owned the asset at the earlier time; and
  - (ii) the asset had become of negligible value at the earlier time; and either
  - (iii) for capital gains tax purposes the earlier time is not more than two years before the beginning of the year of assessment in which the claim is made; or
  - (iv) for corporation tax purposes the earlier time is on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.
- (c) Section 93 of and Schedule 12 to the Finance Act 1994 (indexation losses and transitional relief) shall have effect in relation to an asset to which this section applies as if the sale and reacquisition occurred at the time of the claim and not at any earlier time.]

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- (3) For the purposes of [<sup>F178</sup>this section], a building and any permanent or semi-permanent structure in the nature of a building may be regarded as an asset separate from the land on which it is situated, but [<sup>F179</sup>where a building or structure is so regarded,] the person deemed to make the disposal of the building or structure shall be treated as if he had also sold, and immediately reacquired, the site of the building or structure (including in the site any land occupied for purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time.
- [<sup>F180</sup>(4) For the purposes of subsection (1C), a no gain/no loss disposal is one which, by virtue of any of the no gain/no loss provisions, neither a gain nor a loss accrues to the person making the disposal.]

#### Textual Amendments

- F174** Words in s. 24(1) substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 3** (with S.I. 2008/1579, reg. 4(1))
- F175** S. 24(1A)-(1C) inserted (with effect in accordance with art. 4(6) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **4(2)**
- F176** S. 24(2) substituted (with effect in accordance with Sch. 39 para. 4(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 39 para. 4(1)**
- F177** Words in s. 24(2) substituted (with effect in accordance with art. 4(6) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **4(3)**
- F178** Words in s. 24(3) substituted (with effect in accordance with art. 4(6) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **4(4)(a)**
- F179** Words in s. 24(3) substituted (with effect in accordance with art. 4(6) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **4(4)(b)**
- F180** S. 24(4) inserted (with effect in accordance with art. 4(6) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **4(5)**

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

- C58** S. 24 excluded by [Finance Act 1996 \(c. 8\)](#), Sch. 9 para. 12B(5) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 8** (with S.I. 2008/1579, reg. 4(1)))
- C59** S. 24 excluded by [Finance Act 1996 \(c. 8\)](#), Sch. 9 para. 12D(5) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 16** (with S.I. 2008/1579, reg. 4(1)))
- C60** S. 24 excluded by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 30D(5) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 19** (with S.I. 2008/1579, reg. 4(1)))
- C61** S. 24 excluded by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 85(1D) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 21(2)** (with S.I. 2008/1579, reg. 4(1)))
- C62** S. 24 excluded by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 30B(5) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 10** (with S.I. 2008/1579, reg. 4(1)))

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**C63** S. 24 excluded by Finance Act 2002 (c. 23), Sch. 29 para. 85A(6) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 11** (with S.I. 2008/1579, reg. 4(1)))

## 25 Non-residents: deemed disposals.

(1) Where an asset ceases by virtue of becoming situated outside the United Kingdom to be a chargeable asset in relation to a person, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when it became situated outside the United Kingdom, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Subsection (1) above does not apply—

(a) where the asset becomes situated outside the United Kingdom contemporaneously with the person there mentioned ceasing to carry on a trade in the United Kingdom through a branch or agency, or

(b) where the asset is an exploration or exploitation asset.

(3) Where an asset ceases to be a chargeable asset in relation to a person by virtue of his ceasing to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency, and

(b) immediately to have reacquired it,

at its market value at that time.

[<sup>F181</sup>(3A) Subsection (3) above shall not apply if—

(a) the person ceasing to carry on the trade is a company, and

(b) the trade is transferred to another company in circumstances in which section 139 or 171 applies in relation to the assets transferred.]

<sup>F182</sup>(4) .....

(5) Subsection (3) above does not apply to an asset which is a chargeable asset in relation to the person there mentioned at any time after he ceases to carry on the trade in the United Kingdom through a branch or agency and before the end of the chargeable period in which he does so.

(6) In this section—

“exploration or exploitation asset” means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area, and

“designated area” and “exploration or exploitation activities” have the same meanings as in section 276.

(7) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

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- (a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or
  - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section <sup>F183</sup>10B].
- (8) This section shall apply as if references to a trade included references to a profession or vocation.

#### Textual Amendments

- F181** S. 25(3A) inserted (with effect in accordance with Sch. 29 para. 6(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 6\(2\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F182** S. 25(4) repealed (with effect in accordance with Sch. 29 para. 6(5), Sch. 40 Pt. 2(12) Note 3 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 6\(3\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F183** Word in s. 25(7)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)

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

- C64** S. 25(2)(3)(5) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(b\)](#)

### <sup>F184</sup>25Z ~~A~~ Deemed disposal of UK residential property interest under section 25(3)

- (1) This section applies if, ignoring subsections (3) and (4)—
  - (a) a gain or loss would accrue to a person on a disposal of a UK residential property interest deemed to have been made by virtue of section 25(3), and
  - (b) on the assumptions in subsection (2), that gain or loss would be an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D (see section 57B and Schedule 4ZZB).
- (2) The assumptions are—
  - (a) the disposal is a non-resident CGT disposal, and
  - (b) if the person is a company, any claim which the company could make under section 14F is made.
- (3) No gain or loss accrues to the person on that disposal.
- (4) But, on a subsequent disposal of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1)(a), the whole or a corresponding part of the gain or loss which would have accrued to the person were it not for subsection (3)—
  - (a) is deemed to accrue to the person (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D accruing on a non-resident CGT disposal.
- (5) A person may make an election for subsections (3) and (4) not to apply in relation to the disposal mentioned in subsection (1)(a).



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- (6) If the person is a company, such an election must be made within 2 years after the day on which the company ceases to carry on a trade in the United Kingdom through a branch or agency.
- (7) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

#### Textual Amendments

**F184** S. 25ZA inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 13](#)

### [<sup>F185</sup>25A Long funding leases of plant or machinery: deemed disposals

- (1) This section applies where plant or machinery is used for the purpose of leasing under a long funding lease.
- (2) The lessor shall be deemed for all purposes of this Act—
- to have disposed of the plant or machinery at the commencement of the term of the lease at [<sup>F186</sup>the relevant disposal value], and
  - to have immediately reacquired it at the same value.
- (3) The lessor shall also be deemed for all purposes of this Act—
- to have disposed of the plant or machinery on the termination of the lease for a consideration equal to the termination amount, and
  - to have immediately reacquired it for the same consideration.
- [<sup>F187</sup>(4) “Relevant disposal value” means—
- in relation to a long funding finance lease, the disposal value described in item 5A of the table in section 61(2) of the Capital Allowances Act (disposal values), and
  - in relation to a long funding operating lease, the disposal value described in item 5B of that table.]
- (5) For the purposes of this section, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases)—

“commencement”, in relation to the term of a lease,

“lessor”,

“long funding lease”,

“long funding finance lease”,

“long funding operating lease”,

**F188**

“the term”, in relation to a lease,

“termination”,

“termination amount”.]

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### Textual Amendments

- F185** S. 25A inserted (with effect in accordance with Sch. 9 para. 4(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 9 para. 4\(1\)](#)
- F186** Words in s. 25A(2)(a) substituted (with effect in accordance with Sch. 32 para. 5(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 3\(2\)](#)
- F187** S. 25A(4) substituted for s. 25A(4)-(4D) (with effect in accordance with Sch. 32 para. 5(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 3\(3\)](#)
- F188** Words in s. 25A(5) omitted (with effect in accordance with Sch. 32 para. 5(2) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 3\(4\)](#)

## 26 Mortgages and charges not to be treated as disposals.

- (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 Act as involving any acquisition or disposal of the asset.
- (2) Where a person 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 Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.
- (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.

### [<sup>F189</sup>26A Transfer of dormant bank or building society account

- (1) This section applies where the balance of a dormant account held by a person with a bank or building society is transferred—
  - (a) to an authorised reclaim fund, with the result that section 1 of the Dormant Bank and Building Society Accounts Act 2008 applies in relation to the account, or
  - (b) to an authorised reclaim fund and one or more charities, with the result that section 2 of that Act applies in relation to the account.
- (2) For the purposes of this Act—
  - (a) the transfer is not to be treated as involving any acquisition or disposal of an asset, and
  - (b) the person's rights under Part 1 of that Act are to be treated as the same asset as the original rights, acquired as the original rights were acquired and having the same characteristics as those rights.

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- (3) “The original rights” are the person's rights against the bank or building society immediately before the transfer.
- (4) Terms used in this section and in the Dormant Bank and Building Society Accounts Act 2008 have the same meaning in this section as in that Act.]

#### Textual Amendments

**F189** S. 26A inserted (1.2.2011) by [Finance Act 2008 \(c. 9\), s. 39\(7\)\(8\)](#); [S.I. 2011/23, art. 2](#)

### 27 Disposals in cases of hire-purchase and similar transactions.

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 Act, 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.

### 28 Time of disposal and acquisition where asset disposed of under contract.

- (1) Subject to section 22(2), and subsection (2) below, 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.

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

- C65** S. 28 extended (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 2\(2\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C66** S. 28 applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 24\(9\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

### *Value shifting*

### 29 General provisions.

- (1) Without prejudice to the generality of the provisions of this Act as to the transactions which are disposals of assets, any transaction which under the following subsections is to be treated as a disposal of an asset—
  - (a) shall be so treated (with a corresponding acquisition of an interest in the asset) notwithstanding that there is no consideration, and

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- (b) so far as, on the assumption that the parties to the transaction were at arm's length, the party making the disposal could have obtained consideration, or additional consideration, for the disposal, shall be treated as not being at arm's length and the consideration so obtainable, or the additional consideration so obtainable added to the consideration actually passing, shall be treated as the market value of what is acquired.
- (2) If a person having control of a company exercises his control so that value passes out of shares in the company owned by him or a person with whom he is connected, or out of rights over the company exercisable by him or by a person with whom he is connected, and passes into other shares in or rights over the company, that shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.
- (3) A loss on the disposal of an asset shall not be an allowable loss to the extent to which it is attributable to value having passed out of other assets, being shares in or rights over a company which by virtue of the passing of value are treated as disposed of under subsection (2) above.
- (4) If, after a transaction which results in the owner of land or of any other description of property becoming the lessee of the property there is any adjustment of the rights and liabilities under the lease, whether or not involving the grant of a new lease, which is as a whole favourable to the lessor, that shall be a disposal by the lessee of an interest in the property.
- (5) If an asset is subject to any description of right or restriction the extinction or abrogation, in whole or in part, of the right or restriction by the person entitled to enforce it shall be a disposal by him of the right or restriction.

### **30 Tax-free benefits.**

- (1) This section has effect as respects the disposal of an asset if a scheme has been effected or arrangements have been made (whether before or after the disposal) whereby—
- (a) the value of the asset <sup>F190</sup>... has been materially reduced, and
  - (b) a tax-free benefit has been or will be conferred—
    - (i) on the person making the disposal or a person with whom he is connected, or
    - (ii) subject to subsection (4) below, on any other person.
- [<sup>F191</sup>(2) But, for the purposes of corporation tax, this section does not have effect if the disposal of the asset is a disposal by a company of shares in, or securities of, another company (as to which see section 31).]
- (3) For the purposes of subsection (1)(b) above a benefit is conferred on a person if he becomes entitled to any money or money's worth or the value of any asset in which he has an interest is increased or he is wholly or partly relieved from any liability to which he is subject; and a benefit is tax-free unless it is required, on the occasion on which it is conferred on the person in question, to be brought into account in computing his income, profits or gains for the purposes of income tax, capital gains tax or corporation tax.
- (4) This section shall not apply by virtue of subsection (1)(b)(ii) above [<sup>F192</sup>in a case where] avoidance of tax was not the main purpose or one of the main purposes of the scheme or arrangements in question.

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- (5) Where this section has effect in relation to any disposal, any allowable loss or chargeable gain accruing on the disposal shall be calculated as if the consideration for the disposal were increased by such amount as [<sup>F193</sup>is] just and reasonable having regard to the scheme or arrangements and the tax-free benefit in question.
- (6) Where—
- (a) by virtue of subsection (5) above the consideration for the disposal of an asset has been treated as increased, and
  - (b) the benefit taken into account under subsection (1)(b) above was an increase in the value of another asset,
- any allowable loss or chargeable gain accruing on the first disposal of the other asset after the increase in its value shall be calculated as if the consideration for that disposal were reduced by such amount as [<sup>F194</sup>is] just and reasonable having regard to the scheme or arrangements in question and the increase made in relation to the disposal mentioned in paragraph (a) above.
- (7) References in this section to a disposal do not include references to any disposal falling within section 58(1), 62(4) or 171(1).
- <sup>F195</sup>(8) .....
- (9) In relation to a case in which the disposal of an asset precedes its acquisition the references in subsections (1)(a) and (2) above to a reduction shall be read as including a reference to an increase.

#### Textual Amendments

- F190** Words in s. 30(1)(a) omitted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 1\(a\)](#)
- F191** S. 30(2) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 1\(b\)](#)
- F192** Words in s. 30(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 46](#)
- F193** Word in s. 30(5) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 47\(a\)](#)
- F194** Word in s. 30(6) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 47\(a\)](#)
- F195** S. 30(8) omitted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 1\(c\)](#)

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

- C67** S. 30 excluded (retrospective to 5.11.2993) by [Finance Act 1994 \(c. 9\)](#), s. 252(2), [Sch. 24 para. 4\(1\)](#)
- C68** S. 30 excluded (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 4](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, [Sch.](#)
- C69** S. 30 modified (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), [Sch. 7 para. 9\(1\)](#)
- C70** S. 30 applied (with modifications) (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 71\(3\)](#)
- C71** S. 30 excluded (6.11.2000) by [Postal Services Act 2000 \(c. 26\)](#), s. 130(1), [Sch. 4 para. 6](#); [S.I. 2000/2957](#), art. 2(1), [Sch. 1](#)
- C72** S. 30 excluded (1.2.2001) by [Transport Act 2000 \(c. 38\)](#), s. 275(1), [Sch. 7 para. 5](#); [S.I. 2001/57](#), art. 3(1)
- C73** S. 30 excluded (15.1.2001) by [Transport Act 2000 \(c. 38\)](#), s. 275(1), [Sch. 26 para. 36](#); [S.I. 2000/3376](#), art. 2

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- C74** S. 30 modified (E.W.S.) (8.6.2005 for specified purposes, 24.7.2005 in so far as not already in force) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 10 para. 31](#); [S.I. 2005/1444, art. 2\(1\), Sch. 1](#); [S.I. 2005/1909, art. 2, Sch.](#)
- C75** S. 30(5) excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 4\(2\)\(3\)](#)
- C76** S. 30(5) excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\), s. 149\(1\), Sch. 7 para. 9\(3\)](#)

### **[<sup>F196</sup>31 Disposal of shares or securities by a company**

- (1) For the purposes of corporation tax, subsection (2) has effect as respects the disposal by a company (“the disposing company”) of shares in, or securities of, another company if—
- (a) arrangements have been made whereby the value of those shares or securities, or any relevant asset, is materially reduced,
  - (b) the main purpose, or one of the main purposes, of the arrangements is to obtain a tax advantage, and
  - (c) the arrangements do not consist solely of the making of an exempt distribution.
- (2) Any allowable loss or chargeable gain accruing on the disposal is to be calculated as if the consideration for the disposal were increased by such amount as is just and reasonable having regard to—
- (a) the arrangements, and
  - (b) any charge to, or relief from, corporation tax that, in the absence of this section, would arise in consequence of the disposal or the arrangements.
- (3) For the purposes of subsection (1)—
- (a) an asset is a relevant asset if, at the time of the disposal, it is owned by a company which is a member of the same group as the disposing company, and
  - (b) it does not matter whether the tax advantage is obtained for the disposing company or any other person.
- (4) In relation to a case in which the disposal of the shares or securities precedes their acquisition, the reference in subsection (1)(a) to a reduction is to be read as including a reference to an increase.
- (5) Where, but for arrangements to which subsection (6) applies, a transaction would, by virtue of section 29(2), be treated as a disposal of shares by a company, that transaction is to be treated as if it were, by virtue of section 29(2), a disposal of those shares.
- (6) The arrangements to which this subsection applies are arrangements—
- (a) whereby the value of the shares or securities is materially reduced, and
  - (b) the main purpose, or one of the main purposes, of which is to obtain a tax advantage (whether for the company or any other person).
- (7) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “exempt distribution” means a distribution which—
- (a) for the purposes of section 931D of CTA 2009 (exemption from charge to tax: distributions received by companies that are not small), falls

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within an exempt class by virtue of section 931H of that Act (dividends derived from transactions not designed to reduce tax), or  
(b) would be within paragraph (a) but for the recipient being a small company (within the meaning of section 931S of that Act) in the accounting period of the recipient in which the distribution was received;  
“group” is to be construed in accordance with section 170;  
“securities” has the same meaning as in section 132;  
“tax advantage” means the avoidance of a liability to corporation tax in respect of chargeable gains.]

**Textual Amendments**

**F196** S. 31 substituted for ss. 31-34 (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 2](#)

**<sup>F196</sup>31A Asset-holding company leaving the group.**

.....

**Textual Amendments**

**F196** S. 31 substituted for ss. 31-34 (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 2](#)

**<sup>F196</sup>32 Disposals within a group followed by a disposal of shares.**

.....

**Textual Amendments**

**F196** S. 31 substituted for ss. 31-34 (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 2](#)

**<sup>F196</sup>33 Provisions supplementary to sections 30 to 32.**

.....

**Textual Amendments**

**F196** S. 31 substituted for ss. 31-34 (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 9 para. 2](#)

**<sup>F196</sup>33A Modification of sections 30 to 33 in relation to chargeable intangible asset**

.....

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**Textual Amendments**

**F196** S. 31 substituted for ss. 31-34 (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 9 para. 2**

**<sup>F196</sup>34 Transactions treated as a reorganisation of share capital.**

.....

**Textual Amendments**

**F196** S. 31 substituted for ss. 31-34 (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 9 para. 2**

**CHAPTER III**

COMPUTATION OF GAINS: GENERAL PROVISIONS

*Re-basing to 1982, and assets held on 6th April 1965*

**35 Assets held on 31st March 1982 (including assets held on 6th April 1965).**

- (1) This section applies to a disposal of an asset which was held on 31st March 1982 by the person making the disposal.
  - (2) [<sup>F197</sup>In] computing for the purpose of this Act the gain or loss accruing on the disposal it shall be assumed that the asset was on 31st March 1982 sold by the person making the disposal, and immediately reacquired by [<sup>F198</sup>that person], at its market value on that date.
- [<sup>F199</sup>(2A) For the purposes of corporation tax, subsection (2) above has effect subject to subsections (3) to (8) below (and see also subsections (9) and (10)).]
- (3) Subject to subsection (5) below, subsection (2) above shall not apply to a disposal—
    - (a) where a gain would accrue on the disposal to the person making the disposal if that subsection did apply, and either a smaller gain or a loss would so accrue if it did not,
    - (b) where a loss would so accrue if that subsection did apply, and either a smaller loss or a gain would accrue if it did not,
    - (c) where, either on the facts of the case or by virtue of Schedule 2, neither a gain nor a loss would accrue if that subsection did not apply, <sup>F200</sup>...
    - [<sup>F201</sup>(ca) where, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal, or]
    - (d) where neither a gain nor a loss would accrue by virtue of any of [<sup>F202</sup>the no gain/no loss provisions.]
  - [<sup>F203</sup>(4) Where in the case of a disposal of an asset—
    - (a) the effect of subsection (2) above would be to substitute a loss for a gain or a gain for a loss, but



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- (b) the application of subsection (2) is excluded by subsection (3),  
it shall be assumed in relation to the disposal that the asset was acquired by the person making the disposal for a consideration such that, on the disposal, neither a gain nor a loss accrues to [<sup>F204</sup>that person].
- (5) If a person so elects, disposals made by [<sup>F205</sup>that person] (including any made by [<sup>F205</sup>that person] before the election) shall fall outside subsection (3) above (so that subsection (2) above is not excluded by that subsection).
- (6) An election by a person under subsection (5) above shall be irrevocable and shall be made by notice to [<sup>F206</sup>an officer of the Board] at any time before 6th April 1990 or at any time during the period beginning with the day of the first relevant disposal and ending—
- [<sup>F207</sup>(a) <sup>F208</sup>.....
- (aa) <sup>F209</sup>... 2 years after the end of the accounting period in which the disposal is made; or
- (b) <sup>F210</sup>... at such later time as the Board may allow;]
- and “the first relevant disposal” means the first disposal to which this section applies which is made by the person making the election.
- (7) An election made by a person under subsection (5) above in one capacity does not cover disposals made by [<sup>F211</sup>that person] in another capacity.
- (8) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under subsection (5) above.
- (9) Schedule 2 shall have effect [<sup>F212</sup>for the purposes of corporation tax] in relation to disposals of assets owned on 6th April 1965 in cases where neither subsection (2) nor subsection (4) above applies.
- (10) Schedule 3, which contains provisions supplementary to subsections (1) to (8) above, shall have effect [<sup>F213</sup>for the purposes of capital gains tax and corporation tax].]

### Textual Amendments

- F197** Word in s. 35(2) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(2\)\(a\)](#)
- F198** Words in s. 35(2) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(2\)\(b\)](#)
- F199** S. 35(2A) inserted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(3\)](#)
- F200** Word in s. 35(3)(c) omitted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 2\(a\)](#)
- F201** S. 35(3)(ca) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 2\(b\)](#)
- F202** Words in s. 35(3)(d) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(4\)](#)
- F203** S. 35(3)(d)(xvi) inserted (E.W.S.) (8.6.2005 for specified purposes, 24.7.2005 in so far as not already in force) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), [Sch. 10 para. 33](#); [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#); [S.I. 2005/1909](#), art. 2, [Sch.](#)
- F204** Words in s. 35(4) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(5\)](#)

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- F205** Words in s. 35(5) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(6\)](#)
- F206** Words in s. 35(6) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 35\(a\)](#)
- F207** S. 35(6)(a)(aa)(b) substituted for s. 35(6)(a)(b) (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 35\(b\)](#)
- F208** S. 35(6)(a) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(7\)\(a\)](#)
- F209** Words in s. 35(6)(aa) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(7\)\(b\)](#)
- F210** Words in s. 35(6)(b) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(7\)\(c\)](#)
- F211** Words in s. 35(7) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(8\)](#)
- F212** Words in s. 35(9) inserted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(9\)](#)
- F213** Words in s. 35(10) inserted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 58\(10\)](#)

### **[<sup>F214</sup>35A Disposal of asset acquired on no gain/no loss disposal**

- (1) This section applies for the purposes of capital gains tax in relation to a disposal of an asset if—
- (a) the person making the disposal acquired the asset after 31 March 1982 and before 6 April 2008,
  - (b) the disposal by which the person acquired the asset (“the relevant disposal”), and any previous disposal of the asset after 31 March 1982, was a disposal on which, by virtue of any enactment, neither a gain nor a loss accrued to the person making the disposal, and
  - (c) section 35(2) did not apply to the relevant disposal.
- (2) It is to be assumed that section 35(2) did apply to the relevant disposal (and that section 56(2) applied to the relevant disposal accordingly).]

#### **Textual Amendments**

- F214** S. 35A inserted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 59](#)

### **36 Deferred charges on gains before 31st March 1982.**

Schedule 4, which provides for the reduction of a deferred charge to [<sup>F215</sup>corporation tax in respect of chargeable gains] where the charge is wholly or partly attributable to an increase in the value of an asset before 31st March 1982, shall have effect.

#### **Textual Amendments**

- F215** Words in s. 36 substituted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 73](#)

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### *Allowable deductions*

#### **37 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 of the gain 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.
- [<sup>F216</sup>(1A) There is to be excluded from the consideration for a disposal of an asset taken into account in the computation of the gain a sum equal to any amount that is taken into account by the person making the disposal as a receipt under section 96A or 307E of ITTOIA 2005 (capital receipts under, or after leaving, cash basis) as a result of the operation of any deemed disposal provision in relation to the asset.
- (1B) But subsection (1A) applies only to the extent that the sum has not been excluded from the consideration for an earlier disposal of the asset.
- (1C) The following are “deemed disposal provisions”—
- (a) in relation to trades, professions and vocations, subsections (4) and (5) of section 96A of ITTOIA 2005 (which provide for circumstances in which a person is to be regarded as disposing of an asset for the purposes of that section), and
  - (b) in relation to property businesses, section 307F of ITTOIA 2005 (which provides for circumstances in which a person is to be regarded as disposing of an asset for the purposes of section 307E of that Act).]
- (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—
- [<sup>F217</sup>(a) taken into account in the making of a balancing charge under the Capital Allowances Act but excluding Part 10 of that Act,
- (b) brought into account as the disposal value of plant or machinery under Part 2 of that Act, or
- (c) brought into account as the disposal value of an asset representing qualifying expenditure under Part 6 of that Act.]
- [<sup>F218</sup>See also section 37A(4) and (5) (consideration on disposal of certain leases).]
- [<sup>F219</sup>(2A) Subsection (1) is not to be taken as excluding from the consideration so taken into account any money or money's worth which is, or is taken into account in computing, a return on which income tax is charged under Chapter 2A of Part 4 of ITTOIA 2005 (disguised interest) (but see section 381D of that Act).]
- (3) This section shall not preclude the taking into account in a computation of the gain, 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 income or to payments in the nature of income over a period, or to a series of payments in the nature of income.

[<sup>F220</sup>(4) . . . . .]

[<sup>F221</sup>(5) If—

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- (a) because section [F222]517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of] a person other than the person (“A”) by whom the gain was realised, and
- (b) the income tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of A.

[ If—

- F223(5A) (a) because section [F224]356OG(4) or (6) of CTA 2010 (transactions in land: the chargeable company) applies, an amount is charged to corporation tax as profits of a person other than] the person (“C”) by whom the gain was realised, and
- (b) the corporation tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of C.]

(6) If—

- (a) because section 777(5) of that Act applies, the person charged to tax under Chapter 4 of Part 13 of that Act (sales of occupation income) is a person other than the person (“B”)—
  - (i) for whom the capital amount was obtained, or
  - (ii) in the case of income treated as arising under section 779 of that Act, by whom the property or right was sold or realised, and
- (b) the income tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of B.

(7) In subsection (6) “capital amount” has the same meaning as in Chapter 4 of Part 13 of that Act (sales of occupation income) (see section 777(7) of that Act).]

### Textual Amendments

- F216** S. 37(1A)-(1C) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 2 para. 44**
- F217** S. 37(2)(a)-(c) substituted for s. 37(2)(a)(b) (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), **Sch. 2 para. 77**
- F218** Words in s. 37(2) added (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 231** (with Sch. 9 paras. 1-9, 22)
- F219** S. 37(2A) inserted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 12 para. 6**
- F220** S. 37(4) repealed (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 48(2)**
- F221** S. 37(5)-(7) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 299** (with Sch. 2)
- F222** Words in s. 37(5)(a) substituted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), **s. 79(8)** (with savings in 2017 c. 32, s. 39(1)(2))
- F223** S. 37(5A) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 228** (with Sch. 2)

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**F224** Words in s. 37(5A)(a) substituted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\), s. 77\(7\)](#) (with savings in 2017 c. 32, s. 39(1)(2))

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

- C77** S. 37 extended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by [1993 c. 34, ss. 176\(2\)\(b\), 184\(3\)](#)
- C78** S. 37 excluded (19.3.1997) by [Finance Act 1997 \(c. 16\), Sch. 12 para. 12\(1\)\(2\)\(3\)\(4\), 13, 14](#) (with [Sch. 12 para. 17](#))
- C79** S. 37 excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), ss. 670\(7\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))
- C80** S. 37 excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), ss. 672\(4\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))
- C81** S. 37(1) restricted (16.7.1992, with effect as mentioned in [s. 65\(6\)](#) of the amending Act) by [1992 c. 48, s. 65\(2\)\(e\)\(5\)](#)
- C82** S. 37(1) modified (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 133\(5\)\(a\)](#)
- C83** S. 37(1) modified (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 45\(2\)](#)

### **[<sup>F225</sup>37A Consideration on disposal of certain leases**

- (1) This section applies if—
- (a) a disposal occurs that is within section 614BP of ITA 2007 (including that section as it has effect as a result of section 614CD of that Act), and
  - (b) for the purposes of Chapter 2 or 3 of Part 11A of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.
- (2) This section also applies if—
- (a) a disposal occurs that is within section 915 of CTA 2010 (including that section as it has effect as a result of section 929 of that Act), and
  - (b) for the purposes of Chapter 2 or 3 of Part 21 of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.
- (3) In determining for the purposes of this Act the amount of any gain accruing to the person making the disposal, the consideration for the disposal is treated as reduced by setting against it that excess (but not so as to reduce the amount of that consideration below nil).
- (4) Subsection (3) only affects section 37 so far as subsection (5) provides.
- (5) Section 37 does not exclude any money or money's worth from the consideration for a disposal so far as it is represented by any such cumulative accountancy rental excess that, in accordance with subsection (3)—
- (a) falls to be set against the consideration for the disposal, or
  - (b) has fallen to be set against the consideration for a previous disposal made by the person making the disposal in question or a person connected with that person.
- (6) Subsections (7) to (9) apply if the disposal mentioned in subsection (1) or (2) is a part disposal of the asset in question.

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- (7) The cumulative accountancy rental excess mentioned in subsection (3) must be apportioned between—
- (a) the property disposed of, and
  - (b) the property that remains undisposed of.
- (8) That apportionment must be made in the same proportions as those in which the sums that under section 38(1)(a) or (b) are attributable to the asset fall to be apportioned under section 42.
- (9) Only so much of the cumulative accountancy rental excess as is so apportioned to the property disposed of is set against the consideration for the part disposal in accordance with subsection (3).
- (10) If subsection (3) applies in a case where two or more disposals within subsection (1) or (2) are made at the same time, the cumulative accountancy rental excess mentioned in subsection (3) must be apportioned, subject to subsections (7) to (9), between the disposals in such proportions as are just and reasonable.
- (11) Section 614DC of ITA 2007 (connected persons) applies for the purposes of this section in its application as a result of any leasing arrangements (within the meaning of that section) as it applies for the purposes mentioned in that section.]

#### Textual Amendments

**F225** S. 37A inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 3 para. 7](#) (with [Sch. 9 paras. 1-9, 22](#))

### 38 Acquisition and disposal costs etc.

- (1) 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) 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 [<sup>F226</sup> or stamp duty land tax]) together—

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- (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 of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.
- (3) Except as provided by section 40, 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 reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

#### Textual Amendments

**F226** Words in s. 38(2) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 18 para. 5](#)

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

**C84** S. 38 restricted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 173\(4\)\(d\)](#) (with [s. 173\(1\)](#))

**C85** S. 38(1)(a)(b) restricted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), [s. 198\(2\)](#), [Sch. 9 para. 4\(2\)](#) (with [s. 38\(2\)](#)); [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

**C86** S. 38(1)(c) applied by [Finance Act 1996 \(c. 8\)](#), [s. 92\(5D\)](#) (as inserted (with effect in accordance with [s. 79\(3\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 23 para. 5\(3\)](#))

### 39 Exclusion of expenditure by reference to tax on income.

- (1) There shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure allowable as a deduction in computing the [<sup>F227</sup>profits] 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 38 as a deduction in the computation of the gain 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 [<sup>F227</sup>profits] 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 [<sup>F227</sup>profits] or losses of the trade for the purposes of income tax.
- (3) No account shall be taken of any relief under Chapter II of Part IV of the <sup>M3</sup>Finance Act 1981 or under Schedule 5 to the <sup>M4</sup>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.

[<sup>F228</sup>(3A) This section is not to be taken as excluding, from the sums allowable under section 38 as a deduction in the computation of the gain, expenditure allowable as a deduction

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in computing a return on which income tax is charged under Chapter 2A of Part 4 of ITTOIA 2005 (disguised interest) (but see section 381D of that Act).]

[<sup>F229</sup>(4) If—

- (a) because section [<sup>F230</sup>517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of] a person other than the person (“A”) by whom the gain was realised, and
- (b) the income tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of A.]

[<sup>F231</sup>(5) If—

- (a) because section [<sup>F232</sup>356OG(4) or (6) of CTA 2010 (transactions in land: the chargeable company) applies, an amount is charged to corporation tax as profits of a person other than] the person (“B”) by whom the gain was realised, and
- (b) the corporation tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of B.]

#### Textual Amendments

- F227** Word in s. 39(1)(2) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3)(a), [Sch. 7 para. 7](#)
- F228** S. 39(3A) inserted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 7](#)
- F229** S. 39(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 300](#) (with [Sch. 2](#))
- F230** Words in s. 39(4)(a) substituted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 79\(9\)](#) (with savings in 2017 c. 32, s. 39(1)(2))
- F231** S. 39(5) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 229](#) (with [Sch. 2](#))
- F232** Words in s. 39(5)(a) substituted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(8\)](#) (with savings in 2017 c. 32, s. 39(1)(2))

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

- C87** S. 39 extended (27.7.1993 with effect for the years 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by [1993 c. 34](#), [s. 176\(2\)\(b\)](#), 184(3)
- C88** S. 39 excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 670\(7\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))
- C89** S. 39 excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 672\(4\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))
- C90** S. 39 extended (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 1157\(2\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))
- C91** S. 39(1) modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 133\(5\)\(b\)](#)

#### Marginal Citations

- M3** [1981 c. 35](#).
- M4** [1983 c. 28](#).

## 40 Interest charged to capital.

(1) Where—



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- (a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under section 38 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and
- (b) that expenditure was defrayed out of borrowed money,
- the sums so allowable under section 38 shall, subject to subsection (2) below, include the amount of any interest on that borrowed money which is referable to a period or part of a period ending on or before the disposal.
- (2) Subsection (1) above has effect subject to section 39 and does not apply to interest which is a charge on income.
- (3) In relation to interest paid in any accounting period ending before 1st April 1981 subsection (1) above shall have effect with the substitution for all following paragraph (b) of—

“and

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

and the sums so allowable under section 38 shall include the amount of that interest charged to capital.”;

and subsection (2) above shall not apply.

- [<sup>F233</sup>(4) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) [<sup>F234</sup>and CTA 2009 (Part 5 of which re-enacts that Chapter)] this section does not have effect in relation to interest referable to an accounting period ending on or after 1st April 1996.]

#### Textual Amendments

**F233** S. 40(4) added (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 25 para. 60\(2\)](#)

**F234** Words in s. 40(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 362](#) (with [Sch. 2 Pts. 1, 2](#))

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

- (1) Section 39 shall not require the exclusion from the sums allowable as a deduction in the computation of the gain 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 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—
- [<sup>F235</sup>(a) by a transfer by way of sale in relation to which an election under section 569 of the Capital Allowances Act was made, or

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- (b) by a transfer to which section 268 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—
- [<sup>F236</sup>(a) any allowance under the Capital Allowances Act,]
  - [<sup>F237</sup>(zaa) any deduction allowable in respect of capital expenditure in calculating profits on the cash basis (see sections 33A and 307B of ITTOIA 2005),]
  - [<sup>F238</sup>(aa) any deduction under section 311A of ITTOIA 2005 or section 250A of CTA 2009 (replacement domestic items relief),]
  - (b) <sup>F239</sup> ... [<sup>F240</sup>any deduction under section 315 of ITTOIA 2005][<sup>F241</sup>or section 254 of CTA 2009] (expenditure on sea walls), and
  - (c) any deduction in computing [<sup>F242</sup>profits] allowable under <sup>F243</sup> ... [<sup>F244</sup>section 170 of ITTOIA 2005][<sup>F245</sup>or section 147 of CTA 2009] (cemeteries).
- (5) In this section “renewals allowance” means a deduction allowable in computing the [<sup>F242</sup>profits] 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.
- [<sup>F246</sup>(6A) Where—
- (a) capital allowances have been made or may be made in respect of expenditure, and
  - (b) the capital allowances include a deduction mentioned in subsection (4)(zaa),
- the capital allowances to be taken into account under this section are to be regarded as equal to the total amount of expenditure which has qualified for capital allowances less any balancing charge to which the person making the disposal is liable under the Capital Allowances Act.]
- (7) Where the disposal is of [<sup>F247</sup>plant or machinery] in relation to expenditure on which allowances or charges have been made under [<sup>F248</sup>Part 2 of the Capital Allowances Act, [<sup>F249</sup>and subsection (6A) does not apply,] and neither Chapter 15 (assets provided or used only partly for qualifying activity) nor Chapter 16 (partial depreciation subsidies) of that Part] applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the [<sup>F250</sup>qualifying expenditure] incurred, or treated as incurred, under that Part on the provision of the [<sup>F247</sup>plant or machinery] by the person making the disposal and the disposal value required to be brought into account in respect of the [<sup>F247</sup>plant or machinery].

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- [<sup>F251</sup>(8) Where there is a disposal of an asset acquired in circumstances in which—
- (a) section 140A applies, or
  - (b) section 171 applies or would apply but for subsection (2) of that section,
- this section has effect in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in such circumstances.

This does not affect the consideration for which an asset is deemed under section 140A or 171 to be acquired.]

- [<sup>F252</sup>(9) In this section—
- (a) in relation to a trade, profession or vocation, references to calculating profits on the cash basis are to calculating the profits of a trade, profession or vocation in relation to which an election under section 25A of ITTOIA 2005 (cash basis for trades) has effect, and
  - (b) in relation to a property business, references to calculating profits on the cash basis are to be construed in accordance with section 271D of that Act (calculation of profits of property businesses on the cash basis).

- (10) In this section—

“capital expenditure” means expenditure of a capital nature incurred on, or in connection with, the creation, construction, acquisition, alteration or disposal of an asset, and

“property business” means a UK property business or an overseas property business within the meaning of Part 3 of ITTOIA 2005 (see sections 264 and 265 of that Act).]

### Textual Amendments

- F235** S. 41(3)(a)(b) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 78\(1\)](#)
- F236** S. 41(4)(a) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 78\(2\)](#)
- F237** S. 41(4)(zaa) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 2 para. 45\(2\)](#)
- F238** S. 41(4)(aa) inserted (with effect in accordance with s. 73(8)(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 73\(3\)](#)
- F239** Words in s. 41(4)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 363\(a\)\(i\), Sch. 3 Pt. 1](#) (with Sch. 2 Pts. 1, 2)
- F240** Words in s. 41(4)(b) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 430\(a\)](#) (with Sch. 2)
- F241** Words in s. 41(4)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 363\(a\)\(ii\)](#) (with Sch. 2 Pts. 1, 2)
- F242** Word in s. 41(4)(5) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\), Sch. 7 para. 7](#)
- F243** Words in s. 41(4)(c) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 363\(b\)\(i\), Sch. 3 Pt. 1](#) (with Sch. 2 Pts. 1, 2)
- F244** Words in s. 41(4)(c) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 430\(b\)](#) (with Sch. 2)
- F245** Words in s. 41(4)(c) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 363\(b\)\(ii\)](#) (with Sch. 2 Pts. 1, 2)
- F246** S. 41(6A) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 2 para. 45\(3\)](#)
- F247** Words in s. 41(7) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 78\(3\)\(a\)](#)
- F248** Words in s. 41(7) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 78\(3\)\(b\)](#)

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- F249** Words in s. 41(7) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 2 para. 45(4)**
- F250** Words in s. 41(7) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), **Sch. 2 para. 78(3)(c)**
- F251** S. 41(8) added (with effect in accordance with Sch. 29 para. 12(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 12(1)** (with [Sch. 29 para. 46\(5\)](#))
- F252** S. 41(9)(10) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 2 para. 45(5)**

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

- C92** S. 41 modified (16.7.1992) by 1992 c. 48, s. 77, **Sch. 17 paras. 6(2)(5),7**
- C93** S. 41 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 21\(2\)\(5\)\(6\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C94** S. 41(8) modified (15.1.2001) by [Transport Act 2000 \(c. 38\)](#), s. 275(1), **Sch. 26 para. 10(1)** (with [Sch. 26 para. 10\(2\)](#)); [S.I. 2000/3376](#), art. 2

**[<sup>F253</sup>41A Restriction of losses: long funding leases of plant or machinery**

- (1) This section applies where a person disposes of an asset—
  - (a) which includes plant or machinery which is a fixture for the purposes of Chapter 6A of Part 2 of the Capital Allowances Act, and
  - (b) which he has used for the purpose of leasing under one or more long funding leases.
- (2) In the computation of the amount of a loss accruing to the person on the disposal there shall be excluded from the sums allowable as a deduction by virtue of section 38(1) (a) and (b) (acquisition and enhancement costs) an amount determined in accordance with subsection (3) or (4).
- (3) Where the person has used the plant or machinery for the purpose of leasing under one long funding lease, the amount is equal to the fall in value of the plant or machinery during the period of the lease.
- (4) Where the person has used the plant or machinery for the purpose of leasing under more than one long funding lease, the amount is equal to the sum of the fall in value of the plant or machinery during the period of each lease.
- (5) In this section, references to the fall in value of plant or machinery during the period of a lease are references to the amount (if any) by which—
  - (a) the market value of the plant or machinery at the commencement of the term of the lease,  
exceeds
  - (b) its market value at the termination of the lease.
- (6) For the purposes of this section, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases)—
  - “commencement”, in relation to the term of a lease,
  - “long funding lease”,
  - “market value”,
  - “the term”, in relation to a lease,
  - “termination”.]

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### Textual Amendments

**F253** S. 41A inserted (with effect in accordance with Sch. 9 para. 5(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 9 para. 5\(1\)](#)

## 42 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 38(1) are attributable to the asset shall, both for the purposes of the computation of the gain accruing on the disposal and for the purpose of applying this Part in relation to the property which remains undisposed of, be apportioned.
- (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 the computation 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 41 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 38(1) are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under the provisions of section 41.
- (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, section 58(1), sections 152 to 158 (but without prejudice to section 152(10)), section 171(1) or any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

### Modifications etc. (not altering text)

**C95** S. 42(2) applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 667\(2\)](#), [1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))

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- C96** S. 42(2) applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), **ss. 668(2), 1329(1)** (with [Sch. 2 Pts. 1, 2](#))
- C97** S. 42(2) applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), **ss. 670(5), 1329(1)** (with [Sch. 2 Pts. 1, 2](#))

### 43 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 the computation of a gain in respect of the other asset under paragraphs (a) and (b) of section 38(1) shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

#### *Wasting assets*

### 44 Meaning of “wasting asset”.

- (1) In this Chapter “wasting asset” means an asset with a predictable life not exceeding 50 years but so that—
  - (a) freehold land shall not be a wasting asset whatever its nature, and whatever the nature of the buildings or works on 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 50 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 50 years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the 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.

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#### **45 Exemption for certain wasting assets.**

- (1) Subject to the provisions of this section, no chargeable gain shall accrue on the disposal of, or of an interest in, an asset which is tangible movable property and which is a wasting asset.
- (2) Subsection (1) above shall not apply to a disposal of, or of an interest in, an asset—
- (a) if, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, the asset has been used and used solely for the purposes of a trade, profession or vocation and if that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset or interest under paragraph (a) or paragraph (b) of section 38(1); or
  - (b) if the person making the disposal has incurred any expenditure on the asset or interest which has otherwise qualified in full for any capital allowance.
- (3) In the case of the disposal of, or of an interest in, an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, 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 or interest by virtue of section 38(1)(a) and (b), shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
  - (b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
  - (c) subsection (1) above shall not apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances.
- [<sup>F254</sup>(3A) But subsection (3) does not apply in the case of a disposal in relation to which subsection (3B) disapplies subsection (1).
- (3B) Subsection (1) does not apply to a disposal of, or of an interest in, an asset if—
- (a) at any time in the period of ownership of the person making the disposal, the asset is used for the purposes of a trade, profession or vocation carried on by another person,
  - (b) as a result of that use, the asset becomes plant,
  - (c) but for the asset therefore being regarded under section 44(1)(c) as having a predictable life of less than 50 years, the disposal would not be of, or of an interest in, a wasting asset, and
  - (d) the disposal is not within subsection (3C).
- (3C) A disposal of, or of an interest in, an asset is within this subsection if the asset is plant used for the purpose of leasing under a long funding lease and—
- (a) the disposal takes place after the commencement of the term of the lease but before the termination of the lease, or
  - (b) the disposal is the deemed disposal of the asset under section 25A(3)(a) on the termination of the lease.
- (3D) Section 25A(5) applies for the purposes of subsection (3C).]

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- (4) Subsection (1) above shall not apply to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market.

#### Textual Amendments

**F254** S. 45(3A)-(3D) inserted (with effect in accordance with s. 40(2) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 40\(1\)](#)

#### 46 Straightline restriction of allowable expenditure.

- (1) In the computation 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 38(1)(a) after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nothing at the end of its life, and

(b) that any expenditure attributable to the asset under section 38(1)(b) 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 38(1)(b), 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 of the gain—

(a) out of the expenditure attributable to the asset under section 38(1)(a) a fraction—

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

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 38(1)(b) a fraction—

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

of the amount of the expenditure.

- (3) If any expenditure attributable to the asset under section 38(1)(b) 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.



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#### 47 Wasting assets qualifying for capital allowances.

- (1) Section 46 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 38(1), or
  - (b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.
- (2) In the case of the disposal of an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, 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 38(1) shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
  - (b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
  - (c) section 46 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.

*[<sup>F255</sup>Cash basis accounting*

#### Textual Amendments

**F255** Ss. 47A, 47B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 45](#)

#### 47A [<sup>F256</sup>Exemption for certain disposals under, or after leaving, cash basis]

- (1) No chargeable gain shall accrue on the disposal of, or of an interest in, an asset if conditions [<sup>F257</sup>A, B and D] are met in relation to the asset.

[<sup>F258</sup>(2) Condition A is that the asset is not land.]

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- (3) Condition B is that, at any time during the period of ownership of the person making the disposal, the asset has been used for the purposes of a trade, profession<sup>F259</sup>, vocation or property business] carried on by the person.
- <sup>F260</sup>(4) . . . . .
- [<sup>F261</sup>(5) Condition D is that relevant disposal proceeds—
- (a) are brought into account as a receipt (whether or not on the cash basis) under section 96A(31) of ITTOIA 2005 in calculating the profits of a trade, profession or vocation (capital receipts under, or after leaving, cash basis: trades, professions and vocations), or
  - (b) are brought into account as a receipt (whether or not on the cash basis) under section 307E(12) of that Act in calculating the profits of a property business (capital receipts under, or after leaving, cash basis: property businesses).
- (5A) “Relevant disposal proceeds” means disposal proceeds as mentioned in section 96A(3F) of ITTOIA 2005 or (as the case may be) section 307E(9) of that Act which arise from the disposal mentioned in subsection (1).]
- [<sup>F262</sup>(6) Subsection (7) applies in the case of the disposal of, or of an interest in, an asset—
- (a) which, in the period of ownership of the person making the disposal—
    - (i) has been used partly for the purposes of the trade, profession or vocation and partly for other purposes, or
    - (ii) has been used for the purposes of the trade, profession or vocation for part of that period, or
  - (b) expenditure on which by the person has qualified in part only for capital allowances.]
- (7) In such a case—
- (a) the consideration for the disposal, and any expenditure attributable to the asset or interest by virtue of section 38(1)(a) and (b), shall be apportioned by reference to the extent to which that expenditure [<sup>F263</sup>qualified for capital allowances],
  - (b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
  - (c) subsection (1) above shall apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation<sup>F264</sup>, or to the expenditure qualifying for capital allowances].
- [ In this section “property business” means a UK property business or an overseas <sup>F265</sup>(8) property business within the meaning of Part 3 of ITTOIA 2005 (see sections 264 and 265 of that Act).]]

#### Textual Amendments

- F256** S. 47A heading substituted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 2 para. 46(2)**
- F257** Words in s. 47A(1) substituted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 2 para. 46(3)**
- F258** S. 47A(2) substituted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 2 para. 46(4)**

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- F259** Words in s. 47A(3) substituted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(5\)](#)
- F260** S. 47A(4) omitted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(6\)](#)
- F261** S. 47A(5)(5A) substituted for s. 47A(5) (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(7\)](#)
- F262** S. 47A(6) substituted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(8\)](#)
- F263** Words in s. 47A(7)(a) substituted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(9\)\(a\)](#)
- F264** Words in s. 47A(7)(c) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(9\)\(b\)](#)
- F265** S. 47A(8) inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 46\(10\)](#)

## **F266 47B Disposals made by persons after leaving cash basis**

.....

### **Textual Amendments**

- F266** S. 47B omitted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 2 para. 47](#)

### *Miscellaneous provisions*

## **48 Consideration due after time of disposal.**

[<sup>F267</sup>(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 [<sup>F268</sup>subsequently proves to be irrecoverable, there shall be made, on a claim being made to that effect, such adjustment, whether by way of discharge or repayment of tax or otherwise, as is required in consequence].

[<sup>F269</sup>(2) Subsection (1) above does not apply in relation to so much of any consideration as consists of rights under a creditor relationship to which a company becomes a party as a result of the disposal.

(3) In the computation of the gain in a case where subsection (2) above has effect in relation to any consideration, the amount to be brought into account in respect of that consideration is the fair value of the creditor relationship.

(4) In this section—

- (a) “creditor relationship”, and
- (b) “fair value”, in relation to a creditor relationship,

each have the same meaning as in [<sup>F270</sup>Part 5 of CTA 2009 (see sections 302(5) and 313(6))].]

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### Textual Amendments

- F267** S. 48 renumbered as s. 48(1) (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 7\(2\)](#)
- F268** Words in s. 48 substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 48](#)
- F269** S. 48(2)-(4) added (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 7\(3\)](#)
- F270** Words in s. 48(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 364](#) (with [Sch. 2 Pts. 1, 2](#))

### Modifications etc. (not altering text)

- C98** S. 48 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 208, 1184\(1\)](#) (with [Sch. 2](#))

## [<sup>F271</sup>48A Unascertainable consideration

- (1) This section applies where—
- (a) a person (“P”) has made a non-resident CGT disposal in relation to which there accrued to P an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D or 188D (“the original disposal”),
  - (b) P acquired a right as the whole or part of the consideration for that disposal,
  - (c) on P’s acquisition of the right, there was no corresponding disposal of it, and
  - (d) the right is a right to unascertainable consideration (see subsections (4) to (6)).
- (2) If P subsequently receives consideration (“the ascertained consideration”) representing the whole or part of the consideration referred to in subsection (1)(d) and condition A in section 14B would have been met in relation to the original disposal had a gain on that disposal accrued at the time of the receipt of the ascertained consideration—
- (a) the ascertained consideration is treated as not accruing on the disposal of the right,
  - (b) the costs of P’s acquisition of the right (or, in the case of a part disposal of the right, those costs so far as referable to the part disposed of) are taken to be nil, and
  - (c) the following steps are taken.
 

*Step 1* Any amount by which the ascertained consideration exceeds the relevant original consideration is treated as consideration (or further consideration) accruing on the original disposal. If the relevant original consideration exceeds the ascertained consideration, the consideration accruing on the original disposal is treated as reduced by the amount of the excess.

*Step 2* Compute the difference that the adjustment under step 1 makes to what (if any) NRCGT gain or loss, ATED-related gain or loss or other gain or loss accrues on the original disposal (computing this separately for each type of gain or loss). The difference is “positive” if a loss is decreased (to nil or otherwise) or a gain created or increased. The difference is “negative” if a gain is reduced (to nil or otherwise) or a loss created or increased.

*Step 3* Any positive amount computed under step 2 is treated for the purposes of this Act and the Management Act as a gain (of the type

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appropriate to the computation) accruing to P at the time of the receipt of the ascertained consideration. Any negative amount computed under step 2 is treated for the purposes of this Act and the Management Act as a loss (of the type appropriate to the computation) accruing to P at the time of the receipt of the ascertained consideration.

- (3) In step 1 in subsection (2), “the relevant original consideration” means the consideration accruing on the original disposal, so far as referable to the right mentioned in subsection (1)(b) (or, in the case of a part disposal of the right, referable to the part disposed of).
- (4) A right is a right to unascertainable consideration if, and only if—
- (a) it is a right to consideration the amount or value of which is unascertainable at the time when the right is conferred, and
  - (b) that amount or value is unascertainable at that time on account of its being referable, in whole or in part, to matters which are uncertain at that time because they have not yet occurred.

This subsection is subject to subsections (5) and (6).

- (5) The amount or value of any consideration is not to be regarded as being unascertainable by reason only—
- (a) that the right to receive the whole or any part of the consideration is postponed or contingent, if the consideration or, as the case may be, that part of it is, in accordance with section 48, brought into account in the computation of the gain accruing to a person on the disposal of an asset, or
  - (b) in a case where the right to receive the whole or any part of the consideration is postponed and is to be, or may be, to any extent satisfied by the receipt of property of one description or property of some other description, that some person has a right to select the property, or the description of property, that is to be received.
- (6) A right is not to be taken to be a right to unascertainable consideration by reason only that either the amount or the value of the consideration has not been fixed, if—
- (a) the amount will be fixed by reference to the value, and the value is ascertainable, or
  - (b) the value will be fixed by reference to the amount, and the amount is ascertainable.]

#### Textual Amendments

**F271** S. 48A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 14](#)

## 49 Contingent liabilities.

- (1) In the first instance no allowance shall be made in the computation of the gain—
- (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,

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- (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.
- [<sup>F272</sup>(2) If any such contingent liability subsequently becomes enforceable and is being or has been enforced, there shall be made, on a claim being made to that effect, such adjustment, whether by way of discharge or repayment of tax or otherwise, as is required in consequence.]
- (3) Subsection (2) above also applies where the disposal in question was before the commencement of this section.

#### **Textual Amendments**

**F272** S. 49(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 49](#)

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

There shall be excluded from the computation of a gain 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.

#### **51 Exemption for winnings and damages etc.**

- (1) It is hereby declared that winnings from betting, including pool betting, or lotteries or games with prizes are not chargeable gains, and no chargeable gain or allowable loss shall accrue on the disposal of rights to winnings obtained by participating in any pool betting or lottery or game with prizes.
- (2) It is hereby declared that sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation are not chargeable gains.

#### **52 Supplemental.**

- (1) No deduction shall be allowable in a computation of the gain 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 of the gain any necessary apportionments shall be made of any consideration or of any expenditure and the method of apportionment

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adopted shall, subject to the express provisions of this Chapter, be <sup>F273</sup>... just and reasonable.

- (5) In this Chapter “capital allowance” and “renewals allowance” have the meanings given by subsections (4) and (5) of section 41.

#### Textual Amendments

**F273** Words in s. 52(4) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 50](#), [Sch. 41 Pt. V\(10\)](#)

## CHAPTER IV

### COMPUTATION OF GAINS: THE INDEXATION ALLOWANCE

#### *General*

#### <sup>F274</sup>**52A Chapter to apply only for corporation tax purposes**

This Chapter applies only for the purposes of corporation tax.]

#### Textual Amendments

**F274** S. 52A inserted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 78](#)

#### **53 The indexation allowance and interpretative provisions.**

- (1) Subject to any provision to the contrary, [<sup>F275</sup>if on the disposal of an asset there is an unindexed gain, an allowance (“the indexation allowance”) shall be allowed against the unindexed gain—
- so as to give the gain for the purposes of this Act, or
  - if the indexation allowance equals or exceeds the unindexed gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues)];
- and any reference in this Act to an indexation allowance or to the making of an indexation allowance shall be construed accordingly.

<sup>F276</sup>(1A) . . . . .

- (2) For the purposes of [<sup>F277</sup>this Chapter], in relation to any disposal of an asset—
- <sup>F278</sup>(a) “unindexed gain” means the amount of the gain on the disposal computed in accordance with this Part]; and
  - “relevant allowable expenditure” means, subject to subsection (3) below, any sum which, in the computation of the unindexed [<sup>F279</sup>gain] was taken into account by virtue of paragraph (a) or paragraph (b) of section 38(1).

<sup>F280</sup>(2A) Notwithstanding anything in section 16 of this Act, this section shall not apply to a disposal on which a loss accrues.]

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- (3) In determining what sum (if any) was taken into account as mentioned in subsection (2) (b) above, account shall be taken of any provision of any enactment which, for the purpose of the computation of the gain, increases, excludes or reduces the whole or any part of any item of expenditure falling within section 38 or provides for it to be written-down.
- (4) Sections 54 and 108 and this section have effect subject to sections 56, 57, 109, 110<sup>F281</sup> ... , 113, 131 and 145.

**Textual Amendments**

**F275** Words in s. 53(1) substituted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(1\)](#) (with [Sch. 12](#))

**F276** S. 53(1A) omitted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 2 para. 79\(a\)](#)

**F277** Words in s. 53(2) substituted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(2\)\(a\)](#) (with [Sch. 12](#))

**F278** S. 53(2)(a) substituted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(2\)\(b\)](#) (with [Sch. 12](#))

**F279** Word in s. 53(2)(b) substituted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(2\)\(c\)](#) (with [Sch. 12](#))

**F280** S. 53(2A) inserted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(3\)](#) (with [Sch. 12](#))

**F281** Word in s. 53(4) omitted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 2 para. 79\(b\)](#)

**54 Calculation of indexation allowance.**

- (1) Subject to any provision to the contrary, the indexation allowance is the aggregate of the indexed rise in each item of relevant allowable expenditure; and, in relation to any such item of expenditure, the indexed rise is a sum produced by multiplying the amount of that item by a figure expressed as a decimal and determined, subject to subsections (2) and (3) below, by the formula—

$$\frac{(RD - RI)}{RI}$$

where—

RD is the retail prices index for [<sup>F282</sup>the month in which the disposal occurs]; and  
 RI is the retail prices index for March 1982 or the month in which the expenditure was incurred, whichever is the later.

<sup>F283</sup>(1A) .....

- (2) If, in relation to any item of expenditure—
  - (a) the expenditure is attributable to the acquisition of relevant securities, within the meaning of section 108, which are disposed of within the period of 10 days beginning on the day on which the expenditure was incurred, or
  - (b) RD, as defined in subsection (1) above, is equal to or less than RI, as so defined,



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the indexed rise in that item is nil.

- (3) If, in relation to any item of expenditure, the figure determined in accordance with the formula in subsection (1) above would, apart from this subsection, be a figure having more than 3 decimal places, it shall be rounded to the nearest third decimal place.
- (4) For the purposes of this section—
  - (a) relevant allowable expenditure falling within paragraph (a) of subsection (1) of section 38 shall be assumed to have been incurred at the time when the asset in question was acquired or provided; and
  - (b) relevant allowable expenditure falling within paragraph (b) of that subsection shall be assumed to have been incurred at the time when that expenditure became due and payable.

#### Textual Amendments

**F282** Words in s. 54(1) substituted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 80\(2\)](#)

**F283** S. 54(1A) omitted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 80\(3\)](#)

## 55 Assets owned on 31st March 1982 or acquired on a no gain/no loss disposal.

- (1) For the purpose of computing the indexation allowance on a disposal of an asset where, on 31st March 1982, the asset was held by the person making the disposal, it shall be assumed that on that date the asset was sold by the person making the disposal and immediately reacquired by him at its market value on that date.
- (2) Except where an election under section 35(5) has effect, neither subsection (1) above nor section 35(2) shall apply for the purpose of computing the indexation allowance in a case where that allowance would be greater if they did not apply.
- (3) If under subsection (1) above it is to be assumed that any asset was on 31st March 1982 sold by the person making the disposal and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by him in providing the asset as if it were made in respect of expenditure which, on that assumption, was incurred by him in reacquiring the asset on 31st March 1982.
- (4) Where, after 31st March 1982, an asset which was held on that date has been merged or divided or has changed its nature or rights in or over the asset have been created, then, subject to subsection (2) above, subsection (1) above shall have effect to determine for the purposes of section 43 the amount of the consideration for the acquisition of the asset which was so held.
- (5) Subsection (6) below applies to a disposal of an asset which is not a no gain/no loss disposal if—
  - (a) the person making the disposal acquired the asset after 31st March 1982; and
  - (b) the disposal by which he acquired the asset and any previous disposal of the asset after 31st March 1982 was a no gain/no loss disposal;

and for the purposes of this subsection a no gain/no loss disposal is one on which, by virtue of section 257(2) or 259(2) or any of the [<sup>F284</sup>no gain/no loss provisions], neither a gain nor a loss accrues (or accrued) to the person making the disposal.

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- [<sup>F285</sup>(5A) For the purposes of subsection (5), a disposal is also a no gain/no loss disposal if it is one on which, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal; but, in such a case, subsection (6)(b) below does not apply.]
- (6) Where this subsection applies to a disposal of an asset—
- (a) the person making the disposal shall be treated for the purpose of computing the indexation allowance on the disposal as having held the asset on 31st March 1982; <sup>F286</sup> ...
  - [<sup>F287</sup>(aa) in the case of a disposal to which paragraph 1A of Schedule 3 applies (certain holdings of shares or securities), the market value of the asset on that date is to be determined in accordance with that paragraph; and]
  - (b) for the purpose of determining any gain or loss on the disposal, the consideration which, apart from this subsection, that person would be treated as having given for the asset shall be taken to be reduced by deducting therefrom any indexation allowance brought into account by virtue of section 56(2) on any disposal falling within subsection (5)(b) above.
- [<sup>F288</sup>(7) The rules in subsection (8) below apply (after the application of section 53 but before the application of section 35(3) or (4)) to give the gain or loss for the purposes of this Act where—
- (a) subsection (6) above applies to the disposal (the “disposal in question”) of an asset by any person (the “transferor”), and
  - (b) but for paragraph (b) of that subsection, the consideration the transferor would be treated as having given for the asset would include an amount or amounts of indexation allowance brought into account by virtue of section 56(2) on any disposal made before 30th November 1993.
- (8) The rules are as follows—
- (a) where (apart from this subsection) there would be a loss, an amount equal to the rolled-up indexation shall be added to it so as to increase it,
  - (b) where (apart from this subsection) the unindexed gain or loss would be nil, there shall be a loss of an amount equal to the rolled-up indexation, and
  - (c) where (apart from this subsection)—
    - (i) there would be an unindexed gain, and
    - (ii) the gain or loss would be nil but the amount of the indexation allowance used to extinguish the gain would be less than the rolled-up indexation,
 the difference shall constitute a loss.
- (9) In this section the “rolled-up indexation” means, subject to subsections (10) and (11) below, the amount or, as the case may be, the aggregate of the amounts referred to in subsection (7)(b) above; and subsections (10) and (11) below shall, as well as applying on the disposal in question, be treated as having applied on any previous part disposal by the transferor.
- (10) Where, for the purposes of any disposal of the asset by the transferor, any amount falling within any, or any combination of, paragraphs (a) to (c) of section 38(1) is required by any enactment to be excluded, reduced or written down, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (11) below on a previous part disposal)

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shall be reduced in proportion to any reduction made in the amount falling within the paragraph, or the combination of paragraphs, in question.

- (11) Where the transferor makes a part disposal of the asset at any time, then, for the purposes of that and any subsequent disposal, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (10) above on a previous part disposal by him or after the application of subsection (10) above on the part disposal) shall be apportioned between the property disposed of and the property which remains in the same proportions as the sums falling within section 38(1)(a) and (b).]

#### Textual Amendments

- F284** Words in s. 55(5) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 60](#)
- F285** S. 55(5A) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 3](#)
- F286** Word in s. 55(6)(a) omitted (with effect in accordance with art. 7(4) of the amending S.I.) by virtue of [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, [7\(2\)](#)
- F287** S. 55(6)(aa) inserted (with effect in accordance with art. 7(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, [7\(2\)](#)
- F288** S. 55(7)-(11) inserted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 93\(4\)](#) (with [Sch. 12](#))

## 56 Part disposals and disposals on a no-gain/no-loss basis.

- (1) For the purpose of determining the indexation allowance (if any) on the occasion of a part disposal of an asset, the apportionment under section 42 of the sums which make up the relevant allowable expenditure shall be effected before the application of section 54 and, accordingly, in relation to a part disposal—
- references in section 54 to an item of expenditure shall be construed as references to that part of that item which is so apportioned for the purposes of the computation of the unindexed gain<sup>F289</sup> ... on the part disposal; and
  - no indexation allowance shall be determined by reference to the part of each item of relevant allowable expenditure which is apportioned to the property which remains undisposed of.
- (2) [<sup>F290</sup>On a no gain/no loss disposal by any person (“the transferor”)]—
- the amount of the consideration shall be calculated for the purposes of this Act on the assumption that, on the disposal, an unindexed gain accrues to the transferor which is equal to the indexation allowance on the disposal, and
  - the disposal shall accordingly be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues;

and for the purposes of the application of sections 53 and 54 there shall be disregarded so much of any enactment as provides that, on the subsequent disposal of the asset by the person acquiring the asset on the disposal (“the transferee”), the transferor’s acquisition of the asset is to be treated as the transferee’s acquisition of it.

- [<sup>F291</sup>(3) Where apart from this subsection—

- a loss would accrue on the disposal of an asset, and

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- (b) the sums allowable as a deduction in computing that loss would include an amount attributable to the application of the assumption in subsection (2) above on any no gain/no loss disposal made on or after 30th November 1993, those sums shall be determined as if that subsection had not applied on any such disposal made on or after that date and the loss shall be reduced accordingly or, if those sums are then equal to or less than the consideration for the disposal, the disposal shall be one on which neither a gain nor a loss accrues.
- (4) For the purposes of this section a no gain/no loss disposal is one which, by virtue of any enactment other than section 35(4), 53(1) or this section, is treated as a disposal on which neither a gain nor a loss accrues to the person making the disposal.]

#### Textual Amendments

- F289** Words in s. 56(1)(a) repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 26 Pt. V\(8\)](#)
- F290** Words in s. 56(2) substituted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 93\(5\)\(a\)](#) (with [Sch. 12](#))
- F291** S. 56(3)(4) added (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 93\(5\)\(b\)](#) (with [Sch. 12](#))

#### 57 Receipts etc. which are not treated as disposals but affect relevant allowable expenditure.

- (1) This section applies where, in determining the relevant allowable expenditure in relation to a disposal of an asset, account is required to be taken, as mentioned in section 53(3), of any provision of any enactment which, by reference to a relevant event, reduces the whole or any part of an item of expenditure as mentioned in that subsection.
- (2) For the purpose of determining, in a case where this section applies, the indexation allowance (if any) to which the person making the disposal is entitled, no account shall in the first instance be taken of the provision referred to in subsection (1) above in calculating the indexed rise in the item of expenditure to which that provision applies but, from that indexed rise as so calculated, there shall be deducted a sum equal to the indexed rise (determined as for the purposes of the actual disposal) in a notional item of expenditure which—
- (a) is equal to the amount of the reduction effected by the provision concerned; and
  - (b) was incurred on the date of the relevant event referred to in subsection (1) above.
- (3) In this section “relevant event” means any event which does not fall to be treated as a disposal for the purposes of this Act.

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## [<sup>F292</sup>CHAPTER 5

### COMPUTATION OF GAINS AND LOSSES: RELEVANT HIGH VALUE DISPOSALS

#### Textual Amendments

**F292** Pt. 2 Ch. 5 inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 9](#)

#### 57A Gains and losses on relevant high value disposals

- (1) Schedule 4ZZA makes provision about the computation of gains and losses on relevant high value disposals, including provision about whether a gain or loss is ATED-related or not.
- (2) But if the effect of Schedule 4ZZA applying in relation to a disposal would be that no ATED-related gain or loss accrues on the disposal, for the purposes of this Act the gain or loss on the disposal is to be computed ignoring that Schedule (and is not ATED-related).

[ Subsection (2) does not apply where<sup>F294</sup>—

- <sup>F293</sup>(3) (a) Part 4 of Schedule 4ZZB applies (non-resident CGT disposals which are or involve relevant high value disposals) [<sup>F295</sup>or,
- (b) Part 3 of Schedule 4ZZC applies (other disposals of residential property interests which are or involve relevant high value disposals)].]

#### Textual Amendments

**F293** S. 57A(3) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 15](#)

**F294** S. 57A(3)(a) formed from s. 57A(3) (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 12 para. 2\(a\)](#)

**F295** S. 57A(3)(b) and preceding word inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 12 para. 2\(b\)](#)

## [<sup>F296</sup>CHAPTER 6

### COMPUTATION OF GAINS AND LOSSES: NON-RESIDENT CGT DISPOSALS

#### Textual Amendments

**F296** Pt. 2 Ch. 6 inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 16](#)

#### 57B Gains and losses on non-resident CGT disposals

- (1) Schedule 4ZZB makes provision about the computation of—
  - (a) NRCGT gains or losses, and
  - (b) other gains or losses,

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on non-resident CGT disposals.

- (2) For further provision about non-resident CGT disposals and NRCGT gains and losses see sections 14B to 14H and 188D and 188E.]

## [<sup>F297</sup>CHAPTER 7

### COMPUTATION OF GAINS AND LOSSES: DISPOSALS OF RESIDENTIAL PROPERTY INTERESTS

#### Textual Amendments

**F297** Pt. 2 Ch. 7 inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 12 para. 3](#)

### 57C **Gains and losses on disposals of residential property interests**

Schedule 4ZZC makes provision about the computation of—

- (a) residential property gains or losses, and
- (b) other gains or losses,

on disposals of residential property interests which are not non-resident CGT disposals.]

## PART III

### INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES [<sup>F298</sup>ETC]

#### Textual Amendments

**F298** Word in [Pt. 3](#) heading inserted (with effect in accordance with [Sch. 22 para. 12](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 9](#); S.I. 2010/670, [art. 2](#)

## CHAPTER I

### MISCELLANEOUS PROVISIONS

### 58 [<sup>F299</sup>Spouses and civil partners].

- (1) [<sup>F300</sup>If, in any year of assessment, —

- (a) an individual is living with his spouse or civil partner, and
- (b) one of them disposes of an asset to the other,

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 section shall not apply—

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- (a) if until the disposal the asset formed part of trading stock of a trade carried on by the one making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring the asset, <sup>F301</sup> ... [<sup>F302</sup>or]
- (b) if the disposal is by way of donatio mortis causa, <sup>F303</sup> ...
- <sup>F303</sup>(c) .....

but this section shall have effect notwithstanding the provisions of section 18 or 161, or of any other provisions of this Act fixing the amount of the consideration deemed to be given on a disposal or acquisition.

- <sup>F304</sup>(3) .....
- <sup>F304</sup>(4) .....
- <sup>F304</sup>(5) .....

**Textual Amendments**

- F299** Words in s. 58 heading substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **107(3)**
- F300** Words in s. 58(1) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **107(2)**
- F301** Word in s. 58(2)(a) omitted (1.9.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 23 paras. 18(a)**, 38; [S.I. 2013/1755](#), art. 2
- F302** Word in s. 58(2)(a) inserted (with effect in accordance with s. 13(6)-(8) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), **s. 13(2)(a)(i)**
- F303** S. 58(2)(c) and preceding word omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of [Finance Act 2017 \(c. 10\)](#), **s. 13(2)(a)(ii)**
- F304** S. 58(3)-(5) omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of [Finance Act 2017 \(c. 10\)](#), **s. 13(2)(b)**

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

- C99** S. 58(1) excluded (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 8 para. 41(6)**

**59 Partnerships.**

- [<sup>F305</sup>(1)] Where 2 or more persons carry on a trade or business in partnership—
  - (a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Scotland as well as elsewhere in the United Kingdom, be assessed and charged on them separately, and
  - (b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such, <sup>F306</sup> ...
  - <sup>F306</sup>(c) .....

- [<sup>F307</sup>(2)] Subsection (3) applies if—
  - (a) a person resident in the United Kingdom (“the resident partner”) is a member of a partnership which resides outside the United Kingdom or which carries on any trade, profession or business the control and management of which is situated outside the United Kingdom, and
  - (b) by virtue of any arrangements [<sup>F308</sup>that have effect under section 2(1) of TIOPA 2010] (“the arrangements”) any of the capital gains of the partnership

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are relieved from capital gains tax [<sup>F309</sup>or corporation tax] in the United Kingdom.

(3) The arrangements [<sup>F310</sup>(so far as providing for that relief)] do not affect any liability to capital gains tax [<sup>F311</sup>or corporation tax] in respect of the resident partner's share of any capital gains of the partnership.]

[<sup>F312</sup>(4) For the purposes of subsections (2) and (3) the members of a partnership include any person entitled to a share of capital gains of the partnership.]

#### Textual Amendments

- F305** S. 59(1) renumbered (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 431\(2\)](#) (with Sch. 2)
- F306** S. 59(c) and preceding word repealed (with effect in accordance with Sch. 29 Pt. VIII(16) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 29 Pt. VIII\(16\)](#)
- F307** S. 59(2)(3) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 431\(3\)](#) (with Sch. 2)
- F308** Words in s. 59(2)(b) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 43](#) (with Sch. 9 paras. 1-9, 22)
- F309** Words in s. 59(2)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 365\(2\)](#) (with Sch. 2 Pts. 1, 2)
- F310** Words in s. 59(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 365\(3\)\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F311** Words in s. 59(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 365\(3\)\(b\)](#) (with Sch. 2 Pts. 1, 2)
- F312** S. 59(4) inserted (retrospective to 6.4.2005) by [Finance Act 2008 \(c. 9\), s. 58\(2\)\(4\)](#)

#### [<sup>F313</sup>59A] Limited liability partnerships.

(1) Where a limited liability partnership carries on a trade or business with a view to profit—

- (a) assets held by the limited liability partnership are treated for the purposes of tax in respect of chargeable gains as held by its members as partners, and
- (b) any dealings by the limited liability partnership are treated for those purposes as dealings by its members in partnership (and not by the limited liability partnership as such);

and tax in respect of chargeable gains accruing to the members of the limited liability partnership on the disposal of any of its assets shall be assessed and charged on them separately.

(2) For all purposes, except as otherwise provided, in the enactments relating to tax in respect of chargeable gains—

- (a) references to a partnership include a limited liability partnership in relation to which subsection (1) above applies,
- (b) references to members of a partnership include members of such a limited liability partnership,
- (c) references to a company do not include such a limited liability partnership, and
- (d) references to members of a company do not include members of such a limited liability partnership.



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- (3) Subsection (1) above continues to apply in relation to a limited liability partnership which no longer carries on any trade or business with a view to profit—
- (a) if the cessation is only temporary, or
  - (b) during a period of winding up following a permanent cessation, provided—
    - (i) the winding up is not for reasons connected in whole or in part with the avoidance of tax, and
    - (ii) the period of winding up is not unreasonably prolonged,but subject to subsection (4) below.
- (4) Subsection (1) above ceases to apply in relation to a limited liability partnership—
- (a) on the appointment of a liquidator or (if earlier) the making of a winding-up order by the court, or
  - (b) on the occurrence of any event under the law of a country or territory outside the United Kingdom corresponding to an event specified in paragraph (a) above.
- (5) Where subsection (1) above ceases to apply in relation to a limited liability partnership with the effect that tax is assessed and charged—
- (a) on the limited liability partnership (as a company) in respect of chargeable gains accruing on the disposal of any of its assets, and
  - (b) on the members in respect of chargeable gains accruing on the disposal of any of their capital interests in the limited liability partnership,
- it shall be assessed and charged on the limited liability partnership as if subsection (1) above had never applied in relation to it.
- (6) Neither the commencement of the application of subsection (1) above nor the cessation of its application in relation to a limited liability partnership shall be taken as giving rise to the disposal of any assets by it or any of its members.]

#### Textual Amendments

**F313** S. 59A inserted (6.4.2001) by [Limited Liability Partnerships Act 2000 \(c. 12\)](#), ss. 10(3), 19(1); [S.I. 2000/3316](#), art. 2; s. 59A substituted (retrospectively) (6.4.2001) by [Finance Act 2001 \(c. 9\)](#), s. [75\(2\)\(6\)](#) (with [Sch. 3](#))

#### [<sup>F314</sup>59B Alternative investment fund managers (1)]

- (1) Subsection (2) applies if—
- (a) under section 863I of ITTOIA 2005, a partner (“P”) in a partnership allocates to the partnership an amount of profit (“the allocated profit”) representing variable remuneration which, if it vests in P, will vest in the form of instruments,
  - (b) there is a disposal to P of instruments which are partnership assets of the partnership for the purposes of section 59, and
  - (c) by virtue of that disposal the variable remuneration vests in P.
- (2) Both the persons making the disposal and P are to be treated as if the instruments were acquired by P from those persons for a consideration of an amount equal to the allocated profit net of the income tax for which the partnership is liable by virtue of section 863I of ITTOIA 2005 in respect of the allocated profit.

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- (3) Terms used in this section which are also used in section 863I or 863J of ITTOIA 2005 have the same meaning as in that section.

#### Textual Amendments

**F314** Ss. 59B, 59C inserted (with effect in accordance with Sch. 17 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 17](#)

### 59C Alternative investment managers (2)

- (1) Subsection (2) applies if—
- (a) under section 863I of ITTOIA 2005, a partner (“P”) in a partnership allocates to the partnership an amount of profit (“the allocated profit”) representing variable remuneration which, if it vests in P, will vest in the form of instruments,
  - (b) there is a disposal to P of instruments by a company which is a partner in the partnership,
  - (c) by virtue of that disposal the variable remuneration vests in P, and
  - (d) the company would, as a partner in the partnership, have been charged to tax on the allocated profit but for adjustments made in the case of the company under section 1264A(2) of CTA 2009 or section 850C(5) of ITTOIA 2005.
- (2) Both the company and P are to be treated as if the instruments were acquired by P from the company for a consideration of an amount equal to the allocated profit net of the income tax for which the partnership is liable by virtue of section 863I of ITTOIA 2005 in respect of the allocated profit.
- (3) Terms used in this section which are also used in section 863I or 863J of ITTOIA 2005 have the same meaning as in that section.]

#### Textual Amendments

**F314** Ss. 59B, 59C inserted (with effect in accordance with Sch. 17 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 17](#)

### 60 Nominees and bare trustees.

- (1) In relation to [<sup>F315</sup>property] held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for 2 or more persons who are or would be jointly so entitled), this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the [<sup>F315</sup>property] 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 Act to any [<sup>F316</sup>property] 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 [<sup>F316</sup>property]

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for payment of duty, taxes, costs or other outgoings, to direct how that [F316property] shall be dealt with.

#### Textual Amendments

**F315** Word in s. 60(1) substituted (with effect in accordance with Sch. 12 para. 10(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 10\(1\)](#)

**F316** Word in s. 60(2) substituted (with effect in accordance with Sch. 12 para. 10(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 10\(2\)](#)

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

**C100** S. 60 applied (with application in accordance with s. 58(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 59\(8\)](#)

**C101** S. 60(1) applied (27.7.1993) by [1993 c. 37, s. 12](#), [Sch. 2 Pt. I para. 21\(2\)\(d\)](#)

## 61 Funds in court.

- (1) For the purposes of section 60, funds in court held by the Accountant General shall be regarded as held by him as nominee for the persons entitled to or interested in the funds, or as the case may be for their trustees.
- (2) Where funds in court standing to an account are invested or, after investment, are realised, the method by which the Accountant General effects the investment or the realisation of investments shall not affect the question whether there is for the purposes of this Act an acquisition, or as the case may be a disposal, of an asset representing funds in court standing to the account, and in particular there shall for those purposes be an acquisition or disposal of shares in a court investment fund notwithstanding that the investment in such shares of funds in court standing to an account, or the realisation of funds which have been so invested, is effected by setting off, in the Accountant General's accounts, investment in one account against realisation of investments in another.
- (3) In this section “funds in court” means—
  - (a) money in the [F317Senior Courts], money in [F318the county court][F319], money in the family court] and statutory deposits described in section 40 of the <sup>M5</sup>Administration of Justice Act 1982, and
  - (b) money in the [F320Court of Judicature] and money in a county court in Northern Ireland,

and investments representing such money; and references in this section to the Accountant General are references to the Accountant General of the [F321Senior Courts] and, in relation to money within paragraph (b) above and investments representing such money, include references to the Accountant General of the [F320Court of Judicature] or any other person by whom such funds are held.

#### Textual Amendments

**F317** Words in s. 61(3)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), [s. 148\(1\)](#), [Sch. 11 para. 30\(2\)\(a\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)

**F318** Words in s. 61(3)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 131](#); [S.I. 2014/954](#), [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), [arts. 3-11](#))

*Status: Point in time view as at 16/11/2017.*

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- F319** Words in s. 61(3)(a) inserted (22.4.2014) by [The Crime and Courts Act 2013 \(Family Court: Consequential Provision\) Order 2014 \(S.I. 2014/605\)](#), arts. 1, **20**
- F320** Words in s. 61(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 30(2)(c)**; S.I. 2009/1604, art. 2(d)
- F321** Words in s. 61(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 30(2)(b)**; S.I. 2009/1604, art. 2(d)

#### Marginal Citations

**M5** 1982 c. 53.

## 62 Death: general provisions.

- (1) For the purposes of this Act the assets of which a deceased person was competent to dispose—
- (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 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.
- [<sup>F322</sup>(2A) Amounts deductible from chargeable gains for any year in accordance with subsection (2) above shall not be so deductible from any such gains so far as they [<sup>F323</sup>are—
- (a) gains that are treated as accruing by virtue of section 87 or 89(2) (read, where appropriate, with section 10A), or
  - (b) NRCGT gains (see section 57B and Schedule 4ZZB).]
- [ Where allowable NRCGT losses (see section 57B and Schedule 4ZZB) are sustained <sup>F324</sup>(2AA) by an individual in the year of assessment in which the individual dies, the losses may, so far as they cannot be deducted from chargeable gains accruing to the individual in that year, be deducted from any gains such as are mentioned in subsection (2A)(b) that accrued to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.]
- <sup>F325</sup>(2B) . . . . . ]
- (3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Act 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 <sup>F326</sup>... and domicile at the date of death.
- (4) On a person acquiring any asset as legatee (as defined in section 64)—
- (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.

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- [<sup>F327</sup>(4A) The Treasury may by regulations make provision having effect in place of subsection (4)(b) above in a case where there has been a time when the personal representatives—
- (a) held the asset acquired by the legatee, and
  - (b) would, if they had disposed of the asset at that time—
    - (i) by way of a bargain at arm's length, and
    - (ii) otherwise than to a legatee,have been entitled as a result of regulations under section 151 (investments under plans) to relief from capital gains tax in respect of any chargeable gain accruing on the disposal.
- (4B) Provision made by regulations under subsection (4A) above may (in particular) treat a person who acquires an asset as legatee as doing so at a time or for a consideration, or at a time and for a consideration, ascertained as specified by the regulations.]
- (5) Notwithstanding section 17(1) no chargeable gain shall accrue to any person on his making a disposal by way of donatio mortis causa.
- (6) Subject to subsections (7) and (8) below, where within the period of 2 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 Act, and
  - (b) this section 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) Subsection (6) above does not apply to a variation [<sup>F328</sup>unless the instrument contains a statement by the persons making the instrument to the effect that they intend the subsection to apply to the variation.]
- (8) Subsection (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) Subsection (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 section references to assets of which a deceased person was competent to dispose 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 England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

#### Textual Amendments

**F322** S. 62(2A)(2B) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 5](#)

*Status: Point in time view as at 16/11/2017.*

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- F323** Words in s. 62(2A) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 17\(2\)](#)
- F324** S. 62(2AA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 17\(3\)](#)
- F325** S. 62(2B) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 29\(3\)](#)
- F326** Words in s. 62(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 79](#)
- F327** S. 62(4A)(4B) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [s. 27\(3\)](#)
- F328** Words in s. 62(7) substituted (with application in accordance with s. 52(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 52\(1\)](#)

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

- C102** S. 62 applied (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [34](#)
- C103** S. 62 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 85W\(2\)](#) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\)](#), [21](#))

## **63 Death: application of law in Scotland.**

- (1) The provisions of this Act, so far as relating to the consequences of the death of <sup>F329</sup>... a proper liferenter of any property, shall have effect subject to the provisions of this section.
- (2) <sup>F330</sup>... on the death of any such <sup>F331</sup>... liferenter <sup>F332</sup>... the person (if any) who, on the death of the liferenter, becomes entitled to possession of the property as fiar shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.

#### **Textual Amendments**

- F329** Words in s. 63(1) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(a\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F330** Words in s. 63(2) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(b\)\(i\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F331** Words in s. 63(2) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(b\)\(ii\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F332** Words in s. 63(2) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(b\)\(iii\)](#), [Sch. 26 Pt. 3\(15\)](#)

## **[<sup>F333</sup>63A Death: application of law in Northern Ireland**

- (1) The provisions of this Act, so far as relating to the consequences of the death of a person to whom property in Northern Ireland stands limited for life (“the deceased”), shall have effect subject to the provisions of this section.
- (2) A person who acquires property in fee simple absolute or fee tail in possession as a consequence of the deceased's death shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.]

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#### Textual Amendments

**F333** S. 63A inserted (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(2\)](#)

### 64 Expenses in administration of estates and trusts.

- (1) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, [<sup>F334</sup>an asset held by another person as trustee, or as a personal representative of a deceased person, to which he became absolutely entitled as legatee or as against the trustee]—
- (a) any expenditure within section 38(2) incurred by him in relation to the transfer of the asset to him by the [<sup>F335</sup>personal representative or trustee], and
  - (b) any such expenditure incurred in relation to the transfer of the asset by the [<sup>F336</sup>personal representative or trustee],
- shall be allowable as a deduction in the computation of the gain accruing to that person on the disposal.
- (2) In this Act, 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 section 62) 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 Act 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.

#### Textual Amendments

**F334** Words in s. 64(1) substituted (with effect in accordance with Sch. 12 para. 12(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 12\(1\)\(a\)](#)

**F335** Words in s. 64(1)(a) substituted (with effect in accordance with Sch. 12 para. 12(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 12\(1\)\(b\)](#)

**F336** Words in s. 64(1)(b) substituted (with effect in accordance with Sch. 12 para. 12(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 12\(1\)\(b\)](#)

### 65 Liability for tax of trustees or personal representatives.

- [<sup>F337</sup>(1) Subject to subsection (3) below, capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of any one or more of the relevant trustees or the relevant personal representatives.]
- (2) Subject to section 60 and any other express provision to the contrary, chargeable gains accruing to the trustees of a settlement or to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such trustees or personal representatives, shall not be regarded for the purposes of this Act as accruing to, or

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chargeable on, any other person, nor shall any trustee or personal representative be regarded for the purposes of this Act as an individual.

[<sup>F338</sup>(3) Where section 80 applies as regards the trustees of a settlement (“the migrating trustees”), nothing in subsection (1) above shall enable any person—

- (a) who ceased to be a trustee of the settlement before the end of the relevant period, and
- (b) who shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might [<sup>F339</sup>cease to be resident] in the United Kingdom,

to be assessed and charged to any capital gains tax which is payable by the migrating trustees by virtue of section 80(2).

(4) In this section—

“the relevant period” has the same meaning as in section 82;

“the relevant trustees”, in relation to any chargeable gains, means the trustees in the year of assessment in which the chargeable gains accrue and any subsequent trustees of the settlement, and “the relevant personal representatives” has a corresponding meaning.]

#### Textual Amendments

**F337** S. 65(1) substituted (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 114\(1\)](#)

**F338** S. 65(3)(4) inserted (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 114\(2\)](#)

**F339** Words in s. 65(3)(b) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 80](#)

## 66 Insolvents’ assets.

- (1) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement this Act 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 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 Act be regarded as held by a personal representative of the deceased and—
  - (a) subsection (1) above shall not apply after the death, and
  - (b) section 62(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 Act be regarded as held by a personal representative of the deceased, and subsection (1) above shall not apply.



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- (4) The definition of “settled property” in section 68 shall not include any property as being property held by a trustee or assignee in bankruptcy or under a deed of arrangement.
- (5) In this section—
- “deed of arrangement” means a deed of arrangement to which [<sup>F340</sup>an enactment forming part of the law of Scotland or Northern Ireland which corresponds to the Deeds of Arrangement Act 1914 applies], and
- “trustee in bankruptcy” includes a [<sup>F341</sup>trustee in a sequestration under] the Bankruptcy (Scotland) Act [<sup>F342</sup>2016].

#### Textual Amendments

- F340** Words in s. 66(5) substituted (1.10.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 2\(12\)](#) (with [Sch. 6 para. 3](#)); [S.I. 2015/1732](#), art. 2(e)(i)
- F341** Words in s. 66(5) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 10\(a\)](#)
- F342** Word in s. 66(5) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 10\(b\)](#)

#### 67 Provisions applicable where section 79 of the Finance Act 1980 has applied.

- (1) In this section “a claim” means a claim under section 79 of the Finance Act 1980 (“section 79”) and “relief” means relief under that section (which provided general relief for gifts).
- (2) Where a disposal in respect of which a claim is or has been made is or proves to be a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—
- (a) the inheritance tax attributable to the value of the asset; and
- (b) the amount of the chargeable gain as computed apart from this subsection;
- and in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.
- (3) Where an amount of inheritance tax—
- (a) falls to be redetermined in consequence of the transferor’s death within 7 years of making the chargeable transfer in question; or
- (b) is otherwise varied,
- after it has been taken into account under subsection (2) above (or under section 79(5)), all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.
- (4) Where—
- (a) a claim for relief has been made in respect of the disposal of an asset to a trustee, and
- (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a),

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sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset, or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

(5) Subsection (4) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.

(6) Section 168 shall apply where relief has been given—

(a) with the substitution for subsection (1) of the following—

“(1) If—

(a) relief has been given under section 79 of the Finance Act 1980 in respect of a disposal made after 5th April 1981 to an individual (“the relevant disposal”); and

(b) at a time when he has not disposed of the asset in question, the transferee [<sup>F343</sup>ceases to be resident] in the United Kingdom,

then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 67) on the relevant disposal.”; and

(b) with the substitution in subsections (2), (6) and (10) for the references to section 165(4)(b) of references to section 79(1)(b).

(7) In this section “held-over gain”, in relation to a disposal, means the chargeable gain which would have accrued on that disposal apart from section 79, reduced where applicable in accordance with subsection (3) of that section, and references to inheritance tax include references to capital transfer tax.

#### **Textual Amendments**

**F343** Words in s. 67(6)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 81](#)

## **CHAPTER II**

### SETTLEMENTS

#### *General provisions*

#### **68 Meaning of “settled property”.**

In this Act, unless the context otherwise requires, [<sup>F344</sup>“settled property” means any property held in trust other than property to which section 60 applies (and references, however expressed, to property comprised in a settlement are references to settled property)].

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### Textual Amendments

**F344** Words in s. 68 substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(1\)\(3\)](#)

## [<sup>F345</sup> 68A Meaning of “settlor”

- (1) In this Act, unless the context otherwise requires—
  - (a) “settlor” in relation to a settlement means the person, or any of the persons, who has made, or is treated for the purposes of this Act as having made, the settlement, and
  - (b) a person is a settlor of property which—
    - (i) is settled property by reason of his having made the settlement (or by reason of an event which causes him to be treated under this Act as having made the settlement), or
    - (ii) derives from property to which sub-paragraph (i) applies.
- (2) A person is treated for the purposes of this Act as having made a settlement if—
  - (a) he has made or entered into the settlement, directly or indirectly, or
  - (b) the settled property, or property from which the settled property is derived, is or includes property of which he was competent to dispose immediately before his death, and the settlement arose on his death, whether by will, on his intestacy, or otherwise.
- (3) A person is, in particular, treated for the purposes of this Act as having made a settlement if—
  - (a) he has provided property directly or indirectly for the purposes of the settlement, or
  - (b) he has undertaken to provide property directly or indirectly for the purposes of the settlement.
- (4) Where one person (A) makes or enters into a settlement in accordance with reciprocal arrangements with another person (B), for the purposes of this Act—
  - (a) B shall be treated as having made the settlement, and
  - (b) A shall not be treated as having made the settlement by reason only of the reciprocal arrangements.
- (5) In subsection (2)(b) “property of which he was competent to dispose immediately before his death” shall be construed in accordance with section 62(10) (reading each reference to “assets” as a reference to “property”).
- (6) A person who has been a settlor in relation to a settlement shall be treated for the purposes of this Act as having ceased to be a settlor in relation to the settlement if—
  - (a) no property of which he is a settlor is comprised in the settlement,
  - (b) he has not undertaken to provide property directly or indirectly for the purposes of the settlement in the future, and
  - (c) he has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.
- (7) For the purpose of this section and sections 68B and 68C property is derived from other property—

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- (a) if it derives (directly or indirectly and wholly or partly) from that property or any part of it, and
  - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that property or any part of it.
- (8) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

#### **Textual Amendments**

**F345** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)\(4\)](#)

### **68B Transfer between settlements: identification of settlor**

- (1) This section applies in relation to a transfer of property from the trustees of one settlement (“Settlement 1”) to the trustees of another (“Settlement 2”) otherwise than—
- (a) for full consideration, or
  - (b) by way of a bargain made at arm's length.
- (2) In this section “transfer of property” means—
- (a) a disposal of property by the trustees of Settlement 1, and
  - (b) the acquisition by the trustees of Settlement 2 of—
    - (i) property disposed of by the trustees of Settlement 1, or
    - (ii) property created by the disposal;
- and a reference to transferred property is a reference to property acquired by the trustees of Settlement 2 on the disposal.
- (3) For the purposes of this Act, except where the context otherwise requires—
- (a) the settlor (or each settlor) of the property disposed of by the trustees of Settlement 1 shall be treated from the time of the disposal as having made Settlement 2, and
  - (b) if there is more than one settlor of the property disposed of by the trustees of Settlement 1, each settlor shall be treated in relation to Settlement 2 as the settlor of a proportionate part of the transferred property.
- (4) For the purposes of this Act, except where the context otherwise requires, if and to the extent that the property disposed of by the trustees of Settlement 1 was provided for the purposes of Settlement 1, or is derived from property provided for the purposes of Settlement 1, the transferred property shall be treated from the time of the disposal as having been provided for the purposes of Settlement 2.
- (5) If transferred property is treated by virtue of subsection (4) as having been provided for the purposes of Settlement 2 —
- (a) the person who provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1 shall be treated as having provided the transferred property, and
  - (b) if more than one person provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1, each of them shall be treated as having provided a proportionate part of the transferred property.

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- (6) But subsections (3) and (4) do not apply in relation to a transfer of property—
- (a) which occurs by reason only of the assignment or assignation by a beneficiary under Settlement 1 of an interest in that settlement to the trustees of Settlement 2,
  - (b) which occurs by reason only of the exercise of a general power of appointment, or
  - (c) to which section 68C(6) applies.
- (7) In determining whether this section applies in relation to a transfer of property between settlements, section 18(2) shall be disregarded.]

#### Textual Amendments

**F345** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)\(4\)](#)

#### [<sup>F346</sup> 68C Variation of will or intestacy, etc: identification of settlor

- (1) This section applies where—
- (a) a disposition of property following a person's death is varied, and
  - (b) section 62(6) applies in respect of the variation.
- (2) Where property becomes settled property in consequence of the variation (and would not, but for the variation, have become settled property), a person mentioned in subsection (3) shall be treated for the purposes of this Act, except where the context otherwise requires—
- (a) as having made the settlement, and
  - (b) as having provided the property for the purposes of the settlement.
- (3) Those persons are—
- (a) a person who immediately before the variation was entitled to the property, or to property from which it derives, absolutely as legatee,
  - (b) a person who would have become entitled to the property, or to property from which it derives, absolutely as legatee but for the variation,
  - (c) a person who immediately before the variation would have been entitled to the property, or to property from which it derives, absolutely as legatee but for being an infant or other person under a disability, and
  - (d) a person who would, but for the variation, have become entitled to the property, or to property from which it derives, absolutely as legatee if he had not been an infant or other person under a disability.
- (4) In subsection (3) references to a person being entitled to property absolutely as legatee shall be construed in accordance with section 64(3) (reading the references to “an asset” and “any asset” as references to “property”).
- (5) Where—
- (a) property would have become comprised in a settlement—
    - (i) which arose on the deceased person's death (whether in accordance with his will, on his intestacy or otherwise), or

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- (ii) which was already in existence on the deceased person's death (whether or not the deceased person was a settlor in relation to that settlement), but
  - (b) in consequence of the variation the property, or property derived from it, becomes comprised in another settlement,
 the deceased person shall be treated for the purposes of this Act, except where the context otherwise requires, as having made the other settlement.
- (6) Where—
  - (a) immediately before the variation property is comprised in a settlement and is property of which the deceased person is a settlor, and
  - (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,
 the deceased person shall be treated for the purposes of this Act, except where the context otherwise requires, as having made the other settlement.
- (7) If a person is treated as having made a settlement under subsection (5) or (6), for the purposes of this Act he shall be treated as having made the settlement immediately before his death.
- (8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.]

#### Textual Amendments

**F346** S. 68C inserted (with effect in accordance with Sch. 12 para. 1(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)](#)

## 69 Trustees of settlements.

- [<sup>F347</sup>(1) For the purposes of this Act the trustees of a settlement shall, unless the context otherwise requires, together be treated as if they were a single person (distinct from the persons who are trustees of the settlement from time to time).
- (2) The deemed person referred to in subsection (1) shall be treated for the purposes of this Act as resident <sup>F348</sup>... in the United Kingdom at any time when a condition in subsection (2A) or (2B) is satisfied.
  - (2A) Condition 1 is that all the trustees are resident in the United Kingdom.
  - (2B) Condition 2 is that—
    - (a) at least one trustee is resident in the United Kingdom,
    - (b) at least one is not resident in the United Kingdom, and
    - (c) a settlor in relation to the settlement was resident <sup>F349</sup>... or domiciled in the United Kingdom at a time which is a relevant time in relation to him.
  - (2C) In subsection (2B)(c) “relevant time” in relation to a settlor—
    - (a) means, where the settlement arose on the settlor's death (whether by will, intestacy or otherwise), the time immediately before his death, and
    - (b) in any other case, means a time when the settlor made the settlement (or was treated for the purposes of this Act as making the settlement);

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and, in the case of a transfer of property from Settlement 1 to Settlement 2 in relation to which section 68B applies, “relevant time” in relation to a settlor of the transferred property in respect of Settlement 2 includes any time which, immediately before the time of the disposal by the trustees of Settlement 1, was a relevant time in relation to that settlor in respect of Settlement 1.

(2D) A trustee who is not resident in the United Kingdom shall be treated for the purposes of subsections (2A) and (2B) as if he were resident in the United Kingdom at any time when he acts as trustee in the course of a business which he carries on in the United Kingdom through a branch, agency or permanent establishment there.

<sup>F350</sup>(2DA) A trustee who is resident in the United Kingdom for a tax year is to be treated for the purposes of subsections (2A) and (2B) as if he or she were not resident in the United Kingdom for that year if—

- (a) the trustee is an individual,
- (b) the individual becomes or ceases to be a trustee of the settlement during the tax year,
- (c) that year is a split year as respects the individual, and
- (d) in that year, the only period when the individual is a trustee of the settlement falls wholly within the overseas part of the year.

(2DB) Subsection (2DA) is subject to subsection (2D) and, accordingly, an individual who is treated under subsection (2DA) as not resident is, in spite of that, to be regarded as resident whenever the individual acts as mentioned in subsection (2D).]

(2E) If the deemed person referred to in subsection (1) is not treated for the purposes of this Act as resident <sup>F351</sup>in the United Kingdom, then for the purposes of this Act it is treated as being not resident in the United Kingdom].]

<sup>F352</sup>(2F) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (2B)(c).]

(3) For the purposes of this section, and of sections 71(1) and 72(1), where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the <sup>M6</sup>Settled Land Act 1925 is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

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

#### Textual Amendments

**F347** S. 69(1)-(2E) substituted for s. 69(1)(2) (with effect in accordance with Sch. 12 para. 2(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 2\(1\)](#)

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- F348** Words in s. 69(2) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 82\(2\)](#)
- F349** Words in s. 69(2B)(c) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 82\(3\)](#)
- F350** S. 69(2DA)(2DB) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 102](#)
- F351** Words in s. 69(2E) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 82\(4\)](#)
- F352** S. 69(2F) inserted (with effect in accordance with Sch. 8 para. 6(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 6\(1\)](#)

#### Marginal Citations

**M6** 1925 c. 18.

### [<sup>F353</sup>69A Sub-fund settlements

Schedule 4ZA (which makes provision about sub-fund settlements) shall have effect.]

#### Textual Amendments

**F353** S. 69A inserted (with effect in accordance with Sch. 12 para. 6(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 6\(1\)](#)

### 70 Transfers into settlement.

A transfer into settlement, whether revocable or irrevocable, is a disposal of the entire property thereby becoming settled property notwithstanding that the transferor has some interest as a beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.

### 71 Person becoming absolutely entitled to settled property.

(1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.

[<sup>F354</sup>(2) Where, in any case in which a person (“the beneficiary”) becomes absolutely entitled to any settled property as against the trustee, an allowable loss would (apart from this subsection) have accrued to the trustee on the deemed disposal under subsection (1) above of an asset comprised in that property—

- (a) that loss shall be treated, to the extent only that it cannot be deducted from pre-entitlement gains of the trustee, as an allowable loss accruing to the beneficiary (instead of to the trustee); but
- (b) any allowable loss treated as accruing to the beneficiary under this subsection shall be deductible under this Act from chargeable gains accruing to the beneficiary to the extent only that it can be deducted from gains accruing to the beneficiary on the disposal by him of—
  - (i) the asset on the deemed disposal of which the loss accrued; or



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- (ii) where that asset is an estate, interest or right in or over land, that asset or any asset deriving from that asset.
- (2A) In subsection (2) above “pre-entitlement gain”, in relation to an allowable loss accruing to a trustee on the deemed disposal of any asset comprised in any settled property, means a chargeable gain accruing to that trustee on—
- (a) a disposal which, on the occasion on which the beneficiary becomes absolutely entitled as against the trustee to that property, is deemed under subsection (1) above to have taken place; or
  - (b) any other disposal taking place before that occasion but in the same year of assessment.
- (2B) For the purposes of subsection (2)(b)(ii) above an asset (“the relevant asset”) derives from another if, in a case where—
- (a) assets have merged,
  - (b) an asset has divided or otherwise changed its nature, or
  - (c) different rights or interests in or over any asset have been created or extinguished at different times,
- the value of the relevant asset is wholly or partly derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from the other asset.
- (2C) The rules set out in subsection (2D) below shall apply (notwithstanding any other rules contained in this Act or in section 113(2) of the Finance Act 1995 (order of deduction))
- (a) for determining for the purposes of this section whether an allowable loss accruing to the trustee, or treated as accruing to the beneficiary, can be deducted from particular chargeable gains for any year of assessment; and
  - (b) for the making of deductions of allowable losses from chargeable gains in cases where it has been determined that such an allowable loss can be deducted from particular chargeable gains.
- (2D) Those rules are as follows—
- (a) allowable losses accruing to the trustee on a deemed disposal under subsection (1) above shall be deducted before any deduction is made in respect of any other allowable losses accruing to the trustee in that year;
  - (b) allowable losses treated as accruing to the beneficiary under this section, so far as they cannot be deducted in a year of assessment as mentioned in subsection (2)(b) above, may be carried forward from year to year until they can be so deducted; and
  - (c) allowable losses treated as accruing to the beneficiary for any year of assessment under this section, and allowable losses carried forward to any year of assessment under paragraph (b) above—
    - (i) shall be deducted before any deduction is made in respect of any allowable losses accruing to the beneficiary in that year otherwise than by virtue of this section; and
    - (ii) in the case of losses carried forward to any year, shall be deductible as if they were losses actually accruing in that year.]
- (3) References in this section to the case where a person becomes absolutely entitled to settled property as against the trustee shall be taken to include references to the case

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where a person would become so entitled but for being an infant or other person under disability.

#### **Textual Amendments**

**F354** S. 71(2)-(2D) substituted for s. 71(2) (with application in accordance with s. 75(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **s. 75(1)**

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

**C104** S. 71 excluded (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 21\(2\)\(d\)](#)

## **72 Termination of life interest on death of person entitled.**

(1) On the termination, on the death of the person entitled to it, of [<sup>F355</sup>an] interest in possession in all or any part of settled property—

- (a) the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of this Act at that time to be disposed of and immediately reacquired by the trustee for a consideration equal to the whole or a corresponding part of the market value of the asset; but
- (b) no chargeable gain shall accrue on that disposal.

For the purposes of this subsection [<sup>F355</sup>an] interest which is a right to part of the income of settled property shall be treated as [<sup>F355</sup>an] interest in a corresponding part of the settled property.

[<sup>F356</sup>(1A) Where the interest in possession mentioned in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, the first sentence of that subsection applies in relation to that interest only if—

- (a) immediately before the person's death, the interest falls within subsection (1B) below, or
- (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.

(1B) An interest falls within this subsection if—

- (a) the interest is—
  - (i) an immediate post-death interest, within the meaning given by section 49A of the Inheritance Tax Act 1984,
  - (ii) a transitional serial interest, within the meaning given by section 49B of that Act, or
  - (iii) a disabled person's interest[<sup>F357</sup>, within the meaning given by section 89B] of that Act, or
- (b) section 71A of that Act (trusts for bereaved minors) applies to the property in which the interest subsists.

(1C) Subsection (1A) above does not have effect in relation to the operation of subsection (1) above as applied by subsection (2) below (but see subsection (2A) below).]

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- (2) Subsection (1) above shall apply where the person entitled to [<sup>F358</sup>an] interest in possession in all or any part of settled property dies (although the interest does not then terminate) as it applies on the termination of such [<sup>F358</sup>an] interest.
- [<sup>F359</sup>(2A) Where the interest in possession mentioned in subsection (2) above is one to which the person becomes entitled on or after 22nd March 2006—
- (a) subsection (2) above, and
  - (b) the first sentence of subsection (1) above as applied by subsection (2) above, apply in relation to that interest only if, immediately before the person's death, the interest falls within subsection (1B)(a) above.]
- [<sup>F360</sup>(3) This section shall apply on the death of the person entitled to any annuity payable out of, or charged on, settled property or the income of settled property as it applies on the death of a person whose interest in possession in the whole or any part of settled property terminates on his death.
- (4) Where, in the case of any entitlement to an annuity created by a settlement some of the settled property is appropriated by the trustees as a fund out of which the annuity is payable, and there is no right of recourse to, or to the income of, settled property not so appropriated, then without prejudice to subsection (5) below, the settled property so appropriated shall, while the annuity is payable, and on the occasion of the death of the person entitled to the annuity, be treated for the purposes of this section as being settled property under a separate settlement.]
- (5) If there is [<sup>F361</sup>an] interest in a part of the settled property and, where that is [<sup>F361</sup>an] interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the [<sup>F362</sup>... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.
- [<sup>F363</sup>(6) An interest which is a disabled person's interest by virtue of section 89B(1)(a) or (b) of the Inheritance Tax Act 1984 is to be treated as an interest in possession for the purposes of this section.]

#### Textual Amendments

- F355** Word in s. 72(1) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F356** S. 72(1A)-(1C) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(2\)](#)
- F357** Words in s. 72(1B)(a)(iii) substituted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 60\(2\)\(a\)](#)
- F358** Word in s. 72(2) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F359** S. 72(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(3\)](#)
- F360** S. 72(3)(4) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(3\)](#)
- F361** Word in s. 72(5) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F362** Word in s. 72(5) repealed (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#), [Sch. 41 Pt. VIII\(4\)](#)

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**F363** S. 72(6) inserted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 60\(2\)\(b\)](#)

### 73 **Death of life tenant: exclusion of chargeable gain.**

- (1) Where, by virtue of section 71(1), the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes (or would but for a disability become) absolutely entitled thereto as against the trustee, then, if that occasion is the <sup>[F364]</sup>death of a person entitled to an interest in possession in the settled property]—
- (a) no chargeable gain shall accrue on the disposal, and
  - (b) if on the death the property reverts to the disponer, the disposal and reacquisition under that subsection shall be deemed to be for such consideration as to secure that neither a gain nor a loss accrues to the trustee, and shall, if the trustee had first acquired the property at a date earlier than <sup>[F365]</sup>31 March 1982], be deemed to be at that earlier date.
- <sup>[F366]</sup>(1A) Subsection (1)(b) above shall be treated as having effect in relation to a sub-fund settlement if the property does not revert to the trustees of the principal settlement in relation to that sub-fund settlement by reason only that—
- (a) a sub-fund election is or has been made in respect of another sub-fund of the principal settlement, and
  - (b) the property becomes comprised in that other sub-fund settlement on the death of the person entitled to the interest in possession.]
- (2) Where the <sup>F367</sup>... interest referred to in subsection (1) above is an interest in part only of the settled property to which section 71 applies, subsection (1)(a) above shall not apply but any chargeable gain accruing on the disposal shall be reduced by a proportion corresponding to that represented by the part.
- <sup>[F368]</sup>(2A) Where the interest in possession referred to in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, subsections (1) and (2) above apply in relation to that interest only if—
- (a) immediately before the person's death, the interest falls within section 72(1B), or
  - (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.]
- (3) The last sentence of subsection (1) of section 72 and <sup>[F369]</sup>subsections (3) <sup>[F370]</sup>to (6) of that section shall apply for the purposes of this section] as they apply for the purposes of section 72(1).

#### **Textual Amendments**

- F364** Words in s. 73(1) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 39 para. 6\(2\)](#)
- F365** Words in s. 73(1) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 2 para. 61](#)
- F366** S. 73(1A) inserted (with effect in accordance with Sch. 12 para. 45 of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 42](#)

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- F367** Word in s. 73(2) repealed (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(3\)](#), [Sch. 41 Pt. VIII\(4\)](#)
- F368** S. 73(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\)](#), [31](#)
- F369** Words in s. 73(3) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(4\)](#)
- F370** Words in s. 73(3) substituted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 60\(3\)](#)

#### **74 Effect on sections 72 and 73 of relief under section 165 or 260.**

- (1) This section applies where—
  - (a) a claim for relief was made under section 165 or 260 in respect of the disposal of an asset to a trustee, and
  - (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a).
- (2) Sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.
- (3) Subsection (2) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.
- (4) In this section “held-over gain” has the same meaning as in section 165 or, as the case may be, 260.

#### **75 Death of annuitant.**

**F371** .....

##### **Textual Amendments**

- F371** S. 75 repealed (with effect in accordance with Sch. 39 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. VIII\(4\)](#)

#### **76 Disposal of interests in settled property.**

- (1) [<sup>F372</sup>Subject to subsection (1A) below] No chargeable gain shall accrue on the disposal of an interest created by or arising under a settlement (including, in particular, an annuity or life interest, and the reversion to an annuity or life interest) by the person for whose benefit the interest was created by the terms of the settlement or by any other person except one who acquired, or derives his title from one who acquired, the interest for a consideration in money or money’s worth, other than consideration consisting of another interest under the settlement.

[<sup>F373</sup>(1A) Subject to subsection (3) below, subsection (1) above does not apply if—

- (a) the settlement falls within subsection (1B) below; or
- (b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.

*Status: Point in time view as at 16/11/2017.*

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- (1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—
- (a) were [<sup>F374</sup>[<sup>F375</sup>not resident] in the United Kingdom]; or
  - (b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.]
- (2) Subject to subsection (1) above, where a person who has acquired an interest in settled property (including in particular the reversion to an annuity or life interest) becomes, as the holder of that interest, absolutely entitled as against the trustee to any settled property, he shall be treated as disposing of the interest in consideration of obtaining that settled property (but without prejudice to any gain accruing to the trustee on the disposal of that property deemed to be effected by him under section 71(1)).
- [<sup>F376</sup>(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.]

#### Textual Amendments

- F372** Words in s. 76(1) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 128\(1\)\(a\)](#)
- F373** S. 76(1A)(1B) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 128\(1\)\(b\)\(2\)](#)
- F374** Words in s. 76(1B)(a) substituted (with effect in accordance with Sch. 12 para. 30(4) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 30\(1\)\(2\)\(a\)](#)
- F375** Words in s. 76(1B)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 83](#)
- F376** S. 76(3) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 128\(1\)\(c\)\(3\)](#)

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

- C105** S. 76(1) excluded (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 21\(2\)\(e\)](#)

#### [<sup>F377</sup>76A Disposal of interest in settled property: deemed disposal of underlying assets.

Schedule 4A to this Act has effect with respect to disposals for consideration of an interest in settled property.]

#### Textual Amendments

- F377** S. 76A inserted (with application in accordance with s. 91(3) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 91\(1\)](#)

#### [<sup>F378</sup>76B Transfers of value by trustees linked with trustee borrowing.

Schedule 4B to this Act has effect with respect to transfers of value by trustees that are, in accordance with the Schedule, treated as linked with trustee borrowing.]

*Status: Point in time view as at 16/11/2017.*

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**Textual Amendments**

**F378** S. 76B inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000](#) (c. 17), [s. 92\(1\)](#)

**<sup>F379</sup>77 Charge on settlor with interest in settlement.**

.....

**Textual Amendments**

**F379** Ss. 77-79 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008](#) (c. 9), [Sch. 2 para. 5](#)

**<sup>F379</sup>78 Right of recovery.**

.....

**Textual Amendments**

**F379** Ss. 77-79 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008](#) (c. 9), [Sch. 2 para. 5](#)

**<sup>F379</sup>79 Provisions supplemental to sections 77 and 78.**

.....

**Textual Amendments**

**F379** Ss. 77-79 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008](#) (c. 9), [Sch. 2 para. 5](#)

**[<sup>F380</sup>79A Restriction on set-off of trust losses.**

- (1) This section applies to a chargeable gain accruing to the trustees of a settlement where—
- (a) in computing the gain, the allowable expenditure is reduced in consequence, directly or indirectly, of a claim to gifts relief in relation to an earlier disposal to the trustees;
  - (b) the transferor on that earlier disposal, or any person connected with the transferor, has at any time—
    - (i) acquired an interest in the settled property, or
    - (ii) entered into an arrangement to acquire such an interest; and
  - (c) in connection with that acquisition or arrangement any person has at any time received, or become entitled to receive, any consideration.

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- (2) Where this section applies to a chargeable gain, no allowable losses accruing to the trustees (in the year in which the gain accrues or any earlier year) may be set against the gain.

This applies to the whole of the chargeable gain (and not just the element deferred as a result of the claim to gifts relief).

- (3) In this section—
- (a) “gifts relief” means relief under section 165 or 260; and
  - (b) references to losses not being allowed to be set against a chargeable gain are to the losses not being allowed as a deduction against chargeable gains to the extent that they include that gain.
- (4) The references in subsection (1)(b) above to an interest in settled property have the same meaning as in Schedule 4A.]

#### **Textual Amendments**

**F380** S. 79A inserted (with application in accordance with s. 93(2) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 93\(1\)](#)

#### **[<sup>F381</sup>79B Attribution to trustees of gains of non-resident companies.**

- (1) This section applies where [<sup>F382</sup>the] trustees of a settlement are participators—
- (a) in a close company, or
  - (b) in a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom.

For this purpose “participator” has the same meaning as in section 13.

- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing a charge to tax arising by virtue of the attribution to the trustees under section 13, by reason of their participation in the company mentioned in subsection (1) above, of any part of a chargeable gain accruing to a company that is not resident in the United Kingdom.
- (3) Where this section applies and—
- (a) a chargeable gain accrues to a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom, and
  - (b) all or part of the chargeable gain is treated under section 13(2) as accruing to a close company which is not chargeable to corporation tax in respect of the gain by reason of double taxation relief arrangements, and
  - (c) had the company mentioned in paragraph (b) (and any other relevant company) not been resident in the United Kingdom, all or part of the chargeable gain would have been attributed to the trustees by reason of their participation in the company mentioned in subsection (1) above,
- section 13(9) shall apply as if the company mentioned in paragraph (b) above (and any other relevant company) were not resident in the United Kingdom.
- (4) The references in subsection (3) above to “any other relevant company” are to any other company which if it were not resident in the United Kingdom would be a



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company in relation to which section 13(9) applied with the result that all or part of the chargeable gain was attributed to the trustees as mentioned in that subsection.]

#### Textual Amendments

**F381** S. 79B inserted (with application in accordance with s. 94(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 94\(1\)](#)

**F382** Word in s. 79B(1) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 14\(1\)](#)

#### *Migration of settlements, non-resident settlements and dual resident settlements*

### **80 Trustees ceasing to be resident in U.K.**

- (1) This section applies if the trustees of a settlement become at any time (“the relevant time”) [<sup>F383</sup>not resident] in the United Kingdom.
- (2) The trustees shall be deemed for all purposes of this Act—
  - (a) to have disposed of the defined assets immediately before the relevant time, and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.
- (4) If immediately after the relevant time—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall not be defined assets.
- (5) Assets shall not be defined assets if—
  - (a) they are of a description specified in any double taxation relief arrangements, and
  - (b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (6) Section 152 shall not apply where the trustees—
  - (a) have disposed of the old assets, or their interest in them, before the relevant time, and
  - (b) acquire the new assets, or their interest in them, after that time, unless the new assets are excepted from this subsection by subsection (7) below.
- (7) If at the time when the new assets are acquired—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,

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the assets falling within paragraph (b) above shall be excepted from subsection (6) above.

(8) In this section “the old assets” and “the new assets” have the same meanings as in section 152.

#### **Textual Amendments**

**F383** Words in s. 80(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 84](#)

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

**C106** S. 80(4)(a)(b) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(b\)](#)

**C107** S. 80(7)(b) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(b\)](#)

### **[<sup>F384</sup>80A Deemed disposal of UK residential property interest under section 80**

- (1) Subsection (2) applies if, ignoring subsections (2) to (4)—
  - (a) a gain or loss would accrue to the trustees of a settlement on a disposal of a UK residential property interest deemed to have been made by virtue of section 80(2), and
  - (b) on the assumption that the disposal is a non-resident CGT disposal, that gain or loss would be a chargeable NRCGT gain or an allowable NRCGT loss (see section 57B and Schedule 4ZZB).
- (2) The trustees may elect for subsections (3) and (4) to have effect.
- (3) No gain or loss accrues to the trustees on that disposal.
- (4) But, on a subsequent disposal of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1)(a), the whole or a corresponding part of the gain or loss which would have accrued to the trustees were it not for subsection (3)—
  - (a) is deemed to accrue to the trustees (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as a chargeable NRCGT gain or an allowable NRCGT loss accruing on a non-resident CGT disposal.
- (5) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

#### **Textual Amendments**

**F384** S. 80A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 18](#)

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## 81 Death of trustee: special rules.

- (1) Subsection (2) below applies where—
  - (a) section 80 applies as a result of the death of a trustee of the settlement, and
  - (b) within the period of 6 months beginning with the death, the trustees of the settlement become resident <sup>F385</sup>... in the United Kingdom.
- (2) That section shall apply as if the defined assets were restricted to such assets (if any) as—
  - (a) would be defined assets apart from this section, and
  - (b) fall within subsection (3) or (4) below.
- (3) Assets fall within this subsection if they were disposed of by the trustees in the period which—
  - (a) begins with the death, and
  - (b) ends when the trustees become resident <sup>F386</sup>... in the United Kingdom.
- (4) Assets fall within this subsection if—
  - (a) they are of a description specified in any double taxation relief arrangements,
  - (b) they constitute settled property of the settlement at the time immediately after the trustees become resident <sup>F387</sup>... in the United Kingdom, and
  - (c) were the trustees to dispose of them at that time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) Subsection (6) below applies where—
  - (a) at any time the trustees of a settlement become resident <sup>F388</sup>... in the United Kingdom as a result of the death of a trustee of the settlement, and
  - (b) section 80 applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of 6 months beginning with the death.
- (6) That section shall apply as if the defined assets were restricted to such assets (if any) as—
  - (a) would be defined assets apart from this section, and
  - (b) fall within subsection (7) below.
- (7) Assets fall within this subsection if—
  - (a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and
  - (b) they acquired them as a result of a disposal in respect of which relief is given under section 165 or in relation to which section 260(3) applies.

### Textual Amendments

- F385** Words in s. 81(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(2\)](#)
- F386** Words in s. 81(3)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(3\)](#)
- F387** Words in s. 81(4)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(4\)](#)

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**F388** Words in s. 81(5)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(5\)](#)

## 82 Past trustees: liability for tax.

- (1) This section applies where—
- (a) section 80 applies as regards the trustees of a settlement (“the migrating trustees”), and
  - (b) any capital gains tax which is payable by the migrating trustees by virtue of section 80(2) is not paid within 6 months from the time when it became payable.
- (2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—
- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;
  - (b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;
  - (c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within 30 days of the service of the notice.
- (3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—
- (a) he ceased to be a trustee of the settlement before the end of the relevant period, and
  - (b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might [<sup>F389</sup>cease to be resident] in the United Kingdom.
- (4) 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 he may recover any such amount paid by him from the migrating trustees.
- (5) 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.
- (6) For the purposes of this section—
- (a) where the relevant time (within the meaning of section 80) falls within the period of 12 months beginning with 19th March 1991, the relevant period is the period beginning with that date and ending with that time;
  - (b) in any other case, the relevant period is the period of 12 months ending with the relevant time.

### Textual Amendments

**F389** Words in s. 82(3)(b) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 86](#)

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### 83 Trustees ceasing to be liable to U.K. tax.

- (1) This section applies if the trustees of a settlement, while continuing to be resident <sup>F390</sup> ... in the United Kingdom, become at any time (“the time concerned”) trustees who fall to be regarded for the purposes of any double taxation relief arrangements—
  - (a) as resident in a territory outside the United Kingdom, and
  - (b) as not liable in the United Kingdom to tax on gains accruing on disposals of assets (“relevant assets”) which constitute settled property of the settlement and fall within descriptions specified in the arrangements.
- (2) The trustees shall be deemed for all purposes of this Act—
  - (a) to have disposed of their relevant assets immediately before the time concerned, and
  - (b) immediately to have reacquired them, at their market value at that time.

#### Textual Amendments

**F390** Words in s. 83(1) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 87](#)

### [<sup>F391</sup>83A Trustees both resident and non-resident in a year of assessment

- (1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—
  - (a) are within the charge to capital gains tax in that year of assessment, but
  - (b) are non-UK resident at the time of the disposal.
- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.
- (3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—
  - (a) if, during any part of that year of assessment, they are resident <sup>F392</sup> ... in the United Kingdom and not Treaty non-resident, <sup>F393</sup> ...
  - <sup>F394</sup>(b) .....
- (4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—
  - (a) they are [<sup>F395</sup>not resident] in the United Kingdom, or
  - (b) they are [<sup>F396</sup>resident <sup>F397</sup> ... in the United Kingdom] but are Treaty non-resident.

<sup>F398</sup>(5) ..... ]

#### Textual Amendments

**F391** S. 83A inserted (with effect in accordance with s. 33(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 33\(1\)](#)

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- F392** Words in s. 83A(3)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(2\)](#)
- F393** Word in s. 83A(3)(a) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(a\)\(ii\)](#), 33, [Sch. 26 Pt. 3\(15\)](#)
- F394** S. 83A(3)(b) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(b\)](#), 33, [Sch. 26 Pt. 3\(15\)](#)
- F395** Words in s. 83A(4)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(3\)\(a\)](#)
- F396** Words in s. 83A(4)(b) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(a\)](#)
- F397** Words in s. 83A(4)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(3\)\(b\)](#)
- F398** S. 83A(5) repealed (with effect in accordance with s. 74(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 74(4)(b), [Sch. 26 Pt. 3\(11\)](#)

#### **84 Acquisition by dual resident trustees.**

- (1) Section 152 shall not apply where—
- (a) the new assets are, or the interest in them is, acquired by the trustees of a settlement,
  - (b) at the time of the acquisition the trustees are resident <sup>F399</sup>... in the United Kingdom and fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
  - (c) the assets are of a description specified in the arrangements, and
  - (d) were the trustees to dispose of the assets immediately after the acquisition, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (2) In this section “the new assets” has the same meaning as in section 152.

#### **Textual Amendments**

- F399** Words in s. 84(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 89](#)

#### **85 Disposal of interests in non-resident settlements.**

- (1) Subsection (1) of section 76 shall not apply to the disposal of an interest in settled property, other than one treated under subsection (2) of that section as made in consideration of obtaining the settled property, if at the time of the disposal the trustees are [<sup>F400</sup>not resident] in the United Kingdom.
- (2) [<sup>F401</sup>Subject to subsections (4), (9) and (10) below,] subsection (3) below applies where—
- (a) section 80 applies as regards the trustees of a settlement,
  - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying, and
  - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time.

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- (3) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
  - (a) disposed of it immediately before the relevant time, and
  - (b) immediately reacquired it,at its market value at that time.
- (4) Subsection (3) above shall not apply if section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell before the time when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it.
- (5) [<sup>F402</sup>Subject to subsection (10) below,] Subsection (7) below applies where—
  - (a) section 80 applies as regards the trustees of a settlement,
  - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying,
  - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time, and
  - (d) section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell in the relevant period.
- (6) The relevant period is the period which—
  - (a) begins when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it, and
  - (b) ends with the relevant time.
- (7) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
  - (a) disposed of it immediately before the time found under subsection (8) below, and
  - (b) immediately reacquired it,at its market value at that time.
- (8) The time is—
  - (a) the time concerned (where there is only one such time), or
  - (b) the earliest time concerned (where there is more than one because section 83 applied more than once).
- (9) Subsection (3) above shall not apply where subsection (7) above applies.
- [<sup>F403</sup>(10) Subsection (3) or (7) above does not apply to the disposal of an interest created by or arising under a settlement which has relevant offshore gains at the material time.  
The material time is—
  - (a) in relation to subsection (3) above, the relevant time within the meaning of section 80;
  - (b) in relation to subsection (7) above, the time found under subsection (8) above.
- (11) For the purposes of subsection (10) above, a settlement has relevant offshore gains at any time if, were the year of assessment to end at that time, [<sup>F404</sup>chargeable gains would be treated under section 89(2) or paragraph 8 of Schedule 4C as accruing in the

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following year of assessment to a beneficiary who received a capital payment from the trustees of the settlement in that year.]]

#### Textual Amendments

- F400** Words in s. 85(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 90](#)
- F401** Words in s. 85(2) substituted (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 95\(2\)](#)
- F402** Words in s. 85(5) inserted (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 95\(3\)](#)
- F403** S. 85(10)(11) added (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 95\(4\)](#)
- F404** Words in s. 85(11) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 107](#)

#### [<sup>F405</sup>85A Transfers of value: attribution of gains to beneficiaries and treatment of losses

- (1) Schedule 4C to this Act has effect with respect to the attribution of gains to beneficiaries where there has been a transfer of value to which Schedule 4B applies.
- (2) Sections 86A to 95 have effect subject to the provisions of Schedule 4C.

[<sup>F406</sup>(2A) For the purposes of sections 87 to 89, no account is to be taken of any section 2(2) amount in a Schedule 4C pool (see paragraph 1 of Schedule 4C).]

[<sup>F407</sup>(3) When calculating the section 2(2) amount for a settlement for a tax year (within the meaning of section 87), no account is to be taken of any chargeable gains or allowable losses accruing by virtue of Schedule 4B.

Nothing in this subsection affects any increase in a section 2(2) amount by virtue of paragraph 1(3A) or 7B(2)(b) of Schedule 4C.]

- (4) No account shall be taken of any chargeable gains or allowable losses to which sections 87 to 89 apply in computing the gains or losses accruing by virtue of Schedule 4B.]

#### Textual Amendments

- F405** S. 85A substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [s. 163\(1\)](#) (with [s. 163\(4\)-\(6\)](#))
- F406** S. 85A(2A) inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 129\(2\)](#) (with [Sch. 7 para. 155](#))
- F407** S. 85A(3) substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 129\(3\)](#) (with [Sch. 7 para. 155](#))

#### 86 Attribution of gains to settlors with interest in non-resident or dual resident settlements.

- (1) This section applies where the following conditions are fulfilled as regards a settlement in a particular year of assessment—
  - (a) the settlement is a qualifying settlement in the year;
  - (b) the trustees of the settlement fulfil the condition as to residence specified in subsection (2) below;



*Status: Point in time view as at 16/11/2017.*

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- (c) a person who is a settlor in relation to the settlement (“the settlor”) is domiciled in the United Kingdom at some time in the year and is <sup>F408</sup>resident in the United Kingdom for the year];
- (d) at any time during the year the settlor has an interest in the settlement;
- (e) by virtue of disposals of any of the settled property originating from the settlor, there is an amount on which the trustees would be chargeable to tax for the year under section 2(2) <sup>F409</sup>if the assumption as to residence specified in subsection (3) below were made;]
- (f) paragraph 3, 4 or 5 of Schedule 5 does not prevent this section applying.

<sup>F410</sup>(2) The condition as to residence is that—

- (a) there is no time in the year when the trustees are resident in the United Kingdom, or
- (b) there is such a time but, whenever the trustees are resident in the United Kingdom during the year, they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.]

(3) Where subsection (2)(a) above applies, the assumption as to residence is that the trustees are <sup>F411</sup>resident <sup>F412</sup>... in the United Kingdom] throughout the year; and where subsection (2)(b) above applies, the assumption as to residence is that the double taxation relief arrangements do not apply.

<sup>F413</sup>(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(c).]

(4) Where this section applies—

- (a) chargeable gains of an amount equal to that referred to in subsection (1)(e) above shall be treated as accruing to the settlor in the year <sup>F414</sup>or if, as respects the settlor, the year is a split year, in the UK part of that year], and
- (b) those gains shall be treated as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

<sup>F415</sup>(4ZA) Where a disposal of any settled property (which would apart from this subsection meet the condition in subsection (1)(e) with respect to the tax year) is a non-resident CGT disposal—

- (a) any chargeable gain or allowable loss accruing on the disposal, other than an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D, is to be treated as if it were a chargeable gain or (as the case requires) allowable loss falling to be taken into account in calculating the amount mentioned in subsection (1)(e) for the tax year, and
- (b) the disposal is otherwise to be disregarded for the purposes of subsection (1)(e).]

<sup>F416</sup>(4ZB) Where (apart from this subsection) the amount mentioned in subsection (1)(e) would include an amount of chargeable gains treated as accruing under section 103KA(2) or (3) (carried interest gains), the amount of the gains is to be disregarded for the purposes of subsection (1)(e).]

<sup>F417</sup>(4A) .....

(5) Schedule 5 (which contains provisions supplementary to this section) shall have effect.

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### Textual Amendments

- F408** Words in s. 86(1)(c) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(2\)](#)
- F409** Words in s. 86(1)(e) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 30](#)
- F410** S. 86(2) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(3\)](#)
- F411** Words in s. 86(3) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(c\)](#)
- F412** Words in s. 86(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(4\)](#)
- F413** S. 86(3A) inserted (with effect in accordance with Sch. 8 para. 7(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 7\(1\)](#)
- F414** Words in s. 86(4)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 100](#)
- F415** S. 86(4ZA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 19](#)
- F416** S. 86(4ZB) inserted (with effect in accordance with s. 32(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 32\(3\)](#)
- F417** S. 86(4A) repealed (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(4\)](#)

### Modifications etc. (not altering text)

- C108** S. 86 modified (with effect in accordance with Sch. 23 paras. 1(1), 2(1)(5)(6), 3(1)(4)(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 23 paras. 1\(2\)\(3\), 2\(2\)-\(4\), 3\(2\)\(3\)](#)
- C109** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 132\(5\)](#)
- C110** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [Sch. 23 para. 4\(1\)](#)

### <sup>F418</sup>86A Attribution of gains to settlor in section 10A cases

- (1) Subsection (3) applies if—
- (a) chargeable gains of an amount equal to the amount referred to in section 86(1)(e) for a tax year (“year A”) are treated under section 10A as accruing to a settlor under section 86 in the period of return,
  - (b) there are amounts on which beneficiaries of the settlement are charged to tax under section 87 or 89(2) for one or more tax years, each of which is earlier than the year of return, and
  - (c) those amounts are in respect of matched capital payments received by the beneficiaries.
- (2) A “matched” capital payment is a capital payment, all or part of which is matched under section 87A with the section 2(2) amount for year A.
- (3) The amount of the chargeable gains mentioned in subsection (1)(a) for year A that are treated under section 10A as accruing to the settlor under section 86 in the period of return is to be reduced by the appropriate amount.
- (4) The appropriate amount is—
- (a) the sum of the amounts mentioned in subsection (1)(c) to the extent that the matched capital payments are matched under section 87A with the section 2(2) amount for year A, or

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- (b) if the property comprised in the settlement has at any time included property not originating from the settlor, so much (if any) of that sum as, on a just and reasonable apportionment, is properly referable to the settlor.
- (5) If a reduction falls to be made under subsection (3) for the year of return, the deduction to be made in accordance with section 87(4)(b) for the settlement for that year must not be made until—
  - (a) all the reductions to be made under subsection (3) for that year for each settlor have been made, and
  - (b) those reductions are to be made starting with the year immediately preceding the year of return and working backwards.
- (6) Subsection (7) applies if, with respect to year A, an amount remains to be treated under section 10A as accruing to any of the settlors in the period of return after having made the reductions under subsection (3) with respect to year A.
- (7) The aggregate of the amounts remaining to be so treated (for all of the settlors) is to be applied in reducing so much of the section 2(2) amount for year A as has not already been matched with a capital payment under section 87A for any year prior to the year of return (but not so as to reduce the section 2(2) amount below zero).
- (8) In this section—
  - (a) “the settlement” means the settlement in relation to which the settlor mentioned in subsection (1)(a) is a settlor,
  - (b) a reference to “the settlors” or “each settlor” is to the settlors or each settlor in relation to the settlement,
  - (c) “period of return” and “year of return” have the same meanings as in section 10A, and
  - (d) paragraph 8 of Schedule 5 applies in construing the reference to property originating from the settlor.]

#### Textual Amendments

**F418** S. 86A substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 120](#)

#### <sup>F419</sup>**87 Non-UK resident settlements: attribution of gains to beneficiaries**

- (1) This section applies to a settlement for a tax year (“the relevant tax year”) if [<sup>F420</sup>there is no time in that year when the trustees are resident in the United Kingdom].
- (2) Chargeable gains are treated as accruing in the relevant tax year to a beneficiary of the settlement who has received a capital payment from the trustees in the relevant tax year or any earlier tax year if all or part of the capital payment is matched (under section 87A as it applies for the relevant tax year) with the section 2(2) amount for the relevant tax year or any earlier tax year.
- (3) The amount of chargeable gains treated as accruing is equal to—
  - (a) the amount of the capital payment, or
  - (b) if only part of the capital payment is matched, the amount of that part.
- (4) The section 2(2) amount for a settlement for a tax year for which this section applies to the settlement is—

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- (a) the amount upon which the trustees of the settlement would be chargeable to tax under section 2(2) for that year if they were resident <sup>F421</sup>... in the United Kingdom in that year, or
  - (b) if section 86 applies to the settlement for that year, the amount mentioned in paragraph (a) minus the total amount of chargeable gains treated under that section as accruing in that year.
- (5) The section 2(2) amount for a settlement for a tax year for which this section does not apply to the settlement is nil.
- [<sup>F422</sup>(5A) For the purpose of determining the section 2(2) amount for a settlement for a tax year—
- (a) any chargeable gain or allowable loss accruing in that tax year on a non-resident CGT disposal made (or treated as made) by the trustees, other than an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D, is to be treated as if it were a chargeable gain or (as the case requires) allowable loss falling to be taken into account in calculating the amount mentioned in subsection (4)(a), and
  - (b) such a disposal is otherwise to be disregarded.]
- [<sup>F423</sup>(5B) Where (apart from this subsection) the amount mentioned in subsection (4)(a) would include an amount of chargeable gains treated as accruing under section 103KA(2) or (3) (carried interest gains), the amount of the gains is to be disregarded for the purposes of determining the section 2(2) amount.]
- (6) For the purposes of this section a settlement arising under a will or intestacy is treated as made by the testator or intestate at the time of death.
- [<sup>F424</sup>(7) If the relevant tax year is a split year as respects a beneficiary of the settlement—
- (a) the amount on which the beneficiary is chargeable to capital gains tax by virtue of this section for that year (in respect of the settlement) is a portion of the amount on which the beneficiary would have been so chargeable if the relevant tax year had not been a split year, and
  - (b) the portion is the portion attributable to the UK part of the relevant tax year calculated on a time apportionment basis.]]

#### Textual Amendments

- F419** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))
- F420** Words in s. 87(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 92\(2\)](#)
- F421** Words in s. 87(4)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 92\(3\)](#)
- F422** S. 87(5A) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 20](#)
- F423** S. 87(5B) inserted (with effect in accordance with s. 32(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 32\(4\)](#)
- F424** S. 87(7) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 101](#)

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

**C111** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))

**C112** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 125\(2\)](#)

**C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)\(4\)](#)

[<sup>F419</sup>**87A Section 87: matching**

- (1) This section supplements section 87.
- (2) The following steps are to be taken for the purposes of matching capital payments with section 2(2) amounts.

*Step 1*

Find the section 2(2) amount for the relevant tax year.

*Step 2*

Find the total amount of capital payments received by the beneficiaries from the trustees in the relevant tax year.

*Step 3*

The section 2(2) amount for the relevant tax year is matched with—

- (a) if the total amount of capital payments received in the relevant tax year does not exceed the section 2(2) amount for the relevant tax year, each capital payment so received, and
- (b) otherwise, the relevant proportion of each of those capital payments.

“The relevant proportion” is the section 2(2) amount for the relevant tax year divided by the total amount of capital payments received in the relevant tax year.

*Step 4*

If paragraph (a) of Step 3 applies—

- (a) reduce the section 2(2) amount for the relevant tax year by the total amount of capital payments referred to there, and
- (b) reduce the amount of those capital payments to nil.

If paragraph (b) of that Step applies—

- (a) reduce the section 2(2) amount for the relevant tax year to nil, and
- (b) reduce the amount of each of the capital payments referred to there by the relevant proportion of that capital payment.

*Step 5*

Start again at Step 1 (unless subsection (3) applies).

If the section 2(2) amount for the relevant tax year (as reduced under Step 4) is not nil, read references to capital payments received in the relevant tax year as references to capital payments received in the latest tax year which—

- (a) is before the last tax year for which Steps 1 to 4 have been undertaken, and

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- (b) is a tax year in which capital payments (the amounts of which have not been reduced to nil) were received by beneficiaries.

If the section 2(2) amount for the relevant tax year (as so reduced) is nil, read references to the section 2(2) amount for the relevant tax year as the section 2(2) amount for the latest tax year—

- (a) which is before the last tax year for which Steps 1 to 4 have been undertaken, and
- (b) for which the section 2(2) amount is not nil.
- (3) This subsection applies if—
- (a) all of the capital payments received by beneficiaries from the trustees in the relevant tax year or any earlier tax year have been reduced to nil, or
- (b) the section 2(2) amounts for the relevant tax year and all earlier tax years have been reduced to nil.
- (4) The effect of any reduction under Step 4 of subsection (2) is to be taken into account in any subsequent application of this section.]

#### Textual Amendments

**F419** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

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

**C111** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

**C112** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

**C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 20\(3\)\(4\)](#)

### [<sup>F419</sup>87B Section 87: remittance basis

- (1) This section applies if—
- (a) chargeable gains are treated under section 87 as accruing to an individual in a tax year, [<sup>F425</sup>and]
- (b) section 809B, 809D or 809E (remittance basis) applies to the individual for that year, <sup>F426</sup>...
- <sup>F427</sup>(c) .....
- (2) The chargeable gains are foreign chargeable gains within the meaning of section 12 (non-UK domiciled beneficiaries to whom remittance basis applies).
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis) treat relevant property or benefits as deriving from the chargeable gains.
- (4) For the purposes of subsection (3) property or a benefit is “relevant” if the capital payment by reason of which the chargeable gains are treated as accruing consists of—
- (a) the payment or transfer of the property or its becoming property to which section 60 applies, or
- (b) the conferring of the benefit.]

*Status: Point in time view as at 16/11/2017.*

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#### Textual Amendments

- F419** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))
- F425** Word in s. 87B(1)(a) inserted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(a\)](#) (with [Sch. 46 para. 26](#))
- F426** Word in s. 87B(1)(b) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(b\)](#) (with [Sch. 46 para. 26](#))
- F427** S. 87B(1)(c) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(c\)](#) (with [Sch. 46 para. 26](#))

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

- C112** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)
- C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

### [<sup>F419</sup>87C Sections 87 and 87A: disregard of certain capital payments

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement, no account is to be taken of a capital payment (or a part of a capital payment) within subsection (2).
- (2) A capital payment is within this subsection if (and to the extent that) it is received (or treated as received) in a tax year from the trustees of the settlement by a company that—
  - (a) is not resident in the United Kingdom in that year, and
  - (b) would be a close company if it were resident in the United Kingdom,(and is not treated under any of subsections (3) to (5) of section 96 as received by another person).]

#### Textual Amendments

- F419** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

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

- C111** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C112** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)
- C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

## 88 Gains of dual resident settlements.

- (1) Section 87 also applies to a settlement for any year of assessment beginning on or after 6th April 1991 if—
  - (a) the trustees are [<sup>F428</sup>resident <sup>F429</sup>... in the United Kingdom during any part of the year], [<sup>F430</sup>and]

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- (b) at any time of [<sup>F431</sup>such residence <sup>F432</sup>...] they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, <sup>F433</sup> ...
- <sup>F433</sup>(c) .....
- [<sup>F434</sup>(2) The section 2(2) amount for a tax year for which section 87 applies by virtue of this section is what it would be if the amount mentioned in section 87(4)(a) were the assumed chargeable amount.]
- (3) For the purposes of subsection (2) above the assumed chargeable amount in respect of a year of assessment is the lesser of the following 2 amounts—
  - (a) the amount on which the trustees would be chargeable to tax for the year under section 2(2) on the assumption that the double taxation relief arrangements did not apply;
  - (b) the amount on which, by virtue of disposals of protected assets, the trustees would be chargeable to tax for the year under section 2(2) on the assumption that those arrangements did not apply.
- (4) For the purposes of subsection (3)(b) above assets are protected assets if—
  - (a) they are of a description specified in the double taxation relief arrangements, and
  - (b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) For the purposes of subsection (4) above—
  - (a) the assumption specified in subsection (3)(b) above shall be ignored;
  - (b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;
  - (c) if different assets are identified by reference to different relevant times, all of them are protected assets.
- <sup>F435</sup>(6) .....
- <sup>F436</sup>(7) .....

**Textual Amendments**

- F428** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\), Sch. 12 paras. 35\(1\)\(a\)\(2\)\(b\)](#), 41
- F429** Words in s. 88(1)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 93\(a\)](#)
- F430** Word in s. 88(1)(a) inserted (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 130\(2\)\(a\)](#)
- F431** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\), Sch. 12 paras. 35\(1\)\(b\)\(2\)\(b\)](#), 41
- F432** Words in s. 88(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 93\(b\)](#)
- F433** S. 88(1)(c) and preceding word repealed (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 130\(2\)\(b\), Sch. 27 Pt. III\(30\)](#)
- F434** S. 88(2) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 109\(2\)](#)



*Status: Point in time view as at 16/11/2017.*

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- F435** S. 88(6) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 6](#)
- F436** S. 88(7) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 109\(3\)](#)

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

- C111** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C112** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)
- C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

**89 Migrant settlements etc.**

- (1) Where a period of one or more years of assessment for which section 87 applies to a settlement (“a non-resident period”) succeeds a period of one or more years of assessment for each of which section 87 does not apply to the settlement (“a resident period”), a capital payment received by a beneficiary in the resident period shall be disregarded for the purposes of [<sup>F437</sup>sections 87 and 87A if] it was not made in anticipation of a disposal made by the trustees in the non-resident period.

[<sup>F438</sup>(1A) Subsection (2) applies to a settlement if—

- (a) a non-resident period is succeeded by a resident period, and
- (b) in relation to the last tax year in the non-resident period (“the last non-resident tax year”), section 87A(3) applied by virtue of paragraph (a) of that provision (exhaustion of capital payments).
- (2) Chargeable gains are treated as accruing in a tax year (in the resident period) to a beneficiary of the settlement who receives a capital payment from the trustees in that year if all or part of the capital payment is matched (under section 87A as it applies for that year) with the section 2(2) amount for the last non-resident tax year or any earlier tax year.
- (3) Section 87(3) and (4) and sections 87A to 87C apply for the purposes of subsection (2) as if the relevant tax year were the tax year mentioned in subsection (2).
- (4) Section 87B (remittance basis) applies in relation to chargeable gains treated under subsection (2) as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.]

**Textual Amendments**

- F437** Words in s. 89(1) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 110\(2\)](#)
- F438** S. 89(1A)-(4) substituted for s. 89(2)(3) (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 110\(3\)](#) (with [Sch. 7 para. 123](#))

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

- C111** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C112** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

*Status: Point in time view as at 16/11/2017.*

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**C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **20(3)(4)**

**[<sup>F439</sup>90 Sections 87 and 89(2): transfers between settlements**

- (1) This section applies if the trustees of a settlement (“the transferor settlement”) transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”).
- (2) In this section “the year of transfer” means the tax year in which the transfer occurs.
- (3) Treat the section 2(2) amount for the transferee settlement for any tax year (not later than the year of transfer) as increased by—
  - (a) the section 2(2) amount for the transferor settlement for that year (as reduced under section 87A as it applies in relation to that settlement for the year of transfer and all earlier tax years), or
  - (b) if part only of the settled property is transferred, the relevant proportion of the amount mentioned in paragraph (a).
- (4) “The relevant proportion” is—
  - (a) the market value of the property transferred, divided by
  - (b) the market value of the property comprised in the transferor settlement immediately before the transfer.
- (5) Treat the section 2(2) amount for the transferor settlement for any tax year as reduced by the amount by which the section 2(2) amount for the transferee settlement for that year is increased under subsection (3).
- (6) If neither section 87 nor section 89(2) would otherwise apply to the transferee settlement for the year of transfer—
  - (a) section 89(2) to (4) apply to the settlement for that year (and subsequent tax years), and
  - (b) for this purpose, references there to the last non-resident tax year are to be read as the year of transfer.
- (7) The increase under subsection (3) has effect for the year of transfer and subsequent tax years.
- (8) The reduction under subsection (5) has effect for tax years after the year of transfer.
- (9) When calculating the market value of property for the purposes of this section or section 90A in a case where the property is subject to a debt, reduce the market value by the amount of the debt.
- (10) This section does not apply to—
  - (a) a transfer to which Schedule 4B applies, or
  - (b) any section 2(2) amount that is in a Schedule 4C pool (see paragraph 1 of Schedule 4C).]

**Textual Amendments**

**F439** Ss. 90, 90A substituted for s. 90 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 111**

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

- C111** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)\(4\)](#)

[<sup>F439</sup>**90A Section 90: transfers made for consideration in money or money's worth**

- (1) Section 90 does not apply to a transfer of settled property made for consideration in money or money's worth if the amount (or value) of that consideration is equal to or exceeds the market value of the property transferred.
- (2) The following provisions apply if—
  - (a) section 90 applies to a transfer of settled property made for consideration in money or money's worth, and
  - (b) the amount (or value) of that consideration is less than the market value of the property transferred.
- (3) If the transfer is of all of the settled property, for the purposes of section 90 treat the transfer as being of part only of the settled property.
- (4) Deduct the amount (or value) of the consideration from the amount of the market value referred to in section 90(4)(a).]

**Textual Amendments**

- F439** Ss. 90, 90A substituted for s. 90 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 111](#)

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

- C113** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)\(4\)](#)

**91 Increase in tax payable under section 87 or 89(2).**

- [<sup>F440</sup>(1) This section applies if—
- (a) chargeable gains are treated under section 87 or 89(2) as accruing to a beneficiary by virtue of the matching (under section 87A) of all or part of a capital payment with the section 2(2) amount for a tax year (“the relevant tax year”),
  - (b) the beneficiary is charged to tax by virtue of that matching, and
  - (c) the capital payment was made more than one year after the end of the relevant tax year.
- (1A) Where part of a capital payment is matched, references in subsections (2) and (3) to the capital payment are to the part matched.]
- (2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under subsection (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.

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- (3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this section) carried interest for the chargeable period at the rate of 10 per cent. per annum.
- (4) The chargeable period is the period which—
  - (a) begins with the later of the 2 days specified in subsection (5) below, and
  - (b) ends with 30th November in the year of assessment following that in which the capital payment is made.
- (5) The 2 days are—
  - (a) 1st December in the [<sup>F441</sup>tax year immediately after the relevant tax year,] and
  - (b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.
- (6) The Treasury may by order substitute for the percentage specified in subsection (3) above (whether as originally enacted or as amended at any time under this subsection) such other percentage as they think fit.
- (7) An order under subsection (6) above may provide that an alteration of the percentage is to have effect for periods beginning on or after a day specified in the order in relation to interest running for chargeable periods beginning before that day (as well as interest running for chargeable periods beginning on or after that day).

<sup>F442</sup>(8) .....

**Textual Amendments**

**F440** S. 91(1)(1A) substituted for s. 91(1) (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(2\)](#)

**F441** Words in s. 91(5)(a) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(3\)](#)

**F442** S. 91(8) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(4\)](#)

<sup>F443</sup>**92 Qualifying amounts and matching.**

.....

**Textual Amendments**

**F443** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)

<sup>F443</sup>**93 Matching: special cases.**

.....

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**Textual Amendments**

**F443** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 113**

**<sup>F443</sup>94 Transfers of settled property where qualifying amounts not wholly matched.**

.....

**Textual Amendments**

**F443** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 113**

**<sup>F443</sup>95 Matching after transfer.**

.....

**Textual Amendments**

**F443** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 113**

**96 Payments by and to companies.**

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 87 to 90 [<sup>F444</sup>and Schedule 4C] it shall be treated as received from the trustees.
- (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 87 to 90 [<sup>F444</sup>and Schedule 4C].
- (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident <sup>F445</sup>... in the United Kingdom, it shall be treated as a capital payment received by that person.
- (4) If the company is controlled by 2 or more persons (taking each one separately) at the time the payment is received, then—
  - (a) if one of them is then resident <sup>F446</sup>... in the United Kingdom, it shall be treated as a capital payment received by that person;
  - (b) if 2 or more of them are then resident <sup>F446</sup>... in the United Kingdom (“the residents”) it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.
- (5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received <sup>F447</sup>... —

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- (a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and
  - (b) each such participator (whatever his residence <sup>F448</sup>... ) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment,
- but where (by virtue of the preceding provisions of this subsection and apart from this provision) a participator would be treated as receiving less than one-twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of this subsection.
- (6) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
  - (7) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (8) below.
  - (8) A person falls within this subsection if—
    - (a) he is a settlor in relation to the settlement, or
    - (b) he is connected with a person falling within paragraph (a) above.
  - (9) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.
- <sup>F449</sup>(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment <sup>F450</sup>for which he or she was not so resident if—
- (a) section 10A applies to him or her, and
  - (b) the year falls within the temporary period of non-residence.]
- (9B) If—
- (a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and
  - (b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,
- nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).]
- (10) For the purposes of this section—
    - (a) the question whether a company is controlled by a person or persons shall be construed in accordance with <sup>F451</sup>sections 450 and 451 of CTA 2010], but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under <sup>F452</sup>section 451(4) to (6) of CTA 2010] if he is not a participator in the company;
    - <sup>F453</sup>(aa) a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement;]
    - (b) “participator” has the meaning given by <sup>F454</sup>section 454 of CTA 2010].

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(11) This section shall apply to payments received on or after 19th March 1991.

#### Textual Amendments

- F444** Words in s. 96(1)(2) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\), Sch. 26 para. 3](#)
- F445** Words in s. 96(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 94\(2\)](#)
- F446** Words in s. 96(4)(a)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 94\(3\)](#)
- F447** Words in s. 96(5) omitted (with application in accordance with s. 96(2) of the amending Act) by virtue of [Finance Act 2000 \(c. 17\), s. 96\(1\)](#)
- F448** Words in s. 96(5)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 94\(4\)](#)
- F449** S. 96(9A)(9B) inserted (with effect in accordance with s. 127(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 127\(3\)](#)
- F450** Words in s. 96(9A) substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 121](#)
- F451** Words in s. 96(10)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 230\(a\)\(i\)](#) (with [Sch. 2](#))
- F452** Words in s. 96(10)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 230\(a\)\(ii\)](#) (with [Sch. 2](#))
- F453** S. 96(10)(aa) inserted (with effect in accordance with art. 6 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2017 \(S.I. 2017/495\), arts. 1, 4](#)
- F454** Words in s. 96(10)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 230\(b\)](#) (with [Sch. 2](#))

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

- C114** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C115** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)](#)

## 97 Supplementary provisions.

- (1) In [<sup>F455</sup>sections 86A] to 96 [<sup>F456</sup>and Schedule 4C] and this section “capital payment”—
- means any payment which is not chargeable to income tax on the recipient or, in the case of a recipient who is [<sup>F457</sup>not resident] in the United Kingdom, any payment received otherwise than as income, but
  - does not include a payment under a transaction entered into at arm’s length if it is received on or after 19th March 1991.
- (2) In subsection (1) above references to a payment include references to the transfer of an asset and the conferring of any other benefit, and to any occasion on which settled property becomes property to which section 60 applies.
- (3) The fact that the whole or part of a benefit is by virtue of [<sup>F458</sup>section 733 of ITA 2007] treated as the recipient’s income for a year of assessment after that in which it is received—

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- (a) shall not prevent the benefit or that part of it being treated for the purposes of [F<sup>455</sup>sections 86A] to 96 [F<sup>459</sup>and Schedule 4C] as a capital payment in relation to any year of assessment earlier than that in which it is treated as his income; but
- (b) shall preclude its being treated for those purposes as a capital payment in relation to that or any later year of assessment.
- (4) For the purposes of [F<sup>455</sup>sections 86A] to 96 [F<sup>460</sup>and Schedule 4C] the amount of a capital payment made by way of loan, and of any other capital payment which is not an outright payment of money, shall be taken to be equal to the value of the benefit conferred by it [F<sup>461</sup>(see sections 97A to 97C for the value of benefits conferred by a capital payment made by way of loan or by way of making movable property or land available)].
- (5) For the purposes of [F<sup>455</sup>sections 86A] to 90 [F<sup>462</sup>and Schedule 4C] a capital payment shall be regarded as received by a beneficiary from the trustees of a settlement if—
- (a) he receives it from them directly or indirectly, or
- (b) it is directly or indirectly applied by them in payment of any debt of his or is otherwise paid or applied for his benefit, or
- (c) it is received by a third person at the beneficiary’s direction.
- (6) Section 16(3) shall not prevent losses accruing to trustees in a year of assessment for which section 87 of this Act or section 17 of the 1979 Act applied to the settlement from being allowed as a deduction from chargeable gains accruing in any later year (so far as they have not previously been set against gains for the purposes of a computation under either of those sections or otherwise).
- (7) In [F<sup>463</sup>sections 86A] to 96 [F<sup>464</sup>and Schedule 4C] and in F<sup>465</sup>... this section—
- [F<sup>466</sup>“settlement” has the meaning given by section 620 of ITTOIA 2005, and
- “settled property” and references (however expressed) to property comprised in a settlement shall be construed accordingly].
- [F<sup>467</sup>(7A) In this section, sections 86A to 96 and Schedule 4C “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this subsection, means any person in whom the settled property or its management is for the time being vested (and a person who is treated as a trustee of the settlement by virtue of this subsection shall be treated as a trustee of the settlement for the purposes of section 69).]
- (8) In a case where—
- (a) at any time on or after 19th March 1991 a capital payment is received from the trustees of a settlement or is treated as so received by virtue of section 96(1),
- (b) it is received by a person, or treated as received by a person by virtue of section 96(2) to (5),
- (c) at the time it is received or treated as received, the person is not (apart from this subsection) a beneficiary of the settlement, and
- (d) subsection (9) or (10) below does not prevent this subsection applying,
- for the purposes of [F<sup>463</sup>sections 86A] to 90 [F<sup>468</sup>and Schedule 4C] the person shall be treated as a beneficiary of the settlement as regards events occurring at or after that time.



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- (9) Subsection (8) above shall not apply where a payment mentioned in paragraph (a) is made in circumstances where it is treated (otherwise than by subsection (8) above) as received by a beneficiary.
- (10) Subsection (8) above shall not apply so as to treat—
- (a) the trustees of the settlement referred to in that subsection, or
  - (b) the trustees of any other settlement,
- as beneficiaries of the settlement referred to in that subsection.

#### Textual Amendments

- F455** Words in s. 97(1)-(5) substituted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(2\)](#)
- F456** Words in s. 97(1) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F457** Words in s. 97(1)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 95](#)
- F458** Words in s. 97(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 302](#) (with [Sch. 2](#))
- F459** Words in s. 97(3)(a) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F460** Words in s. 97(4) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F461** Words in s. 97(4) inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 9 para. 1\(1\)](#)
- F462** Words in s. 97(5) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 4\(b\)](#)
- F463** Words in s. 97(7)(8) substituted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(2\)](#)
- F464** Words in s. 97(7) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F465** Words in s. 97(7) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(a\)\(3\), Sch. 26 Pt. 3\(15\)](#)
- F466** Words in s. 97(7) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(b\)\(3\)](#)
- F467** S. 97(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(2\)\(3\)](#)
- F468** Words in s. 97(8) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 4\(b\)](#)

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

- C114** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C115** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)](#)

#### [<sup>F469</sup>97A Value of benefit conferred by capital payment made by way of loan

- (1) For the purposes of section 97(4), the value of the benefit conferred on a person (P) by a capital payment made by way of loan to P is, for each tax year in which the loan is outstanding, the amount (if any) by which—

*Status: Point in time view as at 16/11/2017.*

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- (a) the amount of interest that would have been payable in that year on the loan if interest had been payable on the loan at the official rate, exceeds
  - (b) the amount of interest (if any) actually paid by P in that year on the loan.
- (2) In this section and section 97B the “official rate”, in relation to interest, means the rate applicable from time to time under section 178 of the Finance Act 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003.

#### Textual Amendments

**F469** Ss. 97A-97C inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 1\(2\)](#)

### **97B Value of benefit conferred by capital payment made by way of making movable property available**

- (1) For the purposes of section 97(4), the value of the benefit conferred by a capital payment consisting of making movable property available, without any transfer of the property in it, to a person (P) is, for each tax year in which the benefit is conferred on P—

$$(CC \times R \times D Y) - T$$

where—

CC is the capital cost of the movable property on the date when the property is first made available to P in the tax year,

D is the number of days in the tax year on which the property is made available to P (the relevant period),

R is the official rate of interest for the relevant period (but see subsection (3)),

T is the total of the amounts (if any) paid in the tax year by P—

- (a) to the person conferring the benefit, in respect of the availability of the movable property, or
- (b) so far as not within paragraph (a), in respect of the repair, insurance, maintenance or storage of the movable property, and

Y is the number of days in the tax year.

- (2) In subsection (1), in the meaning of CC, the “capital cost” of movable property means an amount equal to the total of—
- (a) the amount which is the greater of—
    - (i) the amount or value of the consideration given for the acquisition of the movable property by, or on behalf of, the person (A) conferring the benefit, and
    - (ii) its market value at the time of that acquisition, and
  - (b) the amount of any expenditure wholly and exclusively incurred by, or on behalf of, A for the purpose of enhancing the value of the movable property.
- (3) If the official rate of interest changes during the relevant period, then in subsection (1) R is the average official rate of interest for the period calculated as follows.

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*Step 1* Multiply each official rate of interest in force during the relevant period by the number of days when it is in force.

*Step 2* Add together the products found in Step 1.

*Step 3* Divide the total found in Step 2 by the number of days in the relevant period.

- (4) In subsections (1) and (2), “movable property” means any tangible movable property other than money.

#### Textual Amendments

**F469** Ss. 97A-97C inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 1\(2\)](#)

### 97C Value of benefit conferred by capital payment made by way of making land available

- (1) For the purposes of section 97(4), the value of the benefit conferred by a capital payment consisting of making land available for the use of a person (P) is, for each tax year in which the benefit is conferred on P, the amount by which—
- (a) the rental value of the land for the period of the tax year during which the land is made available to P, exceeds
  - (b) the total of the amounts (if any) paid in the tax year by P—
    - (i) to the person conferring the benefit, in respect of the availability of the land, or
    - (ii) so far as not within sub-paragraph (i), in respect of costs of repair, insurance or maintenance relating to the land.
- (2) Subsection (1) does not apply in the case where the person conferring the benefit transfers the whole of the person's interest in the land to P.
- (3) In subsection (1) “the rental value” of the land for a period means the rent which would have been payable for the period if the land had been let to P at an annual rent equal to the annual value.
- (4) For the purposes of subsection (3) “the annual value” of land is the rent that might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (5) For the purposes of subsection (4) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the costs to the landlord of providing any relevant services.
- (6) In subsection (5) “relevant service” means a service other than the repair, insurance or maintenance of the property.]

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### Textual Amendments

**F469** Ss. 97A-97C inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 1\(2\)](#)

## 98 Power to obtain information for purposes of sections 87 to 90.

- (1) The Board may by notice require any person to furnish them within such time as they may direct, not being less than 28 days, with such particulars as they think necessary for the purposes of sections 87 to 90.
- (2) [<sup>F470</sup>Sections 748(3) to (5), 749 and 750 of ITA 2007 shall have effect in relation to subsection (1) above as they have effect in relation to section 748(1) and (2) of that Act], but in their application by virtue of this subsection—
- (a) references to [<sup>F471</sup>Chapter 2 of Part 13 of that Act] shall be construed as references to sections 87 to 90; <sup>F472</sup>...
- <sup>F473</sup>(b) .....
- [<sup>F474</sup>(3) The provisions of subsections (1) and (2) above have effect as if the references to sections 87 to 90 included references to Schedule 4C.]

### Textual Amendments

- F470** Words in s. 98(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 303\(a\)](#) (with [Sch. 2](#))
- F471** Words in s. 98(2)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 303\(b\)](#) (with [Sch. 2](#))
- F472** Word in s. 98(2)(a) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 16\(1\)\(b\)\(2\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F473** S. 98(2)(b) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 16\(1\)\(c\)\(2\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F474** S. 98(3) added (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 92(4)(b), [Sch. 26 para. 5](#)

### Modifications etc. (not altering text)

- C114** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 762(3) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C115** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), [Sch. 1](#) of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [20\(3\)](#)

## [<sup>F475</sup>98A Settlements with foreign element: information.

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect.]

### Textual Amendments

**F475** S. 98A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. [97\(2\)](#)

*Status: Point in time view as at 16/11/2017.*

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## CHAPTER III

### COLLECTIVE INVESTMENT SCHEMES AND INVESTMENT TRUSTS [F476 ETC]

#### Textual Amendments

**F476** Word in Pt. 3 Ch. 3 heading inserted (with effect in accordance with Sch. 22 para. 12 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 9](#); S.I. 2010/670, art. 2

#### 99 Application of Act to unit trust schemes.

- (1) This Act shall apply in relation to any unit trust scheme as if—
- the scheme were a company,
  - the rights of the unit holders were shares in the company, and
  - in the case of an authorised unit trust, the company were resident <sup>F477</sup>... in the United Kingdom,
- except that nothing in this section shall be taken to bring a unit trust scheme within the charge to corporation tax on chargeable gains.
- (2) Subject to subsection (3) [<sup>F478</sup>and [<sup>F479</sup>sections 99A and 151W(a)]] below, in this Act—
- “unit trust scheme” has the [<sup>F480</sup>meaning given by section 237(1) of the Financial Services and Markets Act 2000],
- [<sup>F481</sup>(aa) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme;
- “authorised unit trust” means, as respects an accounting period, a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force during the whole or part of that period.]
- [<sup>F482</sup>(c) “open-ended investment company” has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly references in subsections (11) to (16) of that section to “the Tax Acts” shall be construed as if they included references to this Act.]
- (3) The Treasury may by regulations provide that any scheme of a description specified in the regulations shall be treated as not being a unit trust scheme for the purposes of this Act; and regulations under this section may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

#### Textual Amendments

**F477** Words in s. 99(1)(c) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 96](#)

**F478** Words in s. 99(2) inserted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 118\(2\)\(a\)](#)

**F479** Words in s. 99(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [s. 381\(1\)](#), [Sch. 8 para. 199](#) (with [Sch. 9 paras. 1-9, 22](#))

**F480** Words in s. 99(2)(a) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), [arts. 1\(2\)\(a\)](#), [62\(1\)](#)

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**F481** S. 99(2)(aa)(b) substituted for s. 99(2)(b) (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 118\(2\)\(b\)](#)

**F482** S. 99(2)(c) added (28.4.1997) by [The Open-ended Investment Companies \(Tax\) Regulations 1997 \(S.I. 1997/1154\)](#), regs. 1(1), 20

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

**C116** S. 99 extended (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 22\(2\)](#)

**C117** S. 99(1) excluded in part by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 14B](#) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2008/3159](#), regs. 1(1), 11)

**[<sup>F483</sup>99A [<sup>F484</sup>Treatment of umbrella schemes]**

(1) In this section an “umbrella scheme” means [<sup>F485</sup>a relevant collective investment scheme]—

- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them, and
- (b) under which the participants are entitled to exchange rights in one pool for rights in another,

and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.

[<sup>F486</sup>(2) For the purposes of this Act (except subsection (1) and section 103C)—

- (a) each of the parts of an umbrella scheme shall itself be regarded as a collective investment scheme of the same form as the umbrella scheme as a whole, and
- (b) the umbrella scheme as a whole shall not be regarded as a collective investment scheme of that form or as any other form of collective investment scheme,

and the participants in the umbrella scheme are to be treated accordingly.

(2A) Subsection (2)—

- (a) does not prevent gains or losses accruing to an umbrella scheme which is a unit trust scheme (other than an authorised unit trust) being regarded as gains or losses accruing to the umbrella scheme as a whole, and
- (b) does not apply for the purposes of section 100(2).]

<sup>F487</sup>(3) .....

(4) Nothing in [<sup>F488</sup>subsection (2)] shall prevent—

- (a) gains accruing to an umbrella scheme being regarded as gains accruing to an authorised unit trust for the purposes of section 100(1) (exemption for authorised unit trusts etc);
- (b) a transfer of business to an umbrella scheme being regarded as a transfer to [<sup>F489</sup>a unit trust scheme] for the purposes of section 139(4) (exclusion of transfers to authorised unit trusts etc);

<sup>F490</sup>(c) .....

[ For the purposes of subsection (1), “arrangements” includes arrangements provided <sup>F491</sup>(5) in a company’s instrument of incorporation.

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- (6) In this section, “relevant collective investment scheme” means a collective investment scheme which is—
- (a) an authorised contractual scheme which is a co-ownership scheme,
  - (b) a unit trust scheme, or
  - (c) an offshore fund.]]

#### Textual Amendments

- F483** S. 99A inserted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 118\(3\)](#)
- F484** S. 99A heading substituted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(f\)](#) (with reg. 1(2))
- F485** Words in s. 99A(1) substituted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(a\)](#) (with reg. 1(2))
- F486** S. 99A(2)(2A) substituted for s. 99A(2) (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(b\)](#) (with reg. 1(2))
- F487** S. 99A(3) omitted (8.6.2013) by virtue of [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(c\)](#) (with reg. 1(2))
- F488** Words in s. 99A(4) substituted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(d\)\(i\)](#) (with reg. 1(2))
- F489** Words in s. 99A(4)(b) substituted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(d\)\(ii\)](#) (with reg. 1(2))
- F490** S. 99A(4)(c) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with Sch. 36)
- F491** S. 99A(5)(6) inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [8\(e\)](#) (with reg. 1(2))

#### [<sup>F492</sup>99B Calculation of the disposal cost of accumulation units

- (1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of this Act, an amount shall be treated as expenditure falling within section 38(1)(b) if—
- (a) it represents income from the investments subject to the unit trust scheme,
  - (b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and
  - (c) it is either—
    - (i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or
    - (ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.
- (2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—

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- (a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and
  - (b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.
- (3) In subsection (2)(a) “distribution date” and “distribution period” shall have the meaning given by [<sup>F493</sup>regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 15 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964))].]

#### Textual Amendments

**F492** S. 99B inserted (with effect in accordance with s. 21(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. **21(1)**

**F493** Words in s. 99B(3) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 1(1), **89(2)**

## 100 Exemption for authorised unit trusts etc.

- (1) Gains accruing to an authorised unit trust, an investment trust [<sup>F494</sup>a venture capital trust] or a court investment fund shall not be chargeable gains.

<sup>F495</sup>(2) .....

<sup>F495</sup>(2A) .....

<sup>F495</sup>(2B) .....

- (3) In this Act “court investment fund” means a fund established under section 42 of the <sup>M7</sup>Administration of Justice Act 1982.

#### Textual Amendments

**F494** Words in s. 100(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. **72(2)**

**F495** S. 100(2)-(2B) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **34** (with reg. 32)

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

**C118** S. 100 excluded by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), reg. 14B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2008/3159](#), regs. 1(1), 11)

**C119** S. 100(1) modified (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\)](#), regs. 1(1), **5**

#### Marginal Citations

**M7** 1982 c. 53.



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## [<sup>F496</sup>100A] Exemption for certain EEA UCITS

- (1) ATED-related gains accruing on relevant high value disposals made by an EEA UCITS which is not an open-ended investment company or a unit trust scheme are not chargeable gains under section 2B.
- (2) In this section—
  - “EEA UCITS” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 237 of that Act);
  - “unit trust scheme” has same meaning as in that Part (see section 237(1) of that Act);
  - “open-ended investment company” has the same meaning as in that Part (see section 236(1) of that Act).]

### Textual Amendments

**F496** S. 100A inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 10](#)

## 101 Transfer of company’s assets to investment trust.

- (1) Where section 139 has applied on the transfer of a company’s business (in whole or in part) to a company which at the time of the transfer was not an investment trust, then if—
  - (a) at any time after the transfer the company becomes for an accounting period an investment trust, and
  - (b) at the beginning of that accounting period the company still owns any of the assets of the business transferred,the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.
- [<sup>F497</sup>(1A) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the end of the last accounting period to end before the beginning of the accounting period mentioned in that subsection.]
- [<sup>F498</sup>(1B) This section does not apply if at the time at which the company becomes an investment trust there has been an event by virtue of which it falls by virtue of section 101B(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.]
- (2) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of subsection (1) above may be made at any time within 6 years after the end of the accounting period referred to in subsection (1) above, and where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

*Status: Point in time view as at 16/11/2017.*

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### Textual Amendments

**F497** S. 101(1A) inserted (29.4.1996 with effect as specified in s. 140(2) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 140\(1\)](#)

**F498** S. 101(1B) inserted (with application in accordance with s. 134(5) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 134\(3\)](#)

### [<sup>F499</sup>101A] **Transfer within group to investment trust.**

- (1) This section applies where—
  - (a) an asset has been disposed of to a company (the “acquiring company”) and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,
  - (b) at the time of the disposal the acquiring company was not an investment trust, and
  - (c) the conditions set out in subsection (2) below are satisfied by the acquiring company.
- (2) Those conditions are satisfied by the acquiring company if—
  - (a) it becomes an investment trust for an accounting period beginning not more than 6 years after the time of the disposal,
  - (b) at the beginning of that accounting period, it owns, otherwise than as trading stock—
    - (i) the asset, or
    - (ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
  - (c) it has not been an investment trust for any earlier accounting period beginning after the time of the disposal, and
  - (d) at the time at which it becomes an investment trust, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101C(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.
- (3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.
- (4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the end of the last accounting period to end before the beginning of the accounting period for which the acquiring company becomes an investment trust.
- (5) For the purposes of this section a chargeable gain is carried forward from an asset to other property on a replacement of business assets if—
  - (a) by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and
  - (b) as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.

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- (6) For the purposes of this section an asset acquired by the acquiring company shall be treated as the same as an asset owned by it at a later time if the value of the second asset is derived in whole or in part from the first asset; and, in particular, assets shall be so treated where—
- (a) the second asset is a freehold and the first asset was a leasehold; and
  - (b) the lessee has acquired the reversion.
- (7) Where under this section a company is to be treated as having disposed of and reacquired an asset—
- (a) all such recomputations of liability in respect of other disposals, and
  - (b) all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax,
- as may be required in consequence of the provisions of this section shall be carried out.
- (8) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years after the end of the accounting period referred to in subsection (2)(a) above.]

#### Textual Amendments

**F499** S. 101A inserted (with application in accordance with s. 133(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 133\(1\)](#)

#### [<sup>F500</sup>101B] **Transfer of company's assets to venture capital trust.**

- (1) Where section 139 has applied on the transfer of a company's business (in whole or in part) to a company which at the time of the transfer was not a venture capital trust, then if—
- (a) at any time after the transfer the company becomes a venture capital trust by virtue of an approval for the purposes of [<sup>F501</sup>Part 6 of ITA 2007]; and
  - (b) at the time as from which the approval has effect the company still owns any of the assets of the business transferred,
- the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.
- (2) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the time mentioned in subsection (1)(b) above.
- (3) This section does not apply if at the time mentioned in subsection (1)(b) above there has been an event by virtue of which the company falls by virtue of section 101(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.
- (4) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the approval mentioned in subsection (1)(a) above has effect as from the beginning of an

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accounting period, be made at any time within 6 years after the end of that accounting period.

- (5) Where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.]

#### Textual Amendments

**F500** S. 101B inserted (with application in accordance with s. 134(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 134(2)

**F501** Words in s. 101B(1)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 304](#) (with [Sch. 2](#))

#### [<sup>F502</sup> 101C] **Transfer within group to venture capital trust.**

- (1) This section applies where—
- (a) an asset has been disposed of to a company (the “acquiring company”) and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,
  - (b) at the time of the disposal the acquiring company was not a venture capital trust, and
  - (c) the conditions set out in subsection (2) below are satisfied by the acquiring company.
- (2) Those conditions are satisfied by the acquiring company if—
- (a) it becomes a venture capital trust by virtue of an approval having effect as from a time (the “time of approval”) not more than 6 years after the time of the disposal,
  - (b) at the time of approval the company owns, otherwise than as trading stock—
    - (i) the asset, or
    - (ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
  - (c) it has not been a venture capital trust at any earlier time since the time of the disposal, and
  - (d) at the time of approval, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101A(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.
- (3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.
- (4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the time of approval.
- (5) Subsections (5) to (7) of section 101A apply for the purposes of this section as they apply for the purposes of that section.

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- (6) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the time of approval is the time at which an accounting period of the company begins, be made at any time within 6 years after the end of that accounting period.
- (7) Any reference in this section to an approval is a reference to an approval for the purposes of [<sup>F503</sup>Part 6 of ITA 2007].]

#### Textual Amendments

**F502** S. 101C inserted (with application in accordance with s. 135(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 135(2)

**F503** Words in s. 101C(7) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 305](#) (with [Sch. 2](#))

### <sup>F504</sup>102 Collective investment schemes with property divided into separate parts.

#### Textual Amendments

**F504** S. 102 omitted (8.6.2013) by virtue of [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), 9 (with reg. 1(2))

### <sup>F505</sup>103 Restriction on availability of indexation allowance.

#### Textual Amendments

**F505** S. 103 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(7), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

### <sup>F506</sup>103A Application of Act to certain offshore funds

- (1) This Act applies in relation to a relevant offshore fund as if—
- (a) the fund were a company, and
  - (b) the rights of the participants in the fund were shares in the company.
- (2) An offshore fund is a relevant offshore fund if—
- (a) it is not constituted by a company [<sup>F507</sup>or by two or more persons carrying on a trade or business in partnership], and
  - (b) it is not a unit trust scheme (see section 99).

[<sup>F508</sup>(3) In this section and [<sup>F509</sup>section 103B, “participant”, in relation to an offshore fund which is not a collective investment scheme, has the meaning given in section 362(1) of TIOPA 2010.]]]

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#### Textual Amendments

- F506** S. 103A inserted (with effect in accordance with Sch. 22 para. 12 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 8](#); S.I. 2010/670, art. 2
- F507** Words in s. 103A(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), [44\(2\)\(a\)](#)
- F508** S. 103A(3) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), [44\(2\)\(b\)](#)
- F509** Words in s. 103A(3) substituted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), [10](#) (with reg. 1(2))

#### [<sup>F510</sup>103B] **Application of section 99B to transparent funds**

- (1) This section applies in relation to an offshore fund which is a transparent fund but is not a unit trust scheme (“the fund”).
- (2) Section 99B applies for the purposes of computing the gain accruing on a disposal by a participant of an interest in the fund and for all other provisions of this Act as if—
  - (a) the fund were a unit trust scheme,
  - (b) the interest in the fund were units in a unit trust scheme (but not an authorised unit trust), and
  - (c) the participant were a unit holder.
- (3) In this section “transparent fund” has the meaning given by the Offshore Funds (Tax) Regulations 2009 ([S.I. 2009/3001](#)) (see regulation 11).]

#### Textual Amendments

- F510** S. 103B inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), [44\(3\)](#)

#### [<sup>F511</sup>103C] **Power to make regulations about collective investment schemes**

- (1) The Treasury may by regulations make provision about the treatment of participants in collective investment schemes for the purposes of this Act.
- (2) The regulations may, in particular, specify descriptions of collective investment scheme in relation to which they are to apply.
- (3) Regulations under this section may make different provision for different cases or different purposes.
- (4) Regulations under this section—
  - (a) may modify this Act or any other enactment or instrument (whenever passed or made), and
  - (b) may include incidental, consequential, supplementary or transitional provision.
- (5) A statutory instrument containing regulations under this section must be laid before the House of Commons after being made.

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- (6) The regulations cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless before the end of that period the instrument is approved by a resolution of the House of Commons.
- (7) After an instrument containing regulations under this section has been approved under subsection (6), subsections (5) and (6) do not apply to any subsequent such instrument (and accordingly section 287(3) applies to any such instrument).
- (8) If regulations cease to have effect as a result of subsection (6), that does not—
  - (a) affect anything previously done under the regulations, or
  - (b) prevent the making of new regulations to the same or similar effect.
- (9) In calculating the period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.
- (10) In this section—
  - “modify” includes amend, repeal or revoke, and
  - “participant”, in relation to a collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000.]

#### Textual Amendments

**F511** S. 103C inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), s. 36(3)

#### [<sup>F512</sup>103D Co-ownership schemes

- (1) This section applies in relation to an authorised contractual scheme which is a co-ownership scheme and is not a relevant offshore fund.
- (2) Subject to what follows, a participant’s interests in the property subject to the scheme are to be disregarded for the purposes of this Act.
- (3) A unit in the scheme is to be treated as an asset for the purposes of this Act.
- (4) Section 99B applies for the purpose of computing the gain accruing on the disposal by a participant of such a unit (but for no other purpose) as if—
  - (a) the scheme were a unit trust scheme,
  - (b) the unit were a unit in a unit trust scheme (but not an authorised unit trust), and
  - (c) the participant were a unit holder.
- (5) For the purposes of this Act—
  - “authorised contractual scheme” has the meaning given by section 237(3) of the Financial Services and Markets Act 2000;
  - “co-ownership scheme” has the meaning given by section 235A of the Financial Services and Markets Act 2000.
- (6) In subsection (1), “relevant offshore fund” has the same meaning as in section 103A.]

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#### Textual Amendments

**F512** S. 103D inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), 3 (with reg. 1(2))

## [<sup>F513</sup>CHAPTER 4

### COLLECTIVE INVESTMENT SCHEMES: EXCHANGES, MERGERS AND SCHEMES OF RECONSTRUCTION

#### Textual Amendments

**F513** Pt. 3 Ch. 4 inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), 11 (with reg. 1(2))

#### 103E Application of Chapter

- (1) In this Chapter (except this section) references to a collective investment scheme are to a collective investment scheme falling within any of the following paragraphs—
  - (a) an authorised contractual scheme which is a co-ownership scheme,
  - (b) a unit trust scheme, or
  - (c) an offshore fund.
- (2) Sections 126 to 138A (reorganisation of share capital, conversion of securities etc) do not apply for the purposes of the treatment of participants in collective investment schemes falling within subsection (1)(a) to (c) except as applied by this Chapter.
- (3) But sections 135 to 138A (company reconstructions) may apply for those purposes where either company A or company B is not a collective investment scheme falling within subsection (1)(a) to (c).
- (4) In subsection (3), “company A” and “company B” have the meaning given by section 135 or 136 as the case may be.
- (5) In this Chapter, “units” includes shares in a company.

#### 103F Exchanges of units for units in the same scheme

- (1) This section applies in the following cases.

##### *Case 1*

Where—

- (a) a participant in a collective investment scheme exchanges units in the scheme for other units in the scheme (“new units”) of substantially the same value, and
- (b) the property subject to the scheme and the rights of participants to share in the capital and income in relation to that property are the



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same immediately before and immediately after the event (ignoring any changes as a result of a variation in management charges).

#### *Case 2*

Where there is a reorganisation of the units in a collective investment scheme in which all the participants holding units in the scheme or, where there are different classes of unit in the scheme, all the participants holding units in the same class, exchange all their units for other units (“new units”) in the scheme.

- (2) Where this section applies—
- (a) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if the collective investment scheme were a company and the event mentioned in subsection (1) were a reorganisation of its share capital, and
  - (b) any distribution in relation to any new units is to be treated for the purposes of capital gains tax, corporation tax or income tax on the basis set out in section 127 (as adapted).
- (3) In subsection (1), “management charges” mean the costs charged to the property subject to the scheme in respect of remunerating the parties operating the scheme, administering the scheme or investing or safeguarding the property subject to the scheme.

### **103G Exchange of units for those in another collective investment scheme**

- (1) This section applies in the following cases where units in a collective investment scheme (“collective investment scheme B”) are issued to a person in exchange for units in another collective investment scheme (“collective investment scheme A”).

- (2) The cases are—

#### *Case 1*

Where units in collective investment scheme B are issued in exchange for units as the result of a general offer—

- (a) made to participants in collective investment scheme A or any class of them, and
- (b) made in the first instance on a condition such that if it were satisfied the property subject to collective investment scheme B would include units in collective investment scheme A giving rights to more than 50% of the capital, and more than 50% of the income, of collective investment scheme A.

#### *Case 2*

Where—

- (a) under an arrangement, participants in collective investment scheme A exchange units in that scheme for units of substantially the same value in collective investment scheme B, and
  - (b) in consequence of the exchanges under the arrangement, 85% or more of the property subject to collective investment scheme B is constituted by units in collective investment scheme A.
- (3) Where this section applies, sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if collective investment scheme A and collective

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investment scheme B were the same company and the exchange were a reorganisation of its share capital.

- (4) This section has effect subject to section 103K(1) (exchange must be for bona fide commercial reasons and not part of tax avoidance scheme).

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

**C120** S. 103G excluded by Offshore Funds (Tax) Regulation 2009 (S.I. 2009/3001), reg. 36A(2)(a) (as substituted (8.6.2013) by S.I. 2013/1400, regs. 1(1), 15(a) (with reg. 1(2)))

**103H Scheme of reconstruction involving issue of units**

- (1) This section applies where—
- (a) for the purposes of, or in connection with, a scheme of reconstruction an arrangement is entered into by all the participants holding units in an original collective investment scheme (“scheme A”), or where there are different classes of units in the scheme, all the participants holding any class of those units, and
  - (b) under the arrangement—
    - (i) units in a successor collective investment scheme or feeder fund (“scheme B”) are issued to those participants in respect of and in proportion to (or as nearly as may be in proportion to) their relevant holdings in scheme A, and
    - (ii) the units in scheme A comprised in relevant holdings are retained by those participants or are cancelled or otherwise extinguished.
- (2) Where this section applies—
- (a) those participants are treated as exchanging their relevant holdings in scheme A for the units held by them in consequence of the arrangement, and
  - (b) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if scheme A and scheme B were the same company and the exchange were a reorganisation of its share capital.
- For this purpose units in scheme A comprised in relevant holdings that are retained are treated as if they had been cancelled and replaced by a new issue.
- (3) Where a reorganisation within case 2 of section 103F(1) of the units in scheme A is carried out for the purposes of the scheme of reconstruction, the provisions of subsections (1) and (2) apply in relation to the position after the reorganisation.
- (4) In this section, references to “relevant holdings” of units are—
- (a) where there is only one class of units in scheme A, to holdings of units in the scheme, and
  - (b) where there are different classes of units in scheme A, to holdings of a class of units that is involved in the scheme of reconstruction (within the meaning of paragraph 3 of Schedule 5AZA).
- (5) This section has effect subject to section 103K(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).

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

**C121** S. 103H excluded by Offshore Funds (Tax) Regulation 2009 (S.I. 2009/3001), reg. 36A(2)(b) (as substituted (8.6.2013) by [S.I. 2013/1400](#), [regs. 1\(1\)](#), [15\(a\)](#) (with [reg. 1\(2\)](#)))

### **103I Scheme of reconstruction involving conversion scheme**

- (1) This section applies where—
  - (a) a scheme of reconstruction is entered into and given effect to, and
  - (b) for the purposes of, or in connection with, the scheme of reconstruction, units in a collective investment scheme (“the conversion scheme”) are issued to participants in another collective investment scheme (“scheme C”) in exchange for and in proportion to (or as nearly as may be in proportion to) their conversion holdings in accordance with regulation 12(1)(b) of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 ([S.I. 2011/1613](#)).
- (2) Where this section applies sections 127 to 131 apply with the necessary adaptations as if scheme C and the conversion scheme were the same company and the exchange were a reorganisation of its share capital.
- (3) In this section “conversion holdings” means the units in scheme C to be converted in accordance with regulation 12(1)(b) of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 into units in the conversion scheme for the purposes of, or in connection with, the scheme of reconstruction.
- (4) This section has effect subject to section 103K(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).

### **103J Supplementary provisions**

In sections 103H and 103I—

- (a) “feeder fund” has the meaning given by paragraph 3(2) of Schedule 5AZA to this Act;
- (b) “scheme of reconstruction” has the meaning given by paragraph 1 of Schedule 5AZA;
- (c) “original collective investment scheme” and “successor collective investment scheme” must be construed in accordance with paragraph 2(2) of Schedule 5AZA; and
- (d) references to units being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise .

### **103K Restriction on application of sections 103G, 103H and 103I**

- (1) Subject to subsection (2) below, and section 138, section 103G, 103H or 103I shall not apply to any issue of units in a collective investment scheme in exchange for or in respect of units in another scheme unless the exchange or scheme of reconstruction in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax, corporation tax or income tax.

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- (2) Subsection (1) above shall not affect the operation of section 103G, 103H or 103I in any case where the participant to whom the units are issued does not hold more than 5 per cent of, or of any class of, the units in the second scheme mentioned in subsection (1) above.
- (3) For the purposes of subsection (2) above units held by participants connected with the participant there mentioned shall be treated as held by that participant.
- (4) If any tax assessed on a participant (“the chargeable participant”) by virtue of subsection (1) above is not paid within 6 months from the date determined under subsection (5) below, any other participant who—
- (a) holds all or any part of the units that were issued to the chargeable participant, and
  - (b) has acquired them without there having been, since their acquisition by the chargeable participant, any disposal of them not falling within section 58(1) or 171,
- may, at any time within 2 years from that date, be assessed and charged (in the name of the chargeable participant) to all or, as the case may be, a corresponding part of the unpaid tax; and a participant paying any amount of tax under this subsection shall be entitled to recover from the chargeable participant a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.
- (5) The date referred to in subsection (4) above is whichever is the later of—
- (a) the date when the tax becomes due and payable by the chargeable participant; and
  - (b) the date when the assessment was made on the chargeable participant.
- (6) Section 138 (procedure for clearance in advance) applies to this section as it applies to section 137 (with any necessary modifications).]

## [<sup>F514</sup>CHAPTER 5

### CARRIED INTEREST

#### Textual Amendments

**F514** Pt. 3 Ch. 5 inserted (with effect in accordance with s. 43(2)-(4) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 43\(1\)](#)

#### **103KA Carried interest**

- (1) This section applies where—
- (a) an individual (“A”) performs investment management services directly or indirectly in respect of an investment scheme under arrangements involving at least one partnership, and
  - (b) carried interest arises to A under the arrangements.
- (2) If the carried interest arises to A in connection with the disposal of one or more assets of the partnership or partnerships—

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a chargeable gain equal to the amount of the carried interest less any permitted deductions (and no other chargeable gain or loss) is to be treated as accruing to A on the disposal, and
  - (b) the chargeable gain is to be treated as accruing to A at the time the carried interest arises.
- (3) If the carried interest arises to A in circumstances other than those specified in subsection (2), a chargeable gain of an amount equal to the amount of the carried interest less any permitted deductions is to be treated as accruing to A at the time the carried interest arises.
- (4) Subsections (2) and (3) do not apply in relation to carried interest to the extent that—
- (a) it is brought into account in calculating the profits of a trade of A for the purposes of income tax for any tax year, or
  - (b) it constitutes a co-investment repayment or return.
- (5) For the purpose of subsections (2) and (3) “permitted deductions” in relation to A means such parts of the amounts specified in subsection (6) as is just and reasonable.
- (6) The amounts referred to in subsection (5) are—
- (a) the amount of any consideration in money given to the scheme by or on behalf of A wholly and exclusively for entering into the arrangements referred to in subsection (1)(a) (but not consideration in respect of co-investments),
  - (b) any amount that constituted earnings of A under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of A's entering into those arrangements (but not any earnings in respect of co-investments or any amount of exempt income within the meaning of section 8 of that Act), and
  - (c) any amount which, by reason of events occurring no later than the time the carried interest arises, counts as income of A under the enactments referred to in section 119A(3) in respect of A's participation in the arrangements referred to in subsection (1)(a) (but not an amount counting as income of A in respect of co-investments); and section 119A(5) applies for the purposes of this paragraph as it applies for the purposes of section 119A(4).

For the purposes of this Act no other deduction may be made from the amount of the carried interest referred to in subsection (2) or (3).

- (7) Where the carried interest arises to A by virtue of his or her acquisition of a right to it from another person for consideration given in money by or on behalf of A, the amount of the chargeable gain accruing to A under subsection (2) or (3) is, on the making of a claim by A under this subsection, to be regarded as reduced by the amount of the consideration.

- (8) In this section—

“co-investment”, in relation to A, means an investment made directly or indirectly by A in the scheme, where there is no return on the investment which is not an arm's length return within the meaning of section 809E ZB(2) of ITA 2007;

“co-investment repayment or return” means a repayment in whole or in part of, or a return on, a co-investment;

“trade” includes profession or vocation.

*Status: Point in time view as at 16/11/2017.*

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### **103KB Carried interest: consideration on disposal etc of right**

- (1) For the purposes of section 103KA, consideration received or receivable by an individual for the disposal, variation, loss or cancellation of a right to carried interest is to be treated as carried interest arising to that individual at the time of the disposal, variation, loss or cancellation.
- (2) But subsection (1) does not apply if and to the extent that the consideration is a disguised fee arising to the individual for the purposes of section 809EZA of ITA 2007.

### **103KC Carried interest: foreign chargeable gains**

In a case where section 103KA applies, a chargeable gain accruing or treated as accruing to an individual in respect of carried interest is a foreign chargeable gain within the meaning of section 12 only to the extent that the individual performs the services referred to in section 103KA(1)(a) outside the United Kingdom.

### **103KD Carried interest: anti-avoidance**

In determining whether section 103KA applies in relation to an individual, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that that section does not to any extent apply in relation to—

- (a) the individual, or
- (b) the individual and one or more other individuals.

### **103KE Carried interest: avoidance of double taxation**

- (1) This section applies where—
  - (a) capital gains tax is charged on an individual by virtue of section 103KA in respect of any carried interest, and
  - (b) Condition A or Condition B is met.
- (2) Condition A is that—
  - (a) at any time, tax (whether income tax or another tax) charged on the individual in relation to the carried interest has been paid by the individual (and has not been repaid), and
  - (b) the amount on which tax is charged as specified in subsection (1)(a) is not a permissible deduction under section 103KA(6)(b) or (c).
- (3) Condition B is that at any time tax (whether income tax or another tax) charged on another person in relation to the carried interest has been paid by that other person (and has not been repaid).
- (4) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the capital gains tax charged as mentioned in subsection (1)(a).
- (5) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (6) The value of any consequential adjustments made must not exceed the lesser of—
  - (a) the capital gains tax charged as mentioned in subsection (1)(a), and
  - (b) the tax charged as mentioned in subsection (2)(a) or (3).

*Status: Point in time view as at 16/11/2017.*

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- (7) Consequential adjustments may be made—
- (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under an enactment.
- (8) Where—
- (a) an individual makes a claim under this section in respect of a year of assessment, and
  - (b) apart from this subsection, an amount falls to be deducted under section 2(2)(b) from the total amount of chargeable gains accruing to the individual in that year,
- the individual may elect that the amount to be so deducted be reduced by any amount not exceeding the amount on which tax is charged as specified in subsection (2)(a) or (3).

### **103KF Relief for external investors on disposal of partnership asset**

- (1) If—
- (a) a chargeable gain accrues to an external investor in an investment scheme on the disposal of one or more partnership assets, and
  - (b) the external investor makes a claim for relief under this section,
- then subsection (2) applies in relation to the disposal.
- (2) The amount of the chargeable gain is to be reduced by an amount equal to—
- $$I - C$$
- where—
- (a) I is an amount equal to such part of the sum invested in the fund by the external investor which on a just and reasonable basis is referable to the asset or assets disposed of, and
  - (b) C is the amount deducted under section 38(1)(a) in respect of consideration given wholly and exclusively for the acquisition of the asset or assets.

### **103KG Meaning of “arise” in Chapter 5**

- (1) For the purposes of this Chapter, carried interest “arises” to an individual (“A”) if, and only if, it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007.
- (2) But section 809EZDB of ITA 2007 (sums arising to connected company or unconnected person) does not apply in relation to a sum of carried interest arising to—
- (a) a company connected with A, or
  - (b) a person not connected with A,
- where the sum is deferred carried interest in relation to A.
- (3) In this section, “deferred carried interest”, in relation to A—
- (a) means a sum of carried interest where the provision of the sum to A or a person connected with A is deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise), and

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- (b) includes A's share (as determined on a just and reasonable basis) of any carried interest the provision of which to A and one or more other persons, taken together, has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).

In this subsection, in a case where the sum referred to in subsection (2) arises to a company connected with A, the reference to a person connected with A does not include that company.

- (4) Where—
  - (a) section 809EZDB of ITA 2007 has been disapplied in relation to a sum of deferred carried interest by virtue of subsection (2),
  - (b) the sum ceases to be deferred carried interest in relation to A, and
  - (c) the sum does not in any event arise to A apart from this subsection,
 the sum is to be regarded as arising to A at the time it ceases to be deferred carried interest.
- (5) But subsection (4) does not apply if—
  - (a) none of the enjoyment conditions is met in relation to the sum when it ceases to be deferred carried interest, and
  - (b) there is no reasonable likelihood that any of those conditions will ever be met in relation to the sum.
- (6) The enjoyment conditions are—
  - (a) the sum, or part of the sum, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A or a person connected with A;
  - (b) the sum's ceasing to be deferred carried interest in relation to A operates to increase the value to A or a person connected with A of any assets which—
    - (i) A or the connected person holds, or
    - (ii) are held for the benefit of A or the connected person;
  - (c) A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
  - (d) A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
  - (e) A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

In this subsection, in a case where the sum referred to in subsection (2) arises to a company connected with A, references to a person connected with A do not include that company.

- (7) In determining whether any of the enjoyment conditions is met in relation to a sum or part of a sum—
  - (a) regard must be had to the substantial result and effect of all the relevant circumstances, and
  - (b) all benefits which may at any time accrue to a person as a result of the sum ceasing to be deferred carried interest in relation to A must be taken into account, irrespective of—



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- (i) the nature or form of the benefits, or
    - (ii) whether the person has legal or equitable rights in respect of the benefits.
  - (8) The enjoyment condition in subsection (6)(b), (c) or (d) is to be treated as not met if it would be met only by reason of A holding shares or an interest in shares in a company.
  - (9) The enjoyment condition in subsection (6)(a) or (e) is to be treated as not met if the sum referred to in subsection (2) arises to a company connected with A and—
    - (a) the company is liable to pay corporation tax in respect of its profits and the sum is included in the computation of those profits, or
    - (b) paragraph (a) does not apply but—
      - (i) the company is a CFC and the exemption in Chapter 14 of Part 9A of TIOPA 2010 applies for the accounting period in which the sum arises, or
      - (ii) the company is not a CFC but, if it were, that exemption would apply for that period.
- In this subsection “CFC” has the same meaning as in Part 9A of TIOPA 2010.
- (10) But subsections (8) and (9) do not apply if the sum referred to in subsection (2) arises to the company referred to in subsection (2)(a) or the person referred to in subsection (2)(b) as part of arrangements where—
    - (a) it is reasonable to assume that in the absence of the arrangements the sum or part of the sum would have arisen to A or an individual connected with A, and
    - (b) it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, inheritance tax or corporation tax.
  - (11) The condition in subsection (10)(b) is to be regarded as met in a case where the sum is applied directly or indirectly as an investment in a collective investment scheme.
  - (12) Subsection (2) does not apply in relation to any sum in relation to which the condition in subsection (8)(b) of section 809EZDB is met by virtue of subsection (9) of that section.
  - (13) Subsection (2) also does not apply if—
    - (a) it is reasonable to assume that the deferral referred to in subsection (3)(a) or (b) is not the effect of genuine commercial arrangements, or
    - (b) that deferral is the effect of such arrangements but it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, corporation tax or inheritance tax.
  - (14) In subsection (13), “genuine commercial arrangements” means arrangements involving A (alone or jointly with others performing investment management services) and external investors in the investment scheme.
  - (15) Section 993 of ITA 2007 (meaning of “connected”) applies for the purposes of this section but as if—
    - (a) subsection (4) of that section were omitted, and
    - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).

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## 103KH Interpretation of Chapter 5

(1) In this Chapter—

“arrangements” has the same meaning as in Chapter 5E of Part 13 of ITA 2007 (see section 809EZE of that Act);

“carried interest”, in relation to arrangements referred to in section 103KA(1)(a), has the same meaning as in section 809EZB of ITA 2007 (see sections 809EYC and 809EYD of that Act);

“investment scheme”, “investment management services” and “external investor” have the same meanings as in Chapter 5E of Part 13 of ITA 2007 (see sections 809EZA(6) and 809EZE of that Act).]

## PART IV

### SHARES, SECURITIES, OPTIONS ETC.

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

C122 Pt. IV: power to modify conferred (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), s. 21(8)-(10)

## CHAPTER I

### GENERAL

#### *Share pooling, identification of securities, and indexation*

#### 104 Share pooling: general interpretative provisions.

(1) Any number of securities of the same class acquired by the same person in the same capacity shall for the purposes of this Act [<sup>F515</sup>(subject to express provision to the contrary)] 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.

[<sup>F516</sup>(2) For the purposes of corporation tax, subsection (1) does not apply to any securities acquired by a company before 1 April 1982.

(2A) See also sections 105 to 105B and—

- (a) section 106A in the case of capital gains tax, or
- (b) sections 107 to 114 in the case of corporation tax.]

(3) For the purposes of this section and sections 105, 107, 110 <sup>F517</sup>... and 114—

[<sup>F518</sup>“a section 104 holding” is] a holding of securities which, by virtue of subsection (1) above, is to be regarded as a single asset;

“securities” does not include relevant securities as defined in section 108 but, subject to that, means—

- (i) shares or securities of a company; and
- (ii) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired; and

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“relevant allowable expenditure” has the meaning assigned to it by section 53(2)(b) and (3);

but shares or securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

[<sup>F519</sup>(3A) For the purposes of capital gains tax section 35(2) applies in relation to a section 104 holding as if the reference to an asset were to any of the securities constituting or forming part of the section 104 holding which were held by the person making the disposal on 31 March 1982.]

[<sup>F520</sup>(4) For the purposes of this Chapter securities of a company which are held—  
(a) by a person who acquired them as an employee of the company or of any other person, and  
(b) on terms which for the time being restrict his right to dispose of them,  
shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any securities acquired by him otherwise than as an employee of the company or of any other person and also from any shares that are not held subject to restrictions, or the same restrictions, on disposal or in the case of which the restrictions are no longer in force.]

[<sup>F521</sup>(4A) For the purposes of this Chapter, securities of a company which are held by the trustees of a settlement, having been last acquired or deemed to be acquired by them in circumstances where section 236H or 236Q applied, shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any other securities of the company acquired by those trustees.]

(5) Nothing in this section or sections 110 <sup>F522</sup>... and 114 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 subsections (1) and (2) above, a disposal of securities in a [<sup>F523</sup>section 104 holding], other than a disposal of the whole of it, is a disposal of part of an asset and the provisions of this Act relating to the computation of a gain accruing on a disposal of part of an asset shall apply accordingly.

#### Textual Amendments

**F515** Words in s. 104(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 17\(1\)\(2\)](#)

**F516** S. 104(2)(2A) substituted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 85\(2\)](#)

**F517** Word in s. 104(3) omitted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 85\(3\)](#)

**F518** Words in s. 104(3) substituted (with effect in accordance with s. 123(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 123\(3\)](#)

**F519** S. 104(3A) inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 85\(4\)](#)

**F520** S. 104(4) substituted (with effect in accordance with s. 123(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 123\(4\)](#)

**F521** S. 104(4A) inserted (with effect in accordance with [Sch. 37 para. 18\(2\)](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para 18\(1\)](#)

**F522** Word in s. 104(5) omitted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 85\(5\)](#)

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**F523** Words in s. 104(6) substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), s. 123(5)(b)

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

**C123** S. 104 applied (with modifications) by S.I. 1989/469, reg. 27(2) (as inserted by S.I. 1996/846, reg. 11(b))

**C124** Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(2) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

**C125** Ss. 104-106 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 15 para. 93(6)

**C126** S. 104 applied (with effect in accordance with art. 1(2)(3), Sch. 1 of the affecting S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), regs. 1(1), 43(3)(a)

**C127** Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, 34(2) (as amended (6.4.2008) by S.I. 2008/704, regs. 1, 15(2), (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 87, 89)

**C128** S. 104(1) restricted (31.7.1998) by Finance Act 1998 (c. 36), s. 124(8)(c)

**C129** S. 104(4) applied (6.4.2007) by Income Tax Act 2007 (c. 3), ss. 148(8)(b), 1034(1) (with Sch. 2)

**105 Disposal on or before day of acquisition of shares and other unidentified assets.**

- (1) [<sup>F524</sup>Paragraphs (a) and (b) below] 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.

[<sup>F525</sup>(2) Where the quantity of securities disposed of by any person exceeds the aggregate quantity of—

- (a) the securities (if any) which are required by subsection (1) above to be identified with securities acquired on the day of the disposal,
- (b) the securities (if any) which are required by [<sup>F526</sup>section] 106A(5) to be identified with securities acquired after the day of the disposal, and
- (c) the securities (if any) which are required by any of the provisions of sections 104, <sup>F527</sup>... 106A or 107, or of Schedule 2, to be identified with securities acquired before the day of the disposal,

the disposal shall be treated as diminishing a quantity of securities subsequently acquired, and as so diminishing any quantity so acquired at an earlier date, rather than one so acquired at a later date.]

[<sup>F528</sup>(3) None of the securities which, by virtue of this section, are identified with other securities shall be regarded as forming part of an existing section 104 holding or as constituting a section 104 holding.]

[<sup>F529</sup>(4) Subsection (5) applies if an individual—

- (a) acquires shares (“the relevant shares”) of the same class, on the same day and in the same capacity, and
- (b) some of the relevant shares are relevant EMI shares (as defined by section 169I(7C) to (7G)).

*Status: Point in time view as at 16/11/2017.*

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- (5) This section has effect as if—
- (a) paragraph (a) of subsection (1) required the relevant EMI shares to be treated as acquired by the individual by a single transaction separate from the remainder of the relevant shares (which are also to be treated by virtue of that paragraph as acquired by the individual by a single transaction), and
  - (b) subsection (1) required the relevant EMI shares to be treated as disposed of after the remainder of the relevant shares.]

#### Textual Amendments

- F524** Words in s. 105(1) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(2\)](#)
- F525** S. 105(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(2\)](#)
- F526** Word in s. 105(2)(b) substituted (with effect in accordance with s. 72(3) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 72\(2\)\(b\)\(i\)](#)
- F527** Word in s. 105(2)(c) repealed (with effect in accordance with s. 72(3) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 72\(2\)\(b\)\(ii\), Sch. 26 Pt. 3\(9\)](#)
- F528** S. 105(3) inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 2 para. 86](#)
- F529** S. 105(4)(5) inserted (with effect in accordance with Sch. 24 paras. 5, 6(4)(5) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 24 para. 3](#)

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

- C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\), reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869, regs. 1\(1\), 12](#))
- C125** Ss. 104-106 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 15 para. 93\(6\)](#)
- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\), regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704, regs. 1, 15\(2\)](#), (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 87, 89](#))
- C130** S. 105 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), ss. 76\(4\), 1184\(1\)](#) (with [Sch. 2](#))
- C131** S. 105 modified (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\), s. 121\(4\)](#) (with [s. 147, Sch. 17](#))

#### [<sup>F530</sup>105] Shares acquired on same day: election for alternative treatment

- (1) Subsection (2) below applies where an individual—
- (a) acquires shares (“the relevant shares”) of the same class, on the same day and in the same capacity, and
  - (b) some of the relevant shares (“the [<sup>F531</sup>tax-advantaged-scheme] shares”) are shares acquired by him as a result of—
    - [<sup>F532</sup>(i) the exercise of a qualifying option within the meaning given by section 527(4) of ITEPA 2003 (enterprise management incentives) in circumstances where section 530 or 531 of that Act (exercise of option to acquire shares) applies, or

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- (ii) the exercise of an option to which Chapter 7 or 8 of Part 7 of that Act ( <sup>F533</sup>... share option schemes) applies in circumstances where section 519(1) or 524(1) of that Act applies.]
- (2) Where the individual first makes a disposal of any of the relevant shares, he may elect for subsections (3) to (5) below to have effect in relation to that disposal and all subsequent disposals of any of those shares.
- (3) In circumstances where section 105 applies, that section shall have effect as if—
- (a) paragraph (a) of subsection (1) of that section required the [<sup>F531</sup>tax-advantaged-scheme] shares to be treated as acquired by the individual by a single transaction separate from the remainder of the relevant shares (which shall also be treated by virtue of that paragraph as acquired by the individual by a single transaction), and
  - (b) subsection (1) of that section required the [<sup>F531</sup>tax-advantaged-scheme] shares to be treated as disposed of after the remainder of the relevant shares.
- (4) If the relevant shares include shares to which relief under Chapter 3 of Part 7 of the Taxes Act [<sup>F534</sup>, relief under Part 5 of ITA 2007] or deferral relief (within the meaning of Schedule 5B to this Act) is attributable—
- (a) paragraph 4(4) of that Schedule has effect as if it required the [<sup>F531</sup>tax-advantaged-scheme] shares falling within paragraph (a), (b), (c) or (d) of that provision to be treated as disposed of after the remainder of the relevant shares falling within the paragraph in question, and
  - (b) section 299 of the Taxes Act [<sup>F535</sup> or section 246 of ITA 2007] has effect for the purposes of section 150A(4) below as if it required—
    - (i) the [<sup>F531</sup>tax-advantaged-scheme] shares falling within paragraph (a), (b), (c) or (d) of subsection (6A) of section 299 [<sup>F536</sup> of the Taxes Act or subsection (3) of section 246 of ITA 2007] to be treated as disposed of after the remainder of the relevant shares falling within the paragraph in question, and
    - (ii) the [<sup>F531</sup>tax-advantaged-scheme] shares to which subsection (6B) of [<sup>F537</sup> section 299 of the Taxes Act or subsection (4) of section 246 of ITA 2007] applies to be treated as disposed of after the remainder of the relevant shares to which that subsection applies.
- (5) Where section 127 applies in relation to any of the relevant shares (“the reorganisation shares”), that section shall apply separately to such of those shares as are [<sup>F531</sup>tax-advantaged-scheme] shares and to the remainder of the reorganisation shares (so that those [<sup>F531</sup>tax-advantaged-scheme] shares and the remainder of the reorganisation shares are treated as comprised in separate holdings of original shares and identified with separate new holdings).
- (6) In subsection (5)—
- (a) the reference to section 127 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and
  - (b) “original shares” and “new holding” have the same meaning as in section 127 or (as the case may be) that section as applied by virtue of the enactment in question.
- (7) For the purposes of subsection (1) above—
- (a) any shares to which relief under Chapter 3 of Part 7 of the Taxes Act [<sup>F538</sup> or relief under Part 5 of ITA 2007] is attributable and which were transferred to

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an individual as mentioned in section 304 of [<sup>F539</sup>the Taxes Act or section 245 of ITA 2007], and

- (b) any shares to which deferral relief (within the meaning of Schedule 5B to this Act), but not relief under that Chapter [<sup>F540</sup>or relief under that Part], is attributable and which were acquired by an individual on a disposal to which section 58 above applies,

shall be treated as acquired by the individual on the day on which they were issued.

- (8) In this section the references to Chapter 3 of Part 7, section 299 and section 304 of the Taxes Act shall be read as references to those provisions as they apply to shares issued after 31st December 1993 (enterprise investment scheme).

[ In this section references to Part 5 of ITA 2007 or any provision of that Part are to a <sup>F541</sup>(9) Part or provision that applies only in relation to shares issued after 5 April 2007.]

#### Textual Amendments

- F530** Ss. 105A, 105B inserted (with effect in accordance with s. 50(2)-(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **s. 50(1)**
- F531** Words in s. 105A substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 122(2)**, 146 (with [Sch. 8 paras. 147-157](#))
- F532** S. 105A(1)(b)(i)(ii) substituted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 5 para. 3(2)**
- F533** Word in s. 105A(1)(b)(ii) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 122(3)**, 146 (with [Sch. 8 paras. 147-157](#))
- F534** Words in s. 105A(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(2)(a)** (with [Sch. 2](#))
- F535** Words in s. 105A(4)(b) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(2)(b)** (with [Sch. 2](#))
- F536** Words in s. 105A(4)(b)(i) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(2)(c)** (with [Sch. 2](#))
- F537** Words in s. 105A(4)(b)(ii) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(2)(d)** (with [Sch. 2](#))
- F538** Words in s. 105A(7)(a) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(3)(a)** (with [Sch. 2](#))
- F539** Words in s. 105A(7)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(3)(b)** (with [Sch. 2](#))
- F540** Words in s. 105A(7) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(3)(c)** (with [Sch. 2](#))
- F541** S. 105A(9) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 306(4)** (with [Sch. 2](#))

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

- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(2)** (as amended (6.4.2008) by [S.I. 2008/704](#), regs. 1, 15(2), (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 87, 89**)

### 105B Provision supplementary to section 105A

- (1) The provisions of section 105A have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—
- (a) by the disposal, or

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- (b) by a transfer or delivery giving effect to it.
- (2) An election must be made, by a notice given to an officer of the Board, on or before the first anniversary of the 31st January next following the year of assessment in which the individual first makes a disposal of any of the relevant shares.
- (3) Where—
- (a) an election is made in respect of the relevant shares, and
  - (b) any shares (“the other shares”) acquired by the individual on the same day and in the same capacity as the relevant shares cease to be treated under section 104(4) as shares of a different class from the relevant shares,
- the election shall have effect in respect of the other shares from the time they cease to be so treated.
- (4) In determining for the purposes of section 105A(2) and subsection (2) above whether the individual has made a disposal of any of the relevant shares, sections 122(1) and 128(3) shall be disregarded.
- (5) No election may be made in respect of ordinary shares in a venture capital trust.
- For this purpose “ordinary shares” has the meaning given in section 151A(7).
- (6) For the purposes of section 105A, shares in a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange, or would be so treated if dealt with on that recognised stock exchange.
- (7) In section 105A(2) to (5) and subsections (2) to (4) above, any reference to the relevant shares or to the [<sup>F542</sup>tax-advantaged-scheme] shares includes a reference to the securities (if any) directly or indirectly derived from the shares in question by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains).
- (8) In this section—
- “the [<sup>F542</sup>tax-advantaged-scheme] shares” has the same meaning as in section 105A;
  - “election” means an election under that section;
  - “the relevant shares” has the same meaning as in that section; and
  - “securities” has the meaning given in section 104(3);
- and in subsection (4) the reference to section 128(3) includes a reference to that provision as it is applied by virtue of any enactment relating to chargeable gains.]

#### Textual Amendments

**F530** Ss. 105A, 105B inserted (with effect in accordance with s. 50(2)-(4) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 50\(1\)](#)

**F542** Words in s. 105B(7)(8) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 123, 146](#) (with [Sch. 8 paras. 147-157](#))

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

**C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\), regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704, regs. 1, 15\(2\)](#)), (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 87, 89](#))



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**<sup>F543</sup>106 Disposal of shares and securities by company within prescribed period of acquisition.**

.....

**Textual Amendments**

**F543** S. 106 repealed (with effect in accordance with s. 72(3) of the amending Act) by [Finance Act 2006](#) (c. 25), s. 72(1), [Sch. 26 Pt. 3\(9\)](#)

**[<sup>F544</sup>106A Identification of securities: <sup>F545</sup>... capital gains tax.**

- (1) This section has effect for the purposes of capital gains tax (but not corporation tax) where any securities are disposed of by any person.
- (2) The securities disposed of shall be identified in accordance with the following provisions of this section with securities of the same class that have been acquired by the person making the disposal.
- (3) The provisions of this section have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—
  - (a) by the disposal, or
  - (b) by a transfer or delivery giving effect to it;but where a person disposes of securities in one capacity, they shall not be identified under those provisions with any securities which he holds, or can dispose of, only in some other capacity.
- (4) Securities disposed of on an earlier date shall be identified before securities disposed of on a later date; and, accordingly, securities disposed of by a later disposal shall not be identified with securities already identified as disposed of by an earlier disposal.
- (5) Subject to subsection (4) above, if within the period of thirty days after the disposal the person making it acquires securities of the same class, the securities disposed of shall be identified—
  - (a) with securities acquired by him within that period, rather than with other securities; <sup>F546</sup>...
  - <sup>F547</sup>(aa) [ with securities acquired by him within that period which are not relevant EMI shares, rather than with securities acquired by him within that period which are relevant EMI shares; and]
  - (b) [<sup>F548</sup>subject to paragraph (aa),] with securities acquired at an earlier time within that period, rather than with securities acquired at a later time within that period.

[ None of the securities which, by virtue of subsection (5) above, are identified with <sup>F549</sup>(5ZA) other securities shall be regarded as forming part of an existing section 104 holding or as constituting a section 104 holding.]

[ Subsection (5) above shall not require securities to be identified with securities which <sup>F550</sup>(5A) the person making the disposal acquires at a time when—

- (a) he is [<sup>F551</sup>not resident] in the United Kingdom, or
- (b) he is resident <sup>F552</sup>... in the United Kingdom but is Treaty non-resident.]

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(6) Subject to subsections (4) and (5) above, [<sup>F553</sup>relevant] securities disposed of shall be identified with [<sup>F553</sup>relevant] securities acquired at a later time, rather than with [<sup>F553</sup>relevant] securities acquired at an earlier time.

<sup>F554</sup>(6A) [ Subject to subsections (4) and (5) above, a company's shares which are disposed of shall be identified—

- (a) with relevant EMI shares, rather than with other shares, and
- (b) with relevant EMI shares acquired at an earlier time rather than with relevant EMI shares acquired at a later time.

(6B) No shares identified with relevant EMI shares by virtue of subsection (6A)(a) or (b) above shall be regarded as forming part of an existing section 104 holding or as constituting a section 104 holding.]

<sup>F555</sup>(7) . . . . .

<sup>F556</sup>(8) . . . . .

(9) The identification rules set out in the preceding provisions of this section have effect subject to subsection (1) of section 105, and securities disposed of shall not be identified with securities acquired after the disposal except in accordance with that section or subsection (5) above.

[<sup>F557</sup>(10) In this section—

[<sup>F558</sup>“relevant EMI shares” has the meaning given by section 169I(7C) to (7G),]

“securities” means any securities within the meaning of section 104 or any relevant securities, and

“relevant securities” means—

- (a) securities within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits),
- (b) qualifying corporate bonds, and
- (c) [<sup>F559</sup>securities which are interests in a non-reporting fund, within the meaning of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (see regulation 4(2)).]

(11) For the purposes of this section securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange, or would be so treated if dealt with on that recognised stock exchange.]

#### Textual Amendments

**F544** S. 106A inserted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 124\(1\)](#) (with s. 124(8))

**F545** Words in s. 106A heading omitted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 87\(7\)](#)

**F546** Word in s. 106A(5) omitted (with effect in accordance with Sch. 24 paras. 5, 6(4)(5) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 4\(2\)\(a\)](#)

**F547** S. 106A(5)(aa) inserted (with effect in accordance with Sch. 24 paras. 5, 6(4)(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 4\(2\)\(b\)](#)

**F548** Words in s. 106A(5)(b) inserted (with effect in accordance with Sch. 24 paras. 5, 6(4)(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 4\(2\)\(c\)](#)

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- F549** S. 106A(5ZA) inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 87\(2\)](#)
- F550** S. 106A(5A) inserted (with effect in accordance with s. 74(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 74\(2\)](#)
- F551** Words in s. 106A(5A)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 97\(a\)](#)
- F552** Words in s. 106A(5A)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 97\(b\)](#)
- F553** Word in s. 106A(6) inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 87\(3\)](#)
- F554** S. 106A(6A)(6B) inserted (with effect in accordance with Sch. 24 paras. 5, 6(4)(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 4\(3\)](#)
- F555** S. 106A(7) omitted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 87\(4\)](#)
- F556** S. 106A(8) omitted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 87\(5\)](#)
- F557** S. 106A(10) substituted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 87\(6\)](#)
- F558** Words in s. 106A(10) inserted (with effect in accordance with Sch. 24 paras. 5, 6(4)(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 4\(4\)](#)
- F559** Words in s. 106A(10) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), [regs. 1\(1\), 44\(4\)](#)

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

- C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), [reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), [regs. 1\(1\), 12](#))
- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), [regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704](#), [regs. 1, 15\(2\)](#), (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 87, 89](#))
- C132** S. 106A modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), [reg. 27\(3\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), [regs. 1\(1\), 12](#))
- C133** S. 106A modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), [regs. 1, 34\(3\)](#)

## **107 Identification of securities etc: general rules [<sup>F560</sup>for corporation tax].**

[<sup>F561</sup>(1) This section has effect for the purposes of corporation tax where any securities are disposed of by a company.

(1A) The securities disposed of shall be identified in accordance with the following provisions of this section with securities of the same class that have been acquired by the company making the disposal and could be comprised in that disposal.

(2) The provisions of this section have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—

- (a) by the disposal, or
- (b) by a transfer or delivery giving effect to it;

but where a company disposes of securities in one capacity, they shall not be identified with securities which it holds, or can dispose of, only in some other capacity.]

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- (3) Without prejudice to section 105 if, within a period of 10 days, a number of securities are acquired and subsequently a number of securities are disposed of and, apart from this subsection—
- (a) the securities acquired would increase the size of, or constitute a [<sup>F562</sup>section 104 holding], and
  - (b) the securities disposed of would decrease the size of, or extinguish, the same [<sup>F562</sup>section 104 holding],
- then, subject to subsections (4) and (5) 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 [<sup>F562</sup>section 104 holding] or constituting a [<sup>F562</sup>section 104 holding].
- (4) If, in a case falling within subsection (3) above, the number of securities acquired exceeds the number disposed of—
- (a) the excess shall be regarded as forming part of an existing [<sup>F562</sup>section 104 holding] or, as the case may be, as constituting a [<sup>F562</sup>section 104 holding]; and
  - (b) if the securities acquired were acquired at different times (within the 10 days referred to in subsection (3) above) the securities disposed of shall be identified with securities acquired at an earlier time rather than with securities acquired at a later time.
- (5) If, in a case falling within subsection (3) above, the number of securities disposed of exceeds the number acquired, the excess shall not be identified in accordance with that subsection.
- (6) Securities which, by virtue of subsection (3) above, do not form part of or constitute a [<sup>F562</sup>section 104 holding] shall be treated for the purposes of section 54(2) as relevant securities within the meaning of section 108.
- (7) The identification rules set out in subsections (8) and (9) below have effect subject to section 105 but, subject to that, have priority according to the order in which they are so set out.
- (8) Securities disposed of shall be identified with securities forming part of a [<sup>F562</sup>section 104 holding] rather than with other securities.
- (9) Securities disposed of shall be identified with securities forming part of a 1982 holding, within the meaning of section 109, rather than with other securities and, subject to that, shall be identified with securities acquired at a later time rather than with securities acquired at an earlier time.

#### Textual Amendments

**F560** Words in s. 107 heading inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 88](#)

**F561** S. 107(1)(1A)(2) substituted for s. 107(1)(2) (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 124\(3\)](#)

**F562** Words in s. 107 substituted (with effect in accordance with s. 123(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 123\(5\)\(b\)](#)

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

**C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), [reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), [regs. 1\(1\), 12](#))

*Status: Point in time view as at 16/11/2017.*

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- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(2)** (as amended (6.4.2008) by [S.I. 2008/704](#), regs. 1, 15(2), (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), Sch. 8 paras. 87, 89)
- C134** S. 107 modified by [S.I. 1989/469](#), **reg. 27A(2A)** (as inserted (6.4.1996) by [S.I. 1996/846](#), **reg. 11(b)**)
- C135** S. 107 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 93(6)**
- C136** S. 107 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 76(4), 1184(1)** (with Sch. 2)

## 108 Identification of relevant securities <sup>F563</sup>for corporation tax].

<sup>F564</sup>(A1) This section has effect for the purposes of corporation tax where any relevant securities are disposed of by a company.]

- (1) In this section “relevant securities” means—
- (a) securities, within the meaning of <sup>F565</sup>Chapter 2 of Part 12 of ITA 2007 (accrued income profits)];
  - <sup>F566</sup>(aa) qualifying corporate bonds;]
  - <sup>F567</sup>(b) ..... ; and
  - (c) securities which are <sup>F568</sup>... <sup>F569</sup>interests in a non-reporting fund, within the meaning of regulations <sup>F570</sup>under section 354(1) of TIOPA 2010] (see Part 2 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001));]

and shares or securities of a company shall not be treated for the purposes of this section as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

- (2) Where a <sup>F571</sup>company] disposes of relevant securities, the securities disposed of shall be identified in accordance with the rules contained in this section with the securities of the same class acquired by <sup>F572</sup>the company] which could be comprised in that disposal, and shall be so identified notwithstanding that they are otherwise identified by the disposal or by a transfer or delivery giving effect to it (but so that where a <sup>F571</sup>company] disposes of securities in one capacity, they shall not be identified with securities which <sup>F572</sup>it] holds or can dispose of only in some other capacity).
- (3) Relevant securities disposed of on an earlier date shall be identified before securities disposed of on a later date, and the identification of the securities first disposed of shall accordingly determine the securities which could be comprised in the later disposal.
- (4) Relevant securities disposed of for transfer or delivery on a particular date or in a particular period—
- (a) shall not be identified with securities acquired for transfer or delivery on a later date or in a later period; and
  - (b) shall be identified with securities acquired for transfer or delivery on or before that date or in or before that period, but on or after the date of the disposal, rather than with securities not so acquired.
- (5) The relevant securities disposed of shall be identified—
- (a) with securities acquired within the 12 months preceding the disposal rather than with securities not so acquired, and with securities so acquired on an earlier date rather than with securities so acquired on a later date, and

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- (b) subject to paragraph (a) above, with securities acquired on a later date rather than with securities acquired on an earlier date; and
  - (c) with securities acquired at different times on any one day in as nearly as may be equal proportions.
- (6) The rules contained in the preceding subsections shall have priority according to the order in which they are so contained.
- (7) Notwithstanding anything in subsections (3) to (5) above, where, under arrangements designed to postpone the transfer or delivery of relevant securities disposed of, a [<sup>F573</sup>company] by a single bargain acquires securities for transfer or delivery on a particular date or in a particular period and disposes of them for transfer or delivery on a later date or in a later period, then—
- (a) the securities disposed of by that bargain shall be identified with the securities thereby acquired; and
  - (b) securities previously disposed of which, but for the operation of paragraph (a) above in relation to acquisitions for transfer or delivery on the earlier date or in the earlier period, would have been identified with the securities acquired by that bargain—
    - (i) shall, subject to subsection (3) above, be identified with any available securities acquired for such transfer or delivery (that is to say, any securities so acquired other than securities to which paragraph (a) above applies and other than securities with which securities disposed of for such transfer or delivery would be identified apart from this subsection); and
    - (ii) in so far as they cannot be so identified shall be treated as disposed of for transfer or delivery on the later date, or in the later period, mentioned above.
- (8) This section <sup>F574</sup>... shall not apply—
- (a) where the disposal is of quoted securities (within the meaning of paragraph 8 of Schedule 2), unless an election has been made with respect to the securities under paragraph 4 of that Schedule or under section 109(4), or
  - (b) where the disposal is of securities as respects which paragraph 17 or 18 of Schedule 2 has effect.

#### Textual Amendments

- F563** Words in s. 108 heading inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 89](#)
- F564** S. 108(A1) inserted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 124\(4\)](#)
- F565** Words in s. 108(1)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1034\(1\)](#), [Sch. 1 para. 307](#) (with [Sch. 2](#))
- F566** S. 108(1)(aa) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 59](#) (with [Sch. 15](#))
- F567** S. 108(1)(b) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))
- F568** Words in s. 108(1)(c) repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 127\(2\)\(a\)](#), [Sch. 2](#)
- F569** Words in s. 108(1)(c) substituted (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 127\(2\)\(b\)](#)

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- F570** Words in s. 108(1)(c) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 164](#) (with [Sch. 9 paras. 1-9, 22](#))
- F571** Word in s. 108(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(5\)\(a\)](#)
- F572** Words in s. 108(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(5\)\(b\)](#)
- F573** Word in s. 108(7) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(5\)\(a\)](#)
- F574** Words in s. 108(8) repealed (with effect in accordance with s. 72(3) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 72\(2\)\(c\), Sch. 26 Pt. 3\(9\)](#)

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

- C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\), reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869, regs. 1\(1\), 12](#))
- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\), regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704, regs. 1, 15\(2\)](#), (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 87, 89](#))

**109** [<sup>F575</sup>Corporation tax: pre-April] 1982 share pools.

- (1) [<sup>F576</sup>For the purposes of corporation tax, this] section has effect in relation to any 1982 holding, and in this section “1982 holding” means a holding which, immediately before the coming into force of this section, was a 1982 holding for the purposes of Part II of Schedule 19 to the <sup>M8</sup>Finance Act 1985.
- (2) Subject to subsections (3) to (5) below—
- the holding shall continue to be regarded as a single asset for the purposes of this Act [<sup>F577</sup>(subject to express provision to the contrary)], but one which cannot grow by the acquisition of additional securities of the same class, and
  - every sum, which on a disposal of the holding, would be an item of relevant allowable expenditure shall be regarded for the purposes of section 54 as having been incurred at such a time that the month which determines RI in the formula in subsection (1) of that section is March 1982.

Securities of a company shall not be treated for the purposes of this section as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

- (3) Nothing in subsection (2) above affects the operation of section 127 in relation to the holding, but without prejudice to section 131.
- (4) If a person so elects, quoted securities, as defined in paragraph 8 of Schedule 2 which are covered by the election—
- shall be treated as an accretion to an existing 1982 holding or, as the case may be, as constituting a new 1982 holding; and
  - shall be excluded from paragraph 2 of that Schedule;
- and the relevant allowable expenditure which is attributable to that 1982 holding shall be adjusted or determined accordingly.
- (5) Paragraphs 4(8) to (13) and 5 to 8 of Schedule 2 shall apply in relation to an election under subsection (4) above as they apply in relation to an election under paragraph

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4(2) of that Schedule, but with the substitution for any reference to 19th March 1968 of a reference to 31st March 1985 in the case of holdings or disposals by companies and 5th April 1985 in any other case.

- (6) For the purpose of computing the indexation allowance (if any) on a disposal of a 1982 holding, the relevant allowable expenditure attributable to the holding on the coming into force of this section shall be the amount which, if the holding had been disposed of immediately before the coming into force of this section, would have been the relevant allowable expenditure in relation to that holding on that disposal, and for the purposes of section 54(4) relevant allowable expenditure attributable to a 1982 holding shall be deemed to be expenditure falling within section 38(1)(a).

#### Textual Amendments

- F575** Words in s. 109 heading substituted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 90(3)**
- F576** Words in s. 109(1) substituted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 90(2)**
- F577** Words in s. 109(2)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 18(1)(2)**

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

- C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), **regs. 1(1), 12**)
- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), **regs. 1, 34(2)** (as amended (6.4.2008) by [S.I. 2008/704](#), **regs. 1, 15(2)**, (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 87, 89**)

#### Marginal Citations

- M8** 1985 c. 54.

### 110 [<sup>F578</sup>Indexation for section 104 holdings for corporation tax].

- (1) [<sup>F579</sup>For the purposes of corporation tax this] section and section 114—
- apply in place of section 54 in relation to a disposal of a [<sup>F580</sup>section 104 holding] for the purpose of computing the indexation allowance;
  - have effect subject to [<sup>F581</sup>section 105].
- (2) On any disposal of a [<sup>F580</sup>section 104 holding], other than a disposal of the whole of it—
- the qualifying expenditure and the indexed pool of expenditure shall each be apportioned between the part disposed of and the remainder in the same proportions as, under this Act, the relevant allowable expenditure is apportioned; and
  - the indexation allowance is the amount by which the portion of the indexed pool which is attributed to the part disposed of exceeds the portion of the qualifying expenditure which is attributed to that part.
- (3) On a disposal of the whole of a [<sup>F580</sup>section 104 holding], the indexation allowance is the amount by which the indexed pool of expenditure at the time of the disposal exceeds the qualifying expenditure at that time.



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- (4) In relation to a [<sup>F580</sup>section 104 holding], the qualifying expenditure is at any time the amount which would be the aggregate of the relevant allowable expenditure in relation to a disposal of the whole of the holding occurring at that time.
- (5) Subject to subsection (6) below and section 114 the indexed pool of expenditure shall come into being at the time that the holding comes into being or, if it is earlier, when any of the qualifying expenditure is incurred and shall at the time it comes into being be the same as the qualifying expenditure at that time.
- (6) In relation to a [<sup>F580</sup>section 104 holding] which was in existence immediately before the coming into force of this section, the indexed pool of expenditure on the coming into force of this section shall be the same as it was for the purposes of Part III of Schedule 19 to the <sup>M9</sup>Finance Act 1985 immediately before then.
- [<sup>F582</sup>(6A) Where a disposal to a person acquiring or adding to a [<sup>F580</sup>section 104 holding] is treated by virtue of any enactment as one on which neither a gain nor a loss accrues to the person making the disposal—
  - (a) section 56(2) shall not apply to the disposal (and, accordingly, the amount of the consideration shall not be calculated on the assumption that a gain of an amount equal to the indexation allowance accrues to the person making the disposal), but
  - (b) an amount equal to the indexation allowance on the disposal shall be added to the indexed pool of expenditure for the holding acquired or, as the case may be, held by the person to whom the disposal is made (and, where it is added to the indexed pool of expenditure for a holding so held, it shall be added after any increase required by subsection (8)(a) below).]
- (7) Any reference below to an operative event is a reference to any event (whether a disposal or otherwise) which has the effect of reducing or increasing the qualifying expenditure referable to the [<sup>F580</sup>section 104 holding].
- (8) Whenever an operative event occurs—
  - (a) there shall be added to the indexed pool of expenditure the indexed rise, as calculated under subsection (10) or (11) below, in the value of the pool since the last operative event or, if there has been no previous operative event, since the pool came into being; and
  - (b) if the operative event results in an increase in the qualifying expenditure then, in addition to any increase under paragraph (a) above, the same increase shall be made to the indexed pool of expenditure; and
  - (c) if the operative event is a disposal resulting in a reduction in the qualifying expenditure, the indexed pool of expenditure shall be reduced in the same proportion as the qualifying expenditure is reduced; and
  - (d) if the operative event results in a reduction in the qualifying expenditure but is not a disposal, the same reduction shall be made to the indexed pool of expenditure.
- (9) Where the operative event is a disposal—
  - (a) any addition under subsection (8)(a) above shall be made before the calculation of the indexation allowance under subsection (2) above; and
  - (b) the reduction under subsection (8)(c) above shall be made after that calculation.

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- (10) At the time of any operative event, the indexed rise in the indexed pool of expenditure is a sum produced by multiplying the value of the pool immediately before the event by a figure expressed as a decimal and determined, subject to subsection (11) below, by the formula—

$$\frac{RE - RL}{RL}$$

where—

RE is the retail prices index for the month in which the operative event occurs; and

RL is the retail prices index for the month in which occurred the immediately preceding operative event or, if there has been no such event, in which the indexed pool of expenditure came into being.

- (11) If RE, as defined in subsection (10) above, is equal to or less than RL, as so defined, the indexed rise is nil.

#### Textual Amendments

- F578** Words in s. 110 heading substituted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 91](#)
- F579** Words in s. 110(1) substituted (with effect in accordance with s. 125(4)(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 125\(1\)](#)
- F580** Words in s. 110 substituted (with effect in accordance with s. 123(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 123\(5\)\(b\)](#)
- F581** Words in s. 110(1)(b) substituted (with effect in accordance with s. 72(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 72\(2\)\(d\)](#)
- F582** S. 110(6A) inserted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 93\(6\)](#) (with [Sch. 12](#))

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

- C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), [reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), [regs. 1\(1\), 12](#))
- C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), [regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704](#), [regs. 1, 15\(2\)](#), (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 87, 89](#))

#### Marginal Citations

- M9** 1985 c. 54.

<sup>F583</sup> **110A** Indexation for section 104 holdings: capital gains tax.

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#### Textual Amendments

**F583** S. 110A omitted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 92**

### <sup>F584</sup>**111 Indexation: building society etc. shares.**

.....

#### Textual Amendments

**F584** S. 111 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

### **112 Parallel pooling regulations<sup>F585</sup>: corporation tax].**

- (1) The <sup>M10</sup>Capital Gains Tax (Parallel Pooling) Regulations 1986 made by the Treasury under paragraph 21 of Schedule 19 to the <sup>M11</sup>Finance Act 1985 shall continue to have effect notwithstanding the repeal by this Act of that Schedule, and for the purposes of section 14 of the <sup>M12</sup>Interpretation Act 1978 that paragraph shall be deemed not to have been repealed.
- (2) An election under Schedule 6 to the <sup>M13</sup>Finance Act 1983 which has not been revoked before 6th April 1992 shall not have effect in relation to any disposal after 5th April 1992 and may, if the Board allow, be revoked by notice to the inspector.
- (3) All such adjustments shall be made, whether by way of discharge or repayment of tax, or the making of assessments or otherwise, as are required in consequence of a revocation under subsection (2) above.

#### Textual Amendments

**F585** Words in s. 112 heading inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 93**

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

**C124** Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1), 12**)

**C127** Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), **regs. 1, 34(2)** (as amended (6.4.2008) by S.I. 2008/704, **regs. 1, 15(2)**, (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 87, 89**)

#### Marginal Citations

**M10** S.I.1986/387.  
**M11** 1985 c. 54.  
**M12** 1978 c. 30.  
**M13** 1983 c. 28.

*Status: Point in time view as at 16/11/2017.*

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### 113 Calls on shares<sup>[F586]</sup>: corporation tax].

[<sup>F587</sup>(A1) This section has effect for the purposes of corporation tax.]

- (1) Subsection (2) below applies where—
  - (a) on a disposal to which section 53 applies, the relevant allowable expenditure is or includes the amount or value of the consideration given for the issue of shares or securities in, or debentures of, a company; and
  - (b) the whole or some part of that consideration was given after the expiry of the period of 12 months beginning on the date of the issue of the shares, securities or debentures.
- (2) For the purpose of computing the indexation allowance (if any) on the disposal referred to in subsection (1)(a) above—
  - (a) so much of the consideration as was given after the expiry of the period referred to in subsection (1)(b) above shall be regarded as an item of expenditure separate from any consideration given during that period; and
  - (b) section 54(4) shall not apply to that separate item of expenditure which, accordingly, shall be regarded as incurred at the time the consideration in question was actually given.

#### Textual Amendments

**F586** Words in s. 113 heading inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 94\(3\)](#)

**F587** S. 113(A1) inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 94\(2\)](#)

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

**C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), [reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), [regs. 1\(1\), 12](#))

**C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), [regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704](#), [regs. 1, 15\(2\)](#), (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 87, 89](#))

### 114 Consideration for options<sup>[F588]</sup>: corporation tax].

[<sup>F589</sup>(A1) This section has effect for the purposes of corporation tax.]

- (1) If, in a case where section 110(8)(b) applies, the increase in the qualifying expenditure is, in whole or in part, attributable to the cost of acquiring an option binding the grantor to sell (“the option consideration”), then, in addition to any increase under section 110(8)(a) or (b), the indexed pool of expenditure shall be increased by an amount equal to the indexed rise in the option consideration, as determined under subsection (2) below.
- (2) The indexed rise in the option consideration is a sum produced by multiplying the consideration by a figure expressed as a decimal and determined, subject to subsection (3) below, by the formula—

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**RO – RA**

**RA**

where—

RO is the retail prices index for the month in which falls the date on which the option is exercised; and

RA is the retail prices index for the month in which falls the date in which the option was acquired or, if it is later, March 1982.

- (3) If RO, as defined in subsection (2) above, is equal to or less than RA, as so defined, the indexed rise is nil.

#### Textual Amendments

**F588** Words in s. 114 heading inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 95\(3\)](#)

**F589** S. 114(A1) inserted (with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 95\(2\)](#)

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

**C124** Ss. 104-114 modified by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), [reg. 27\(2\)](#) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), [regs. 1\(1\), 12](#))

**C127** Ss. 104-114 modified (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), [regs. 1, 34\(2\)](#) (as amended (6.4.2008) by [S.I. 2008/704](#), [regs. 1, 15\(2\)](#), (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 87, 89](#))

### *Gilt-edged securities and qualifying corporate bonds*

#### **115 Exemptions for gilt-edged securities and qualifying corporate bonds etc.**

- (1) A gain which accrues on the disposal by any person of—
- (a) gilt-edged securities or qualifying corporate bonds, or
  - (b) any option or contract to acquire or dispose of gilt-edged securities or qualifying corporate bonds,
- shall not be a chargeable gain.
- (2) In subsection (1) above the reference to the disposal of a contract to acquire or dispose of gilt-edged securities or qualifying corporate bonds is a reference to the disposal of the outstanding obligations under such a contract.
- (3) Without prejudice to section 143(5), where a person who has entered into any such contract as is referred to in subsection (1)(b) above closes out that contract by entering into another contract with obligations which are reciprocal to those of the first-mentioned contract, that transaction shall for the purposes of this section constitute the disposal of an asset, namely, his outstanding obligations under the first-mentioned contract.

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## 116 Reorganisations, conversions and reconstructions.

- (1) This section shall have effect in any case where a transaction occurs of such a description that, apart from the provisions of this section—
- (a) sections 127 to 130 would apply by virtue of any provision of Chapter II of this Part; and
  - (b) either the original shares would consist of or include a qualifying corporate bond and the new holding would not, or the original shares would not and the new holding would consist of or include such a bond;
- and in paragraph (b) above “the original shares” and “the new holding” have the same meaning as they have for the purposes of sections 127 to 130.
- (2) In this section [F590] references to a transaction include references to any conversion of securities (whether or not effected by a transaction) within the meaning of section 132 and] “relevant transaction” means a reorganisation, conversion of securities or other transaction such as is mentioned in subsection (1) above, and, in addition to its application where the transaction takes place after the coming into force of this section, subsection (10) below applies where the relevant transaction took place before the coming into force of this section so far as may be necessary to enable any gain or loss deferred under paragraph 10 of Schedule 13 to the M14 Finance Act 1984 to be taken into account on a subsequent disposal.
- (3) Where the qualifying corporate bond referred to in subsection (1)(b) above would constitute the original shares for the purposes of sections 127 to 130, it is in this section referred to as “the old asset” and the shares or securities which would constitute the new holding for those purposes are referred to as “the new asset”.
- (4) Where the qualifying corporate bond referred to in subsection (1)(b) above would constitute the new holding for the purposes of sections 127 to 130, it is in this section referred to as “the new asset” and the shares or securities which would constitute the original shares for those purposes are referred to as “the old asset”.
- [F591] (4A) In determining for the purposes of subsections (1) to (4) above, as they apply for the purposes of corporation tax—
- (a) whether sections 127 to 130 would apply in any case, and
  - (b) what, in a case where they would apply, would constitute the original shares and the new holding,
- it shall be assumed that every asset representing a loan relationship of a company is a security within the meaning of section 132.]
- (5) So far as the relevant transaction relates to the old asset and the new asset, sections 127 to 130 shall not apply in relation to it.
- (6) In accordance with subsection (5) above, the new asset shall not be treated as having been acquired on any date other than the date of the relevant transaction or, subject to subsections (7) and (8) below, for any consideration other than the market value of the old asset as determined immediately before that transaction.
- (7) If, on the relevant transaction, the person concerned receives, or becomes entitled to receive, any sum of money which, in addition to the new asset, is by way of consideration for the old asset, that sum shall be deducted from the consideration referred to in subsection (6) above.

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- (8) If, on the relevant transaction, the person concerned gives any sum of money which, in addition to the old asset, is by way of consideration for the new asset, that sum shall be added to the consideration referred to in subsection (6) above.
- <sup>F592</sup><sup>F593</sup>(8A) Where subsection (6) above applies for the purposes of corporation tax in a case where the old asset consists of a qualifying corporate bond, <sup>F594</sup>Part 5 of CTA 2009] (loan relationships) shall have effect<sup>F595</sup>, subject to subsection (8B) below,] so as to require such debits and credits to be brought into account for the purposes of <sup>F594</sup>that Part] in relation to the relevant transaction as would have been brought into account if the transaction had been a disposal of the old asset at the market value mentioned in <sup>F596</sup>subsection (6) above].
- <sup>F597</sup>This subsection does not apply in relation to a <sup>F598</sup>relevant loan relationship transaction].]
- <sup>F599</sup>(8AA) In subsection (8A) “relevant loan relationship transaction” means a transaction to which any of the following provisions applies—
- section 342 of CTA 2009 (continuity of treatment on transfers within groups or reorganisations: issues of new securities on reorganisations: disposal at notional carrying value),
  - section 343 of that Act (continuity of treatment on transfers within groups or reorganisations: receiving company using fair value accounting),
  - section 424 of that Act (European cross-border transfers of business: reorganisations involving loan relationships),
  - section 425 of that Act (European cross-border transfers of business: original holder using fair value accounting),
  - section 435 of that Act (European cross-border mergers: reorganisations involving loan relationships),
  - section 436 of that Act (European cross-border mergers: original holder using fair value accounting).]
- <sup>F592</sup><sup>F600</sup>(8B) Subsection (8A) above does not apply where the relevant transaction is a conversion of securities occurring in consequence of the operation of the terms of any security or of any debenture which is not a security.
- Expressions used in this subsection have the same meaning as they have for the purposes of section 132.]
- (9) In any case where the old asset consists of a qualifying corporate bond, then, so far as it relates to the old asset and the new asset, the relevant transaction shall be treated for the purposes of this Act as a disposal of the old asset and an acquisition of the new asset.
- (10) Except in a case falling within subsection (9) above, so far as it relates to the old asset and the new asset, the relevant transaction shall be treated for the purposes of this Act as not involving any disposal of the old asset but—
- (a) there shall be calculated the chargeable gain or allowable loss that would have accrued if, at the time of the relevant transaction, the old asset had been disposed of for a consideration equal to its market value immediately before that transaction; and
  - (b) subject to subsections (12) to (14) below, the whole or a corresponding part of the chargeable gain or allowable loss mentioned in paragraph (a) above shall

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be deemed to accrue on a subsequent disposal of the whole or part of the new asset (in addition to any gain or loss that actually accrues on that disposal); and

- (c) on that subsequent disposal, section 115 shall have effect only in relation to any gain or loss that actually accrues and not in relation to any gain or loss which is deemed to accrue by virtue of paragraph (b) above.

- (11) Subsection (10)(b) and (c) above shall not apply to any disposal falling within section 58(1), 62(4), 139, [<sup>F601</sup>140A,][<sup>F602</sup>140E,][<sup>F603</sup>or 171(1)], but a person who has acquired the new asset on a disposal falling within any of those sections (and without there having been a previous disposal not falling within any of those sections or a devolution on death) shall be treated for the purposes of subsection (10)(b) and (c) above as if the new asset had been acquired by him at the same time and for the same consideration as, having regard to subsections (5) to (8) above, it was acquired by the person making the disposal.

- (12) In any case where—

- (a) on the calculation under subsection (10)(a) above, a chargeable gain would have accrued, and  
 (b) the consideration for the old asset includes such a sum of money as is referred to in subsection (7) above,

then, subject to subsection (13) below, the proportion of that chargeable gain which that sum of money bears to the market value of the old asset immediately before the relevant transaction shall be deemed to accrue at the time of that transaction.

- (13) If<sup>F604</sup> ... the sum of money referred to in subsection (12)(b) above is small, as compared with the market value of the old asset immediately before the relevant transaction,<sup>F604</sup> ... subsection (12) above shall not apply.

- (14) In a case where subsection (12) above applies, the chargeable gain which, apart from that subsection, would by virtue of subsection (10)(b) above be deemed to accrue on a subsequent disposal of the whole or part of the new asset shall be reduced or, as the case may be, extinguished by deducting therefrom the amount of the chargeable gain which, by virtue of subsection (12) above, is deemed to accrue at the time of the relevant transaction.

- (15) In any case where—

- (a) the new asset mentioned in subsections (10) and (11) above is a qualifying corporate bond in respect of which an allowable loss is treated as accruing under section 254(2), and  
 (b) the loss is treated as accruing at a time falling after the relevant transaction but before any actual disposal of the new asset subsequent to the relevant transaction,

then for the purposes of subsections (10) and (11) above a subsequent disposal of the new asset shall be treated as occurring at (and only at) the time the loss is treated as accruing.

- [<sup>F605</sup>(16) This section has effect for the purposes of corporation tax notwithstanding anything in [<sup>F606</sup>section 464(1) of CTA 2009] (matters to be brought into account in the case of loan relationships only under [<sup>F606</sup>Part 5] of that Act).]



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### Textual Amendments

- F590** Words in s. 116(2) inserted (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 88\(4\)](#)
- F591** S. 116(4A) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 14 para. 60\(2\)](#) (with [Sch. 15](#))
- F592** S. 116(8A)(8B) ceased to have effect by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), Sch. 1 para. 10, but that ceasing to have effect deemed never to have had effect by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 5
- F593** S. 116(8A) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 14 para. 60\(3\)](#) (with [Sch. 15](#))
- F594** Words in s. 116(8A) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 366\(2\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F595** Words in s. 116(8A) inserted (with effect in accordance with Sch. 6 para. 8(3) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 6 para. 8\(1\)\(a\)](#)
- F596** Words in s. 116(8A) substituted (with effect in accordance with Sch. 6 para. 8(3) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 6 para. 8\(1\)\(b\)](#)
- F597** Words in s. 116(8A) inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), [Sch. 1 para. 2](#)
- F598** Words in s. 116(8A) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 366\(2\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F599** S. 116(8AA) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 366\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F600** S. 116(8B) inserted (with effect in accordance with Sch. 6 para. 8(3) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 6 para. 8\(2\)](#)
- F601** Words in s. 116(11) inserted (*retrosp.*) by 1992 c. 48, [s. 46\(1\)\(3\)](#)
- F602** Word in s. 116(11) inserted (with effect in accordance with s. 64(5) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 64\(1\)](#)
- F603** Words in s. 116(11) substituted (with effect in accordance with Sch. 29 para. 19(2) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 19\(1\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F604** Words in s. 116(13) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 51, Sch. 41 Pt. V\(10\)](#)
- F605** S. 116(16) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 14 para. 60\(4\)](#) (with [Sch. 15](#))
- F606** Words in s. 116(16) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 366\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))

### Modifications etc. (not altering text)

- C137** S. 116 modified (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 98, Sch. 10 para. 5\(1\)\(3\)](#)
- C138** S. 116 modified (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 105, Sch. 15 para. 30\(2\)](#)
- C139** S. 116 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\), s. 149\(1\), Sch. 7 para. 7\(1\)\(b\)](#) (with [Sch. 7 para. 9\(1\)](#))
- C140** S. 116 modified (with effect in accordance with s. 66(1) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 66\(2\)](#)
- C141** S. 116 applied (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 15 para. 80\(1\)](#)
- C142** S. 116 modified (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 15 para. 88](#)

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- C143** S. 116 modified by [Finance Act 1996 \(c. 8\)](#), s. 91G(3)-(8) (as inserted (with effect in accordance with Sch. 7 para. 10(7) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), Sch. 7 para. 10(6))
- C144** S. 116 excluded by [Income Tax Act 2007 \(c. 3\)](#), s. 809FZD(4) (as inserted (with effect in accordance with s. 37(4) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 37\(2\)](#))
- C145** S. 116(10) excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 81\(2\)](#))
- C146** S. 116(10) excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [regs. 1\(1\)](#), [66\(1\)](#))
- C147** S. 116(10)(a) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Exchange Gains and Losses \(Bringing into Account Gains or Losses\) Regulations 2002 \(S.I. 2002/1970\)](#), [regs. 1\(1\)](#), [9\(4\)\(a\)](#))

#### Marginal Citations

**M14** 1984 c. 43.

### [<sup>F607</sup> 116A] Holding beginning or ceasing to fall within section 490 of CTA 2009

- (1) Section 116 applies in accordance with the following assumptions if—
  - (a) a holding that is a relevant holding for the purposes of section 490 of CTA 2009 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights) is held by a company both at the end of one accounting period and at the beginning of the next, and
  - (b) that section applies to the holding for one of those periods but not for the other.
- (2) The assumptions in subsections (3) and (4) apply for the purposes of this Act if the accounting period for which section 490 of CTA 2009 applies to the relevant holding is the first of those periods.
- (3) The relevant holding is assumed to have ceased to be a relevant holding for the second of those periods as a result of a transaction such as is mentioned in section 116(1) (“the reorganisation transaction”) occurring at the beginning of that period.
- (4) In relation to the reorganisation transaction within subsection (3), for the purposes of section 116—
  - (a) the relevant holding immediately before the beginning of the second of those periods is assumed to be the old asset, and
  - (b) the relevant holding immediately after the beginning of that period is assumed to be the new asset.
- (5) The assumptions in subsections (6) and (8) apply for the purposes of this Act if the accounting period for which section 490 of CTA 2009 applies to the relevant holding is the second of those periods.
- (6) The holding is assumed to have become a relevant holding for the second of those periods as a result of the occurrence at the end of first period of a transaction such as is mentioned in section 116(1).
- (7) But subsection (6) does not apply if the first of those periods is a period at the end of which a disposal of the relevant holding is treated as having occurred under section 212 (annual deemed disposal of holdings of unit trusts etc by insurance companies).
- (8) In relation to the reorganisation transaction within subsection (6), for the purposes of section 116—

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- (a) the relevant holding immediately before the beginning of the second of those periods is assumed to be the old asset, and
- (b) the relevant holding immediately after the beginning of that period is assumed to be the new asset.

#### Textual Amendments

**F607** Ss. 116A, 116B inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 367** (with **Sch. 2 Pts. 1, 2**)

### 116B Shares beginning or ceasing to be shares to which section <sup>[F608]</sup>521B of CTA 2009 applies

- (1) If at any time section <sup>[F609]</sup>521B of CTA 2009 (application of Part 5 of that Act to certain shares as rights under a creditor relationship) begins or ceases to apply in the case of a share held by the investing company it is treated for the purposes of this Act—
  - (a) as having disposed of the share immediately before that time for consideration of an amount equal to <sup>[F610]</sup>the notional carrying value of the share] at that time, and
  - (b) as having immediately reacquired it for consideration of the same amount.

- (2) In this section—

<sup>[F611]</sup>“notional carrying value” has the same meaning as in subsection (2) of section 521F of CTA 2009 (see subsection (3) of that section).]

“investing company” has the same meaning as it has for the purposes of Chapter <sup>[F612]</sup>6A of Part 6 of that Act (shares <sup>[F613]</sup>accounted for as liabilities) (see section 521A(3)] of that Act).]

#### Textual Amendments

**F607** Ss. 116A, 116B inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 367** (with **Sch. 2 Pts. 1, 2**)

**F608** Word in s. 116B heading substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 24 paras. 5(2), 12**

**F609** Word in s. 116B(1) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 24 paras. 5(2), 12**

**F610** Words in s. 116B(1)(a) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 24 paras. 5(3), 12**

**F611** Words in s. 116B(2) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 24 paras. 5(4), 12**

**F612** Figure in s. 116B(2) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 24 paras. 5(5)(a), 12**

**F613** Words in s. 116B(2) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 24 paras. 5(5)(b), 12**

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

**C148** S. 116B(1) modified (with effect in accordance with Sch. 24 para. 14(1) of the affecting Act) by Finance Act 2009 (c. 10), **Sch. 24 paras. 14(2)(3), 15**

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## 117 Meaning of “qualifying corporate bond”.

<sup>F614</sup>(A1) For the purposes of corporation tax “qualifying corporate bond” means <sup>F615</sup>... any asset representing a loan relationship of a company; and for purposes other than those of corporation tax references to a qualifying corporate bond shall be construed in accordance with the following provisions of this section.]

(1) For the purposes of this section, a “corporate bond” is a security, as defined in section 132(3)(b)—

- (a) the debt on which represents and has at all times represented a normal commercial loan; and
- (b) which is expressed in sterling and in respect of which no provision is made for conversion into, or redemption in, a currency other than sterling,

and in paragraph (a) above “normal commercial loan” has the meaning which would be given by <sup>F616</sup>section 162 of CTA 2010 if for paragraphs (a) to (c) of subsection (2) of that section there were substituted the words “corporate bonds (within the meaning of section 117 of TCGA 1992)”].

(2) For the purposes of subsection (1)(b) above—

- (a) a security shall not be regarded as expressed in sterling if the amount of sterling falls to be determined by reference to the value at any time of any other currency or asset; and
- (b) a provision for redemption in a currency other than sterling but at the rate of exchange prevailing at redemption shall be disregarded.

<sup>F617</sup>(2AA) For the purposes of this section “corporate bond” also includes any asset which is not included in the definition in subsection (1) above and which is a <sup>F618</sup>deeply discounted security for the purposes of Chapter 8 of Part 4 of ITTOIA 2005 (see section 430)].]

<sup>F619</sup>(2A) .....

<sup>F620</sup>(3) .....

(4) For the purposes of this section “corporate bond” also includes a share in a building society—

- (a) which is a qualifying share,
- (b) which is expressed in sterling, and
- (c) in respect of which no provision is made for conversion into, or redemption in, a currency other than sterling.

(5) For the purposes of subsection (4) above, a share in a building society is a qualifying share if—

- (a) it is a permanent interest bearing share, or
- (b) it is of a description specified in regulations made by the Treasury for the purposes of this paragraph.

(6) Subsection (2) above applies for the purposes of subsection (4) above as it applies for the purposes of subsection (1)(b) above, treating the reference to a security as a reference to a share.

<sup>F621</sup>[(6A) For the purposes of this section “corporate bond” also includes, except in relation to a person who acquires it on or after a disposal in relation to which section 115 has or has had effect in accordance with section 116(10)(c), any debenture issued on or after 16th March 1993 which is not a security (as defined in section 132) but—

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- (a) is issued in circumstances such that it would fall by virtue of section 251(6) to be treated for the purposes of section 251 as such a security; and
  - (b) would be a corporate bond if it were a security as so defined.]
- [<sup>F622</sup>(6B) An excluded indexed security issued on or after 6th April 1996 is not a corporate bond for the purposes of this section; and an excluded indexed security issued before that date shall be taken to be such a bond for the purposes of this section only if—
- (a) it would be so taken apart from this subsection; and
  - (b) the question whether it should be so taken arises for the purposes of section 116(10).
- (6C) In subsection (6B) above “excluded indexed security” has the same meaning as in [<sup>F623</sup>Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 433)].]
- [<sup>F624</sup>(6D) Section 151T provides for arrangements to which section 151N (alternative finance arrangements: investment bond arrangements) applies also to be a corporate bond for the purposes of this section.]
- (7) Subject to subsections (9) and (10) below, for the purposes of this Act, a corporate bond—
- (a) is a “qualifying” corporate bond if it is issued after 13th March 1984; and
  - (b) becomes a “qualifying” corporate bond if, having been issued on or before that date, it is acquired by any person after that date and that acquisition is not as a result of a disposal which is excluded for the purposes of this subsection, or which was excluded for the purposes of section 64(4) of the <sup>M15</sup>Finance Act 1984.
- (8) Where a person disposes of a corporate bond which was issued on or before 13th March 1984 and, before the disposal, the bond had not become a qualifying corporate bond, the disposal is excluded for the purposes of subsection (7) above if, by virtue of any enactment—
- (a) the disposal is treated for the purposes of this Act as one on which neither a gain nor a loss accrues to the person making the disposal; or
  - (b) the consideration for the disposal is treated for the purposes of this Act as reduced by an amount equal to the held-over gain on that disposal, as defined for the purposes of section 165 or 260.
- [<sup>F625</sup>(8A) A corporate bond falling within subsection (2AA) above is a qualifying corporate bond whatever its date of issue.]
- <sup>F626</sup>(9) . . . . .
- <sup>F626</sup>(10) . . . . .
- (11) For the purposes of this section—
- (a) where a security is comprised in a letter of allotment or similar instrument and the right to the security thereby conferred remains provisional until accepted, the security shall not be treated as issued until there has been acceptance; and
  - [<sup>F627</sup>(b) “permanent interest bearing share” means a share which is a permanent interest bearing share [<sup>F628</sup>for the purposes of] the [<sup>F629</sup>[<sup>F630</sup>PRA Handbook made by the Prudential Regulation Authority] under the Financial Services and Markets Act 2000] as [<sup>F631</sup>that Handbook] applies in relation to shares issued on the date that the share is issued,

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F632 ..... ].

- (12) The Treasury may by regulations provide that for the definition of the expression “permanent interest bearing share” in subsection (11) above (as it has effect for the time being) there shall be substituted a different definition of that expression, and regulations under this subsection or subsection (5)(b) above may contain such supplementary, incidental, consequential or transitional provision as the Treasury thinks fit.
- (13) This section shall have effect for the purposes of section 254 with the omission of subsections (4) to (6), (11) and (12).

### Textual Amendments

- F614** S. 117(A1) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 61\(1\)](#) (with [Sch. 15](#))
- F615** Words in s. 117(A1) repealed (with effect in accordance with Sch. 40 Pt. 3(10) Note 2 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(10\)](#)
- F616** Words in s. 117(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 231](#) (with [Sch. 2](#))
- F617** S. 117(2AA) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 61\(2\)](#) (with [Sch. 15](#))
- F618** Words in s. 117(2AA) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 433\(2\)](#) (with [Sch. 2](#))
- F619** S. 117(2A) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))
- F620** S. 117(3) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))
- F621** S. 117(6A) inserted (27.7.1993 with effect as mentioned in s. 84(3)) by [1993 c. 34](#), s. [84\(1\)\(3\)](#)
- F622** S. 117(6B)(6C) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 61\(3\)](#) (with [Sch. 15](#))
- F623** Words in s. 117(6C) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 433\(3\)](#) (with [Sch. 2](#))
- F624** S. 117(6D) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 200](#) (with [Sch. 9 paras. 1-9, 22](#))
- F625** S. 117(8A) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 61\(4\)](#) (with [Sch. 15](#))
- F626** S. 117(9)(10) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))
- F627** Words in s. 117(11) substituted (with effect in accordance with art. 63(2) of the amending S.I.) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), [63\(1\)](#)
- F628** Words in s. 117(11)(b) substituted (1.1.2007) by [The Capital Gains Tax \(Definition of Permanent Interest Bearing Share\) Regulations 2006 \(S.I. 2006/3291\)](#), regs. 1, [2\(1\)\(a\)](#)
- F629** Words in s. 117(11)(b) substituted (1.1.2007) by [The Capital Gains Tax \(Definition of Permanent Interest Bearing Share\) Regulations 2006 \(S.I. 2006/3291\)](#), regs. 1, [2\(1\)\(b\)](#)
- F630** Words in s. 117(11)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), [Sch. para. 2\(a\)](#)
- F631** Words in s. 117(11)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), [Sch. para. 2\(b\)](#)
- F632** Words in s. 117(11) repealed (1.1.2007) by [The Capital Gains Tax \(Definition of Permanent Interest Bearing Share\) Regulations 2006 \(S.I. 2006/3291\)](#), regs. 1, [2\(2\)](#)

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

- C149** S. 117 applied by 1993 c. 34, s. 153(11A) (as inserted (retrospective to 27.7.1993) by Finance Act 1995 (c. 4), Sch. 24 paras. 1, 4(4))  
S. 117 modified by 1993 c. 34, Sch. 17 para. 5 (as substituted (retrospective to 27.7.1993) by Finance Act 1995 (c. 4), Sch. 24 paras. 1, 6)
- C150** S. 117 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by The Building Societies (Core Capital Deferred Shares) Regulations 2013 (S.I. 2013/460), regs. 1(1), 3(2)(b)
- C151** S. 117(1)(a) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), 4 (with reg. 8)
- C152** S. 117(2AA) modified (27.7.1999) by Finance Act 1999 (c. 16), s. 65(11)

**Marginal Citations**

- M15** 1984 c. 43.

<sup>F633</sup>**117A Assets that are not qualifying corporate bonds for corporation tax purposes.**

.....

**Textual Amendments**

- F633** Ss. 117A, 117B repealed (with effect in accordance with Sch. 40 Pt. 3(10) Note 2 of the amending Act) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(10)

<sup>F633</sup>**117B Holdings in unit trusts and offshore funds excluded from treatment as qualifying corporate bonds.**

.....

**Textual Amendments**

- F633** Ss. 117A, 117B repealed (with effect in accordance with Sch. 40 Pt. 3(10) Note 2 of the amending Act) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(10)

*Deep discount securities, the accrued income scheme etc.*

<sup>F634</sup>**118 Amount to be treated as consideration on disposal of deep discount securities etc.**

.....

**Textual Amendments**

- F634** S. 118 repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 41 Pt. V(3) (with Sch. 15)

**119 Transfers of securities subject to the accrued income scheme.**

- [<sup>F635</sup>(1) Where there is a transfer of securities within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits)—

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- (a) if a payment is treated as made to the transferor under section 632 of that Act or by the transferor under section 633 of that Act, section 37 shall be disregarded in computing the gain accruing on the disposal concerned;
  - (b) if a payment is treated as made by the transferee under section 632 of that Act or to the transferee under section 633 of that Act, section 39 shall be disregarded in computing 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 that Chapter)—
- (a) if a payment is treated as made to the transferor under section 632 of ITA 2007, an amount equal to the amount of that payment shall be excluded from the consideration mentioned in subsection (8) below;
  - (b) if a payment is treated as made by the transferee under that section, an amount equal to the amount of that payment shall be excluded from the sums mentioned in subsection (9) below.
- (3) Where the securities are transferred without accrued interest (within the meaning of that Chapter)—
- (a) if a payment is treated as made by the transferor under section 633 of ITA 2007, an amount equal to the amount of that payment shall be added to the consideration mentioned in subsection (8) below;
  - (b) if a payment is treated as made to the transferee under that section, an amount equal to the amount of that payment shall be added to the sums mentioned in subsection (9) below.
- (3A) Subsections (3B) and (3C) below apply where there is a transfer of variable rate securities (within the meaning of that Chapter) and—
- (a) the transferor is treated as making accrued income profits under section 630(2) of ITA 2007, or
  - (b) a payment is treated as made to the transferor under section 635 of that Act.
- (3B) Section 37 shall be disregarded in computing the gain accruing on the disposal concerned.
- (3C) An amount equal to the amount of the profits or payment shall be excluded from the consideration mentioned in subsection (8) below.
- (4) Where there is a transfer of securities with unrealised interest (within the meaning of Chapter 2 of Part 12 of ITA 2007)—
- (a) if section 630 of that Act applies or a payment is treated as made to the transferor under section 634 of that Act, section 37 shall be disregarded in computing the gain accruing on the disposal concerned, but the relevant amount shall be excluded from the consideration mentioned in subsection (8) below;
  - (b) if section 681 of that Act applies, section 39 shall be disregarded in computing 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 paragraph (b) below does not apply, the amount of the unrealised interest in question (within the meaning of Chapter 2 of Part 12 of ITA 2007);



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- (b) if section 660 of that Act applies—
  - (i) in a case falling within subsection (4)(a) above, the amount taken, by virtue of section 660 or 661 of that Act (as the case may be), to be the unrealised interest value for the purposes of section 660(2) or (3) of that Act;
  - (ii) in a case falling within subsection (4)(b) above, the amount of income that is exempt from liability to income tax under section 681 of that Act.]
- (6) In relation to any securities which by virtue of subsection (7) below are treated for the purposes of this subsection as having been transferred, subsections (2) and (3) above shall have effect [F636 as if for “is treated as made”, in each place where it occurs, there were substituted “would, if the disposal were a transfer, be treated as made”.]
- [F637 (7) Where there is a disposal of securities for the purposes of this Act which is not a transfer (within the meaning of Chapter 2 of Part 12 of ITA 2007) but, if it were such a transfer, a payment would be treated as made under section 632 or 633 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 within the meaning of that Chapter, 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.
- (7A) In relation to any securities which by virtue of subsection (7B) below are treated for the purposes of this subsection as having been transferred, subsection (3A) above shall have effect as if—
  - (a) for “is treated as making” there were substituted “ would, if the disposal were a transfer, be treated as making ”, and
  - (b) for “is treated as made” there were substituted “ would, if the disposal were a transfer, be treated as made ”.
- (7B) Where there is a disposal of securities for the purposes of this Act which is not a transfer (within the meaning of Chapter 2 of Part 12 of ITA 2007) but, if it were such a transfer, the transferor would be treated as making accrued income profits under section 630(2) of that Act in respect of a transfer of variable rate securities or a payment would be treated as made under section 635 of that Act—
  - (a) the securities shall be treated, for the purposes of subsection (7A) above, as transferred on the day of the disposal, and
  - (b) the transfer shall be treated, for the purposes of subsection (3A) above, as a transfer of variable rate securities.]
- (8) The consideration is the consideration for the disposal of the securities transferred which is taken into account in the computation 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 of the gain accruing to him if he disposes of the securities.
- (10) Where on a conversion or exchange of securities [F638 a payment is treated as made to a person under section 632 or 635 of ITA 2007, or a person is treated as making accrued income profits under section 630(2) of that Act in respect of a transfer of variable

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rate securities, an amount equal to the amount of the payment or profits] shall, for the purposes of this Act, 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 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 [<sup>F639</sup>a payment is treated as made by a person under section 633 of that Act an amount equal to the amount of the payment] shall, for the purposes of the computation of the gain, 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 132 and “exchange” means an exchange which by virtue of Chapter II of this Part does not involve a disposal.

#### Textual Amendments

**F635** S. 119(1)-(5) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 308\(2\)](#) (with [Sch. 2](#))

**F636** Words in s. 119(6) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 308\(3\)](#) (with [Sch. 2](#))

**F637** S. 119(7)-(7B) substituted for s. 119(7) (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 308\(4\)](#) (with [Sch. 2](#))

**F638** Words in s. 119(10) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 308\(5\)](#) (with [Sch. 2](#))

**F639** Words in s. 119(10) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 308\(6\)](#) (with [Sch. 2](#))

#### [<sup>F640</sup>119A] **Increase in expenditure by reference to tax charged in relation to employment-related securities**

- (1) This section applies to a disposal of an asset consisting of employment-related securities if the disposal—
- (a) is an event giving rise to a relevant income tax charge, or
  - (b) is the first disposal after an event, other than a disposal, giving rise to a relevant income tax charge.
- (2) Section 38(1)(a) applies as if the relevant amount had formed part of the consideration given by the person making the disposal for his acquisition of the employment-related securities.
- (3) For the purposes of this section an event gives rise to a relevant income tax charge if it results in an amount counting as employment income [<sup>F641</sup>in respect of the employment-related securities]—
- (a) under section 426 of ITEPA 2003 (restricted securities),
  - (b) under section 438 of ITEPA 2003 by virtue of section 439(3)(a) of that Act (conversion of convertible securities),
  - (c) under section 446U of ITEPA 2003 (securities acquired for less than market value: discharge of notional loan),

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- <sup>F642</sup>(ca) [ under section 447 of ITEPA 2003 (receipt of benefit) in a case where the benefit is an increase in the market value of the employment-related securities,]
- (d) under section 476 of ITEPA 2003 by virtue of section 477(3)(a) of that Act (acquisition of securities pursuant to employment-related securities option),  
[<sup>F643</sup>or—
- (e) under subsection (3) of section 21 of the Finance Act 2005 (transitional charge in relation to shares in spin-out companies) by virtue of subsection (4)(b) of that section (election by employee).]

<sup>F644</sup> . . . . .

- (4) For the purposes of this section “the relevant amount” is the aggregate of the amounts counting as employment income as mentioned in subsection (3) above by reason of events occurring—
  - (a) not later than the disposal, and
  - (b) where this section has applied to an earlier disposal of the employment-related securities, after the last disposal to which this section applied.

- [<sup>F645</sup>(5) In determining for the purposes of subsection (4) the amount counting as employment income—
  - (a) in the case of an amount counting as employment income under section 476 of ITEPA 2003 any amounts deducted under section 480(5)(a)[<sup>F646</sup>, (b) or (d)] of that Act shall be added back, and
  - (b) no account shall be taken of any relief under section 428A, 442A, 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee).]

[ See also section 119B ([<sup>F648</sup>unchargeable, and unremitted chargeable, foreign  
<sup>F647</sup>(5A) securities income) [<sup>F649</sup>and section 119C (unremitted Part 7A income)].]

- (6) Where securities or interests in securities cease to be employment-related securities—
  - (a) by reason of subsection (6) of section 421B of ITEPA 2003 in circumstances in which, immediately before the employee’s death, the employment-related securities are held otherwise than by the employee, or
  - (b) by reason of subsection (7) of that section,they are to be regarded for the purposes of this section as remaining employment-related securities until the next occasion on which they are disposed of.

- (7) In this section—
  - “employment-related securities”, and
  - “employee”, in relation to employment-related securities,have the same meaning as in Chapters 1 to 4 of Part 7 of ITEPA 2003.

<sup>F650</sup>(8) . . . . . ]

#### Textual Amendments

**F640** S. 119A inserted (with effect in accordance with Sch. 22 para. 50(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 50\(1\)](#)

**F641** Words in s. 119A(3) inserted (with effect in accordance with s. 22(4) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 22\(2\)\(a\)](#)

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- F642** S. 119A(3)(ca) substituted for word following s. 119A(3)(c) (with effect in accordance with s. 22(4) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 22\(2\)\(b\)](#)
- F643** S. 119A(3)(e) and preceding word inserted (with effect in accordance with s. 22(4) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 22\(2\)\(c\)](#)
- F644** Words in s. 119A(3) repealed (with effect in accordance with s. 22(4) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 22\(2\)\(d\)](#), [Sch. 11 Pt. 2\(2\)](#)
- F645** S. 119A(5) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 85\(2\)](#), [Sch. 16 para. 6\(2\)](#) (with [Sch. 16 para. 6\(4\)](#)); S.I. 2004/1945, art. 2
- F646** Words in s. 119A(5)(a) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 49\(2\)\(a\)](#)
- F647** S. 119A(5A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 63](#)
- F648** Words in s. 119A(5A) substituted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 23, 47](#)
- F649** Words in s. 119A(5A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 49\(2\)\(b\)](#)
- F650** S. 119A(8) repealed (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 85\(2\)](#), [Sch. 16 para. 6\(3\)](#), [Sch. 42 Pt. 2\(10\)](#) (with [Sch. 16 para. 6\(4\)](#)); S.I. 2004/1945, art. 2

**[<sup>F651</sup>119B Section 119A: [<sup>F652</sup>unchargeable, and unremitted chargeable, foreign securities income]**

- (1) For the purposes of section 119A reduce the amount that counts as employment income by so much of that amount (if any) as is<sup>F653</sup>—
- (a) unchargeable foreign securities income, or
  - (b) unremitted chargeable foreign securities income.]

<sup>F654</sup> [ In this section “unchargeable foreign securities income” means unchargeable foreign securities income for the purposes of section 41F of ITEPA 2003 (taxable specific income: internationally mobile employees etc) (see sections 41H to 41L of that Act).]

- (2) In this section “unremitted [<sup>F655</sup>chargeable] foreign securities income” means income that—
- <sup>F656</sup>(a) is chargeable foreign securities income for the purposes of section 41F of ITEPA 2003, and]
  - (b) has not been remitted to the United Kingdom by the end of the tax year in which the disposal mentioned in section 119A(1) occurs.
- (3) The following provisions apply if any of the unremitted [<sup>F657</sup>chargeable] foreign securities income is remitted to the United Kingdom after the end of the tax year referred to in subsection (2)(b).
- (4) The person liable for the capital gains tax on any chargeable gains arising on the disposal may make a claim for section 119A(2) to have effect as if the remitted income had been remitted before the end of that tax year.
- (5) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to a claim under subsection (4).
- (6) Those adjustments may be made at any time, despite anything to the contrary in any enactment relating to capital gains tax.]

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#### Textual Amendments

- F651** S. 119B inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 64](#)
- F652** Words in s. 119B heading substituted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 24\(2\)](#), 47
- F653** Words in s. 119B(1) substituted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 24\(3\)](#), 47
- F654** S. 119B(1A) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 24\(4\)](#), 47
- F655** Word in s. 119B(2) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 24\(5\)\(a\)](#), 47
- F656** S. 119B(2)(a) substituted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 24\(5\)\(b\)](#), 47
- F657** Word in s. 119B(3) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 24\(6\)](#), 47

#### [<sup>F658</sup>119C] **Section 119A: unremitted Part 7A income**

- (1) This section applies for the purposes of section 119A if an amount deducted under section 480(5)(d) of ITEPA 2003, which (apart from this section) would by virtue of section 119A(5)(a) be added back to an amount counting as employment income, is or includes unremitted Part 7A income.
- (2) So much of the amount deducted as is unremitted Part 7A income is not to be added back.
- (3) In this section “unremitted Part 7A income” means an amount counting as employment income under Chapter 2 of Part 7A of ITEPA 2003—
  - (a) to which section 554Z9(2) or 554Z10(2) of that Act applies, and
  - (b) which has not been remitted to the United Kingdom by the end of the tax year in which the disposal mentioned in section 119A(1) occurs.
- (4) Section 119B(4) to (6) applies if any of the unremitted Part 7A income is remitted to the United Kingdom after the end of the tax year referred to in subsection (3)(b).]

#### Textual Amendments

- F658** S. 119C inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 49\(3\)](#)

#### 120 Increase in expenditure by reference to tax charged in relation to shares etc.

- [<sup>F659</sup>(1) Subsection (1A) applies where—
- (a) a person (“the employee”) has acquired shares or an interest in shares as mentioned in section 447(1) of ITEPA 2003, and
  - (b) an amount counts as employment income of the employee under Chapter 4 of Part 7 of that Act in respect of the shares.

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- (1A) On the first disposal of the shares after the acquisition occurs, the employment income amount shall be treated for the purposes of section 38(1)(a) as consideration given by the person making the disposal for the acquisition of the shares.
- (1B) For the purposes of subsections (1) and (1A)—
  - (a) the “employment income amount” means the amount counting as employment income of the employee under that Chapter in respect of the shares, and
  - (b) it is immaterial whether the disposal of the shares mentioned in subsection (1A) is made by the employee or another person.]
- (2) Section 38(1)(a) 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.
- (3) Where an amount [<sup>F660</sup>is treated as earnings under section 195(2) of ITEPA 2003] 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 [<sup>F661</sup>so treated as earnings].
- (4) If a gain [<sup>F662</sup>counting as employment income under section 476 or 477 of ITEPA 2003] is realised by the exercise of a right to acquire shares, the relevant amount is a sum equal to the amount of the gain [<sup>F663</sup>so counting as employment income].
- (5) Where an amount is chargeable to tax under section 138 of the Taxes Act 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.
- [<sup>F664</sup>(5A) Where an amount [<sup>F665</sup>counts as employment income under Chapter 2 of Part 7 of ITEPA 2003] in respect of—
  - (a) the acquisition or disposal of any interest in shares, or
  - (b) any interest in shares ceasing to be only conditional,
 the relevant amount is a sum equal to the amount [<sup>F666</sup>so counting as employment income].
- (5B) Where an amount [<sup>F667</sup>counts as employment income under Chapter 3 of Part 7 of ITEPA 2003] in respect of the conversion of shares, the relevant amount is a sum equal to the amount [<sup>F668</sup>so counting as employment income].]
- <sup>F669</sup>(6) . . . . .
- [<sup>F670</sup>(7) Each of the provisions of this section mentioned in the first column of the following table is to be construed as if it were contained in the Chapter of ITEPA 2003 specified in the corresponding entry in the second column—

<i>Provision of this section</i>	<i>Chapter of ITEPA 2003</i>
subsections (1), (1A) and (1B)	Chapter 4 of Part 7
subsection (3)	Chapter 8 of Part 3
subsection (4)	Chapter 5 of Part 7

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subsection (5A)	Chapter 2 of Part 7
subsection (5B)	Chapter 3 of Part 7;

and subsection (5) of this section is to be construed as one with section 138 of the Taxes Act.]

[<sup>F671</sup>(7A) In relation to events that gave rise to amounts chargeable to income tax before 6th April 2003, this section is to be read as if any reference to an amount mentioned in the first column of the following table included a reference to an amount mentioned in the corresponding entry in the second column—

<i>Amount mentioned in this section</i>	<i>Amount chargeable before 6th April 2003</i>
an amount counting as employment income under Chapter 4 of Part 7 of ITEPA 2003	an amount chargeable to tax under Chapter 2 of Part 3 of the Finance Act 1988
an amount treated as earnings under section 195(2) of ITEPA 2003	an amount chargeable to tax under section 162(5) of the Taxes Act
an amount counting as employment income under section 476 or 477 of ITEPA 2003	an amount chargeable to tax under section 135(1) or (6) of the Taxes Act
an amount which counts as employment income under Chapter 2 of Part 7 of ITEPA 2003	an amount chargeable to tax under section 140A of the Taxes Act
an amount which counts as employment income under Chapter 3 of Part 7 of ITEPA 2003	an amount chargeable to tax under section 140D of the Taxes Act.]

[<sup>F672</sup>(8) For the purposes of subsection (5A) above this section shall have effect as if references in this section to shares included anything referred to as shares in [<sup>F673</sup>Chapter 2 of Part 7 of ITEPA 2003].]

[<sup>F674</sup>(9) References in this section to ITEPA 2003 are to that Act as originally enacted.]

#### Textual Amendments

- F659** S. 120(1)-(1B) substituted for s. 120(1) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(2\)](#) (with [Sch. 7](#))
- F660** Words in s. 120(3) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(3\)\(a\)](#) (with [Sch. 7](#))
- F661** Words in s. 120(3) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(3\)\(b\)](#) (with [Sch. 7](#))
- F662** Words in s. 120(4) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(4\)\(a\)](#) (with [Sch. 7](#))
- F663** Words in s. 120(4) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(4\)\(b\)](#) (with [Sch. 7](#))
- F664** S. 120(5A)(5B) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 54\(2\)](#)

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- F665** Words in s. 120(5A) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(5\)\(a\)](#) (with Sch. 7)
- F666** Words in s. 120(5A) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(5\)\(b\)](#) (with Sch. 7)
- F667** Words in s. 120(5B) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(6\)\(a\)](#) (with Sch. 7)
- F668** Words in s. 120(5B) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(6\)\(b\)](#) (with Sch. 7)
- F669** S. 120(6) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(7\), Sch. 8 Pt. 1](#) (with Sch. 7)
- F670** S. 120(7) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(8\)](#) (with Sch. 7)
- F671** S. 120(7A) inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(9\)](#) (with Sch. 7)
- F672** S. 120(8) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 54\(4\)](#)
- F673** Words in s. 120(8) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 210\(10\)](#) (with Sch. 7)
- F674** S. 120(9) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 51](#)

*Savings certificates etc.*

**121 Exemption for government non-marketable securities.**

- (1) Savings certificates and non-marketable securities issued under the <sup>M16</sup>National Loans Act 1968 or the <sup>M17</sup>National Loans Act 1939, or any corresponding enactment forming part of the law of Northern Ireland, shall not be chargeable assets, and accordingly no chargeable gain shall accrue on their disposal.
- (2) In this section—
- (a) “savings certificates” means savings certificates issued under section 12 of the <sup>M18</sup>National Loans Act 1968, or section 7 of the <sup>M19</sup>National Debt Act 1958, or section 59 of the <sup>M20</sup>Finance Act 1920, and any war savings certificates as defined in section 9(3) of the <sup>M21</sup>National Debt Act 1972, together with any savings certificates issued under any enactment forming part of the law of Northern Ireland and corresponding to the said enactments, and
- (b) “non-marketable securities” means securities which are not transferable, or which are transferable only with the consent of some Minister of the Crown, or the consent of a department of the Government of Northern Ireland, or only with the consent of the National Debt Commissioners.

**Marginal Citations**

- M16** 1968 c. 13.  
**M17** 1939 c. 117.  
**M18** 1968 c. 13.  
**M19** 1958 (7 Eliz. 2) c.6.  
**M20** 1920 c.18.  
**M21** 1972 c. 65.



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*Capital distribution in respect of shares etc.*

**122 Distribution which is not a new holding within Chapter II.**

(1) Where a person receives or becomes entitled to receive in respect of shares in a company any capital distribution from the company (other than a new holding as defined in section 126) he shall be treated as if he had in consideration of that capital distribution disposed of an interest in the shares.

[<sup>F675</sup>(1A) Subsection (1) is subject to the provisions of section 140A(1D) and section 140E(7).]

(2) If <sup>F676</sup>... the amount distributed is small, as compared with the value of the shares in respect of which it is distributed, <sup>F676</sup>...—

- (a) the occasion of the capital distribution shall not be treated for the purposes of this Act as a disposal of the asset, and
- (b) the amount distributed shall be deducted from any expenditure allowable under this Act as a deduction in computing a gain or loss on the disposal of the shares by the person receiving or becoming entitled to receive the distribution of capital.

<sup>F677</sup>(3) .....

(4) Where the allowable expenditure is less than the amount distributed (or is nil)—

- (a) [<sup>F678</sup>subsection (2)] above shall not apply, and
- (b) if the recipient so elects (and there is any allowable expenditure)—
  - (i) the amount distributed shall be reduced by the amount of the allowable expenditure, and
  - (ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the capital distribution, or on any subsequent occasion.

In this subsection “allowable expenditure” means the expenditure which immediately before the occasion of the capital distribution was attributable to the shares under paragraphs (a) and (b) of section 38(1).

(5) In this section—

- (a) the “amount distributed” means the amount or value of the capital distribution,
- (b) “capital distribution” means any distribution from a company, including a distribution in the course of dissolving or winding up the company, in money or money’s worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

[<sup>F679</sup>(5A) The reference in subsection (5)(b) to a distribution in the course of dissolving a company includes a reference to a distribution to which section 1030A(3) of CTA 2010 (distributions prior to dissolution of company) applies.]

[<sup>F680</sup>(6) The reference in subsection (5)(b) to a distribution which in the hands of the recipient constitutes income for the purposes of income tax includes, where the recipient is a company, a distribution to which the charge to corporation tax on income under Part 9A of CTA 2009 (company distributions) would apply were the distribution not exempt for the purposes of that Part.]

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### Textual Amendments

- F675** S. 122(1A) inserted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 4** (with S.I. 2008/1579, reg. 4(1))
- F676** Words in s. 122(2) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), Sch. 20 para. 52(1), **Sch. 41 Pt. V(10)**
- F677** S. 122(3) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), Sch. 20 para. 52(2), **Sch. 41 Pt. V(10)**
- F678** Words in s. 122(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 20 para. 52(3)**
- F679** S. 122(5A) inserted (with effect in accordance with art. 18 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, 17
- F680** S. 122(6) inserted (with effect in accordance with Sch. 3 paras. 5, 7 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 3 para. 4(3)** (with Sch. 3 para. 6(4))

### Modifications etc. (not altering text)

- C153** S. 122 modified (27.7.1992) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 16(2)(b)**
- C154** S. 122 excluded by [Finance Act 1996 \(c. 8\)](#), Sch. 9 para. 12D(5) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [S.I. 2007/3186](#), reg. 1(2), **Sch. 1 para 16** (with S.I. 2008/1579, reg. 4(1)))
- C155** S. 122 excluded by [Finance Act 1996 \(c. 8\)](#), Sch. 9 para. 12B(5) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 8** (with S.I. 2008/1579, reg. 4(1)))
- C156** S. 122 excluded by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 30D(5) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 19** (with S.I. 2008/1579, reg. 4(1)))
- C157** S. 122 excluded by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 30B(5) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 10** (with S.I. 2008/1579, reg. 4(1)))
- C158** S. 122 excluded by [Finance Act 2002 \(c. 23\)](#), Sch. 29 para. 85A(6) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 11** (with S.I. 2008/1579, reg. 4(1)))

## 123 Disposal of right to acquire shares or debentures.

- (1) Where a person receives or becomes entitled to receive in respect of any shares in a company a provisional allotment of shares in or debentures of the company and he disposes of his rights, section 122 shall apply as if the amount of the consideration for the disposal were a capital distribution received by him from the company in respect of the first-mentioned shares, and as if that person had, instead of disposing of the rights, disposed of an interest in those shares.
- (2) This section shall apply in relation to rights obtained in respect of debentures of a company as it applies in relation to rights obtained in respect of shares in a company.

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### *Close companies*

#### **124 Disposal of shares: relief in respect of income tax consequent on shortfall in distributions.**

- (1) If in pursuance of section 426 of the Taxes Act (consequences for income tax of apportionment of income etc. of close company) a person is assessed to income tax, then, in the computation of the gain accruing on a disposal by him of any shares forming part of his interest in the company to which the relevant apportionment relates, the amount of the income tax paid by him, so far as attributable to those shares, shall be allowable as a deduction.
- (2) Subsection (1) above shall not apply in relation to tax charged in respect of undistributed income which has, before the disposal, been subsequently distributed and is then exempt from tax by virtue of section 427(4) of the Taxes Act or in relation to tax treated as having been paid by virtue of section 426(2)(b) of that Act.
- (3) For the purposes of this section the income assessed to tax shall be the highest part of the individual's income for the year of assessment in question, but so that if the highest part of the said income is taken into account under this section in relation to an assessment to tax the next highest part shall be taken into account in relation to any other relevant assessment, and so on.
- (4) For the purpose of identifying shares forming part of an interest in a company with shares subsequently disposed of which are of the same class, shares bought at an earlier time shall be deemed to have been disposed of before shares bought at a later time.

#### **125 Shares in close company transferring assets at an undervalue.**

- (1) If a company which is a close company transfers, or has after 31st March 1982 transferred, an asset to any person otherwise than by way of a bargain made at arm's length and for a consideration of an amount or value less than the market value of the asset, an amount equal to the difference shall be apportioned among the issued shares of the company, and the holders of those shares shall be treated in accordance with the following provisions of this section.
- (2) For the purposes of the computation of the gain accruing on the disposal of any of those shares by the person owning them on the date of transfer, an amount equal to the amount so apportioned to that share shall be excluded from the expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal.
- (3) If the person owning any of the shares at the date of transfer is itself a close company an amount equal to the amount apportioned to the shares so owned under subsection (1) above to that close company shall be apportioned among the issued shares of that close company, and the holders of those shares shall be treated in accordance with subsection (2) above, and so on through any number of close companies.

[<sup>F681</sup>(4) This section does not apply in the following cases.

##### *Case 1*

Case 1 is where the transfer of the asset is a disposal to which section 171(1) applies (transfers within a group: general provisions).

##### *Case 2*

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Case 2 is where the transferee is a participator, or an associate of a participator, in the company and an amount equal to the undervalue amount is treated as—

- (a) a distribution within section 209(2)(b) or (4) of the Taxes Act (meaning of “distribution”), or
- (b) a capital distribution within section 122 of this Act (distribution which is not a new holding within Chapter 2).

Case 3

Case 3 is where the transferee is an employee of the company and—

- (a) an amount equal to the undervalue amount is treated as the employee’s employment income, and
- (b) no part of that amount is treated as exempt income.]

(5) In relation to a disposal to which section 35(2) does not apply, subsection (1) above shall have effect with the substitution of “ 6th April 1965 ” for “31st March 1982”.

[<sup>F682</sup>(6) In this section—

- “associate” has the meaning given by [<sup>F683</sup>section 448 of CTA 2010];
- “employee” has the meaning given by section 4 of ITEPA 2003 (as read with section 5(2) of that Act);
- “employment income” has the meaning given by section 7(2) of ITEPA 2003;
- “exempt income” has the meaning given by section 8 of ITEPA 2003;
- “participator” has the meaning given by [<sup>F684</sup>section 454 of CTA 2010];
- “undervalue amount” means the amount by which the amount or value of the consideration for the transfer is less than the market value of the asset transferred.]

#### Textual Amendments

- F681** S. 125(4) substituted (with effect in accordance with art. 5(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **5(2)**
- F682** S. 125(6) inserted (with effect in accordance with art. 5(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **5(3)**
- F683** Words in s. 125(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 232(a)** (with [Sch. 2](#))
- F684** Words in s. 125(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 232(b)** (with [Sch. 2](#))

#### [<sup>F685</sup>Share loss relief

#### Textual Amendments

- F685** S. 125A and cross-heading inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 309** (with [Sch. 2](#))

*Status: Point in time view as at 16/11/2017.*

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## 125A Effect of share loss relief

- (1) If loss relief under <sup>F686</sup>... Chapter 6 of Part 4 of ITA 2007 [<sup>F687</sup>or Chapter 5 of Part 4 of CTA 2010] (“share loss relief”) is obtained in respect of a loss or any part of a loss, no deduction is to be made in respect of the loss or (as the case may be) the part under this Act.
- (2) If a claim is made for share loss relief in respect of a loss accruing on the disposal of shares, section 30 has effect in relation to the disposal as if for the references in subsections (1)(b) and (5) to a tax-free benefit there were substituted references to any benefit whether tax-free or not.
- (3) All such adjustments of corporation tax on chargeable gains or capital gains tax are to be made, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of—
  - (a) share loss relief being obtained in respect of an allowable loss, or
  - (b) such relief not being obtained in respect of the whole or part of such a loss in respect of which a claim is made.]

### Textual Amendments

**F686** Words in s. 125A(1) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 233\(a\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F687** Words in s. 125A(1) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 233\(b\)](#) (with [Sch. 2](#))

## CHAPTER II

### REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

### Modifications etc. (not altering text)

**C159** Pt. IV Ch. II modified (1.1.1999) by [The European Single Currency \(Taxes\) Regulations 1998 \(S.I. 1998/3177\)](#), regs. 1, 39

**C160** Pt. IV Ch. II modified (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 15 para. 88](#)

### *Reorganisation or reduction of share capital*

## 126 Application of sections 127 to 131.

- (1) For the purposes of this section and sections 127 to 131 “reorganisation” means a reorganisation or reduction of a company’s share capital, and in relation to the reorganisation—
  - (a) “original shares” means shares held before and concerned in the reorganisation,
  - (b) “new holding” means, in relation to any original shares, the shares in and debentures of the company which as a result of the reorganisation represent the original shares (including such, if any, of the original shares as remain).

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- (2) The reference in subsection (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
  - (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 subsection (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 or debentures (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

## 127 Equation of original shares and new holding.

Subject to sections 128 to 130, a reorganisation shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it, but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

### Modifications etc. (not altering text)

- C161** Ss. 127-131 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), **Sch. 7 para. 7(1)(a)** (with [Sch. 7 para. 9\(1\)](#))
- C162** Ss. 127-131 restricted by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), regs. 1(1), 12)
- C163** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(4)**
- C164** S. 127 applied (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 80(1)**
- C165** S. 127 modified (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 84(2)** (with s. 84(1))
- C166** Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 81(1)**
- C167** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 14 para. 58**
- C168** S. 127 modified (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 93(7)**
- C169** Ss. 127-130 applied by [Finance Act 1996 \(c. 8\)](#), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 77(1) (with s. 77(2)))
- C170** Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 2 para. 88** (with [Sch. 7](#))
- C171** S. 127 applied (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **ss. 462(2)**, 723 (with [Sch. 7](#))
- C172** S. 127 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 1(1), **66(1)**
- C173** S. 127 restricted (with effect in accordance with art. 1(2)(3), Sch. 1 of the affecting S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **37**
- C174** Ss. 127-131 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 69Z24E(2), 69Z24F(3) (as inserted (1.8.2012) by [S.I. 2012/1783](#), **regs. 1, 4**)

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**C175** S. 127 modified by Income Tax Act 2007 (c. 3), s. 257TA(6) (as inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 11 para. 1](#))

## 128 Consideration given or received by holder.

- (1) Subject to subsection (2) below, where, on a reorganisation, a person gives or becomes liable to give any consideration for his new holding or any part of it, that consideration shall in relation to any disposal of the new holding or any part of it be treated as having been given for the original shares, and if the new holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.
- (2) There shall not be treated as consideration given for the new 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 new 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, in the case of a reorganisation on or after 10th March 1981, any consideration given for the new 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 new 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 new holding, for the disposal of an interest in the original shares, and in particular—
  - (a) where under section 122 he is to be treated as if he had in consideration of a capital distribution disposed of an interest in the original shares, or
  - (b) where he receives (or is deemed to receive) consideration from other shareholders in respect of a surrender of rights derived from the original shares,

he shall be treated as if the new 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 new holding being treated in accordance with section 127 as the same asset).

- (4) Where for the purpose of subsection (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 subsection 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 section 129.

### Modifications etc. (not altering text)

**C161** Ss. 127-131 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), [Sch. 7 para. 7\(1\)\(a\)](#) (with [Sch. 7 para. 9\(1\)](#))

**C162** Ss. 127-131 restricted by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), regs. 1(1), 12)

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- C163** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(4)**
- C166** Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 81(1)**
- C167** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 14 para. 58**
- C169** Ss. 127-130 applied by [Finance Act 1996 \(c. 8\)](#), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 77(1) (with s. 77(2)))
- C170** Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 2 para. 88** (with Sch. 7)
- C174** Ss. 127-131 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 69Z24E(2), 69Z24F(3) (as inserted (1.8.2012) by [S.I. 2012/1783](#), **regs. 1, 4**)
- C176** S. 128 applied (with effect in accordance with art. 1(2)(3), Sch. 1 of the affecting S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **47(2)**
- C177** S. 128 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), reg. 85Z8 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), **regs. 1(1), 21**)

## 129 Part disposal of new holding.

Subject to section 130(2), where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the new holding it is necessary to apportion the cost of acquisition of any of the original shares between 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 new holding as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

### Modifications etc. (not altering text)

- C161** Ss. 127-131 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), **Sch. 7 para. 7(1)(a)** (with [Sch. 7 para. 9\(1\)](#))
- C162** Ss. 127-131 restricted by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), regs. 1(1), 12)
- C163** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(4)**
- C166** Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 15 para. 81(1)**
- C167** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 14 para. 58**
- C169** Ss. 127-130 applied by [Finance Act 1996 \(c. 8\)](#), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 77(1) (with s. 77(2)))
- C170** Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 2 para. 88** (with Sch. 7)
- C174** Ss. 127-131 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 69Z24E(2), 69Z24F(3) (as inserted (1.8.2012) by [S.I. 2012/1783](#), **regs. 1, 4**)

## 130 Composite new holdings.

- (1) This section shall apply to a new holding—
  - (a) if it consists of more than one class of shares in or debentures of the company and one or more of those classes is of shares or debentures which, at any time



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- not later than the end of the period of 3 months beginning with the date on which the reorganisation took effect, or of such longer period as the Board may by notice allow, [<sup>F688</sup>were listed] on a recognised stock exchange<sup>F689</sup> ... , or
- (b) if it consists of more than one class of rights of unit holders and one or more of those classes is of rights the prices of which were published daily by the managers of the scheme at any time not later than the end of that period of 3 months (or longer if so allowed).
- (2) Where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of the whole or any part of any class of shares or debentures or rights of unit holders forming part of a new holding to which this section applies it is necessary to apportion costs of acquisition between what is disposed of and what is retained, the cost of acquisition of the new holding shall first be apportioned between the entire classes of shares or debentures or rights of which it consists by reference to market value on the first day (whether that day fell before the reorganisation took effect or later) on which market values or prices were quoted or published for the shares, debentures or rights as mentioned in subsection (1)(a) or (1)(b) above (with such adjustment of the market value of any class as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).
- (3) For the purposes of this section the day on which a reorganisation involving the allotment of shares or debentures or unit holders' rights takes effect is the day following the day on which the right to renounce any allotment expires.

#### Textual Amendments

- F688** Words in s. 130(1)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 8\(2\)\(a\)](#)
- F689** Words in s. 130(1)(a) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 8\(2\)\(b\)](#), [Sch. 27 Pt. 6\(5\)](#)

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

- C161** Ss. 127-131 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), [Sch. 7 para. 7\(1\)\(a\)](#) (with [Sch. 7 para. 9\(1\)](#))
- C162** Ss. 127-131 restricted by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), regs. 1(1), 12)
- C163** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, [34\(4\)](#)
- C166** Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 81\(1\)](#)
- C167** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 14 para. 58](#)
- C169** Ss. 127-130 applied by [Finance Act 1996 \(c. 8\)](#), s. 93B(3)(a) (as inserted (with effect in accordance with [Sch. 11 paras. 7, 8](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 77(1) (with s. 77(2)))
- C170** Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 2 para. 88](#) (with [Sch. 7](#))
- C174** Ss. 127-131 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 69Z24E(2), 69Z24F(3) (as inserted (1.8.2012) by [S.I. 2012/1783](#), [regs. 1, 4](#))

## 131 Indexation allowance.

- (1) This section applies where—

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- (a) by virtue of section 127, on a reorganisation the original shares (taken as a single asset) and the new holding (taken as a single asset) fall to be treated as the same asset acquired as the original shares were acquired; and
  - (b) on the reorganisation, a person gives or becomes liable to give any consideration for his new holding or any part of it.
- (2) Where this section applies, so much of the consideration referred to in subsection (1) (b) above as, on a disposal to which section 53 applies of the new holding, will, by virtue of section 128(1), be treated as having been given for the original shares, shall be treated for the purposes of section 54 as an item of relevant allowable expenditure incurred not at the time the original shares were acquired but at the time the person concerned gave or became liable to give the consideration (and, accordingly, section 54(4) shall not apply in relation to that item of expenditure).

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

- C161** Ss. 127-131 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), **Sch. 7 para. 7(1)(a)** (with [Sch. 7 para. 9\(1\)](#))
- C162** Ss. 127-131 restricted by [The Personal Equity Plan Regulations 1989 \(S.I. 1989/469\)](#), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [S.I. 1998/1869](#), regs. 1(1), 12)
- C163** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(4)**
- C174** Ss. 127-131 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 69Z24E(2), 69Z24F(3) (as inserted (1.8.2012) by [S.I. 2012/1783](#), **regs. 1, 4**)

*Conversion of securities*

**132 Equation of converted securities and new holding.**

- (1) Sections 127 to 131 shall apply with any necessary adaptations in relation to the conversion of securities as they apply in relation to a reorganisation (that is to say, a reorganisation or reduction of a company's share capital).
- (2) This section has effect subject to sections 133 and 134.
- (3) For the purposes of this section and section 133—
- (a) “conversion of securities” includes [<sup>F690</sup>any of the following, whether effected by a transaction or occurring in consequence of the operation of the terms of any security or of any debenture which is not a security, that is to say]—
    - (i) a conversion of securities of a company into shares in the company, and
    - [<sup>F691</sup>(ia) a conversion of a security which is not a qualifying corporate bond into a security of the same company which is such a bond, and
    - (ib) a conversion of a qualifying corporate bond into a security which is a security of the same company but is not such a bond, and]
    - (ii) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash, and
    - (iii) any exchange of securities effected in pursuance of any enactment (including an enactment passed after this Act) which provides for the

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compulsory acquisition of any shares or securities and the issue of securities or other securities instead,

- (b) “security” includes any loan stock or similar security whether of the Government of the United Kingdom or of any other government, or of any public or local authority in the United Kingdom or elsewhere, or of any company, and whether secured or unsecured.

[<sup>F692</sup>(4) In subsection (3)(a)(ia) above the reference to the conversion of a security of a company into a qualifying corporate bond includes a reference to—

- (a) any such conversion of a debenture of that company that is deemed to be a security for the purposes of section 251 as produces a security of that company which is a qualifying corporate bond; and
- (b) any such conversion of a security of that company, or of a debenture that is deemed to be a security for those purposes, as produces a debenture of that company which, when deemed to be a security for those purposes, is such a bond.

(5) In subsection (3)(a)(ib) above the reference to the conversion of a qualifying corporate bond into a security of the same company which is not such a bond includes a reference to any conversion of a qualifying corporate bond which produces a debenture which—

- (a) is not a security; and
- (b) when deemed to be a security for the purposes of section 251, is not such a bond.]

#### Textual Amendments

**F690** Words in s. 132(3)(a) inserted (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 88\(2\)\(a\)](#)

**F691** S. 132(3)(ia)(ib) inserted (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 88\(2\)\(b\)](#)

**F692** S. 132(4)(5) inserted (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 88\(3\)](#)

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

**C178** S. 132 applied (retrospective to 31.12.1995) by [Finance Act 1996 \(c. 8\), s. 203\(10\)](#)

### 133 Premiums on conversion of securities.

(1) This section applies where, on a conversion of securities, a person receives, or becomes entitled to receive, any sum of money (“the premium”) which is by way of consideration (in addition to his new holding) for the disposal of the converted securities.

(2) If <sup>F693</sup>... the premium is small, as compared with the value of the converted securities, <sub>F693</sub>...—

- (a) receipt of the premium shall not be treated for the purposes of this Act as a disposal of part of the converted securities, and
- (b) the premium shall be deducted from any expenditure allowable under this Act as a deduction in computing a gain or loss on the disposal of the new holding by the person receiving or becoming entitled to receive the premium.

<sup>F694</sup>(3) .....

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- (4) Where the allowable expenditure is less than the premium (or is nil)—
- (a) [<sup>F695</sup>subsection (2)] above shall not apply, and
  - (b) if the recipient so elects (and there is any allowable expenditure)—
    - (i) the amount of the premium shall be reduced by the amount of the allowable expenditure, and
    - (ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the conversion, or on any subsequent occasion.
- (5) In subsection (4) above “allowable expenditure” means expenditure which immediately before the conversion was attributable to the converted securities under paragraphs (a) and (b) of section 38(1).

#### Textual Amendments

**F693** Words in s. 133(2) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 53\(1\), Sch. 41 Pt. V\(10\)](#)

**F694** S. 133(3) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 53\(2\), Sch. 41 Pt. V\(10\)](#)

**F695** Words in s. 133(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 53\(3\)](#)

### 134 Compensation stock.

- (1) This section has effect where gilt-edged securities are exchanged for shares in pursuance of any enactment (including an enactment passed after this Act) which provides for the compulsory acquisition of any shares and the issue of gilt-edged securities instead.
- (2) The exchange shall not constitute a conversion of securities within section 132 and shall be treated as not involving any disposal of the shares by the person from whom they were compulsorily acquired but—
  - (a) there shall be calculated the gain or loss that would have accrued to him if he had then disposed of the shares for a consideration equal to the value of the shares as determined for the purpose of the exchange, and
  - (b) on a subsequent disposal of the whole or part of the gilt-edged securities by the person to whom they were issued—
    - (i) there shall be deemed to accrue to him the whole or a corresponding part of the gain or loss mentioned in paragraph (a) above, and
    - (ii) section 115(1) shall not have effect in relation to any gain or loss that is deemed to accrue as aforesaid.
- (3) Where a person to whom gilt-edged securities of any kind were issued as mentioned in subsection (1) above disposes of securities of that kind, the securities of which he disposes—
  - (a) shall, so far as possible, be identified with securities which were issued to him as mentioned in subsection (1) above rather than with other securities of that kind, and
  - (b) subject to paragraph (a) above, shall be identified with securities issued at an earlier time rather than those issued at a later time.

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- (4) Subsection (2)(b) above shall not apply to any disposal falling within the provisions of section 58(1), 62(4) or 171(1) but a person who has acquired the securities on a disposal falling within those provisions (and without there having been a previous disposal not falling within those provisions or a devolution on death) shall be treated for the purposes of subsections (2)(b) and (3) above as if the securities had been issued to him.
- (5) Where the gilt-edged securities to be exchanged for any shares are not issued until after the date on which the shares are compulsorily acquired but on that date a right to the securities is granted, this section shall have effect as if the exchange had taken place on that date, as if references to the issue of the securities and the person to whom they were issued were references to the grant of the right and the person to whom it was granted and references to the disposal of the securities included references to disposals of the rights.
- (6) In this section “shares” includes securities within the meaning of section 132.
- (7) This section does not apply where the compulsory acquisition took place before 7th April 1976.

*F696 Company reconstructions ...*

**Textual Amendments**

**F696** Words in s. 135 cross-heading repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(2\)](#)

**[<sup>F697</sup> 135 Exchange of securities for those in another company**

- (1) This section applies in the following circumstances where a company (“company B”) issues shares or debentures to a person in exchange for shares in or debentures of another company (“company A”).
- (2) The circumstances are:
- Case 1*  
Where company B holds, or in consequence of the exchange will hold, more than 25% of the ordinary share capital of company A.
- Case 2*  
Where company B issues the shares or debentures in exchange for shares as the result of a general offer—
- made to members of company A or any class of them (with or without exceptions for persons connected with company B), and
  - made in the first instance on a condition such that if it were satisfied company B would have control of company A.
- Case 3*  
Where company B holds, or in consequence of the exchange will hold, the greater part of the voting power in company A.
- (3) Where this section applies, sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

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- (4) In this section “ordinary share capital” has the meaning given by [<sup>F698</sup>section 1119 of CTA 2010] and also includes—
- (a) in relation to a unit trust scheme, any rights that are treated by section 99(1)(b) of this Act (application of Act to unit trust schemes) as shares in a company, and
  - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.
- (6) This section has effect subject to section 137(1) (exchange must be for bona fide commercial reasons and not part of tax avoidance scheme.)]

#### Textual Amendments

**F697** S. 135 substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 1](#)

**F698** Words in s. 135(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 234](#) (with [Sch. 2](#))

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

**C179** Ss. 135, 136 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 82](#) (with s. 84)

**C180** Ss. 135, 136 excluded by Income and Corporation Taxes Act 1988 (c. 1), s. 757 (as amended (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 4\(5\)](#))

**C181** S. 135 restricted by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85X (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))

**C182** S. 135 excluded by Offshore Funds (Tax) Regulation 2009 (S.I. 2009/3001), reg. 36A(2)(c) (as substituted (8.6.2013) by [S.I. 2013/1400](#), [regs. 1\(1\), 15\(a\)](#) (with [reg. 1\(2\)](#)))

#### [<sup>F699</sup>136 Scheme of reconstruction involving issue of securities

- (1) This section applies where—
- (a) an arrangement between a company (“company A”) and—
    - (i) the persons holding shares in or debentures of the company, or
    - (ii) where there are different classes of shares in or debentures of the company, the persons holding any class of those shares or debentures,
 is entered into for the purposes of, or in connection with, a scheme of reconstruction, and
  - (b) under the arrangement—
    - (i) another company (“company B”) issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their relevant holdings in company A, and
    - (ii) the shares in or debentures of company A comprised in relevant holdings are retained by those persons or are cancelled or otherwise extinguished.

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(2) Where this section applies—

- (a) those persons are treated as exchanging their relevant holdings in company A for the shares or debentures held by them in consequence of the arrangement, and
- (b) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

For this purpose shares in or debentures of company A comprised in relevant holdings that are retained are treated as if they had been cancelled and replaced by a new issue.

(3) Where a reorganisation of the share capital of company A is carried out for the purposes of the scheme of reconstruction, the provisions of subsections (1) and (2) apply in relation to the position after the reorganisation.

(4) In this section—

- (a) “scheme of reconstruction” has the meaning given by Schedule 5AA to this Act;
- (b) references to “relevant holdings” of shares in or debentures of company A are—
  - (i) where there is only one class of shares in or debentures of the company, to holdings of shares in or debentures of the company, and
  - (ii) where there are different classes of shares in or debentures of the company, to holdings of a class of shares or debentures that is involved in the scheme of reconstruction (within the meaning of paragraph 2 of Schedule 5AA);
- (c) references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise; and
- (d) any reference to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.

(5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.

(6) This section has effect subject to section 137(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).]

#### Textual Amendments

**F699** S. 136 substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 2](#)

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

**C179** Ss. 135, 136 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 82](#) (with s. 84)

**C180** Ss. 135, 136 excluded by Income and Corporation Taxes Act 1988 (c. 1), s. 757 (as amended (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 4\(5\)](#))

**C183** S. 136 applied (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 84\(1\)](#)

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- C184** S. 136 applied by Income and Corporation Taxes Act 1988 (c. 1), s. 842 (as amended (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 4\(7\)](#))
- C185** S. 136 restricted by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Y (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))
- C186** S. 136 excluded by Offshore Funds (Tax) Regulation 2009 (S.I. 2009/3001), reg. 36A(2)(d) (as substituted (8.6.2013) by [S.I. 2013/1400](#), [regs. 1\(1\), 15\(a\)](#) (with [reg. 1\(2\)](#)))

### 137 Restriction on application of sections 135 and 136.

- (1) Subject to subsection (2) below, and section 138, neither section 135 nor section 136 shall apply to any issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of another company unless the exchange [<sup>F700</sup>or scheme of reconstruction] in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax.
- (2) Subsection (1) above shall not affect the operation of section 135 or 136 in any case where the person to whom the shares or debentures are issued does not hold more than 5 per cent. of, or of any class of, the shares in or debentures of the second company mentioned in subsection (1) above.
- (3) For the purposes of subsection (2) above shares or debentures held by persons connected with the person there mentioned shall be treated as held by him.
- (4) If any tax assessed on a person (the chargeable person) by virtue of subsection (1) above is not paid within 6 months from the date when it is payable, any other person who—
  - (a) holds all or any part of the shares or debentures that were issued to the chargeable person, and
  - (b) has acquired them without there having been, since their acquisition by the chargeable person, any disposal of them not falling within section 58(1) or 171,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable person) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable person.

- (5) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (4) above—
  - (a) for the words “the date when it is payable” there shall be substituted “the date determined under subsection (4A) below”;
  - (b) for the words “the time when the tax became payable” there shall be substituted “that date”; and
  - (c) for the words “a sum” onwards there shall be substituted “from the chargeable person a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount”;

and after that subsection there shall be inserted—



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- “(4A) The date referred to in subsection (4) above is whichever is the later of—
- (a) the date when the tax becomes due and payable by the chargeable person; and
  - (b) the date when the assessment was made on the chargeable person.”

- (6) In this section references to shares or debentures include references to any interests or options to which this Chapter applies by virtue of <sup>F701</sup>section 135(5), 136(5) or 147.

#### Textual Amendments

- F700** Words in s. 137(1) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(5\)\(a\)](#)
- F701** Words in s. 137(6) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(5\)\(b\)](#)

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

- C187** S. 137 applied by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 69Z24H](#) (as inserted (1.8.2012) by [S.I. 2012/1783](#), [regs. 1, 4](#))
- C188** S. 137(1) modified (with effect in accordance with s. 1329(1) of the affecting Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 129\(7\)](#), [1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### Commencement Information

- II** S. 137(5):30.9.1993 appointed for the purposes of s. 137(5) by [S.I. 1992/3066](#), [art. 2\(2\)\(d\)](#) in force at 30.9.1993 by [S.I. 1992/3066](#), [art. 2\(2\)\(d\)](#)

### 138 Procedure for clearance in advance.

- (1) Section 137 shall not affect the operation of section 135 or 136 in any case where, before the issue is made, the Board have, on the application of either company mentioned in section 137(1), notified the company that the Board are satisfied that the exchange <sup>F702</sup>or scheme of reconstruction] will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in section 137(1).
- (2) Any application under subsection (1) above shall be in writing and shall contain particulars of the operations that are to be effected and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.
- (3) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.
- (4) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) above or do not notify their decision to the applicant within the time required by subsection (3) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (2) above, to the <sup>F703</sup>tribunal];

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and in that event any notification by the [<sup>F703</sup>tribunal] shall have effect for the purposes of subsection (1) above as if it were a notification by the Board.

- (5) If any particulars furnished under this section do not fully and accurately disclose all facts and considerations material for the decision of the Board or [<sup>F704</sup>the tribunal], any resulting notification that the Board or [<sup>F704</sup>the tribunal] are satisfied as mentioned in subsection (1) above shall be void.

#### Textual Amendments

- F702** Words in s. 138(1) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(6\)](#)
- F703** Word in s. 138(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 179\(a\)](#)
- F704** Words in s. 138(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 179\(b\)](#)

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

- C189** S. 138(2) applied (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 247\(2\)](#), [1034\(1\)](#) (with [Sch. 2](#))
- C190** S. 138(2)-(5) applied by [Finance Act 1996 \(c. 8\)](#), Sch. 9 para. 12F(3) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 16](#) (with S.I. 2008/1579, reg. 4(1)))
- C191** S. 138(2)-(5) applied by [Finance Act 1996 \(c. 8\)](#), Sch. 9 para. 12B(8) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 2 para. 8](#) (with S.I. 2008/1579, reg. 4(1)))
- C192** S. 138(2)-(5) applied by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 30F(3) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 19](#) (with S.I. 2008/1579, reg. 4(1)))
- C193** S. 138(2)-(5) applied by [Finance Act 2002 \(c. 23\)](#), Sch. 26 para. 30B(8) (as substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 2 para. 10](#) (with S.I. 2008/1579, reg. 4(1)))
- C194** S. 138(2) applied by [Income Tax Act 2007 \(c. 3\)](#), [s. 257HB\(2\)](#) (as inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 1](#))

#### <sup>F705</sup>138A Use of earn-out rights for exchange of securities.

- (1) For the purposes of this section an earn-out right is so much of any right conferred on any person (“the seller”) as—
- (a) constitutes the whole or any part of the consideration for the transfer by him of shares in or debentures of a company (“the old securities”);
  - (b) consists in a right to be issued with shares in or debentures of another company (“the new company”);
  - (c) is such that the value or quantity of the shares or debentures to be issued in pursuance of the right (“the new securities”) is unascertainable at the time when the right is conferred; and
  - (d) is not capable of being discharged in accordance with its terms otherwise than by the issue of the new securities.

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## (2) Where—

- (a) there is an earn-out right, [<sup>F706</sup>and]
- (b) the exchange of the old securities for the earn-out right is an exchange to which section 135 would apply, in a manner unaffected by section 137, if the earn-out right were an ascertainable amount of shares in or debentures of the new company, <sup>F707</sup> ...

<sup>F707</sup>(c) .....

this Act shall have effect, in the case of the seller and every other person who from time to time has the earn-out right, in accordance with the assumptions specified in subsection (3) below.

[ Subsection (2) above does not have effect if the seller elects under this section for the <sup>F708</sup>(2A) earn-out right not to be treated as a security of the new company.]

## (3) Those assumptions are—

- (a) that the earn-out right is a security within the definition in section 132;
- (b) that the security consisting in the earn-out right is a security of the new company and is incapable of being a qualifying corporate bond for the purposes of this Act;
- (c) that references in this Act (including those in this section) to a debenture include references to a right that is assumed to be a security in accordance with paragraph (a) above; and
- (d) that the issue of shares or debentures in pursuance of such a right constitutes the conversion of the right, in so far as it is discharged by the issue, into the shares or debentures that are issued.

## (4) For the purposes of this section where—

- (a) any right which is assumed, in accordance with this section, to be a security of a company (“the old right”) is extinguished,
- (b) the whole of the consideration for the extinguishment of the old right consists in another right (“the new right”) to be issued with shares in or debentures of that company,
- (c) the new right is such that the value or quantity of the shares or debentures to be issued in pursuance of the right (“the replacement securities”) is unascertainable at the time when the old right is extinguished, [<sup>F709</sup>and]
- (d) the new right is not capable of being discharged in accordance with its terms otherwise than by the issue of the replacement securities, <sup>F710</sup> ...

<sup>F710</sup>(e) .....

the assumptions specified in subsection (3) above shall have effect in relation to the new right, in the case of [<sup>F711</sup>the person on whom the new right is conferred] and every other person who from time to time has the new right, as they had effect in relation to the old right.

[ Subsection (4) above does not have effect if the person on whom the new right is <sup>F712</sup>(4A) conferred elects under this section for it not to be treated as a security of the new company.]

## (5) An election under this section in respect of any right must be made, by a notice given to an officer of the Board—

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- (a) in the case of an election by a company within the charge to corporation tax, within the period of two years from the end of the accounting period in which the right is conferred; and
  - (b) in any other case, on or before the first anniversary of the 31st January next following the year of assessment in which that right is conferred.
- (6) An election under this section shall be irrevocable.
- (7) Subject to subsections (8) to (10) below, where any right to be issued with shares in or debentures of a company is conferred on any person, the value or quantity of the shares or debentures to be issued in pursuance of that right shall be taken for the purposes of this section to be unascertainable at a particular time if, and only if—
- (a) it is made referable to matters relating to any business or assets of one or more relevant companies; and
  - (b) those matters are uncertain at that time on account of future business or future assets being included in the business or assets to which they relate.
- (8) Where a right to be issued with shares or debentures is conferred wholly or partly in consideration for the transfer of other shares or debentures or the extinguishment of any right, the value and quantity of the shares or debentures to be issued shall not be taken for the purposes of this section to be unascertainable in any case where, if—
- (a) the transfer or extinguishment were a disposal, and
  - (b) a gain on that disposal fell to be computed in accordance with this Act,
- the shares or debentures to be issued would, in pursuance of section 48, be themselves regarded as, or as included in, the consideration for the disposal.
- (9) Where any right to be issued with shares in or debentures of a company comprises an option to choose between shares in that company and debentures of that company, the existence of that option shall not, by itself, be taken for the purposes of this section either—
- (a) to make unascertainable the value or quantity of the shares or debentures to be issued; or
  - (b) to prevent the requirements of subsection (1)(b) and (d) or (4)(b) and (d) above from being satisfied in relation to that right.
- (10) For the purposes of this section the value or quantity of shares or debentures shall not be taken to be unascertainable by reason only that it has not been fixed if it will be fixed by reference to the other and the other is ascertainable.
- (11) In subsection (7) above “relevant company”, in relation to any right to be issued with shares in or debentures of a company, means—
- (a) that company or any company which is in the same group of companies as that company; or
  - (b) the company for whose shares or debentures that right was or was part of the consideration, or any company in the same group of companies as that company;
- and in this subsection the reference to a group of companies shall be construed in accordance with section 170(2) to (14).]

#### **Textual Amendments**

**F705** S. 138A inserted (retrospectively) by [Finance Act 1997 \(c. 16\)](#), s. **89(1)(2)** (with s. 89(3)-(8))

*Status: Point in time view as at 16/11/2017.*

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- F706** Word in s. 138A(2)(a) inserted (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(2\)\(a\)](#)
- F707** S. 138A(2)(c) and preceding word repealed (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(2\)\(b\), Sch. 43 Pt. 3\(8\)](#)
- F708** S. 138A(2A) inserted (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(3\)](#)
- F709** Word in s. 138A(4)(c) inserted (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(4\)\(a\)](#)
- F710** S. 138A(4)(e) and preceding word repealed (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(4\)\(b\), Sch. 43 Pt. 3\(8\)](#)
- F711** Words in s. 138A(4) substituted (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(4\)\(c\)](#)
- F712** S. 138A(4A) inserted (with effect in accordance with s. 161(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 161\(5\)](#)

### 139 Reconstruction <sup>F713</sup> ... involving transfer of business.

- (1) Subject to the provisions of this section, where—
- (a) any scheme of reconstruction <sup>F714</sup> ... involves the transfer of the whole or part of a company's business to another company, and
  - <sup>F715</sup>(b) the conditions in subsection (1A) below are met in relation to the assets included in the transfer, and]
  - (c) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then, so far as relates to corporation tax on chargeable gains, the 2 companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of Schedule 2 the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

<sup>F716</sup>(1A) The conditions referred to in subsection (1)(b) above are—

- (a) that the company acquiring the assets is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets [<sup>F717</sup>or NRCGT assets] in relation to that company immediately after that time, and
- (b) that the company from which the assets are acquired is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets [<sup>F718</sup>or NRCGT assets] in relation to that company immediately before that time.

For this purpose an asset is a “chargeable asset” in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section [<sup>F719</sup>10B] form part of its chargeable profits for corporation tax purposes.]

<sup>F720</sup>(1AA) For the purposes of subsection (1A), an asset is an “NRCGT asset” in relation to a company at any time if—

- (a) the disposal of the asset by the company at that time would be a non-resident CGT disposal, and

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- (b) the company would not be, in relation to that disposal, an eligible person (as defined in section 14F).]

[<sup>F721</sup>(1B) Nothing in section 179(3D) prevents the two companies being treated as mentioned in subsection (1).]

- (2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

Section 170(1) applies for the purposes of this subsection.

<sup>F722</sup>(3) .....

- (4) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which section 100(2) applies or which is an authorised unit trust or to an investment trust [<sup>F723</sup>or a venture capital trust].
- (5) This section does not apply unless the reconstruction <sup>F724</sup>... is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax; but the foregoing provisions of this subsection shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the acquiring company, notified the company that the Board are satisfied that the reconstruction <sup>F724</sup>... will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as aforesaid.

Subsections (2) to (5) of section 138 shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.

- (6) Where, if the company making the disposal had not been wound up, tax could have been assessed on it by virtue of subsection (5) above, that tax may be assessed and charged (in the name of the company making the disposal) on the company to which the disposal is made.
- (7) If any tax assessed on a company ("the chargeable company") by virtue of subsection (5) or (6) above is not paid within 6 months from the date when it is payable, any other person who—
- (a) holds all or any part of the assets in respect of which the tax is charged; and
  - (b) either is the company to which the disposal was made or has acquired the assets without there having been any subsequent disposal not falling within this section or section 171,
- may, within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this section shall be entitled to recover a sum of that amount from the chargeable company.
- (8) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (7) above—
- (a) for the words "when it is payable" there shall be substituted "when it is due and payable or, if later, the date when the assessment is made on the company";
  - (b) for the words "the time when the tax became payable" there shall be substituted "the later of those dates"; and

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- (c) for the words “a sum” onwards there shall be substituted “from the chargeable company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount”.

[<sup>F725</sup>(9) In this section “scheme of reconstruction” has the same meaning as in section 136.]

#### Textual Amendments

- F713** Words in s. 139 heading repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(2\)](#)
- F714** Words in s. 139(1)(a) repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(2\)](#)
- F715** S. 139(1)(b) substituted (with effect in accordance with Sch. 29 para. 5(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 5\(2\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F716** S. 139(1A) inserted (with effect in accordance with Sch. 29 para. 5(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 5\(3\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F717** Words in s. 139(1A)(a) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 21\(2\)\(a\)](#)
- F718** Words in s. 139(1A)(b) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 21\(2\)\(b\)](#)
- F719** Word in s. 139(1A) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)
- F720** S. 139(1AA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 21\(3\)](#)
- F721** S. 139(1B) inserted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 1](#)
- F722** S. 139(3) repealed (with effect in accordance with s. 251(1)(a)(5) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 251(5), [Sch. 26 Pt. VIII\(1\)](#)
- F723** Words in s. 139(4) inserted (with application in accordance with s. 134(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 134(1)
- F724** Words in s. 139(5) repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(2\)](#)
- F725** S. 139(9) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(7\)](#)

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

- C195** S. 139 excluded (27.7.1993 with application as mentioned in s. 165(1)) by [1993 c. 34](#), s. 169, [Sch. 17 para. 7\(2\)\(b\)](#)
- C196** S. 139 restricted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 131(1)(2)(a)

#### Commencement Information

- I2** S. 139(8): 30.9.1993 appointed for the purposes of s. 139(8) by [S.I. 1992/3066](#), [art. 2\(2\)\(d\)](#)

### 140 Postponement of charge on transfer of assets to non-resident company.

- (1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a [<sup>F726</sup>permanent establishment] and—
- (a) that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) is transferred to a company not resident in the United Kingdom;

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- (b) the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee company to the transferor company;
- (c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company; and
- (d) either no allowable losses accrue to the transferor company on the transfer or the aggregate of the chargeable gains so accruing exceeds the aggregate of the allowable losses so accruing;

and also applies in any case where section 268A of the <sup>M22</sup>Income and Corporation Taxes Act 1970 applied unless the deferred gain had been wholly taken into account in accordance with that section before the coming into force of this section.

Section 170(1) shall apply for the purposes of this section.

- (2) In any case to which this section applies the transferor company may claim that this Act shall have effect in accordance with the following provisions.
- (3) Any allowable losses accruing to the transferor company on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses and—
  - (a) if the securities are the whole consideration for the transfer, the whole of that gain shall be treated as not accruing to the transferor company on the transfer but an equivalent amount (“the deferred gain”) shall be brought into account in accordance with subsections (4) and (5) below;
  - (b) if the securities are not the whole of that consideration—
    - (i) paragraph (a) above shall apply to the appropriate proportion of that gain; and
    - (ii) the remainder shall be treated as accruing to the transferor company on the transfer.

In paragraph (b)(i) above “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

- (4) If at any time after the transfer the transferor company disposes of the whole or part of the securities held by it immediately before that time, [<sup>F727</sup>there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion] the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (5) below.

In this subsection “the appropriate proportion” means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal.

[<sup>F728</sup>(4A) A chargeable gain which is deemed to accrue under subsection (4) is in addition to any gain or loss that actually accrues to the transferor company on the disposal of the securities.]

- (5) If at any time within 6 years after the transfer the transferee company disposes of the whole or part of the relevant assets held by it immediately before that time there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion



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the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (4) above.

In this subsection “relevant assets” means assets the chargeable gains on which were taken into account in arriving at the deferred gain and “the appropriate proportion” means the proportion which the chargeable gain so taken into account in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(6) There shall be disregarded—

- (a) for the purposes of subsection (4) above any disposal to which section 171 applies; and
- (b) for the purposes of subsection (5) above any disposal to which that section would apply [<sup>F729</sup>if subsections (1)(b) and (1A) of that section and section 170(9) were disregarded];

and where a person acquires securities or an asset on a disposal disregarded for the purposes of subsection (4) or (5) above (and without there having been a previous disposal not so disregarded) a disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, transferee company.

[<sup>F730</sup>(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140C.]

[<sup>F731</sup>(6AA) If securities are transferred by a transferor company as part of the process of the transfer of a business to which section 140A or 140C applies—

- (a) the transfer shall be disregarded for the purposes of subsection (4), and
- (b) the transferee company shall be treated as if it were the transferor company in relation to—
  - (i) any subsequent disposal of the securities, and
  - (ii) any subsequent disposal by the transferee of assets to which subsection 5 applies.]

[<sup>F732</sup>(6B) If securities are transferred by a transferor as part of the process of a merger to which section 140E applies—

- (a) the transfer shall be disregarded for the purposes of subsection (4), and
- (b) the transferee shall be treated as if it were the transferor in relation to—
  - (i) any subsequent disposal of the securities, and
  - (ii) any subsequent disposal by the transferee of assets to which subsection (5) applies.

(6C) In subsection (6B) “transferor” and “transferee” have the meaning given by section 140E(9).]

(7) If in the case of any such transfer as was mentioned in section 268(1) of the <sup>M23</sup>Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section chargeable gains which by virtue of section 268(2) and 268A(8) of that Act were treated as not having accrued to the transferor company, subsection (4) above shall (without any claim in that behalf) apply to the aggregate of those gains as if references to the deferred gain were references to that aggregate and as if references to the transfer and the securities were references to the transfer and the shares, or shares and loan stock, mentioned in section 268(1).

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- (8) If in the case of any such transfer as was mentioned in section 268A(1) of the <sup>M24</sup>Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section deferred gains which by virtue of section 268A(3) were treated as not having accrued to the transferor company, subsections (4) and (5) above shall (without any claim in that behalf) apply to those deferred gains as they apply to gains deferred by virtue of subsection (3) above (as if the references to the transfer and the securities were references to the transfer and securities mentioned in section 268A(1)).

#### Textual Amendments

- F726** Words in s. 140(1) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(b\)](#)
- F727** Words in s. 140(4) substituted (with effect in accordance with s. 37(3) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 37\(1\)\(a\)](#)
- F728** S. 140(4A) inserted (with effect in accordance with s. 37(3) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 37\(1\)\(b\)](#)
- F729** Words in s. 140(6)(b) substituted (with effect in accordance with Sch. 29 para. 23(2) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 23\(1\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F730** S. 140(6A) inserted (*retrosp.*) by [1992 c. 48, s. 46\(1\)\(4\)](#)
- F731** S. 140(6AA) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\), reg. 1\(2\), Sch. 1 para. 7](#) (with [S.I. 2008/1579, reg. 4\(1\)](#))
- F732** S. 140(6B)(6C) substituted for s. 140(6B) (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\), reg. 1\(2\), Sch. 2 para. 5](#) (with [S.I. 2008/1579, reg. 4\(1\)](#))

#### Marginal Citations

- M22** 1970 c. 10.  
**M23** 1970 c. 10.  
**M24** 1970 c. 10.

<sup>F733</sup>*[Transfers concerning companies of different member States]*

#### Textual Amendments

- F733** Cross heading inserted (*retrosp.*) by [1992 c. 48, s.44](#)

### <sup>F734</sup>**140A**<sup>F735</sup> **Transfer or division of UK business]**

- (1) This section applies where—
- (a) a <sup>F736</sup>company] resident in one member State (<sup>F737</sup>the transferor]) transfers the whole or part of a <sup>F738</sup>business] carried on by it in the United Kingdom to a <sup>F736</sup>company] resident in another member State (<sup>F739</sup>the transferee]),
  - (b) the transfer is wholly in exchange for <sup>F740</sup>shares or debentures] issued by <sup>F739</sup>the transferee] to <sup>F737</sup>the transferor],
  - (c) a claim is made under this section by <sup>F737</sup>the transferor] and <sup>F739</sup>the transferee],
  - (d) section 140B does not prevent this section applying, and

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- (e) the appropriate condition is met in relation to [<sup>F739</sup>the transferee] immediately after the time of the transfer.

[ This section also applies where a company transfers part of its business to one or more <sup>F741</sup>(1A) companies if—

- (a) the transferor is resident in one member State,
  - (b) the part of the transferor's business which is to be transferred is carried on by the transferor in the United Kingdom,
  - (c) at least one transferee is resident in a member State other than that in which the transferor is resident,
  - (d) the transferor company continues to carry on a business after the transfer,
  - (e) the conditions in subsection (1)(c) to (e) are satisfied (for which purpose references to the transferee shall be taken as references to each of the transferees), and
  - (f) either of the following conditions is satisfied.
- (1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.
- (1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.
- (1D) If Condition 2 applies in relation to the whole or part of a transfer, sections 24 and 122 do not apply in relation to the transfer.]
- (2) Where immediately after the time of the transfer [<sup>F742</sup>the transferee (or each of the transferees)] is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section [<sup>F743</sup>10B].
  - (3) Where immediately after the time of the transfer [<sup>F742</sup>the transferee (or each of the transferees)] is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.
  - (4) Where this section applies—
    - (a) [<sup>F744</sup>the transferor and the transferee (or each of the transferees)] shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by [<sup>F742</sup>the transferee (or each of the transferees)] from [<sup>F745</sup>the transferor] for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to [<sup>F745</sup>the transferor];
    - (b) section 25(3) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).

<sup>F746</sup>(5) .....

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F747(6) .....

F748(7) ..... ]

### Textual Amendments

- F734** S. 140A inserted (*retrosp.*) by 1992 c. 48, s.44
- F735** S. 140A heading substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(7)** (with S.I. 2008/1579, reg. 4(1))
- F736** Word in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(c)** (with S.I. 2008/1579, reg. 4(1))
- F737** Words in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(a)** (with S.I. 2008/1579, reg. 4(1))
- F738** Word in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(d)** (with S.I. 2008/1579, reg. 4(1))
- F739** Words in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(b)** (with S.I. 2008/1579, reg. 4(1))
- F740** Words in s. 140A(1)(b) substituted (with effect in accordance with s. 59(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. **59(3)(a)**
- F741** S. 140A(1A)-(1D) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(3)** (with S.I. 2008/1579, reg. 4(1))
- F742** Words in s. 140A(2)-(4) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(4)(b)** (with S.I. 2008/1579, reg. 4(1))
- F743** Word in s. 140A(2) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**
- F744** Words in s. 140A(4)(a) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(5)** (with S.I. 2008/1579, reg. 4(1))
- F745** Words in s. 140A(4)(a) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(4)(a)** (with S.I. 2008/1579, reg. 4(1))
- F746** S. 140A(5) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(6)** (with S.I. 2008/1579, reg. 4(1))
- F747** S. 140A(6) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(6)** (with S.I. 2008/1579, reg. 4(1))
- F748** S. 140A(7) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(6)** (with S.I. 2008/1579, reg. 4(1))

### Modifications etc. (not altering text)

- C197** S. 140A restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), s. **131(1)(2)(a)**

*Status: Point in time view as at 16/11/2017.*

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**C198** S. 140A(1C) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 6(1), [Sch. 4 para. 2\(a\)](#) (with reg. 6(2))

### **[<sup>F749</sup>140B] Section 140A: anti-avoidance.**

- (1) Section 140A shall not apply unless the transfer of the [<sup>F750</sup>business] or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of [<sup>F751</sup>the transferor] and [<sup>F752</sup>the transferee (or each of the transferees)] notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.]

#### **Textual Amendments**

**F749** S. 140B inserted (*retrosp.*) by [1992 c. 48, s.44](#)

**F750** Word in s. 140B(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 3\(c\)](#) (with S.I. 2008/1579, reg. 4(1))

**F751** Words in s. 140B(2) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 3\(a\)](#) (with S.I. 2008/1579, reg. 4(1))

**F752** Words in s. 140B(2) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 3\(b\)](#) (with S.I. 2008/1579, reg. 4(1))

### **[<sup>F753</sup>140C]<sup>F754</sup> Transfer or division of non-UK business]**

- (1) This section applies where—
  - (a) a [<sup>F755</sup>company] resident in the United Kingdom ([<sup>F756</sup>the transferor]) transfers to a [<sup>F755</sup>company] resident in another member State ([<sup>F757</sup>the transferee]) the whole or part of a [<sup>F758</sup>business] which, immediately before the time of the transfer, [<sup>F756</sup>the transferor] carried on in a member State other than the United Kingdom through a [<sup>F759</sup>permanent establishment],
  - (b) the transfer includes the whole of the assets of [<sup>F756</sup>the transferor] used for the purposes of the [<sup>F758</sup>business] or part (or the whole of those assets other than cash),
  - (c) the transfer is wholly or partly in exchange for [<sup>F760</sup>shares or debentures] issued by [<sup>F757</sup>the transferee] to [<sup>F756</sup>the transferor],
  - (d) the aggregate of the chargeable gains accruing to [<sup>F756</sup>the transferor] on the transfer exceeds the aggregate of the allowable losses so accruing,
  - (e) a claim is made under this section by [<sup>F756</sup>the transferor], and
  - (f) section 140D does not prevent this section applying.

*Status: Point in time view as at 16/11/2017.*

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[ This section also applies where a company resident in the United Kingdom transfers  
F761(1A) part of its business to one or more companies if—

- (a) the part of the transferor's business which is to be transferred is carried on, immediately before the time of the transfer, by the transferor in a member State other than the United Kingdom through a permanent establishment,
- (b) at least one transferee is resident in a member State other than the United Kingdom,
- (c) the transferor company continues to carry on a business after the transfer,
- (d) the conditions in subsection (1)(b), (d), (e) and (f) are satisfied, and
- (e) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.]

(2) In a case where this section applies, this Act shall have effect in accordance with subsection (3) below.

(3) The allowable losses accruing to [F762the transferor] on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.

(4) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140.

(5) In a case where this section applies, [F763section 122 of TIOPA 2010 (tax treated as chargeable in respect of gains on transfer of non-UK business)] shall also apply.

F764(6) . . . . .

F765(7) . . . . .

F766(8) . . . . .

F767(9) . . . . . ]

#### Textual Amendments

**F753** S. 140C inserted (*retrosp.*) by 1992 c. 48, s. 45

**F754** S. 140C heading substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 4\(6\)](#) (with S.I. 2008/1579, reg. 4(1))

**F755** Word in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 4\(2\)\(c\)](#) (with S.I. 2008/1579, reg. 4(1))

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- F756** Words in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(2)(a)** (with S.I. 2008/1579, reg. 4(1))
- F757** Words in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(2)(b)** (with S.I. 2008/1579, reg. 4(1))
- F758** Word in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(2)(d)** (with S.I. 2008/1579, reg. 4(1))
- F759** Words in s. 140C(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **s. 153(1)(b)**
- F760** Words in s. 140C(1)(c) substituted (with effect in accordance with s. 59(7) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **s. 59(4)(a)**
- F761** S. 140C(1A)-(1C) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(3)** (with S.I. 2008/1579, reg. 4(1))
- F762** Words in s. 140C(3) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(4)** (with S.I. 2008/1579, reg. 4(1))
- F763** Words in s. 140C(5) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\)](#), arts. 1(2), **5**
- F764** S. 140C(6) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(5)** (with S.I. 2008/1579, reg. 4(1))
- F765** S. 140C(7) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(5)** (with S.I. 2008/1579, reg. 4(1))
- F766** S. 140C(8) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 75**
- F767** S. 140C(9) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 4(5)** (with S.I. 2008/1579, reg. 4(1))

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

- C199** S. 140C(1C) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 6(1), **Sch. 4 para. 2(b)** (with reg. 6(2))

#### **[<sup>F768</sup>140D] Section 140C: anti-avoidance.**

- (1) Section 140C shall not apply unless the transfer of the [<sup>F769</sup>business] or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of [<sup>F770</sup>the transferor] notified that company that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.]

*Status: Point in time view as at 16/11/2017.*

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#### Textual Amendments

- F768** S. 140D inserted (*retrosp.*) by **1992 c. 48, s. 45**
- F769** Word in s. 140D(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by **The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186)**, reg. 1(2), **Sch. 1 para. 5(b)** (with S.I. 2008/1579, reg. 4(1))
- F770** Words in s. 140D(2) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by **The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186)**, reg. 1(2), **Sch. 1 para. 5(a)** (with S.I. 2008/1579, reg. 4(1))

### [<sup>F771</sup>140DA Securities issued on division of business

- (1) This section applies where—
- (a) a transfer of assets to which section 140A(1A) or 140C(1A) applies has taken place,
  - (b) the transferor and the transferee (or each of the transferees) are each resident in a member State,
  - (c) they are not all resident in the same State, and
  - (e) the transfer does not constitute or form part of a scheme of reconstruction within the meaning of section 136.
- (2) Where this section applies, the transfer shall be treated for the purposes of section 136 as if it were a scheme of reconstruction.
- (3) Where section 136 applies by virtue of subsection (2) above section 136(6) (and section 137) shall not apply.]

#### Textual Amendments

- F771** S. 140DA inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by **The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186)**, reg. 1(2), **Sch. 1 para. 6** (with S.I. 2008/1579, reg. 4(1))

### [<sup>F772</sup>Mergers within European Community

#### Textual Amendments

- F772** Ss. 140E-140G and cross-heading substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by **The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186)**, reg. 1(2), **Sch. 2 para. 2**

### 140E Merger leaving assets within UK tax charge

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),



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- (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a <sup>F773</sup>registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969], in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/2003 on the Statute for a European Cooperative Society (SCE),
  - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that —
- (a) each of the merging companies is resident in a member State,
  - (b) the merging companies are not all resident in the same State,
  - (c) section 139 does not apply to any qualifying transferred assets,
  - (d) in the case of a merger to which subsection (1)(a), (b) or (c) applies, either—
    - (i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
    - (ii) sub-paragraph (i) is not satisfied by reason only, and to the extent only, that the transferee is prevented from complying with sub-paragraph (i) by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself, and
  - (e) in the case of a merger to which subsection (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).
- (3) Where this section applies, qualifying transferred assets shall be treated for the purposes of corporation tax on chargeable gains as if acquired by the transferee for a consideration resulting in neither gain nor loss for the transferor.
- (4) For the purposes of subsections (2) and (3) an asset is a qualifying transferred asset if—
- (a) it is transferred to the transferee as part of the process of the merger, and
  - (b) subsections (5) and (6) are satisfied in respect of it.
- (5) This subsection is satisfied in respect of a transferred asset if—
- (a) the transferor is resident in the United Kingdom at the time of the transfer, or
  - (b) any gain that would have accrued to the transferor, had it disposed of the asset immediately before the time of the transfer, would have been a chargeable gain forming part of the transferor's chargeable profits in accordance with section 10B.
- (6) This subsection is satisfied in respect of a transferred asset if—
- (a) the transferee is resident in the United Kingdom at the time of the transfer, or
  - (b) any gain that would accrue to the transferee were it to dispose of the asset immediately after the transfer would be a chargeable gain forming part of the transferee's chargeable profits in accordance with section 10B.

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- (7) If subsection (2)(d)(ii) applies in relation to a transfer of assets and liabilities on a merger (in whole or in part), sections 24 and 122 do not apply.
- (8) This section does not apply in relation to a merger if—
- (a) it is not effected for bona fide commercial reasons, or
  - (b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax,  
and section 138 (clearance in advance) shall apply to this subsection as it applies to section 137 (with any necessary modifications).
- (9) In this section—
- (a) “cooperative society” means a [<sup>F774</sup>registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969] or a similar society established in accordance with the law of a member State other than the United Kingdom,
  - (b) “transferor” means—
    - (i) in relation to a merger to which subsection (1)(a) applies, each company merging to form the SE,
    - (ii) in relation to a merger to which subsection (1)(b) applies, each cooperative society merging to form the SCE, and
    - (iii) in relation to a merger to which subsection (1)(c) or (d) applies, each company transferring all of its assets and liabilities,
  - (c) “transferee” means—
    - (i) in relation to a merger to which subsection (1)(a) applies, the SE,
    - (ii) in relation to a merger to which subsection (1)(b) applies, the SCE, and
    - (iii) in relation to a merger to which subsection (1)(c) or (d) applies, the company to which assets and liabilities are transferred, and
  - (d) references in subsections (1)(c) and (2) to (7) to a company include references to a cooperative society.

#### Textual Amendments

**F773** Words in s. 140E(1)(b) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 47\(2\)](#) (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 3\(a\)](#), 15)

**F774** Words in s. 140E(9)(a) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 47\(3\)](#) (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 3\(b\)](#), 15)

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

**C200** S. 140E(2)(d) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 6(1), [Sch. 4 para. 2\(c\)](#) (with [reg. 6\(2\)](#))

### 140F Merger: assets outside UK tax charge

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—

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- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a <sup>F775</sup>registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969], in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/2003 on the Statute for a European Cooperative Society (SCE),
  - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that—
- (a) each merging company is resident in a member State,
  - (b) the merging companies are not all resident in the same State,
  - (c) in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State (“company B”) all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment,
  - (d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of any allowable losses so accruing, <sup>F776</sup> ...
  - (e) in the case of a merger to which subsection (1)(a), (b) or (c) applies, either—
    - (i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
    - (ii) sub-paragraph (i) is not satisfied by reason only, and to the extent only, that the transferee is prevented from complying with sub-paragraph (i) by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself <sup>F777</sup>and
  - (f) in the case of a merger to which subsection (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).]
- (3) Where this section applies, for the purposes of this Act—
- (a) the allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing, and
  - (b) the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.
- (4) Where this section applies, <sup>F778</sup>section 122 of TIOPA 2010 (tax treated as chargeable in respect of gains on transfer of non-UK business)] shall also apply.
- (5) Subsections (8) and (9) of section 140E apply for the purposes of this section as they apply for the purposes of that section.

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### Textual Amendments

- F775** Words in s. 140F(1)(b) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\), s. 154, Sch. 4 para. 48](#) (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\), Sch. 39 paras. 4, 15](#))
- F776** Word in s. 140F(2)(d) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\), reg. 1\(2\), Sch. 1 para. 3\(a\)](#)
- F777** S. 140F(2)(f) and preceding word inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\), reg. 1\(2\), Sch. 1 para. 3\(b\)](#)
- F778** Words in s. 140F(4) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\), arts. 1\(2\), 6](#)

### Modifications etc. (not altering text)

- C201** S. 140F(2)(e) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\), regs. 1\(2\), 6\(1\), Sch. 4 para. 2\(d\)](#) (with reg. 6(2))

## 140G Treatment of securities issued on merger

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation [\(EC\) 2157/2001](#) on the Statute for a European Company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a <sup>F779</sup>registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969], in accordance with Articles 2(1) and 19 of Council Regulation [\(EC\) 1435/2003](#) on the Statute for a European Cooperative Society (SCE),
  - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
  - (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that—
- (a) each of the merging companies is resident in a member State,
  - (b) the merging companies are not all resident in the same State, and
  - (c) the merger does not constitute or form part of a scheme of reconstruction within the meaning of section 136.
- (3) Where this section applies, the merger shall be treated for the purposes of section 136 as if it were a scheme of reconstruction.

*Status: Point in time view as at 16/11/2017.*

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- (4) Where section 136 applies by virtue of subsection (3) above section 136(6) (and section 137) shall not apply.
- (5) Subsections (8) and (9) of section 140E apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

**F779** Words in s. 140G(1)(b) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 49](#) (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 5, 15](#))

### [<sup>F780</sup> **140D** Disapplication of sections 24 and 122 where subsidiary merges with its parent

Sections 24 and 122 do not apply if—

- (a) a merger is effected by the transfer by a company (“the transferor company”) of all of its assets and liabilities to a single company that holds the whole of the ordinary share capital in the transferor company,
- (b) each merging company is resident in a member State,
- (c) the merging companies are not all resident in the same State,
- (d) section 139 does not apply in relation to the transfer, and
- (e) in the course of the merger the transferor company ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 55).]

#### Textual Amendments

**F780** S. 140GA inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), [Sch. 1 para. 4](#)

[<sup>F781</sup> *Transparent entities: disapplication of reliefs related to Mergers Directive*

#### Textual Amendments

**F781** Ss. 140H-140L and cross-heading inserted (with effect in accordance with reg. 3(3) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 3 para. 1](#) (with S.I. 2008/1579, [reg. 4\(2\)](#))

### **140H. Share exchanges**

- (1) This section applies if—
- (a) a company (“company B”) issues shares or debentures to a person in exchange for shares in or debentures of another company (“company A”),
  - (b) the exchange falls within one of the cases specified in section 135(2), and
  - (c) either company B or company A or both is a transparent entity.
- (2) Where this section applies—

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- (a) “company” in section 135 shall be treated as meaning an entity listed in [F782Part A of Annex I] to the Mergers Directive, and
  - (b) section 135(3) does not apply.
- (3) If, as a result of an exchange in relation to which this section applies, a gain accruing to a person holding shares in or debentures of company A on the exchange would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, [F783Part 2 of TIOPA 2010] (double taxation relief), including any [F784double taxation relief arrangements], shall apply as if that tax, calculated in accordance with subsection (4), had been chargeable.
- (4) Tax is calculated in accordance with this subsection if—
- (a) so far as permitted under the law of the relevant member State, losses arising on the exchange are set against gains arising on the exchange, and
  - (b) any relief available to company A under that law has been claimed.

#### Textual Amendments

**F782** Words in s. 140H(2)(a) substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **2(2)**

**F783** Words in s. 140H(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 44(a)** (with Sch. 9 paras. 1-9, 22)

**F784** Words in s. 140H(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 44(b)** (with Sch. 9 paras. 1-9, 22)

#### 140I. Division of business or transfer of assets

- (1) This section applies in relation to a transfer of a business, or part of a business, where—
- (a) the transfer is of a kind [F785mentioned in section 140A(1) or (1A) (or which would be of such a kind] if the business, or the part of the business, transferred were carried on by the transferor in the United Kingdom and the condition mentioned in section 140A(1)(e) were satisfied in relation to the transferee, or each of the transferees), and
  - (b) either the transferor or the transferee, or one of the transferees, is a transparent entity.
- (2) Where this section applies—
- (a) if the transferor is a transparent entity, sections 140A and 140DA do not apply in relation to the transfer;
  - (b) if a transferee is a transparent entity, section 140DA does not apply in relation to the transfer to it.
- (3) If, as a result of a transfer in relation to which this section applies, a transfer gain would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, [F786Part 2 of TIOPA 2010] (double taxation relief), including any [F787double taxation relief arrangements], shall apply as if that tax, calculated in accordance with subsection (5), had been chargeable.

*Status: Point in time view as at 16/11/2017.*

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- (4) In subsection (3) “transfer gain” means a gain accruing to a transparent entity (or which would be treated as accruing to that entity were it not transparent) by reason of the transfer of assets by the transparent entity to the transferee.
- (5) Tax is calculated in accordance with this subsection if—
- (a) so far as permitted under the law of the relevant member State, losses arising on the transfer are set against gains arising on the transfer, and
  - (b) any relief available under that law has been claimed.

#### Textual Amendments

**F785** Words in s. 140I(1)(a) substituted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), [Sch. 1 para. 5](#)

**F786** Words in s. 140I(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 44\(a\)](#) (with [Sch. 9 paras. 1-9, 22](#))

**F787** Words in s. 140I(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 44\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))

## 140J. Mergers

- (1) This section applies in relation to a merger if—
- (a) the merger is of a kind [<sup>F788</sup>mentioned in section 140E(1)],
  - (b) the conditions in section 140E(2) are satisfied in relation to the merger, and
  - (c) one or more of the merging companies is a transparent entity.
- (2) Where this section applies—
- (a) if the assets and liabilities of a transparent entity are transferred to another company by reason of the merger, sections 140E and 140G shall not apply;
  - (b) if the assets and liabilities of one or more other companies are transferred to a transparent entity by reason of the merger section 140G shall not apply.
- (3) If, as a result of a merger in relation to which this section applies, a merger gain would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, [<sup>F789</sup>Part 2 of TIOPA 2010] (double taxation relief), including any [<sup>F790</sup>double taxation relief arrangements] shall apply as if that tax, calculated in accordance with subsection (5), had been chargeable.
- (4) In subsection (3) “merger gain” means a gain accruing to a transparent entity (or which would be treated as accruing to that entity were it not transparent) by reason of the transfer of assets by the transparent entity to another company on the merger.
- (5) Tax is calculated in accordance with this subsection if—
- (a) so far as permitted under the law of the relevant member State, losses arising on the merger are set against gains arising on the merger, and
  - (b) any relief available under that law has been claimed.

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### Textual Amendments

- F788** Words in s. 140J(1)(a) substituted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), [Sch. 1 para. 6](#)
- F789** Words in s. 140J(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 44\(a\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F790** Words in s. 140J(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 44\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))

## 140K. Transparent entities: taxation after merger, &c

- (1) This section applies if—
- (a) a transparent entity (“company A”) is a transferee for the purposes of section 140A(1A) or 140E,
  - (b) a person (“X”) with an interest in company A was or is also a shareholder or debenture holder of a company (“company B”),
  - (c) X became entitled to an interest, or an increased interest, in company A in exchange for a disposal of shares in, or debentures of, company B on a merger to which section 140E applied or on a transfer to which section 140A(1A) applied,
  - (d) a chargeable gain accrued to X on the disposal of shares in or debentures of company B,
  - (e) in calculating the gain on the shares or debentures account was taken of the value of an asset of company B, and
  - (f) X makes a disposal of his interest in the asset.
- (2) In computing the gain accruing to X on a disposal to which subsection (1)(f) applies, the sum allowable as a deduction in accordance with section 38(1)(a) in relation to the interest, or the proportion of the interest, which X acquired on the merger or transfer shall be the value taken into account in computing the gain on the disposal of his shares in, or debentures of, company B.
- (3) In this section a reference to an interest in company A includes—
- (a) an interest in the assets of company A,
  - (b) shares in company A, and
  - (c) debentures of company A.

## 140L. Interpretation

- (1) In sections 140A to 140K [<sup>F791</sup>and this section], unless the contrary intention appears—
- (a) “the Mergers Directive” means Council Directive [<sup>F792</sup>2009/133/EC,]
  - (b) “company” means an entity listed as a company in [<sup>F793</sup>Part A of Annex I] to the Mergers Directive, and
  - (c) “transparent entity” means an entity which is resident in a member State other than the United Kingdom and is listed as a company in [<sup>F793</sup>Part A of Annex I] to the Mergers Directive, but—



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- (i) does not have an ordinary share capital (within the meaning given by <sup>F794</sup>section 1119 of CTA 2010]), and
  - (ii) if it were resident in the United Kingdom, would not be capable of being a company within the meaning given by the Companies Act 2006.
- (2) For the purposes of those sections and subsection (1) above, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.]

#### Textual Amendments

- F791** Words in s. 140L(1) inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), **Sch. 1 para. 7**
- F792** Words in s. 140L(1)(a) substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **2(3)(a)**
- F793** Words in s. 140L(1)(b)(c) substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **2(3)(b)**
- F794** Words in s. 140L(1)(c)(i) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 235** (with Sch. 2)

## CHAPTER III

### MISCELLANEOUS PROVISIONS RELATING TO COMMODITIES, FUTURES, OPTIONS AND OTHER SECURITIES

#### <sup>F795</sup>142 Capital gains on stock dividends.

- (1) This section applies where any share capital to which <sup>F796</sup>section 410(2), (3) or (4) of ITTOIA 2005 applies] in respect of shares in the company held by any person.
- (2) The case shall not constitute a reorganisation of the company's share capital for the purposes of sections 126 to 128.
- (3) The person who acquires the share capital by means of its issue shall (notwithstanding section 17(1)) be treated for the purposes of section 38(1)(a) as having acquired that asset for a consideration equal to <sup>F797</sup>the cash equivalent of the share capital in accordance with section 412 of ITTOIA 2005].]

#### Textual Amendments

- F795** S. 142 substituted for ss. 141, 142 (with application in accordance with s. 126(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 126(1)**
- F796** Words in s. 142(1) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 434(2)** (with Sch. 2)

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**F797** Words in s. 142(3) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 434(3)** (with Sch. 2)

### **[<sup>F798</sup>142 AREITs: chargeable gains on stock dividends**

- (1) This section applies if share capital issued in lieu of a cash dividend by—
  - (a) a company UK REIT, or
  - (b) the principal company of a group UK REIT,
 is attributed as mentioned in section 550(2)(a), (c) or (d) of CTA 2010 (attribution of distributions).
- (2) The case shall not constitute a reorganisation of the company's share capital for the purposes of sections 126 to 128.
- (3) The person who acquires the share capital by means of its issue shall (notwithstanding section 17(1)) be treated for the purposes of section 38(1)(a) as having acquired that asset for a consideration equal to the cash equivalent of the share capital.
- (4) Section 414A(2) to (4) of ITTOIA 2005 (meaning of “share capital issued in lieu of a cash dividend”) applies for the purposes of this section as it applies for the purposes of Chapter 5 of Part 4 of that Act.
- (5) Section 412(1), (2), (4) and (5) of that Act (meaning of “cash equivalent of share capital”) applies for the purposes of this section as it applies in relation to share capital issued as mentioned in section 410(1)(a) of that Act.
- (6) In this section “company UK REIT” and “principal company of a group UK REIT” are to be read in accordance with Part 12 of CTA 2010 (Real Estate Investment Trusts).]

#### **Textual Amendments**

**F798** S. 142A inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 1**

### **143 Commodity and financial futures and qualifying options.**

- (1) If, apart from [<sup>F799</sup>section 981 of CTA 2009][<sup>F800</sup>and section 779 of ITTOIA 2005], gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, for the purposes of the Tax Acts, profits or gains [<sup>F801</sup>chargeable to tax—
  - (a) under [<sup>F802</sup>Chapter 8 of Part 10 of CTA 2009], or
  - (b) under Chapter 8 of Part 5 of ITTOIA 2005,
 then] his outstanding obligations under any futures contract entered into in the course of that dealing and any qualifying option granted or acquired in the course of that dealing shall be regarded as assets to the disposal of which this Act applies.
- (2) In subsection (1) above—
  - (a) “commodity or financial futures” means commodity futures or financial futures which are for the time being dealt in on a recognised futures exchange; and
  - (b) “qualifying option” means a traded option or financial option as defined in section 144(8).

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(3) Notwithstanding the provisions of subsection (2)(a) above, where, otherwise than in the course of dealing on a recognised futures exchange—

- (a) an authorised person <sup>F803</sup>... enters into a commodity or financial futures contract with another person, or
- (b) the outstanding obligations under a commodity or financial futures contract to which an authorised person <sup>F803</sup>... is a party are brought to an end by a further contract between the parties to the futures contract,

then, except in so far as any gain or loss arising to any person from that transaction arises in the course of a trade, that gain or loss shall be regarded for the purposes of subsection (1) above as arising to him in the course of dealing in commodity or financial futures.

<sup>F804</sup>(4) .....

(5) For the purposes of this Act, where, in the course of dealing in commodity or financial futures, a person who has entered into a futures contract closes out that contract by entering into another futures contract with obligations which are reciprocal to those of the first-mentioned contract, that transaction shall constitute the disposal of an asset (namely, his outstanding obligations under the first-mentioned contract) and, accordingly—

- (a) any money or money's worth received by him on that transaction shall constitute consideration for the disposal; and
- (b) any money or money's worth paid or given by him on that transaction shall be treated as incidental costs to him of making the disposal.

[<sup>F805</sup>(6) In any case where, in the course of dealing in commodity or financial futures, a person has entered into a futures contract and—

- (a) he has not closed out the contract (as mentioned in subsection (5) above), and
- (b) he becomes entitled to receive or liable to make a payment, whether under the contract or otherwise, in full or partial settlement of any obligations under the contract,

then, for the purposes of this Act, he shall be treated as having disposed of an asset (namely, that entitlement or liability) and the payment received or made by him shall be treated as consideration for the disposal or, as the case may be, as incidental costs to him of making the disposal.

(7) Section 46 shall not apply to obligations under—

- (a) a commodity or financial futures contract which is entered into by a person in the course of dealing in such futures on a recognised futures exchange; or
- (b) a commodity or financial futures contract to which an authorised person <sup>F806</sup>... is a party.

[<sup>F807</sup>(8) In this section “authorised person” means a person who—

- (a) falls within section 31(1)(a), (b) or (c) of the Financial Services and Markets Act 2000, and
- (b) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]

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### Textual Amendments

- F799** Words in s. 143(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 369\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F800** Words in s. 143(1) inserted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Income Tax \(Trading and Other Income\) Act 2005 \(Consequential Amendments\) Order 2006 \(S.I. 2006/959\), arts. 1\(2\), 3\(2\)\(a\)](#)
- F801** Words in s. 143(1) substituted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Income Tax \(Trading and Other Income\) Act 2005 \(Consequential Amendments\) Order 2006 \(S.I. 2006/959\), arts. 1\(2\), 3\(2\)\(b\)](#)
- F802** Words in s. 143(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 369\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F803** Words in s. 143(3)(a)(b) omitted (1.12.2001) by virtue of [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\), arts. 1\(2\)\(a\), 64\(2\)](#)
- F804** S. 143(4) repealed (with effect in accordance with s. 95(2) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 95\(1\), Sch. 26 Pt. V\(9\)](#)
- F805** S. 143(6)(7)(8) substituted for s. 143(6) (with effect in accordance with s. 95(2) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 95\(1\)](#)
- F806** Words in s. 143(7)(b) omitted (1.12.2001) by virtue of [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\), arts. 1\(2\)\(a\), 64\(2\)](#)
- F807** S. 143(8) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\), arts. 1\(2\)\(a\), 64\(3\)](#)

### Modifications etc. (not altering text)

- C202** S. 143(5)(6) applied (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), ss. 562\(1\), 883\(1\)](#) (with [s. 563, Sch. 2](#))

## 144 Options and forfeited deposits.

- (1) Without prejudice to section 21, 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 of the option), but subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction.
- (2) 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.
- (3) 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

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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.

(4) The abandonment of—

- (a) a quoted option to subscribe for shares in a company, or
- (b) a traded option or financial option, or
- (c) an option to acquire assets exercisable by a person intending to use them, if acquired, for the purpose of a trade carried on by him,

shall constitute the disposal of an asset (namely of the option); but the abandonment of any other option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person.

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

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

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

(8) In subsection (4) above and sections 146 and 147—

- (a) “quoted option” means an option which, at the time of the abandonment or other disposal, is [<sup>F808</sup>listed on] a recognised stock exchange;
- (b) “traded option” means an option which, at the time of the abandonment or other disposal, is [<sup>F809</sup>listed] on a recognised stock exchange or a recognised futures exchange; and
- (c) “financial option” means an option which is not a traded option, as defined in paragraph (b) above, but which, subject to subsection (9) below—

- (i) relates to currency, shares, securities or an interest rate and is granted (otherwise than as agent) by a member of a recognised stock exchange, by an [<sup>F810</sup>authorised person within the meaning given by section 143(8)]; or

- (ii) relates to shares or securities which are dealt in on a recognised stock exchange and is granted by a member of such an exchange, acting as agent; or

- (iii) relates to currency, shares, securities or an interest rate and is granted to such an authorised person <sup>F811</sup>... as is referred to in sub-paragraph (i) above and concurrently and in association with an option falling within that sub-paragraph which is granted by that authorised person <sup>F811</sup>... to the grantor of the first-mentioned option; or

- (iv) relates to shares or securities which are dealt in on a recognised stock exchange and is granted to a member of such an exchange, including such a member acting as agent.

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- (9) If the Treasury by order so provide, an option of a description specified in the order shall be taken to be within the definition of “financial option” in subsection (8)(c) above.

#### Textual Amendments

- F808** Words in s. 144(8)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 8\(3\)](#)
- F809** Word in s. 144(8)(b) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 38 para. 10\(2\)\(a\)](#)
- F810** Words in s. 144(8)(c)(i) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), [65\(a\)](#)
- F811** Words in s. 144(8)(c)(iii) omitted (1.12.2001) by virtue of [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), [65\(b\)](#)

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

- C203** S. 144 extended (27.7.1993) by [1993 c. 37](#), s. 12, [Sch. 2 Pt. I para. 26\(2\)](#)
- C204** S. 144 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 6\(1\)\(2\)](#) (with [Sch. 4 paras. 6\(4\), 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C205** S. 144 applied (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [ss. 562\(1\)](#), 883(1) (with s. 563, Sch. 2)
- C206** S. 144(2) applied (with effect in accordance with s. 1329(1) of the affecting Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 653\(2\)](#), 1329(1) (with [Pts. 1, 2](#), [Sch. 2 para. 94](#))

#### [<sup>F812</sup>144ZA] Application of market value rule in case of exercise of option

- (1) [<sup>F813</sup>Subject to section 144ZB,] This section applies where—
- (a) an option is exercised, so that by virtue of section 144(2) or (3) the grant or acquisition of the option and the transaction resulting from its exercise are treated as a single transaction, and
  - (b) section 17(1) (“the market value rule”) applies, or would apply but for this section, in relation to—
    - (i) the grant of the option,
    - (ii) the acquisition of the option (whether directly from the grantor or not) by the person exercising it, or
    - (iii) the transaction resulting from its exercise.
- (2) If the option binds the grantor to sell—
- (a) the market value rule does not apply for determining the consideration for the sale, except, where the rule applies for determining the consideration for the option, to that extent (in accordance with section 144(2)(a));
  - (b) the market value rule does not apply for determining the cost to the person exercising the option of acquiring what is sold, except, where the rule applies for determining the cost of acquiring the option, to that extent (in accordance with section 144(3)(a)).
- (3) If the option binds the grantor to buy—
- (a) the market value rule does not apply for determining the cost of acquisition incurred by the grantor, but without prejudice to its application (in accordance with section 144(2)(b)) where the rule applies for determining the consideration for the option;

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- (b) the market value rule does not apply for determining the consideration for the disposal of what is bought, but without prejudice to its application (in accordance with section 144(3)(b)) where the rule applies for determining the cost of the option.
- (4) To the extent that, by virtue of this section, the market value rule does not apply for determining an amount or value, the amount or value to be taken into account is <sup>F814</sup>(subject to section 119A) the exercise price].
- [ In subsection (4) above “exercise price”, in relation to an option, means the amount <sup>F815</sup>(4A) or value of the consideration which, under the terms of the option, is—
- (a) receivable (if the option binds the grantor to buy), or
  - (b) payable (if the option binds the grantor to sell),
- as a result of the exercise of the option (and does not include the amount or value of any consideration for the acquisition of the option (whether directly from the grantor or not)).]
- [<sup>F816</sup>(5) Subsections (5) and (6) of section 144 shall apply for the purposes of this section and sections 144ZB to 144ZD as they apply for the purposes of that section.]]

#### Textual Amendments

- F812** S. 144ZA inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), **s. 158(1)** (with [s. 158\(2\)](#))
- F813** Words in s. 144ZA(1) inserted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 5 para. 1(2)**
- F814** Words in s. 144ZA(4) substituted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 5 para. 1(3)**
- F815** S. 144ZA(4A) inserted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 5 para. 1(4)**
- F816** S. 144ZA(5) substituted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 5 para. 1(5)**

#### [<sup>F817</sup>144ZB] **Exception to rule in section 144ZA**

- (1) This section applies where—
- (a) section 144ZA would apply but for this section in relation to an option, and
  - (b) the exercise of the option is non-commercial (see section 144ZC).
- (2) But this section does not apply if—
- (a) the option is a securities option within the meaning of Chapter 5 of Part 7 of ITEPA 2003 (see section 420(8) of that Act) to which that Chapter applies <sup>F818</sup>... (see section 471 of that Act), or
  - (b) section 144ZD of this Act (value of underlying subject matter of option altered with a view to obtaining a tax advantage) applies in relation to the option.
- (3) Where this section applies, neither section 144ZA nor the following provisions of section 144 shall apply in relation to the option—
- (a) in subsection (2), the words from “and accordingly” to the end of that subsection, and
  - (b) in subsection (3), the words from “and accordingly” to the end of that subsection;

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but subsection (4) or (5) below shall instead have effect (subject to subsection (6) below).

- (4) If the option binds the grantor to buy—
- (a) the cost of acquisition incurred by the grantor in buying in pursuance of his obligations under the option, and
  - (b) the consideration for the disposal of what is bought by the grantor,
- shall be deemed for the purposes of tax in respect of chargeable gains to be the market value, at the time the option is exercised, of what is bought.
- (5) If the option binds the grantor to sell—
- (a) the consideration for the sale, and
  - (b) the cost to the person exercising the option of acquiring what is sold,
- shall be deemed for the purposes of tax in respect of chargeable gains to be the market value, at the time the option is exercised, of what is sold.
- (6) But if the whole or any part of the underlying subject matter of the option (see subsection (7)) is subject to any right or restriction which is enforceable by the person disposing of the underlying subject matter or a person connected with him—
- (a) the market value of the underlying subject matter shall be determined for the purposes of subsection (4) or (5) above as if the right or restriction did not exist, and
  - (b) to the extent that subsection (6) or (7) of section 18 would apply apart from this paragraph, it shall be disregarded.
- (7) In this section “underlying subject matter”, in relation to an option, means—
- (a) if the option binds the grantor to sell, what falls to be sold on exercise of the option;
  - (b) if the option binds the grantor to buy, what falls to be bought on exercise of the option.

#### Textual Amendments

**F817** Ss. 144ZB-144ZD inserted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 5 para. 2](#)

**F818** Words in s. 144ZB(2)(a) omitted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 25, 47](#)

#### 144ZC Section 144ZB: non-commercial exercise of option

- (1) For the purposes of section 144ZB, the exercise of an option which binds the grantor to buy is non-commercial if the exercise price for the option (see subsection (3)) is less than the open market price (see subsection (4)) of what is bought.
- (2) For the purposes of section 144ZB, the exercise of an option which binds the grantor to sell is non-commercial if the exercise price for the option is greater than the open market price of what is sold.
- (3) In this section “exercise price”, in relation to an option, means the amount or value of the consideration which, under the terms of the option, is—
  - (a) receivable (if the option binds the grantor to buy), or



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- (b) payable (if the option binds the grantor to sell),  
as a result of the exercise of the option (and does not include the amount or value of any consideration for the acquisition of the option (whether directly from the grantor or not)).
- (4) In this section “open market price”, in relation to the underlying subject matter of an option (see section 144ZB(7)), means the price which the underlying subject matter might reasonably be expected to fetch on a sale in the open market at the time the option is exercised; and subsections (5) to (7) below apply for the purposes of this subsection.
- (5) If the whole or any part of the underlying subject matter of the option is subject to any right or restriction which is enforceable by—
- (a) the person disposing of the underlying subject matter, or
  - (b) a person connected with him,
- the open market price of the underlying subject matter shall be determined as if the right or restriction did not exist.
- (6) Section 272(2) (no reduction in estimated market value on account of assumption that whole of assets are placed on market at one time) shall apply in estimating the open market price of the underlying subject matter of an option as it applies in estimating the market value of any assets.
- (7) Where the underlying subject matter of an option comprises or includes assets to which section 273 applies (unquoted shares and securities), subsection (3) of that section (assumption that relevant information is available) shall apply in determining the open market price of those assets as it applies for the purposes of a determination falling within subsection (1) of that section.
- (8) This section is to be construed as one with section 144ZB.

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**Textual Amendments**

**F817** Ss. 144ZB-144ZD inserted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 5 para. 2](#)

**144ZD Section 144ZB: alteration of value to obtain tax advantage**

- (1) This section applies in relation to an option if each of the following conditions is satisfied (as to the effect of this section applying, see section 144ZB(2)(b)).
- (2) Condition 1 is that section 144ZB would, apart from subsection (2)(b) of that section, apply in relation to the option.
- (3) Condition 2 is that, at the time the option is exercised, the open market price (see section 144ZC(4)) of the underlying subject matter of the option (see section 144ZB(7)) differs from the open market price of the underlying subject matter of the option at the time the option was granted.
- (4) Condition 3 is that some or all of that change in the open market price of the underlying subject matter of the option results to any extent, directly or indirectly, from arrangements (see subsection (8)) (“the relevant arrangements”)—
  - (a) to which a relevant person is or has been a party, or

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- (b) which include one or more transactions to which a relevant person is or has been a party.
- (5) In subsection (4) above “relevant person” means any of the following—
- (a) the grantor of the option;
  - (b) any person who at any time holds the option;
  - (c) a person connected with one or more of the persons mentioned in paragraph (a) or (b) above.
- (6) Condition 4 is that, if there were to be disregarded so much of that change in the open market price of the underlying subject matter of the option as results to any extent, directly or indirectly, from the relevant arrangements, the exercise of the option would not be non-commercial (see section 144ZC).
- (7) Condition 5 is that (apart from this section) as a result, directly or indirectly, of the relevant arrangements—
- (a) the grantor of the option, or
  - (b) the person exercising the option,
- would obtain or might be expected to obtain an advantage (see subsection (9)) in relation to capital gains tax or corporation tax in respect of chargeable gains directly or indirectly in consequence of, or otherwise in connection with, the exercise of the option.
- (8) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (9) In this section “advantage”, in relation to capital gains tax or corporation tax in respect of chargeable gains, means—
- (a) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an assessment to that tax or the avoidance of a possible assessment to that tax, or
  - (b) the deferral of any payment of that tax or the advancement of any repayment of that tax.
- (10) This section is to be construed as one with sections 144ZB and 144ZC.]

#### Textual Amendments

**F817** Ss. 144ZB-144ZD inserted (with effect in accordance with Sch. 5 para. 6(1) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 5 para. 2**

#### [<sup>F819</sup>144A Cash-settled options.

- (1) In any case where—
- (a) an option is exercised; and
  - (b) the nature of the option (or its exercise) is such that the grantor of the option is liable to make, and the person exercising it is entitled to receive, a payment in full settlement of all obligations under the option,
- subsections (2) and (3) below shall apply in place of subsections (2) and (3) of section 144.
- (2) As regards the grantor of the option—

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- (a) he shall be treated as having disposed of an asset (namely, his liability to make the payment) and the payment made by him shall be treated as incidental costs to him of making the disposal; and
  - (b) the grant of the option and the disposal shall be treated as a single transaction and the consideration for the option shall be treated as the consideration for the disposal.
- (3) As regards the person exercising the option—
- (a) he shall be treated as having disposed of an asset (namely, his entitlement to receive the payment) and the payment received by him shall be treated as the consideration for the disposal;
  - (b) the acquisition of the option (whether directly from the grantor or not) and the disposal shall be treated as a single transaction and the cost of acquiring the option shall be treated as expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal; and
  - (c) for the purpose of computing the indexation allowance (if any) on the disposal, the cost of the option shall be treated (notwithstanding paragraph (b) above) as incurred when the option was acquired.
- (4) In any case where subsections (2) and (3) above would apply as mentioned in subsection (1) above if the reference in that subsection to full settlement included a reference to partial settlement, those subsections and subsections (2) and (3) of section 144 shall both apply but with the following modifications—
- (a) for any reference to the grant or acquisition of the option there shall be substituted a reference to the grant or acquisition of so much of the option as relates to the making and receipt of the payment or, as the case may be, the sale or purchase by the grantor; and
  - (b) for any reference to the consideration for, or the cost of or of acquiring, the option there shall be substituted a reference to the appropriate proportion of that consideration or cost.
- (5) In this section “appropriate proportion” means such proportion as may be just and reasonable in all the circumstances.]

#### Textual Amendments

**F819** S. 144A inserted (with effect in accordance with s. 96(2) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 96\(1\)](#)

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

**C207** S. 144A applied (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), ss. 562\(1\), 883\(1\)](#) (with s. 563, Sch. 2)

### 145 Call options: indexation allowance.

- (1) This section applies <sup>F820</sup>... where, on a disposal to which section 53 applies, the relevant allowable expenditure includes both—
- (a) the cost of acquiring an option binding the grantor to sell (“the option consideration”); and
  - (b) the cost of acquiring what was sold as a result of the exercise of the option (“the sale consideration”),

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but does not apply in any case where section 114 applies.

<sup>F821</sup>(1A) .....

- (2) For the purpose of computing the indexation allowance (if any) on the disposal referred to in subsection (1) above—
- (a) the option consideration and the sale consideration shall be regarded as separate items of expenditure; and
  - (b) subsection (4) of section 54 shall apply to neither of those items and, accordingly, they shall be regarded as incurred when the option was acquired and when the sale took place, respectively.
- (3) This section has effect notwithstanding section 144, but expressions used in this section have the same meaning as in that section and subsection (5) of that section applies for the purpose of determining the cost of acquiring an option binding the grantor to sell.

#### Textual Amendments

**F820** Words in s. 145(1) omitted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 81\(2\)](#)

**F821** S. 145(1A) omitted (with effect in accordance with Sch. 2 para. 83 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 81\(3\)](#)

#### 146 Options: application of rules as to wasting assets.

- (1) Section 46 shall not apply—
- (a) to a quoted option to subscribe for shares in a company, or
  - (b) to a traded option, or financial option, or
  - (c) to an option to acquire assets exercisable by a person intending to use them, if acquired, for the purpose of a trade carried on by him.
- (2) In relation to the disposal by way of transfer of an option (other than an option falling within subsection (1)(a) or (b) above) binding the grantor to sell or buy quoted shares or securities, the option shall be regarded as a wasting asset the life of which ends when the right to exercise the option ends, or when the option becomes valueless, whichever is the earlier.
- Subsections (5) and (6) of section 144 shall apply in relation to this subsection as they apply in relation to that section.
- (3) The preceding provisions of this section are without prejudice to the application of sections 44 to 47 to options not within those provisions.
- (4) In this section—
- (a) “financial option”, “quoted option” and “traded option” have the meanings given by section 144(8), and
  - (b) “quoted shares or securities” means shares or securities which [<sup>F822</sup>are listed] on a recognised stock exchange <sup>F823</sup> ... .

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### Textual Amendments

**F822** Words in s. 146(4)(b) substituted (with effect in accordance with Sch. 38 para. 11(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 38 para. 11\(1\)](#)

**F823** Words in s. 146(4)(b) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 8\(4\)](#), [Sch. 27 Pt. 6\(5\)](#)

## 147 Quoted options treated as part of new holdings.

- (1) If a quoted option to subscribe for shares in a company is dealt in (on the stock exchange where it is quoted) within 3 months after the taking effect, with respect to the company granting the option, of any reorganisation, reduction, conversion<sup>F824</sup>, exchange or scheme of reconstruction] to which Chapter II of this Part applies, or within such longer period as the Board may by notice allow—
  - (a) the option shall, for the purposes of that Chapter be regarded as the shares which could be acquired by exercising the option, and
  - (b) section 272(3) shall apply for determining its market value.
- (2) In this section “quoted option” has the meaning given by section 144(8) <sup>F825</sup> and “scheme of reconstruction” has the same meaning as in section 136].

### Textual Amendments

**F824** Words in s. 147(1) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(8\)\(a\)](#)

**F825** Words in s. 147(2) inserted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(8\)\(b\)](#)

## 148 Traded options: closing purchases.

- (1) This section applies where a person (“the grantor”) who has granted a traded option (“the original option”) closes it out by acquiring a traded option of the same description (“the second option”).
- (2) Any disposal by the grantor involved in closing out the original option shall be disregarded for the purposes of capital gains tax or, as the case may be, corporation tax on chargeable gains.
- (3) The incidental costs to the grantor of making the disposal constituted by the grant of the original option shall be treated for the purposes of the computation of the gain as increased by an amount equal to the aggregate of—
  - (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 second option, and
  - (b) the incidental costs to him of that acquisition.
- (4) In this section “traded option” has the meaning given by section 144(8).

## <sup>F826</sup>148A Futures and options involving guaranteed returns

.....

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#### Textual Amendments

**F826** Ss. 148A-148C omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 8](#)

#### <sup>F826</sup>**148B** Deemed disposals at a gain under section 564(4) of ITTOIA 2005

.....

#### Textual Amendments

**F826** Ss. 148A-148C omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 8](#)

#### <sup>F826</sup>**148C** Deemed disposals at a loss under section 564(4) of ITTOIA 2005

.....

#### Textual Amendments

**F826** Ss. 148A-148C omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 8](#)

### 149 Rights to acquire qualifying shares.

- (1) This section applies where on or after 25th July 1991 (the day on which the <sup>M25</sup>Finance Act 1991 was passed) a building society confers—
  - (a) on its members, or
  - (b) on any particular class or description of its members,
 any rights to acquire, in priority to other persons, shares in the society which are qualifying shares.
- (2) Any such right so conferred shall be regarded for the purposes of capital gains tax as an option granted to, and acquired by, the member concerned for no consideration and having no value at the time of that grant and acquisition.
- (3) In this section—
  - “member” includes a former member, and
  - “qualifying share” has the same meaning as in section 117(4).

#### Marginal Citations

**M25** [1991 c. 31](#).

#### [<sup>F827</sup>**149A**<sup>F828</sup> Employment-related securities options]

- (1) This section applies where—
  - (a) an option is granted on or after 16th March 1993,

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- [<sup>F829</sup>(b) the option is a securities option within the meaning of Chapter 5 of Part 7 of ITEPA 2003 (see section 420(8) of that Act) to which that Chapter applies <sup>F830</sup>... (see section 471 of that Act), and]
- (c) section 17(1) [<sup>F831</sup>of this Act] would (apart from this section) apply for the purposes of calculating the consideration for the grant of the option.
- (2) [<sup>F832</sup>Both the grantor of the option and the person to whom the option is granted] shall be treated for the purposes of this Act as if section 17(1) did not apply for the purposes of calculating the consideration and, accordingly, as if the amount or value of the consideration was its actual amount or value.
- (3) Where the option is granted wholly or partly in recognition of services or past services in any office or employment, the value of those services shall not be taken into account in calculating the actual amount or value of the consideration.
- <sup>F833</sup>(4) ..... ]

#### Textual Amendments

**F827** S. 149A inserted (27.7.1993) by 1993 c. 34, s.104

**F828** S. 149A heading substituted (with effect in accordance with Sch. 5 para. 6(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 5 para. 4(4)

**F829** S. 149A(1)(b) substituted (with effect in accordance with Sch. 5 para. 6(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 5 para. 4(2)

**F830** Words in s. 149A(1)(b) omitted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by virtue of Finance Act 2014 (c. 26), Sch. 9 paras. 26, 47

**F831** Words in s. 149A(1)(c) inserted (with effect in accordance with Sch. 5 para. 6(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 5 para. 4(3)

**F832** Words in s. 149A(2) substituted (with effect in accordance with s. 111(6) of the amending Act) by Finance Act 1996 (c. 8), s. 111(3)

**F833** S. 149A(4) repealed (with effect in accordance with s. 111(6) of the amending Act) by Finance Act 1996 (c. 8), s. 111(4), Sch. 41 Pt. V(5)

#### [<sup>F834</sup>149A Restricted and convertible employment-related securities [<sup>F835</sup>and employee shareholder shares]

- (1) [<sup>F836</sup>Subject to subsection (1A), where] an individual has acquired an asset consisting of employment-related securities which are—
- restricted securities or a restricted interest in securities, or
  - convertible securities or an interest in convertible securities,
- the consideration for the acquisition shall (subject to section 119A) be taken to be equal to the aggregate of the actual amount or value given for the employment-related securities and any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition.

[ Where an individual has acquired an asset consisting of shares which, on acquisition, <sup>F837</sup>(1A) became employee shareholder shares—

- the consideration for the acquisition is (subject to section 119A) to be taken to be equal to any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) or section 226A of that Act (employee shareholder shares), and

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- (b) no other consideration is to be treated as having been given for the acquisition of the shares.]
- (2) [<sup>F838</sup>Subsections (1) and (1A) apply] only to the individual making the acquisition and, accordingly, [<sup>F839</sup>are] to be disregarded in calculating the consideration received by the person from whom the employment-related securities are acquired.
- (3) This section has effect in relation to acquisitions on or after the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003.
- (4) In this section “employment-related securities” has the same meaning as in Chapters 1 to 4 of Part 7 of ITEPA 2003 (as substituted by Schedule 22 to the Finance Act 2003).
- (5) In this section—  
“restricted interest in securities”, and  
“restricted securities”,  
have the same meaning as in Chapter 2 of that Part of ITEPA 2003 (as so substituted).
- (6) In this section “convertible securities” has the same meaning as in Chapter 3 of that Part of ITEPA 2003 (as so substituted).
- [<sup>F840</sup>(6A) For the purposes of this section—  
shares are “acquired” by an employee if the employee becomes beneficially entitled to them (and they are acquired at the time when the employee becomes so entitled);  
“employee shareholder share” means a share acquired in consideration of an employee shareholder agreement and held by the employee;  
“employee shareholder agreement” means an agreement by virtue of which an employee is an employee shareholder (see section 205A(1)(a) to (d) of the Employment Rights Act 1996);  
“employee” and “employer company”, in relation to an employee shareholder agreement, mean the individual and the company which enter into the agreement.]
- [ [<sup>F842</sup>In subsections (1) and (1A) a] reference to any amount that constituted earnings  
<sup>F841</sup>(7) under Chapter 1 of Part 3 of ITEPA 2003 [<sup>F843</sup>or was treated as earnings under section 226A of that Act] does not include[<sup>F844</sup>—  
(a)] any amount of exempt income (within the meaning of section 8 of that Act)[<sup>F845</sup>, or  
(b) in a case in which the amount that constituted, or was treated as, earnings was not an amount of general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 of ITEPA 2003 applied, any amount that would have been an amount of such exempt income if any of those charging provisions had applied.]]]

#### Textual Amendments

**F834** S. 149AA inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 52\(1\)](#)

**F835** Words in s. 149AA heading inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(6\)\(b\)](#), 38; [S.I. 2013/1755](#), art. 2

**F836** Words in s. 149AA(1) substituted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(2\)](#), 38; [S.I. 2013/1755](#), art. 2



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- F837** S. 149AA(1A) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(3\)](#), 38; S.I. 2013/1755, art. 2
- F838** Words in s. 149AA(2) substituted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(4\)\(a\)](#), 38; S.I. 2013/1755, art. 2
- F839** Word in s. 149AA(2) substituted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(4\)\(b\)](#), 38; S.I. 2013/1755, art. 2
- F840** S. 149AA(6A) substituted (with effect in accordance with s. 13(6)-(8) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [s. 13\(3\)](#)
- F841** S. 149AA(7) inserted (with effect in accordance with s. 49(9) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 49\(1\)](#)
- F842** Words in s. 149AA(7) substituted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(6\)\(a\)](#), 38; S.I. 2013/1755, art. 2
- F843** Words in s. 149AA(7) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 19\(6\)\(b\)](#), 38; S.I. 2013/1755, art. 2
- F844** Words in s. 149AA(7) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 27\(a\)](#), 47
- F845** S. 149AA(7)(b) and preceding word inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 27\(b\)](#), 47

#### **[<sup>F846</sup> 149AB] Shares in research institution spin-out companies**

- (1) Where an individual has acquired shares (or an interest in shares) in circumstances where section 452(1) and (2)(a) of ITEPA 2003 (shares in research institution spin-out companies: market value on acquisition) apply (and section 149AA does not apply in relation to those shares (or interest in shares)) the consideration for the acquisition shall (subject to section 119A) be taken to be equal to the aggregate of—
- (a) the actual amount or value given for the shares (or interest in shares), and
  - (b) any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition.
- (2) Subsection (1) above applies only to the individual making the acquisition and, accordingly, is to be disregarded in calculating the consideration received by the person from whom the shares (or interest in shares) are (or is) acquired.]

#### **Textual Amendments**

- F846** S. 149AB inserted (with effect in accordance with s. 22(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 22\(3\)](#)

#### **[<sup>F847</sup> 149BE] Employee incentive schemes: conditional interests in shares.**

- (1) Where—
- (a) an individual has acquired an interest in any shares or securities which is only conditional,
  - (b) that interest is one which for the purposes of [<sup>F848</sup>Chapter 2 of Part 7 of ITEPA 2003 (conditional interests in shares)] is taken to have been acquired by him as a director or employee of a company, and
  - (c) by virtue of section 17(1)(b) the acquisition of that interest would, apart from this section, be an acquisition for a consideration equal to the market value of the interest,

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section 17 shall not apply for calculating the consideration.

- (2) Instead, the consideration for the acquisition shall be taken (subject to section 120) to be equal to the actual amount or value of the consideration given for that interest as computed in accordance with [<sup>F849</sup>section 429 of ITEPA 2003].
- (3) This section shall apply in relation only to the individual making the acquisition and, accordingly, shall be disregarded in calculating the consideration received by the person from whom the interest is acquired.
- (4) Expressions used in this section and in [<sup>F850</sup>Chapter 2 of Part 7 of ITEPA 2003] have the same meanings in this section as in [<sup>F851</sup>that Chapter].
- <sup>F852</sup>(5) [ This section does not apply to acquisitions on or after the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003.
- (6) References in this section to ITEPA 2003 are to that Act as originally enacted.]]

#### Textual Amendments

- F847** S. 149B inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 54\(5\)](#)
- F848** Words in s. 149B(1) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 211\(2\)](#) (with Sch. 7)
- F849** Words in s. 149B(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 211\(3\)](#) (with Sch. 7)
- F850** Words in s. 149B(4) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 211\(4\)\(a\)](#) (with Sch. 7)
- F851** Words in s. 149B(4) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 211\(4\)\(b\)](#) (with Sch. 7)
- F852** S. 149B(5)(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 53](#)

#### [<sup>F853</sup>149C] Priority share allocations

Section 17(1) shall not apply to an acquisition of shares if section 542 or 544 of ITEPA 2003 applies in relation to it.]

#### Textual Amendments

- F853** S. 149C inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 212](#) (with Sch. 7)

#### 150 Business expansion schemes.

- (1) In this section “relief” means relief under Chapter III of Part VII of the Taxes Act, Schedule 5 to the <sup>M26</sup>Finance Act 1983 (“the 1983 Act”) or Chapter II of Part IV of the <sup>M27</sup>Finance Act 1981 (“the 1981 Act”) and “eligible shares” has the meaning given by section 289(4) of the Taxes Act [<sup>F854</sup>and references in this section to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued before 1st January 1994].

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- (2) A gain or loss which accrues to an individual on the disposal of any shares issued after 18th March 1986 in respect of which relief has been given to him and not withdrawn shall not be a chargeable gain or allowable loss for the purposes of capital gains tax.
- (3) The sums allowable as deductions from the consideration in the computation for the purposes of capital gains tax of the gain or loss accruing to an individual on the disposal of shares issued before 19th March 1986 in respect of which relief has been given and not withdrawn shall be determined without regard to that relief, except that where those sums exceed the consideration they shall be reduced by an amount equal to—
- (a) the amount of that relief; or
  - (b) the excess,
- whichever is the less, but the foregoing provisions of this subsection shall not apply to a disposal falling within section 58(1).
- (4) Any question—
- (a) as to which of any shares [<sup>F855</sup>acquired by an individual] at different times, being shares in respect of which relief has been given and not withdrawn, a disposal relates [<sup>F856</sup>to], or
  - (b) whether a disposal relates to shares in respect of which relief has been given and not withdrawn or to other shares,
- shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act, or section 57 of the <sup>M28</sup>Finance Act 1981 if the relief has only been given under that Act; and Chapter I of this Part shall have effect subject to the foregoing provisions of this subsection.
- (5) [<sup>F857</sup>Sections 104, 105 and 106A do not apply] to shares in respect of which relief has been given and not withdrawn.
- (6) Where an individual holds shares which form part of the ordinary share capital of a company and the relief has been given (and not withdrawn) in respect of some but not others, then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply separately to the shares in respect of which the relief has been given (and not withdrawn) and to the other shares (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (7) Where section 58 has applied to any [<sup>F858</sup>shares in respect of which relief has been given and not withdrawn] disposed of by an individual to his or her spouse [<sup>F859</sup>or civil partner] (“the transferee”), subsection (2) above shall apply in relation to the subsequent disposal of the shares by the transferee to a third party.
- (8) Where section 135 or 136 would, but for this subsection, apply in relation to <sup>F860</sup>... shares issued after 18th March 1986 in respect of which an individual has been given relief, that section shall apply only if the relief is withdrawn.
- [<sup>F861</sup>(8A) Subsection (8) above shall not have effect to disapply section 135 or 136 where—
- (a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future <sup>F862</sup>... right to be redeemed,
  - (b) the new shares are issued on or after 29th November 1994 and after the end of the relevant period, and
  - (c) the condition in subsection (8B) below is fulfilled.

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- (8B) The condition is that at some time before the issue of the new shares—
- (a) the company issuing them issued eligible shares, and
  - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act and in accordance with that section.
- (8C) In subsection (8A) above—
- (a) “new holding” shall be construed in accordance with sections 126, 127, 135 and 136;
  - (b) “relevant period” means the period found by applying section 289(12)(a) of the Taxes Act by reference to the company issuing the shares referred to in subsection (8) above and by reference to those shares.]
- [<sup>F863</sup>(8D) Where shares in respect of which relief has been given and not withdrawn are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—
- (a) subsection (8) above shall not have effect to disapply section 135; and
  - (b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.]
- (9) Sections 127 to 130 shall not apply in relation to any shares in respect of which relief (other than relief under the 1981 Act) has been given and which form part of a company’s ordinary share capital if—
- (a) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation occurring after 18th March 1986 affecting those shares; and
  - (b) immediately following the reorganisation, the relief has not been withdrawn in respect of those shares or relief has been given in respect of the allotted shares and not withdrawn.
- (10) Where relief is reduced by virtue of subsection (2) of section 305 of the Taxes Act—
- (a) the sums allowable as deductions from the consideration in the computation, for the purposes of capital gains tax, of the gain or loss accruing to an individual on the disposal, after 18th March 1986, of any of the allotted shares or debentures shall be taken to include the amount of the reduction apportioned between the allotted shares or (as the case may be) debentures in [<sup>F864</sup>a way which is] just and reasonable; and
  - (b) the sums so allowable on the disposal (in circumstances in which subsections (2) to (8) above do not apply) of any of the shares referred to in section 305(2) (a) shall be taken to be reduced by the amount mentioned in paragraph (a) above, similarly apportioned between those shares.
- (11) There shall be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the relief being given or withdrawn.
- [<sup>F865</sup>(12) In this section—
- “ordinary share capital” has the same meaning as in the Taxes Act;
  - “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital.]

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### Textual Amendments

- F854** Words in s. 150(1) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 29](#)
- F855** Words in s. 150(4)(a) substituted (with effect in accordance with Sch. 13 para. 42(8)(a) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(1\)\(a\)](#)
- F856** Word in s. 150(4)(a) inserted (with effect in accordance with Sch. 13 para. 42(8)(a) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(1\)\(b\)](#)
- F857** Words in s. 150(5) substituted (with effect in accordance with Sch. 13 para. 42(8)(a) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(2\)](#)
- F858** Words in s. 150(7) substituted (with effect in accordance with Sch. 13 para. 42(8)(b) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(3\)](#)
- F859** Words in s. 150(7) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [109](#)
- F860** Word in s. 150(8) repealed (with effect in accordance with Sch. 13 para. 42(8)(c) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(4\)](#), [Sch. 27 Pt. III\(14\)](#)
- F861** S. 150(8A)-(8C) inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [s. 69](#)
- F862** Word in s. 150(8A)(a) repealed (with effect in accordance with Sch. 13 para. 42(8)(d) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(5\)](#), [Sch. 27 Pt. III\(14\)](#)
- F863** S. 150(8D) inserted (with effect in accordance with Sch. 13 para. 42(8)(e) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(6\)](#)
- F864** Words in s. 150(10)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 54](#)
- F865** S. 150(12) inserted (with effect in accordance with Sch. 13 para. 42(8)(f) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 42\(7\)](#)

### Marginal Citations

- M26** 1983 c. 28.
- M27** 1981 c. 35.
- M28** 1981 c. 35.

### [<sup>F866</sup>150A] Enterprise investment scheme.

- (1) For the purpose of determining the gain or loss on any disposal of <sup>F867</sup>... shares by an individual where—
- an amount of [<sup>F868</sup>EIS relief] is attributable to the shares, and
  - apart from this subsection there would be a loss,
- the consideration given by him for the shares shall be treated as reduced by the amount of the [<sup>F868</sup>EIS relief].
- (2) Subject to subsection (3) below, if on any disposal of <sup>F869</sup>... shares by an individual after the end of the period referred to in section 312(1A)(a) of the Taxes Act [<sup>F870</sup>or section 159(2) of ITA 2007] where an amount of [<sup>F868</sup>EIS relief] is attributable to the shares, there would (apart from this subsection) be a gain, the gain shall not be a chargeable gain.

[ Notwithstanding anything in section 16(2), subsection (2) above shall not apply to a <sup>F871</sup>(2A) disposal on which a loss accrues.]

- (3) Where—
- <sup>F872</sup>(a) an individual's liability to income tax has been reduced (or treated by virtue of section 304 of the Taxes Act or section 245 of ITA 2007 (spouses and civil

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- partners) as reduced) for any year of assessment under section 289A of the Taxes Act or section 158 of ITA 2007 in respect of any issue of shares,
- (b) the amount of the reduction (“A”) is less than the amount (“B”) which is equal to tax at the [<sup>F873</sup>EIS original rate] for that year on the amount subscribed for the issue, and
  - (c) A is not found under section 289A(2)(b) of the Taxes Act or (as the case may require) is not within paragraph (b) solely by virtue of section 29(2) and (3) of ITA 2007,]

then, if there is a disposal of the shares on which there is a gain, subsection (2) above shall apply only to so much of the gain as is found by multiplying it by the fraction—

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[ In subsection (3) “EIS original rate” has the meaning given by section 256A of ITA <sup>F874</sup>(3A) 2007, except that where the year mentioned in subsection (3)(b) is the tax year 2007-08 or an earlier year, it means 20%.]

- (4) Any question as to—
- (a) which of any shares [<sup>F875</sup>acquired by an individual at different times a disposal relates to], being shares to which [<sup>F868</sup>EIS relief] is attributable, or
  - (b) whether a disposal relates to shares to which [<sup>F868</sup>EIS relief] is attributable or to other shares,

shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act [<sup>F876</sup>or as provided by section 246 of ITA 2007]; and Chapter I of this Part shall have effect subject to the foregoing provisions of this subsection.

- (5) [<sup>F877</sup>Sections 104, 105 and 106A] shall not apply to shares to which [<sup>F868</sup>EIS relief] is attributable.

- [<sup>F878</sup>(6) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—
- (a) shares to which [<sup>F868</sup>EIS relief] is attributable and to which subsection (6A) below applies,
  - (b) shares to which [<sup>F868</sup>EIS relief] is attributable and to which that subsection does not apply, <sup>F879</sup>...

[<sup>F880</sup>(ba) shares to which SEIS relief is attributable; and]

- (c) shares to which [<sup>F881</sup>neither EIS nor SEIS relief is] attributable,

then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this section) separately to shares falling within paragraph (a), (b)[<sup>F882</sup>, (ba)] or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

- (6A) This subsection applies to any shares if—
- (a) expenditure on the shares has been set under Schedule 5B to this Act against the whole or part of any gain; and
  - (b) in relation to the shares there has been no chargeable event for the purposes of that Schedule.]
- (7) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,

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- (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
- (c) immediately following the reorganisation, [<sup>F868</sup>EIS relief] is attributable to the existing holding or the allotted shares,
- sections 127 to 130 shall not apply in relation to the existing holding.
- (8) Sections 135 and 136 shall not apply in respect of shares to which [<sup>F868</sup>EIS relief] is attributable.
- [ Subsection (8) above shall not have effect to disapply section 135 or 136 where—
- <sup>F883</sup>(8A) (a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future <sup>F884</sup>... right to be redeemed,
- (b) the new shares are issued on or after 29th November 1994 and after the end of the relevant period, and
- (c) the condition in subsection (8B) below is satisfied.
- (8B) The condition is that at some time before the issue of the new shares—
- (a) the company issuing them issued eligible shares, and
- (b) a certificate in relation to those eligible shares was issued by the company for the purposes of [<sup>F885</sup>section 306(2) of the Taxes Act or section 203(1) of ITA 2007 and in accordance with section 306 of the Taxes Act or sections 204 and 205 of ITA 2007].
- (8C) In subsection (8A) above—
- (a) “new holding” shall be construed in accordance with sections 126, 127, 135 and 136;
- (b) “relevant period” means the period found by applying section 312(1A)(a) of the Taxes Act [<sup>F886</sup>or section 159(2) of ITA 2007] by reference to the company issuing the shares referred to in subsection (8) above and by reference to those shares.]
- [ Where shares to which [<sup>F868</sup>EIS relief] is attributable are exchanged for other shares
- <sup>F887</sup>(8D) in circumstances such that section 304A of the Taxes Act [<sup>F888</sup>or section 247 of ITA 2007] (acquisition of share capital by new company) applies—
- (a) subsection (8) above shall not have effect to disapply section 135; and
- [<sup>F889</sup>(b) the following—
- (i) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act and subsection (5) of that section so far as relating to section 306(2) of that Act, or
- (ii) sections 247(3)(b), 248(2)(a) and 249 of ITA 2007,
- shall apply for the purposes of this section as they apply for the purposes of Chapter 3 of Part 7 of the Taxes Act or Part 5 of ITA 2007.]]
- (9) Where the [<sup>F868</sup>EIS relief] attributable to any shares is reduced by virtue of section 305(2) of the Taxes Act—
- (a) the sums allowable as deductions from the consideration in the computation, for the purposes of capital gains tax, of the gain or loss accruing to an individual on the disposal of any of the allotted shares or debentures shall be taken to include the amount of the reduction apportioned between the allotted shares or (as the case may be) debentures in [<sup>F890</sup>a way which is] just and reasonable, and

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- (b) the sums so allowable on the disposal (in circumstances in which the preceding provisions of this section do not apply) of any of the shares referred to in section 305(1)(a) shall be taken to be reduced by the amount mentioned in paragraph (a) above, similarly apportioned between those shares.
- (10) There shall be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of <sup>F891</sup>[EIS relief] being given or withdrawn.
- <sup>F892</sup>[ In this section—
- (10A) <sup>F893</sup>“EIS relief” means relief under Chapter 3 of Part 7 of the Taxes Act or Part 5 of ITA 2007;]
- “ordinary share capital” has <sup>F894</sup>the meaning given in section 989 of ITA 2007;]
- “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;
- <sup>F893</sup>“SEIS relief” means relief under Part 5A of ITA 2007].]
- (11) Chapter III of Part VII of the Taxes Act <sup>F895</sup>[or Part 5 of ITA 2007] (enterprise investment scheme) applies for the purposes of this section to determine whether <sup>F868</sup>[EIS relief] is attributable to any shares and, if so, the amount of <sup>F868</sup>[EIS relief] so attributable; and “eligible shares” has the same meaning as in that Chapter <sup>F896</sup>[or means shares that meet the requirements of section 173(2) of ITA 2007].
- (12) References in this section to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994.
- [ References in this section to Part 5 of ITA 2007 or any provision of that Part are to a <sup>F897</sup>(13) Part or provision that applies only in relation to shares issued after 5 April 2007.]]

#### Textual Amendments

- F866** S. 150A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 30](#)
- F867** Word in s. 150A(1) repealed (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 24\(1\)](#), [Sch. 27 Pt. III\(14\)](#)
- F868** Words in s. 150A substituted (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 20\(2\)](#)
- F869** Word in s. 150A(2) repealed (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 24\(1\)](#), [Sch. 27 Pt. III\(14\)](#)
- F870** Words in s. 150A(2) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 311\(2\)](#) (with Sch. 2)
- F871** S. 150A(2A) inserted (with application in accordance with Sch. 13 para. 2(1) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 2\(2\)](#)
- F872** Ss. 150A(3)(a)-(c) substituted for s. 150A(3)(a)(aa)(b) (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 311\(3\)](#) (with Sch. 2)
- F873** Words in s. 150A(3)(b) substituted (with effect in accordance with Sch. 7 para. 34 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 27\(a\)](#)
- F874** S. 150A(3A) inserted (with effect in accordance with Sch. 7 para. 34 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 27\(b\)](#)
- F875** Words in s. 150A(4)(a) substituted (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 24\(2\)](#)



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- F876** Words in s. 150A(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(4)** (with [Sch. 2](#))
- F877** Words in s. 150A(5) substituted (with effect in accordance with [Sch. 13 para. 24\(8\)\(a\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 24(3)**
- F878** S. 150A(6)(6A) substituted for s. 150A(6) (with effect in accordance with [Sch. 13 para. 24\(8\)\(b\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 24(4)**
- F879** Word in s. 150A(6)(b) omitted (with effect in accordance with [Sch. 6 para. 24\(1\)](#) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 6 para. 20(3)(a)**
- F880** S. 150A(6)(ba) inserted (with effect in accordance with [Sch. 6 para. 24\(1\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 6 para. 20(3)(a)**
- F881** Words in s. 150A(6)(c) substituted (with effect in accordance with [Sch. 6 para. 24\(1\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 6 para. 20(3)(b)**
- F882** Word in s. 150A(6) inserted (with effect in accordance with [Sch. 6 para. 24\(1\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 6 para. 20(3)(c)**
- F883** Ss. 150A(8A)–(8C) inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), **Sch. 13 para. 2(4)**
- F884** Word in s. 150A(8A)(a) repealed (with effect in accordance with [Sch. 13 para. 24\(8\)\(c\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 24\(5\)](#), **Sch. 27 Pt. III(14)**
- F885** Words in s. 150A(8B)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(5)** (with [Sch. 2](#))
- F886** Words in s. 150A(8C) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(6)** (with [Sch. 2](#))
- F887** S. 150A(8D) inserted (with effect in accordance with [Sch. 13 para. 24\(8\)\(d\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 24(6)**
- F888** Words in s. 150A(8D) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(7)(a)** (with [Sch. 2](#))
- F889** S. 150A(8D)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(7)(b)** (with [Sch. 2](#))
- F890** Words in s. 150A(9)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 20 para. 54**
- F891** Words in s. 150A(10) substituted (with effect in accordance with [Sch. 6 para. 24\(1\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 6 para. 20(4)**
- F892** S. 150A(10A) inserted (with effect in accordance with [Sch. 13 para. 24\(8\)\(e\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 24(7)**
- F893** Words in s. 150A(10A) inserted (with effect in accordance with [Sch. 6 para. 24\(1\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 6 para. 20(5)**
- F894** Words in s. 150A(10A) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(8)** (with [Sch. 2](#))
- F895** Words in s. 150A(11) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(9)(a)** (with [Sch. 2](#))
- F896** Words in s. 150A(11) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(9)(b)** (with [Sch. 2](#))
- F897** S. 150A(13) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 311(10)** (with [Sch. 2](#))

### **[<sup>F898</sup>150B Enterprise investment scheme: reduction of [<sup>F899</sup>EIS relief].**

- (1) This section has effect where section 150A(2) applies on a disposal of <sup>F900</sup>... shares, and before the disposal but on or after 29th November 1994—
- (a) value is received in circumstances where [<sup>F899</sup>EIS relief] attributable to the shares is reduced by an amount under section 300(1A)(a) of the Taxes Act [<sup>F901</sup>or section 213(2)(a) of ITA 2007],

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- (b) there is a repayment, redemption, repurchase or payment in circumstances where [F899EIS relief] attributable to the shares is reduced by an amount under section 303(1A)(a) of [F902the Taxes Act or section 224(2)(a) of ITA 2007], or
- (c) paragraphs (a) and (b) above apply.
- (2) If section 150A(2) applies on the disposal but section 150A(3) does not, section 150A(2) shall apply only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—
- (a) whose numerator is equal to the amount by which the [F899EIS relief] attributable to the shares is reduced as mentioned in subsection (1) above, and
- (b) whose denominator is equal to the amount of the [F899EIS relief] attributable to the shares.
- (3) If section 150A(2) and (3) apply on the disposal, section 150A(2) shall apply only to so much of the gain as is found by—
- (a) taking the part of the gain found under section 150A(3), and
- (b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2) above.
- (4) Where the [F899EIS relief] attributable to the shares is reduced as mentioned in subsection (1) above by more than one amount, the numerator mentioned in subsection (2) above shall be taken to be equal to the aggregate of the amounts.
- (5) The denominator mentioned in subsection (2) above shall be found without regard to any reduction mentioned in subsection (1) above.
- [ In this section “EIS relief” means relief under Chapter 3 of Part 7 of the Taxes Act F903(5A) or Part 5 of ITA 2007.]
- (6) [F904Subsections (11) to (13)] of section 150A apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

**F898** S. 150B inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 3](#)

**F899** Words in s. 150B substituted (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 21\(2\)](#)

**F900** Word in s. 150B(1) repealed (with effect in accordance with Sch. 13 para. 25(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 25\(1\)](#), [Sch. 27 Pt. III\(14\)](#)

**F901** Words in s. 150B(1)(a) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 312\(2\)\(a\)](#) (with Sch. 2)

**F902** Words in s. 150B(1)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 312\(2\)\(b\)](#) (with Sch. 2)

**F903** S. 150B(5A) inserted (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 21\(3\)](#)

**F904** Words in s. 150B(6) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 312\(3\)](#) (with Sch. 2)

#### [F905]150Enterprise investment scheme: re-investment.

Schedule 5B to this Act (which provides relief in respect of re-investment under the enterprise investment scheme) shall have effect.]

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### Textual Amendments

**F905** S. 150C inserted (with effect in accordance with Sch. 13 para. 4(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 4\(1\)](#)

### <sup>F906</sup>**150D** Enterprise investment scheme: application of taper relief

### Textual Amendments

**F906** S. 150D omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 32](#)

### [<sup>F907</sup>**150E** Seed enterprise investment scheme

- (1) For the purpose of determining the gain or loss on any disposal of shares by an individual where—
  - (a) an amount of SEIS relief is attributable to the shares, and
  - (b) apart from this subsection there would be a loss,
 the consideration given by the individual for the shares is to be treated as reduced by the amount of the relief.
- (2) Where—
  - (a) shares are disposed of by an individual after the end of the period referred to in section 257AC(2) of ITA 2007,
  - (b) an amount of SEIS relief is attributable to the shares, and
  - (c) (apart from this subsection) there would be a gain,
 the gain is not a chargeable gain.
- (3) Despite section 16(2), subsection (2) does not apply to a disposal on which a loss accrues.
- (4) Subsection (5) applies where—
  - (a) an individual's liability to income tax has been reduced (or treated by virtue of section 257H of ITA 2007 (spouses and civil partners) as reduced) for any tax year under section 257AB of that Act in respect of an issue of shares,
  - (b) the amount of the reduction (“R”) is less than the amount (“T”) which is equal to tax at the SEIS rate on the amount subscribed for the issue, and
  - (c) R is not within paragraph (b) solely by virtue of section 29(2) and (3) of ITA 2007.
- (5) If there is a disposal of the shares on which there is a gain, subsection (2) applies only to so much of the gain as is found by multiplying it by the fraction—
 
$$\frac{R}{T}$$
- (6) Any question as to—
  - (a) which of any shares that—
    - (i) are acquired by an individual at different times, and

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- (ii) are shares to which SEIS relief is attributable,  
 a disposal relates to, or
- (b) whether a disposal relates to shares to which SEIS relief is attributable,  
 is to be determined for the purposes of capital gains tax as for the purposes of section 257HA of ITA 2007.
- Chapter 1 of this Part has effect subject to this subsection.
- (7) Sections 104, 105 and 106A do not apply to shares to which SEIS relief is attributable.
- (8) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
  - (c) immediately following the reorganisation, SEIS relief is attributable to the existing holding or the allotted shares,
- sections 127 to 130 do not apply in relation to the existing holding.
- (9) Sections 135 and 136 do not apply in respect of shares to which SEIS relief is attributable.
- (10) Subsection (9) does not have effect to disapply section 135 or 136 where—
- (a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future right to be redeemed,
  - (b) the new shares are issued after the end of the relevant period, and
  - (c) the condition in subsection (11) is satisfied.
- (11) The condition is that at some time before the issue of the new shares—
- (a) the company issuing them issued eligible shares, and
  - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of section 257EB(1) of ITA 2007 and in accordance with sections 257EC and 257ED of that Act.
- (12) All such adjustments of capital gains tax are to be made, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the SEIS relief being given or withdrawn.
- (13) Where shares to which SEIS relief is attributable are exchanged for other shares in circumstances such that section 257HB of ITA 2007 (acquisition of share capital by new company) applies—
- (a) subsection (9) above does not have effect to disapply section 135, and
  - (b) sections 257HB(3)(b), 257HC(2)(a) and 257HD of ITA 2007 apply for the purposes of this section as they apply for the purposes of Part 5A of that Act.
- (14) For the purposes of this section—
- “eligible shares” means shares that meet the requirements of section 257CA(2);
- “new holding” is to be construed in accordance with sections 126, 127, 135 and 136;
- “ordinary share capital” has the meaning given in section 989 of ITA 2007;

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“ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;

“relevant period” means the period found by applying section 257AC(2) of ITA 2007 by reference to the company issuing the shares referred to in subsection (9) and by reference to those shares;

“the SEIS rate” has the meaning given by section 257AB(3) of ITA 2007;

“SEIS relief” means relief under Part 5A of ITA 2007 (seed enterprise investment scheme);

and that Part applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.

#### Textual Amendments

**F907** Ss. 150E, 150F inserted (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 6 para. 3**

### 150F Seed enterprise investment scheme: reduction of relief

- (1) This section has effect where—
  - (a) section 150E(2) applies on a disposal of shares, and
  - (b) before the disposal, value is received in circumstances where SEIS relief attributable to the shares is reduced by an amount under section 257FE(2)(a) of ITA 2007.
- (2) If section 150E(2) applies on the disposal but section 150E(5) does not, section 150E(2) applies only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—
 
$$\frac{A}{B}$$
 where—
 

A is the amount by which the SEIS relief attributable to the shares is reduced as mentioned in subsection (1), and

B is the amount of the relief attributable to the shares.
- (3) If section 150E(2) and (5) apply on the disposal, section 150E(2) applies only to so much of the gain as is found by—
  - (a) taking the part of the gain found under section 150E(5), and
  - (b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2) above.
- (4) Where the SEIS relief attributable to the shares is reduced as mentioned in subsection (1) by more than one amount, “A” in subsection (2) is to be taken to be equal to the aggregate of the amounts.
- (5) The amount which is “B” in subsection (2) is to be found without regard to any reduction mentioned in subsection (1).
- (6) For the purposes of this section, Part 5A of ITA 2007 (seed enterprise investment scheme) applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.]

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#### Textual Amendments

**F907** Ss. 150E, 150F inserted (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 3](#)

### [<sup>F908</sup>150C] Seed enterprise investment scheme: re-investment

Schedule 5BB to this Act (which provides relief in respect of re-investment under the seed enterprise investment scheme <sup>F909</sup> ... ) has effect.]

#### Textual Amendments

**F908** S. 150G inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 4](#)

**F909** Words in s. 150G omitted (17.7.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [s. 55\(2\)](#)

### 151 Personal equity plans.

- (1) The Treasury may make regulations providing that an individual who invests under a plan shall be entitled to relief from capital gains tax in respect of the investments.
- [<sup>F910</sup>(2) The provisions of Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans), except [<sup>F911</sup>sections 694(1) to (2) and 694A(1)], shall apply in relation to regulations made under subsection (1) as they apply to regulations made under section 694(1), [<sup>F912</sup>but with the following modifications—
  - (a) any reference to income tax is to be read as a reference to capital gains tax,
  - [<sup>F913</sup>(aa) section 694A(2) applies also for the purposes of subsection (1) of this section,
  - (ab) the reference in section 694A(3) to section 694A(1) is to be read as a reference to paragraph (aa) of this subsection,
  - (ac) the reference in section 694A(4)(b)(iii) to the individual's income from investments under the plan being exempt from income tax is to be read as a reference to the individual being entitled to relief from capital gains tax in respect of the investments,]
  - (b) the reference in section 695A(1) to the case where regulations provide that income of a child from investments under a plan is exempt from income tax is to be read as a reference to the case where regulations provide that a child who invests under a plan is entitled to relief from capital gains tax in respect of the investments,
  - (c) the reference in section 695A(4) to that Chapter is to be read as a reference to this section, and
  - (d) that Chapter has effect as if sections 699(9) and 701(6) were omitted.]]
- (3) Regulations under this section may include provision securing that losses are disregarded for the purposes of capital gains tax where they accrue on the disposal of investments on or after 18th January 1988.
- [<sup>F914</sup>(4) Regulations under this section may include provision which, for cases where a person subscribes to a plan by transferring or renouncing shares or rights to shares—
  - (a) modifies the effect of this Act in relation to their acquisition and their transfer or renunciation; and

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- (b) makes consequential modifications of the effect of this Act in relation to anything which (apart from the regulations) would have been regarded on or after their acquisition as an indistinguishable part of the same asset.]

#### Textual Amendments

- F910** S. 151(2) substituted for s. 151(2)(2A) (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 436](#) (with [Sch. 2](#))
- F911** Words in s. 151(2) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 27\(2\)\(a\)](#)
- F912** Words in s. 151(2) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 40\(6\)\(b\)](#)
- F913** S. 151(2)(aa)-(ac) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 27\(2\)\(b\)](#)
- F914** S. 151(4) inserted (27.7.1993) by [1993 c. 34, s.85](#)

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

- C208** S. 151 extended (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 123\(7\)\(b\)](#)

### [<sup>F915</sup>151] Venture capital trusts: reliefs.

- (1) A gain or loss accruing to an individual on a qualifying disposal of any ordinary shares in a company which—
- was a venture capital trust at the time when he acquired the shares, and
  - is still such a trust at the time of the disposal,
- shall not be a chargeable gain or, as the case may be, an allowable loss.
- (2) For the purposes of this section a disposal of shares is a qualifying disposal in so far as—
- it is made by an individual who has attained the age of eighteen years;
  - the shares disposed of were not acquired in excess of the permitted maximum for any year of assessment; and
  - that individual acquired those shares for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

<sup>F916</sup>(3) .....

- (4) In determining for the purposes of this section whether a disposal by any person of shares in a venture capital trust relates to shares acquired in excess of the permitted maximum for any year of assessment, it shall be assumed (subject to subsection (5) below)—
- as between shares acquired by the same person on different days, that those acquired on an earlier day are disposed of by that person before those acquired on a later day; and
  - as between shares acquired by the same person on the same day, that those acquired in excess of the permitted maximum are disposed of by that person before he disposes of any other shares acquired on that day.
- (5) It shall be assumed for the purposes of subsection (1) above that a person who disposes of shares in a venture capital trust disposes of shares acquired at a time when it was not such a trust before he disposes of any other shares in that trust.
- (6) References in this section to shares in a venture capital trust acquired in excess of the permitted maximum for any year of assessment shall be construed [<sup>F917</sup>as references

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to shares not acquired within the limit in section 709(4) of ITTOIA 2005; and the question whether shares are acquired within that limit shall be determined as it is for the purposes of Chapter 5 of Part 6 of that Act].

- (7) In this section and section 151B “ordinary shares”, in relation to a company, means any shares forming part of the company’s ordinary share capital (within <sup>F918</sup>the meaning given in section 989 of ITA 2007]).

#### Textual Amendments

- F915** Ss. 151A, 151B inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 72\(3\)](#)
- F916** S. 151A(3) repealed (with effect in accordance with Sch. 19 para. 7 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 19 para. 4, Sch. 42 Pt. 2\(13\)](#)
- F917** Words in s. 151A(6) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 437 \(with Sch. 2\)](#)
- F918** Words in s. 151A(7) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 314 \(with Sch. 2\)](#)

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

- C209** S. 151A modified (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\), regs. 1\(1\), 6\(1\), 13\(4\)](#)
- C210** S. 151A(4)(5) applied by [Income and Corporation Taxes Act 1988 \(c. 1\), Sch. 15B para. 8\(6\)\(c\) \(as inserted \(1.5.1995\) by Finance Act 1995 \(c. 4\), s. 71\(2\), Sch. 15\)](#)

### 151B Venture capital trusts: supplementary.

- (1) Sections 104, 105 and <sup>F919</sup>106A] shall not apply to any shares in a venture capital trust which are eligible for relief under section 151A(1).
- (2) Subject to the following provisions of this section, where—
- an individual holds any ordinary shares in a venture capital trust,
  - some of those shares fall within one of the paragraphs of subsection (3) below, and
  - others of those shares fall within at least one other of those paragraphs,
- then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply separately in relation to the shares (if any) falling within each of the paragraphs of that subsection (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (3) The kinds of shares referred to in subsection (2) above are—
- any shares in a venture capital trust which are eligible for relief under section 151A(1) and by reference to which any person has <sup>F920</sup>obtained] or is entitled to claim relief under <sup>F920</sup>Chapter 2 of Part 6 of ITA 2007];
  - any shares in a venture capital trust which are eligible for relief under section 151A(1) but by reference to which no person has <sup>F921</sup>obtained], or is entitled to claim, any relief under <sup>F921</sup>that Chapter of that Part];
  - any shares in a venture capital trust by reference to which any person has <sup>F922</sup>obtained], or is entitled to claim, any relief under <sup>F922</sup>that Chapter of that



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Part] but which are not shares that are eligible for relief under section 151A(1);  
and

- (d) any shares in a venture capital trust that do not fall within any of paragraphs (a) to (c) above.

(4) Where—

- (a) an individual holds ordinary shares in a company (“the existing holding”),  
(b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and  
(c) immediately following the reorganisation, the shares or the allotted holding are shares falling within any of paragraphs (a) to (c) of subsection (3) above,  
sections 127 to 130 shall not apply in relation to the existing holding.

(5) Sections 135 and 136 shall not apply where—

- (a) the exchanged holding consists of shares falling within paragraph (a) or (b) of subsection (3) above; and  
(b) that for which the exchanged holding is or is treated as exchanged does not consist of ordinary shares in a venture capital trust.

(6) Where—

- (a) the approval of any company as a venture capital trust is withdrawn, and  
(b) the withdrawal of the approval is not one to which [<sup>F923</sup>section 281(3) of ITA 2007] applies,

any person who at the time when the withdrawal takes effect is holding shares in that company which (apart from the withdrawal) would be eligible for relief under section 151A(1) shall be deemed for the purposes of this Act, at that time, to have disposed of and immediately re-acquired those shares for a consideration equal to their market value at that time.

(7) The disposal that is deemed to take place by virtue of subsection (6) above shall be deemed for the purposes of section 151A to take place while the company is still a venture capital trust; but, for the purpose of applying sections 104, 105 and [<sup>F924</sup>106A] to the shares that are deemed to be re-acquired, it shall be assumed that the re-acquisition for which that subsection provides takes place immediately after the company ceases to be such a trust.

(8) For the purposes of this section—

- (a) shares are eligible for relief under section 151A(1) at any time when they are held by an individual whose disposal of the shares at that time would (on the assumption, where it is not the case, that the individual attained the age of eighteen years before that time) be a disposal to which section 151A(1) would apply; and  
(b) shares shall not, in relation to any time, be treated as shares by reference to which relief has been [<sup>F925</sup>obtained] under [<sup>F925</sup>Chapter 2 of Part 6 of ITA 2007] if that time falls after—  
(i) any relief given by reference to those shares has been reduced or withdrawn,  
(ii) any chargeable event (within the meaning of Schedule 5C) has occurred in relation to those shares, or  
(iii) the death of a person who held those shares immediately before his death;

and

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[<sup>F926</sup>(c) a reference to the exchanged holding is, in relation to section 135 or 136, to the shares in the company referred to in that section as company A.]]

#### Textual Amendments

- F915** Ss. 151A, 151B inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 72\(3\)](#)
- F919** Word in s. 151B(1) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(6\)](#)
- F920** Words in s. 151B(3)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 315\(2\)\(a\)](#) (with [Sch. 2](#))
- F921** Words in s. 151B(3)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 315\(2\)\(b\)](#) (with [Sch. 2](#))
- F922** Words in s. 151B(3)(c) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 315\(2\)\(b\)](#) (with [Sch. 2](#))
- F923** Words in s. 151B(6)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 315\(3\)](#) (with [Sch. 2](#))
- F924** Word in s. 151B(7) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(6\)](#)
- F925** Words in s. 151B(8)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 315\(4\)](#) (with [Sch. 2](#))
- F926** S. 151B(8)(c) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 9 para. 5\(9\)](#)

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

- C211** S. 151B modified (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\), regs. 1\(1\), 6\(1\), 13\(4\)](#)

#### [<sup>F927</sup>151B] **CITR: identification of securities or shares on a disposal**

- (1) This section applies for the purpose of identifying the securities or shares disposed of in any case where—
- (a) an individual or company (“the investor”) disposes of part of a holding of securities or shares (“the holding”), and
  - (b) the holding includes securities or shares to which CITR is attributable in respect of one or more years of assessment or accounting periods that have been held by the investor continuously from the time they were issued until the disposal.
- (2) Any disposal by the investor of securities or shares included in the holding which have been acquired by the investor on different days is treated as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (3) If there is a disposal by the investor of securities or shares included in the holding which have been acquired by the investor on the same day, any of those securities or shares—
- (a) to which CITR is attributable, and
  - (b) which have been held by the investor continuously from the time they were issued until the time of disposal,

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are treated as disposed of after any other securities or shares included in the holding which were acquired by the investor on that day.

- (4) For the purposes of this section a holding of securities is any number of securities of a company which—
- (a) carry the same rights,
  - (b) were issued under the same terms, and
  - (c) are held by the investor in the same capacity.

It does not matter for this purpose that the number of the securities grows or diminishes as securities carrying those rights and issued under those terms are acquired or disposed of.

- (5) For the purposes of this section a holding of shares is any number of shares in a company which—
- (a) are of the same class, and
  - (b) are held by the investor in the same capacity.

It does not matter for this purpose that the number of the shares grows or diminishes as shares of that class are acquired or disposed of.

- (6) Chapter 1 of Part 4 (share pooling, etc) has effect subject to this section.
- (7) Sections 104 to 107 (which make provision for the identification of securities and shares on a disposal) do not apply to securities or shares to which CITR is attributable.
- (8) In a case to which section 127 (equation of original shares and new holding) applies, shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (9) In subsection (8)—
- (a) the reference to section 127 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and
  - (b) “original shares” and “new holding” have the same meaning as in section 127, or (as the case may be) that section as applied by virtue of the enactment in question.

- (10) In this section and sections 151BB and 151BC—
- (a) if the investor is an individual—
    - (i) “CITR” has the meaning given by section 333 of ITA 2007,
    - (ii) references to CITR being attributable to securities, shares or debentures are to be read in accordance with section 357 of that Act, and
    - (iii) references to securities, shares or debentures having been held by the investor continuously are to be read in accordance with section 380 of that Act,
  - (b) if the investor is a company—
    - (i) “CITR” means relief under <sup>F928</sup>Part 7 of CTA 2010],
    - (ii) references to CITR being <sup>F929</sup>attributable to securities, shares or debentures] are to be read in accordance with <sup>F930</sup>section 240 of that Act], and

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- (iii) references to securities, shares or debentures having been held by the investor continuously are to be read in accordance with [<sup>F931</sup>section 267 of that Act].]

#### Textual Amendments

- F927** S. 151BA inserted (6.4.2007) by **Income Tax Act 2007 (c. 3)**, s. 1034(1), **Sch. 1 para. 316** (with Sch. 2)
- F928** Words in s. 151BA(10)(b)(i) substituted (with effect in accordance with s. 1184(1) of the amending Act) by **Corporation Tax Act 2010 (c. 4)**, s. 1184(1), **Sch. 1 para. 236(a)** (with Sch. 2)
- F929** Words in s. 151BA(10)(b)(ii) substituted (with effect in accordance with s. 1184(1) of the amending Act) by **Corporation Tax Act 2010 (c. 4)**, s. 1184(1), **Sch. 1 para. 236(b)(i)** (with Sch. 2)
- F930** Words in s. 151BA(10)(b)(ii) substituted (with effect in accordance with s. 1184(1) of the amending Act) by **Corporation Tax Act 2010 (c. 4)**, s. 1184(1), **Sch. 1 para. 236(b)(ii)** (with Sch. 2)
- F931** Words in s. 151BA(10)(b)(iii) substituted (with effect in accordance with s. 1184(1) of the amending Act) by **Corporation Tax Act 2010 (c. 4)**, s. 1184(1), **Sch. 1 para. 236(c)** (with Sch. 2)

#### [<sup>F932</sup>151BB] **CITR: rights issues etc**

- (1) If—
- (a) an individual or company (“the investor”) holds shares in the CDFI which are of the same class and held in the same capacity (“the existing holding”),
  - (b) there is a reorganisation affecting the existing holding as a result of an allotment which—
    - (i) falls within section 126(2)(a) (an allotment of shares or debentures in respect of and in proportion to an original holding), and
    - (ii) is not an allotment of corresponding bonus shares,
  - (c) immediately after the reorganisation, CITR is attributable to the shares included in the existing holding or the shares or debentures allotted in respect of those shares, in respect of one or more years of assessment or accounting periods, and
  - (d) if CITR is attributable to the shares included in the existing holding at that time, those shares have been held by the investor continuously from the time they were issued until the reorganisation,

sections 127 to 130 (treatment of share capital following a reorganisation) do not apply in relation to the existing holding.

- (2) Section 116(10) (reorganisations, conversions and reconstructions) does not apply in any case where the old asset consists of shares held (in the same capacity) by the investor—
- (a) that have been held by the investor continuously from the time they were issued until the relevant transaction, and
  - (b) to which CITR is attributable immediately before that transaction.

In this subsection “old asset” and “the relevant transaction” have the meaning given by section 116.

- (3) For the purposes of subsection (1)—
- “corresponding bonus shares” means bonus shares that—
- (a) are issued in respect of shares included in the existing holding, and

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- (b) are in the same company, are of the same class, and carry the same rights as, those shares,  
 “reorganisation” has the meaning given in section 126.
- (4) The following provisions of this Act have effect subject to this section—  
 section 116 (reorganisations, conversions and reconstructions);  
 Chapter 2 of Part 4 (reorganisation of share capital, conversion of securities etc).
- (5) In this section “the CDFI” is to be read—  
 (a) if the investor is an individual, in accordance with section 334(2) of ITA 2007,  
 (b) if the investor is a company, in accordance with [F933 section 219(2) of CTA 2010].]

#### Textual Amendments

**F932** S. 151BB inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 317](#) (with [Sch. 2](#))

**F933** Words in s. 151BB(5)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 237](#) (with [Sch. 2](#))

#### [F934] **151BCITR: company reconstructions etc**

- (1) If—  
 (a) an individual or company (“the investor”) holds shares in or debentures of a company (“company A”),  
 (b) there is a reconstruction or amalgamation affecting that holding (“the existing holding”),  
 (c) immediately before the reconstruction or amalgamation, CITR is attributable to the shares or debentures included in the existing holding in respect of one or more years of assessment or accounting periods, and  
 (d) the shares or debentures included in the existing holding have been held by the investor continuously from the time they were issued until the reconstruction or amalgamation,  
 sections 135 and 136 (share exchanges and company reconstructions) do not apply in respect of the existing holding.
- (2) Subsection (1)(a) applies only if the shares or debentures are held by the investor in the same capacity.
- (3) For the purposes of subsection (1) a “reconstruction or amalgamation” means an issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of company A.
- (4) The following provisions of this Act have effect subject to this section—  
 section 116 (reorganisations, conversions and reconstructions),  
 Chapter 2 of Part 4 (reorganisation of share capital, conversion of securities etc).
- (5) The investor is treated as disposing of any securities or shares which but for subsection (1) the investor—  
 (a) would be treated as exchanging for other securities or shares by virtue of section 136, or

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- (b) would be so treated but for section 137(1) (which restricts section 136 to genuine reconstructions).]

#### Textual Amendments

**F934** S. 151BC inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 318](#) (with [Sch. 2](#))

### [<sup>F935</sup>151C] Strips: manipulation of price: associated payment giving rise to loss

- (1) This section applies if—
- (a) as a result of any scheme or arrangement which has an unallowable purpose, the circumstances are, or might have been, as mentioned in paragraph (a), (b) or (c) of section 449(2) of ITTOIA 2005,
  - (b) under the scheme or arrangement, a payment falls to be made otherwise than in respect of the acquisition or disposal of a strip, and
  - (c) as a result of that payment or the circumstances in which it is made, a loss accrues to any person.
- (2) The loss shall not be an allowable loss.
- (3) For the purposes of this section a scheme or arrangement has an unallowable purpose if the main benefit, or one of the main benefits that might have been expected to result from, or from any provision of, the scheme or arrangement (apart from section 449 of ITTOIA 2005 and this section) is—
- (a) the obtaining of a tax advantage by any person, or
  - (b) the accrual to any person of an allowable loss.
- (4) The reference in subsection (1)(b) to the acquisition or disposal of a strip shall be construed as if it were in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see, in particular, sections 437 and 445 of that Act for the meaning of “disposal” and “acquisition” and section 444 of that Act for the meaning of “strip”).
- (5) In subsection (3)(a) “tax advantage” has the meaning given by [<sup>F936</sup>section 1139 of CTA 2010].
- (6) This section applies to losses accruing on or after 17th March 2004.]

#### Textual Amendments

**F935** S. 151C inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 438](#) (with [Sch. 2](#))

**F936** Words in s. 151C(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 238](#) (with [Sch. 2](#))

### [<sup>F937</sup>151D] Corporate strips: manipulation of price: associated payment giving rise to loss

- (1) This section applies if—

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- (a) as a result of any scheme or arrangement which has an unallowable purpose, the circumstances are, or might have been, as mentioned in paragraph (a), (b) or (c) of section 452G(2) of ITTOIA 2005,
  - (b) under the scheme or arrangement, a payment falls to be made otherwise than in respect of the acquisition or disposal of a corporate strip, and
  - (c) as a result of that payment or the circumstances in which it is made, a loss accrues to any person.
- (2) The loss shall not be an allowable loss.
- (3) For the purposes of this section a scheme or arrangement has an unallowable purpose if the main benefit, or one of the main benefits, that might have been expected to result from, or from any provision of, the scheme or arrangement (apart from section 452G of ITTOIA 2005 and this section) is—
- (a) the obtaining of a tax advantage by any person, or
  - (b) the accrual to any person of an allowable loss.
- (4) The reference in subsection (1)(b) above to the acquisition or disposal of a corporate strip shall be construed as if it were in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see, in particular, sections 437 and 452F of that Act for the meaning of “disposal” and section 452E of that Act for the meaning of “corporate strip”).
- (5) In subsection (3)(a) above “tax advantage” has the meaning given by <sup>F938</sup>section 1139 of CTA 2010].
- (6) This section applies to losses accruing on or after 6th April 2005.]

#### Textual Amendments

**F937** S. 151D inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 8](#)

**F938** Words in s. 151D(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 239](#) (with [Sch. 2](#))

#### [<sup>F939</sup>151E Exchange gains and losses from loan relationships: regulations

- (1) The Treasury may by regulations make provision for or in connection with bringing into account in prescribed circumstances for the purposes of this Act [<sup>F940</sup>exchange gains or losses (as defined by section 475 of CTA 2009)] to which section 328(1) of CTA 2009 does not apply because of section 328(3) [<sup>F941</sup>of that Act or because of regulations under section 328(4) of that Act].

[ The regulations may make provision as to the way in which, including the currency <sup>F942</sup>(1A) by reference to which, the amounts to be brought into account are to be calculated.]

- (2) The regulations may—
- (a) make different provision for different cases, and
  - (b) make provision subject to an election or to other prescribed conditions.

#### Textual Amendments

**F939** Ss. 151E-151G inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 370](#) (with [Sch. 2 Pts. 1, 2](#))

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- F940** Words in s. 151E(1) substituted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 7 para. 98(2)(a)**
- F941** Words in s. 151E(1) substituted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 7 para. 98(2)(b)**
- F942** S. 151E(1A) inserted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 7 para. 98(3)**

### <sup>F943</sup> 151F Treatment of alternative finance arrangements

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#### Textual Amendments

- F939** Ss. 151E-151G inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 370** (with [Sch. 2 Pts. 1, 2](#))
- F943** S. 151F repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 201](#), **Sch. 10 Pt. 7** (with [Sch. 9 paras. 1-9, 22](#))

### 151G Regulations where non-qualifying shares conditions altered

- (1) If the Treasury make regulations under section 533 of CTA 2009 (power to change conditions for non-qualifying shares) adding, varying or removing such a condition as is mentioned in subsection (1) of that section, they may also by regulations amend this Act so as to make provision for or in connection with taxation in the case of any asset or transaction that is or was mentioned in the condition.
- (2) Regulations under this section may—
- (a) make different provision for different cases, and
  - (b) make incidental, supplemental, consequential and transitional provisions and savings.
- (3) Regulations made under subsection (2)(b) may, in particular, include provision amending any enactment or any instrument made under an enactment.]

#### Textual Amendments

- F939** Ss. 151E-151G inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 370** (with [Sch. 2 Pts. 1, 2](#))

## [<sup>F944</sup> CHAPTER 4

### ALTERNATIVE FINANCE ARRANGEMENTS

#### Textual Amendments

- F944** Pt. 4 Ch. 4 inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 28** (with [Sch. 9 paras. 1-9, 22](#))



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

**C212** Pt. 4 Ch. 4 applied (with modifications) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 9 para. 40](#) (with [Sch. 9 paras. 1-9, 22](#))

### *Introduction*

#### **151H Introduction**

- (1) This Chapter makes provision about the treatment of alternative finance arrangements with financial institutions and alternative finance return under such arrangements for the purposes of this Act (see sections 151T to 151Y).
- (2) In this Chapter “alternative finance arrangements” means—
  - (a) purchase and resale arrangements,
  - (b) diminishing shared ownership arrangements,
  - (c) deposit arrangements,
  - (d) profit share agency arrangements, and
  - (e) investment bond arrangements.
- (3) In this Chapter—
  - (a) “purchase and resale arrangements” means arrangements to which section 151J applies,
  - (b) “diminishing shared ownership arrangements” means arrangements to which section 151K applies,
  - (c) “deposit arrangements” means arrangements to which section 151L applies,
  - (d) “profit share agency arrangements” means arrangements to which section 151M applies, and
  - (e) “investment bond arrangements” means arrangements to which section 151N applies.
- (4) For the meaning of “alternative finance return”, see sections 151P to 151S.
- (5) For the meaning of “financial institution”, see section 151I.
- (6) Also, see—
  - (a) section 366 of TIOPA 2010 (power to extend this Chapter and other provisions to other arrangements by order), and
  - (b) Schedule 61 to FA 2009 (alternative finance investment bonds) which makes further provision about the treatment of investment bond arrangements for the purposes of this Act.]

#### **[<sup>F945</sup>151I Meaning of “financial institution”**

- (1) In this Chapter “financial institution” means—
  - (a) a bank, as defined by section 1120 of CTA 2010,
  - (b) a building society,
  - (c) a wholly-owned subsidiary—
    - (i) of a bank within paragraph (a), or
    - (ii) of a building society,

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- (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,
  - (e) a bond-issuer, within the meaning of section 151N, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,
  - (f) a person authorised in a jurisdiction outside the United Kingdom—
    - (i) to receive deposits or other repayable funds from the public, and
    - (ii) to grant credits for its own account,
  - (g) an insurance company as defined in [<sup>F946</sup>section 65 of the Finance Act 2012], or
  - (h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in [<sup>F947</sup>section 139(1) of the Finance Act 2012].
- (2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except—
- (a) the parent or persons acting on behalf of the parent, and
  - (b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries.]

#### Textual Amendments

**F945** S. 151I inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 29** (with Sch. 9 paras. 1-9, 22)

**F946** Words in s. 151I(1)(g) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 76(a)**

**F947** Words in s. 151I(1)(h) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 76(b)**

#### *[<sup>F948</sup>Arrangements that are alternative finance arrangements*

#### Textual Amendments

**F948** S. 151J and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 30** (with Sch. 9 paras. 1-9, 22)

### 151J Purchase and resale arrangements

- (1) This section applies to arrangements if—
- (a) they are entered into between two persons (“the first purchaser” and “the second purchaser”), one or both of whom are financial institutions, and
  - (b) under the arrangements—
    - (i) the first purchaser purchases an asset and sells it to the second purchaser,
    - (ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),

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- (iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,
  - (iv) the second purchase price exceeds the first purchase price, and
  - (v) the excess equates, in substance, to the return on an investment of money at interest.
- (2) The circumstances are that—
- (a) the first purchaser is a financial institution, and
  - (b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.
- (3) In this section—
- “the first purchase price” means the amount paid by the first purchaser in respect of the purchase, and
  - “the second purchase price” means the amount payable by the second purchaser in respect of the sale.
- (4) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from this section and sections 151K to 151N).]

#### [<sup>F949</sup> 151K] Diminishing shared ownership arrangements

- (1) This section applies to arrangements if under them—
- (a) a financial institution (“the first owner”) acquires a beneficial interest in an asset,
  - (b) another person (“the eventual owner”) also acquires a beneficial interest in it,
  - (c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner's beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),
  - (d) the eventual owner is to acquire the first owner's beneficial interest (whether or not in stages) as a result of those payments,
  - (e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),
  - (f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and
  - (g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).
- (2) For the purposes of subsection (1)(a) it does not matter if—
- (a) the first owner acquires its beneficial interest from the eventual owner,
  - (b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or
  - (c) the first owner also has a legal interest in it.
- (3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.
- (4) The conditions are that—
- (a) the grant is not to—

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- (i) the first owner,
  - (ii) a person controlled by the first owner, or
  - (iii) a person controlled by a person who also controls the first owner, and
  - (b) the grant is not required by the first owner or arrangements to which the first owner is a party.
- (5) Subsection (1)(g) does not prevent the first owner from—
- (a) having responsibility for any reduction in the asset's value, or
  - (b) having a share in a loss arising out of any such reduction.
- (6) Section 1124 of CTA 2010 (meaning of “control”) applies for the purposes of this section.
- (7) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from section 151J, this section and sections 151L to 151N).]

#### Textual Amendments

**F949** S. 151K inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 31** (with Sch. 9 paras. 1-9, 22)

#### [<sup>F950</sup>151I] Deposit arrangements

- (1) This section applies to arrangements if under them—
- (a) a person (“the depositor”) deposits money with a financial institution,
  - (b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,
  - (c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,
  - (d) the payment is in proportion to the amount deposited by the depositor, and
  - (e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.
- (2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J, 151K, this section and sections 151M and 151N).]

#### Textual Amendments

**F950** S. 151L inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 32** (with Sch. 9 paras. 1-9, 22)

#### [<sup>F951</sup>151M] Profit share agency arrangements

- (1) This section applies to arrangements if under them—
- (a) a person (“the principal”) appoints an agent,
  - (b) one or both of the principal and agent is a financial institution,
  - (c) the agent uses money provided by the principal with a view to producing a profit,

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- (d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
  - (e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and
  - (f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.
- (2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151L, this section and section 151N).]

#### Textual Amendments

**F951** S. 151M inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 33** (with Sch. 9 paras. 1-9, 22)

#### [<sup>F952</sup>151N Investment bond arrangements

- (1) This section applies to arrangements if—
- (a) they provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
  - (b) they identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”),
  - (c) they specify a period at the end of which they cease to have effect (“the bond term”),
  - (d) the bond-issuer undertakes under the arrangements—
    - (i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,
    - (ii) to make a repayment of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond-term (whether or not in instalments), and
    - (iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“additional payments”),
  - (e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,
  - (f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,
  - (g) the bond-holder is able to transfer the rights under the arrangements to another person (who becomes the bond-holder because of the transfer),
  - (h) the arrangements are a listed security on a recognised stock exchange, and
  - (i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer, or would be if the bond-issuer applied those standards.
- (2) For the purposes of subsection (1)—
- (a) the bond-issuer may acquire bond assets before or after the arrangements take effect,

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- (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,
  - (c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but need not) be described as, or accompanied by a document described as, a declaration of trust,
  - (d) a reference to the management of assets includes a reference to disposal,
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term,
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or
    - (iii) determined in some other way,
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,
  - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and
  - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (3) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151M and this section).]

#### Textual Amendments

**F952** S. 151N inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 2 para. 34](#) (with Sch. 9 paras. 1-9, 22)

#### [<sup>F953</sup> 151O Provision not at arm's length: exclusion of arrangements from sections 151J to 151N

- (1) Arrangements to which this section applies are not—
  - (a) purchase and resale arrangements,
  - (b) diminishing shared ownership arrangements,
  - (c) deposit arrangements,
  - (d) profit share agency arrangements, or
  - (e) investment bond arrangements.
- (2) This section applies to arrangements if—
  - (a) apart from this section they would be alternative finance arrangements,
  - (b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes

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- as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,
- (c) any person who is an affected person for the purposes of Part 4 of that Act (“the affected person”) is entitled to—
- (i) relevant return in relation to the arrangements, or
  - (ii) an amount representing relevant return in relation to them, and
- (d) the affected person is not subject—
- (i) to income tax or corporation tax, or
  - (ii) to any corresponding tax under the law of a territory outside the United Kingdom,
- on the relevant return or the amount representing it.
- (3) In this section “relevant return”, in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements.]

#### Textual Amendments

**F953** S. 151O inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 35** (with Sch. 9 paras. 1-9, 22)

#### <sup>F954</sup> Meaning of “alternative finance return”

#### Textual Amendments

**F954** S. 151P and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 36** (with Sch. 9 paras. 1-9, 22)

### 151P Purchase and resale arrangements

- (1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Chapter.
- (2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.
- (3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.
- (4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).
- (5) The assumptions are that—
- (a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,
  - (b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,

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- (c) the instalment is a part repayment of the principal of the loan with interest, and
  - (d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.
- (6) In this section expressions used in section 151J have the same meaning as in that section.]

### [<sup>F955</sup>151Q] **Purchase and resale arrangements where return in foreign currency**

- (1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—
- (a) by or to a person other than a company, and
  - (b) otherwise than for the purposes of a trade, profession or vocation or a property business,
- subsections (2) and (3) apply as respects that person.
- (2) The amount of the excess referred to in section 151P(2) and (5)(b) and the appropriate amount for the purposes of section 151P(3) and (4) are to be calculated in that other currency.
- (3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.]

#### Textual Amendments

**F955** S. 151Q inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 37** (with Sch. 9 paras. 1-9, 22)

### [<sup>F956</sup>151R] **Diminishing shared ownership arrangements**

- (1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Chapter, except so far as subsection (2) or (3) applies to them.
- (2) This subsection applies to the payments so far as they amount to payments of the kind described in section 151K(1)(c) (payments to be made by the eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).
- (3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.
- (4) In this section “the eventual owner” has the same meaning as in section 151K.]

#### Textual Amendments

**F956** S. 151R inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 38** (with Sch. 9 paras. 1-9, 22)



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## [<sup>F957</sup> 151S Other arrangements

- (1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 151L(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Chapter.
- (2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 151M(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Chapter.
- (3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Chapter.
- (4) In this section “additional payments” has the same meaning as in section 151N (see subsection (1)(d)(iii) of that section).]

### Textual Amendments

**F957** S. 151S inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 2 para. 39](#) (with Sch. 9 paras. 1-9, 22)

## [<sup>F958</sup> Special rules for investment bond arrangements

### Textual Amendments

**F958** S. 151T and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 2 para. 40](#) (with Sch. 9 paras. 1-9, 22)

## 151T Investment bond arrangements are qualifying corporate bonds

- (1) For the purposes of section 117, investment bond arrangements are a corporate bond, issued on the date on which the arrangements are entered into, if each of conditions A to D is met.
- (2) Condition A is that the capital is expressed in sterling.
- (3) Condition B is that the arrangements do not include provision for the redemption payment to be in a currency other than sterling.
- (4) Condition C is that entitlement to the redemption payment is not capable of conversion (directly or indirectly) into an entitlement to the issue of securities apart from other arrangements to which section 151N applies.
- (5) Condition D is that the additional payments are not determined wholly or partly by reference to the value of the bond assets.
- (6) Section 117(2) applies for the purposes of this section as it applies for the purposes of section 117(1).

[ Expressions used in this section have the same meaning as in section 151N.]]

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<sup>F959</sup>(7)

#### Textual Amendments

**F959** S. 151T(7) inserted (with retrospective effect in accordance with art. 1(2) of the amending S.I.) by [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), 2

#### [<sup>F960</sup>151U] Treatment of bond-holder and bond-issuer

- (1) This section applies for the purposes of this Act and any other enactment about capital gains tax and irrespective of the position for other purposes.
- (2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.
- (3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.
- (4) Gains accruing to the bond-issuer in connection with the bond assets are gains of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).
- (5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.
- (6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.
- (7) Expressions used in this section have the same meaning as in section 151N.]

#### Textual Amendments

**F960** S. 151U inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 41** (with Sch. 9 paras. 1-9, 22)

#### [<sup>F961</sup>151V] Treatment as securities

- (1) Investment bond arrangements are securities for the purposes of this Act and any other enactment about capital gains tax.
- (2) For those purposes—
  - (a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and
  - (b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.
- (3) In subsection (2) “the redemption payment” has the same meaning as in section 151N (see subsection (1)(d)(ii) of that section).]

*Status: Point in time view as at 16/11/2017.*

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#### Textual Amendments

**F961** S. 151V inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 2 para. 42** (with Sch. 9 paras. 1-9, 22)

### [<sup>F962</sup>151W Investment bond arrangements not unit trust scheme or offshore fund

Investment bond arrangements are not—

- (a) a unit trust scheme for the purposes of this Act, or
- (b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to capital gains tax.]

#### Textual Amendments

**F962** S. 151W inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 2 para. 43** (with Sch. 9 paras. 1-9, 22)

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

**C213** S. 151W(b) modified (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 9 para. 38** (with Sch. 9 paras. 1-9, 22)

### [<sup>F963</sup>Other rules

#### Textual Amendments

**F963** S. 151X and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 2 para. 44** (with Sch. 9 paras. 1-9, 22)

### 151X Exclusion of some alternative finance return from sale consideration

- (1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151J).
- (2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151K).
- (3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151N).

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- (4) Subsections (1) to (3) do not affect the operation of any provision of this Act or the Tax Acts that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.]

**[<sup>F964</sup>151Y] Diminishing shared ownership arrangements not partnerships**

Diminishing shared ownership arrangements are not treated as a partnership for capital gains tax purposes.]

**Textual Amendments**

**F964** S. 151Y inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 2 para. 45** (with [Sch. 9 paras. 1-9, 22](#))

**PART V**

TRANSFER OF BUSINESS ASSETS<sup>[F965]</sup>, ENTREPRENEURS' RELIEF AND INVESTORS' RELIEF]

**Textual Amendments**

**F965** Words in Pt. 5 heading inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 14 para. 1(1)**

**CHAPTER I**

[<sup>F966</sup>TRANSFER OF BUSINESS ASSETS:] GENERAL PROVISIONS

**Textual Amendments**

**F966** Words in Pt. 5 Ch. 1 heading inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), **Sch. 14 para. 1(2)**

*Replacement of business assets*

**152 Roll-over relief.**

- (1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (“the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (“the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade, and the old assets and new assets are within the classes of assets listed in section 155, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Act—
- (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

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- (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,
- but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.
- (2) Where subsection (1)(a) above applies to exclude a gain which, in consequence of Schedule 2, is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) above shall be the amount of the chargeable gain, and not the whole amount of the gain.
- (3) Subject to subsection (4) below, this section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice allow.
- (4) Where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets, or the interest in the new assets, is acquired in pursuance of the contract, and, when that fact is ascertained, all necessary adjustments shall be made by making [<sup>F967</sup>or amending] assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments [<sup>F968</sup>or amendments] may be made.
- (5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of, or of the interest in, the new assets.
- (6) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.
- (7) If the old assets were not used for the purposes of the trade throughout the period of ownership this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.
- (8) This section shall apply in relation to a person who, either successively or at the same time, carries on 2 or more trades as if both or all of them were a single trade.
- (9) In this section “period of ownership” does not include any period before 31st March 1982.
- (10) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.

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- (11) Without prejudice to section 52(4), where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

#### Textual Amendments

- F967** Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(1\)\(a\)](#)
- F968** Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(1\)\(b\)](#)

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

- C214** Ss. 152-156 modified (16.7.1992) by [1992 c. 48, s. 77, Sch. 17 paras.3, 7](#)  
 Ss. 152-156 modified (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 6\(2\)](#)
- C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(1\)](#)
- C216** S. 152 restricted (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(3\)](#)
- C217** Ss. 152-154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(4\)](#)
- C218** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\), Sch. 25 para. 3\(2\)](#)
- C219** S. 152 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(1\)\(a\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C220** S. 152 restricted (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(2\)\(a\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C221** S. 152 applied (with modifications) (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(3\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C222** Ss. 152, 153 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 22 para. 67](#)
- C223** S. 152 modified (24.7.2002) by [Finance Act 2002 \(c. 23\), Sch. 29 para. 132](#)

### 153 Assets only partly replaced.

- (1) Section 152(1) shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Act—
- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
  - (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under paragraph (a) of this subsection,
- but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

*Status: Point in time view as at 16/11/2017.*

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(2) Subsections (3) to (11) of 152 shall apply as if this section formed part of that section.

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

- C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(1\)](#)
- C217** Ss. 152-154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(4\)](#)
- C218** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 25 para. 3\(2\)](#)
- C222** Ss. 152, 153 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 22 para. 67](#)
- C224** Ss. 152-156 modified (16.7.1992) by [1992 c. 48](#), s. 77, [Sch. 17 paras.3, 7](#)  
Ss. 152-156 modified (27.7.1993) by [1993 c. 37](#), s. 12, [Sch. 2 Pt. I para. 6\(2\)](#)
- C225** S. 153 restricted (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(3\)](#)
- C226** S. 153 restricted (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 7\(2\)\(a\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C227** S. 153 applied (with modifications) (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 7\(3\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C228** S. 153 modified (with effect in accordance with s. 84(1) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 132\(2\)\(3\)](#)

**[<sup>F969</sup>153A] Provisional application of sections 152 and 153.**

- (1) This section applies where a person carrying on a trade who for a consideration disposes of, or of his interest in, any assets (“the old assets”) declares, in his return for the chargeable period in which the disposal takes place—
- that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets (“the new assets”) which on the acquisition will be taken into use, and used only, for the purposes of the trade;
  - that the acquisition will take place as mentioned in subsection (3) of section 152; and
  - that the new assets will be within the classes listed in section 155.
- (2) Until the declaration ceases to have effect, section 152 or, as the case may be, section 153 shall apply as if the acquisition had taken place and the person had made a claim under that section.
- (3) The declaration shall cease to have effect as follows—
- if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 152 or 153, on the day on which it is so withdrawn or superseded; and
  - if and to the extent that it is not so withdrawn or superseded, on the relevant day.
- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—
- shall be made by making or amending assessments or by repayment or discharge of tax; and
  - shall be so made notwithstanding any limitation on the time within which assessments or amendments may be made.

*Status: Point in time view as at 16/11/2017.*

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- (5) In this section “the relevant day” means—
- (a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place;
  - (b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.
- (6) Subsections (6), (8), (10) and (11) of section 152 shall apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

**F969** S. 153A inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(2\)](#)

#### 154 New assets which are depreciating assets.

- (1) Sections 152, 153 and 229 shall have effect subject to the provisions of this section in which—
- (a) the “held-over gain” means the amount by which, under those sections, and apart from the provisions of this section, any chargeable gain on one asset (“asset No.1”) is reduced, with a corresponding reduction of the expenditure allowable in respect of another asset (“asset No.2”), and
  - (b) any reference to a gain of any amount being carried forward to any asset is a reference to a reduction of that amount in a chargeable gain coupled with a reduction of the same amount in expenditure allowable in respect of that asset.
- (2) If asset No.2 is a depreciating asset, the held-over gain shall not be carried forward, but the claimant shall be treated as if so much of the chargeable gain on asset No.1 as is equal to the held-over gain did not accrue until—
- (a) the claimant disposes of asset No.2, or
  - (b) he ceases to use asset No.2 for the purposes of a trade carried on by him, or
  - (c) the expiration of a period of 10 years beginning with the acquisition of asset No.2,
- whichever event comes first.
- [<sup>F970</sup>(2A) If asset No 2 or shares in a company which holds asset No 2 are transferred as part of the process of a merger to which section 140E applies, the transfer shall be disregarded for the purpose of subsection (2), and for that purpose—
- (a) if the transferee holds asset No 2, it shall be treated for the purpose of subsection (2), in relation to asset No 2, as if it were the claimant, or
  - (b) if the transferee holds shares in the company which holds asset No 2, section 175 shall apply in relation to the group of which the transferee is a member as if it were the same group as any group of which the claimant was a member before the merger.
- (2B) If, as part of the process of a merger to which section 140E applies, the transferee becomes a member (whether or not as the principal company) of a group of which the claimant is also a member, for the purposes of subsection (2) section 175 shall apply in relation to the trade carried on by the claimant as if the group of which the



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transferee is a member were the same group as the group of which the claimant was a member before the merger.

(2C) In subsections (2A) and (2B), “transferor” and “transferee” have the meaning given by section 140E(9).]

[<sup>F971</sup>(2D) Subsections (2A) and (2B) shall apply in relation to the transfer of an asset in circumstances where section 140A applies as they apply in relation to the transfer of an asset on a merger to which section 140E applies, and for that purpose—

- (a) references to the merger shall be treated as references to the transfer,
- (b) references to section 140E shall be treated as references to section 140A, and
- (c) references to the transferor and the transferee shall be treated as references to the transferor and the transferee in relation to the asset.]

(3) Where section 229 has effect subject to the provisions of this section, subsection (2) (b) above shall have effect as if it read—

“(b) section 232(3) applies as regards asset No.2 (whether or not by virtue of section 232(5)), or”.

(4) If, in the circumstances specified in subsection (5) below, the claimant acquires an asset (“asset No.3”) which is not a depreciating asset, and claims under section 152 or 153—

- (a) the gain held-over from asset No.1 shall be carried forward to asset No.3, and
- (b) the claim which applies to asset No.2 shall be treated as withdrawn (so that subsection (2) above does not apply).

(5) The circumstances are that asset No.3 is acquired not later than the time when the chargeable gain postponed under subsection (2) above would accrue and, assuming—

- (a) that the consideration for asset No.1 was applied in acquiring asset No.3, and
- (b) that the time between the disposal of asset No.1 and the acquisition of asset No.3 was within the time limited by section 152(3),

the whole amount of the postponed gain could be carried forward from asset No.1 to asset No.3; and the claim under subsection (4) above shall be accepted as if those assumptions were true.

(6) If part only of the postponed gain could be carried forward from asset No.1 to asset No.3, and the claimant so requires, that and the other part of the postponed gain shall be treated as derived from 2 separate assets, so that, on that claim—

- (a) subsection (4) above applies to the first-mentioned part, and
- (b) the other part remains subject to subsection (2) above.

(7) For the purposes of this section, an asset is a depreciating asset at any time if—

- (a) at that time it is a wasting asset, as defined in section 44, or
- (b) within the period of 10 years beginning at that time it will become a wasting asset (so defined).

#### Textual Amendments

**F970** S. 154(2A)-(2C) substituted for s. 154(2A)(2B) (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007](#) (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 6** (with S.I. 2008/1579, reg. 4(1))

*Status: Point in time view as at 16/11/2017.*

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**F971** S. 154(2D) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 1 para. 8** (with S.I. 2008/1579, **reg. 4(1)**)

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

**C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 6(1)**

**C217** Ss. 152-154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 6(4)**

**C218** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **Sch. 25 para. 3(2)**

**C229** Ss. 152-156 modified (16.7.1992) by [1992 c. 48](#), s. 77, [Sch. 17 paras.3, 7](#)

Ss. 152-156 modified (27.7.1993) by [1993 c. 37](#), s. 12, **Sch. 2 Pt. I para. 6(2)**

**C230** S. 154 applied (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 6(5)**

**C231** S. 154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 6(2)**

**C232** S. 154 restricted (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 7(2)(b)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, [Sch.](#)

**C233** S. 154 applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 7(6)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, [Sch.](#)

**C234** S. 154 modified (1.2.2001) by [Transport Act 2000 \(c. 38\)](#), s. 275(1), **Sch. 7 para. 6(2)**; [S.I. 2001/57](#), art. 3(1)

**C235** S. 154 modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 13 para. 12(2)**

**155 Relevant classes of assets.**

The classes of assets for the purposes of section 152(1) are as follows.

CLASS 1

Assets within heads A and B below.

Head A

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

Head A has effect subject to section 156.

Head B

Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

CLASS 2

Ships, aircraft and hovercraft (“hovercraft” having the same meaning as in the <sup>M29</sup>[Hovercraft Act 1968](#)).

CLASS 3

Satellites, space stations and spacecraft (including launch vehicles).

CLASS 4

Goodwill.

CLASS 5

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Milk quotas (that is, rights to sell dairy produce without being liable to pay milk levy or to deliver dairy produce without being liable to pay a contribution to milk levy) and potato quotas (that is, rights to produce potatoes without being liable to pay more than the ordinary contribution to the Potato Marketing Board's fund).  
[<sup>F972</sup>CLASS 6

Ewe and suckler cow premium quotas (that is, rights in respect of any ewes or suckler cows to receive payments by way of any subsidy entitlement to which is determined by reference to limits contained in a Community instrument).]  
[<sup>F973</sup>CLASS 7

Fish quota (that is, an allocation of quota to catch fish stocks, which derives from the Total Allowable Catches set in pursuance of Article 8(4) of Council Regulation (EEC) 3760/92 and under annual Council Regulations made in accordance with that Article, or under any replacement Community Instruments).]  
[<sup>F974</sup>CLASS 7A

[<sup>F975</sup>Assets within heads A and B below.  
Head A]

Payment entitlements under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of [<sup>F976</sup>Council Regulation (EC) No 73/2009]).  
[<sup>F977</sup>Head B

Payment entitlements under the basic payment scheme (that is, the scheme of income support for farmers in pursuance of Regulation (EU) No 1307/2013 of the European Parliament and of the Council).]]

[<sup>F978</sup>CLASS 8

Assets within heads A and B below.  
Head A

Rights of a member of Lloyd's under a syndicate within the meaning of Chapter III of Part II of the Finance Act 1993.  
Head B

An asset which a member of Lloyd's is treated as having acquired by virtue of section 82 of the Finance Act 1999.]

#### Textual Amendments

- F972** Words in s. 155 inserted (27.7.1993 with effect as mentioned in s. 86(4)) by 1993 c. 34, s. 86(1)(4)  
**F973** Words in s. 155 added (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 1993, Section 86(2), (Fish Quota) Order 1999 (S.I. 1999/564), arts. 1(1), 3  
**F974** Words in s. 155 inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 1993, Section 86(2), (Single Payment Scheme) Order 2005 (S.I. 2005/409), arts. 1(1), 2  
**F975** Words in s. 155 inserted (with effect in accordance with s. 61(4) of the amending Act) by Finance Act 2014 (c. 26), s. 61(2)  
**F976** Words in s. 155 substituted (with effect in accordance with s. 37(4) of the amending Act) by Finance Act 2012 (c. 14), s. 37(1)  
**F977** Words in s. 155 inserted (with effect in accordance with s. 61(4) of the amending Act) by Finance Act 2014 (c. 26), s. 61(3)

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**F978** Words in s. 155 inserted (with application in accordance with s. 84(2) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 84\(1\)](#)

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

**C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(1\)](#)

**C218** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\), Sch. 25 para. 3\(2\)](#)

**C236** Ss. 152-156 modified (16.7.1992) by [1992 c. 48, s. 77, Sch. 17 paras. 3, 7](#)

Ss. 152-156 modified (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 6\(2\)](#)

**C237** S. 155 restricted (24.7.2002) by [Finance Act 2002 \(c. 23\), Sch. 29 para. 132\(5\)](#)

**Marginal Citations**

**M29** [1968 c.59.](#)

**156 Assets of Class 1.**

- (1) This section has effect as respects head A of Class 1 in section 155.
- (2) Head A shall not apply where the trade is a trade—
  - (a) of dealing in or developing land, or
  - (b) of providing services for the occupier of land in which the person carrying on the trade has an estate or interest.
- (3) Where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, then, as regards that land, the trade shall be treated for the purposes of subsection (2) (a) above as if it were not a trade of dealing in or developing land.
- <sup>F979</sup>(4) Where <sup>F980</sup>... [<sup>F981</sup>section 19 of ITTOIA 2005][<sup>F982</sup>or section 42 of CTA 2009] applies (tied premises: receipts and expenses treated as those of trade), the trader shall be treated, to the extent that the conditions in subsection (1) of that section are met in relation to premises, as occupying as well as using the premises for the purposes of the trade.]

**Textual Amendments**

**F979** S. 156(4) substituted (with effect in accordance with s. 41(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 41\(2\)](#) (with art. 41(4)-(7))

**F980** Words in s. 156(4) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 371\(a\), Sch. 3 Pt. 1](#) (with Sch. 2 Pts. 1, 2)

**F981** Words in s. 156(4) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 439](#) (with Sch. 2)

**F982** Words in s. 156(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 371\(b\)](#) (with Sch. 2 Pts. 1, 2)

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

**C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(1\)](#)

**C218** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\), Sch. 25 para. 3\(2\)](#)

**C238** Ss. 152-156 modified (16.7.1992) by [1992 c. 48, s. 77, Sch. 17 paras.3, 7](#)

Ss. 152-156 modified (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 6\(2\)](#)

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### **[<sup>F983</sup>156ZA] Intangible fixed assets: roll-over relief**

- (1) This section applies if a company is entitled to relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of realisation and reinvestment) as a result of—
  - (a) section 898 of that Act (roll-over relief where pre-FA 2002 assets disposed of on or after 1 April 2002), or
  - (b) section 899 of that Act (roll-over relief where degrouping charge on pre-FA 2002 asset arises on or after 1 April 2002).
- (2) The company is treated for the purposes of this Act as if the consideration for the disposal of the old asset were reduced by the amount available for relief.
- (3) Subsection (2) does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets.
- (4) In this section—
  - “the old asset” has the same meaning as in Chapter 7 of Part 8 of CTA 2009 (see section 754(2)), and
  - “the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

#### **Textual Amendments**

**F983** Ss. 156ZA, 156ZB inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 372** (with **Sch. 2 Pts. 1, 2**)

### **156ZB Intangible fixed assets: interaction with relief under Chapter 7 of Part 8 of CTA 2009**

- (1) [<sup>F984</sup>Subsection (2)] applies if there is a disposal on or after 1 April 2002 of an asset that is both—
  - (a) an asset of a class specified in section 155, and
  - (b) an intangible fixed asset for the purposes of Part 8 of CTA 2009.
- (2) The period specified in section 152(3)—
  - (a) does not include any period beginning on or after 1 April 2002, and
  - (b) may not be extended so as to include any such period.
- (3) Classes 4 to 7A in section 155 do not apply for the purposes of corporation tax as respects the acquisition of new assets that are chargeable intangible assets for the purposes of Part 8 of CTA 2009 (see section 741 of that Act).
- (4) In the case of an acquisition before 22 March 2005, subsection (3) applies as if it referred to Classes 4 to 7, instead of Classes 4 to 7A.]

#### **Textual Amendments**

**F983** Ss. 156ZA, 156ZB inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 372** (with **Sch. 2 Pts. 1, 2**)

**F984** Words in s. 156ZB(1) substituted (with effect in accordance with s. 62(3) of the amending Act) by Finance Act 2014 (c. 26), **s. 62(1)**

*Status: Point in time view as at 16/11/2017.*

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**[<sup>F985</sup>156A Cessation of trade by limited liability partnership.**

- (1) Where, immediately before the time of cessation of trade, a member of a limited liability partnership holds an asset, or an interest in an asset, acquired by him for a consideration treated as reduced under section 152 or 153, he shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.
- (2) Where, as a result of section 154(2), a chargeable gain on the disposal of an asset, or an interest in an asset, by a member of a limited liability partnership has not accrued before the time of cessation of trade, the member shall be treated as if the chargeable gain accrued immediately before that time.
- (3) In this section “the time of cessation of trade”, in relation to a limited liability partnership, means the time when section 59A(1) ceases to apply in relation to the limited liability partnership.]

**Textual Amendments**

**F985** S. 156A inserted (6.4.2001) by [Limited Liability Partnerships Act 2000 \(c. 12\)](#), **ss. 10(4)**, 19(1); [S.I. 2000/3316](#), art. 2

**157 Trade carried on by family company: business assets dealt with by individual.**

In relation to a case where—

- (a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and
- (b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his [<sup>F986</sup>personal company], [<sup>F987</sup>that is to say, a company the voting rights in which are exercisable, as to not less than 5 per cent., by him],

any reference in sections 152 to 156 to the person carrying on the trade (or the 2 or more trades) includes a reference to that individual.

**Textual Amendments**

**F986** Words in s. 157 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by [1993 c. 34, s. 87, Sch. 7 Pt. I para. 1\(1\)](#)

**F987** Words in s. 157 substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 140(3)**

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

**C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 6(1)**

**158 Activities other than trades, and interpretation.**

- (1) Sections 152 to 157 shall apply with the necessary modifications—
  - (a) in relation to the discharge of the functions of a public authority, and

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- (b) in relation to the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits, and
- (c) in relation to a profession, vocation, office or employment, and
- (d) in relation to such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed, and
- (e) in relation to the activities of an unincorporated association or other body chargeable to corporation tax, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within head A of class 1 only if they are both occupied and used by the body, and in the case of other assets only if they are used by the body, <sup>F988</sup>and
- (f) in relation to the activities of a company owned by such an unincorporated association or other body (“the parent body”), but in the case of any assets within head A of class 1 only if they are both occupied and used by the parent body, and in the case of any other assets only if they are used by the parent body.]

as they apply in relation to a trade.

<sup>F989</sup>(1A) For the purposes of subsection (1)(f) the parent body owns the company if—

- (a) it holds not less than 90% of the company’s ordinary share capital,
- (b) it is beneficially entitled to not less than 90% of the profits available for distribution to the equity holders of the company, and
- (c) it would be beneficially entitled on a winding up to not less than 90% of the assets of the company available for distribution to equity holders.

(1B) For the purposes of subsection (1A)—

- (a) “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act and also includes, in relation to a company that has no share capital, any interests in the company possessed by members of the company, and
- (b) the meaning of “equity holder” and method of determination of profits or assets available for distribution shall be that prescribed for the purposes of paragraph 8 of Schedule 7AC by sub-paragraphs (2) and (3) of that paragraph.]

(2) In sections 152 to 157 and this section the expressions “trade”, “profession”, “vocation”, “office” and “employment” have the same meanings as in the Income Tax Acts, <sup>F990</sup> ... .

(3) Sections 152 to 157 and this section shall be construed as one.

#### Textual Amendments

**F988** S. 158(1)(f) and preceding word inserted (with effect in accordance with art. 6(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **6(2)**

**F989** S. 158(1A)(1B) inserted (with effect in accordance with art. 6(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **6(3)**

**F990** Words in s. 158(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 373, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

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

- C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(1\)](#)
- C239** S. 158 applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 7\(7\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

**159 Non-residents: roll-over relief.**

- (1) Section 152 shall not apply in the case of a person if the old assets are chargeable assets in relation to him at the time they are disposed of, unless the new assets are chargeable assets in relation to him immediately after the time they are acquired.
- (2) Subsection (1) above shall not apply where—
  - (a) the person acquires the new assets after he has disposed of the old assets, and
  - (b) immediately after the time they are acquired the person is resident <sup>F991</sup>... in the United Kingdom.
- (3) Subsection (2) above shall not apply where immediately after the time the new assets are acquired—
  - (a) the person is a dual resident, and
  - (b) the new assets are prescribed assets.
- (4) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—
  - (a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or
  - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section [<sup>F992</sup>10B].
- (5) In this section—
 

“dual resident” means a person who is resident <sup>F993</sup>... in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and

“prescribed asset”, in relation to a dual resident, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, he falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to him on a disposal.
- (6) In this section—
  - (a) “the old assets” and “the new assets” have the same meanings as in section 152,
  - (b) references to disposal of the old assets include references to disposal of an interest in them, and
  - (c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.
- (7) Where the acquisition of the new assets took place before 14th March 1989 and the disposal of the old assets took place, or takes place, on or after that date, this section shall not apply if the disposal of the old assets took place, or takes place, within 12



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months of the acquisition of the new assets or such longer period as the Board may by notice allow.

#### Textual Amendments

- F991** Words in s. 159(2)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 98\(2\)](#)
- F992** Word in s. 159(4)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)
- F993** Words in s. 159(5) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 98\(3\)](#)

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

- C215** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(1\)](#)

### [<sup>F994</sup>159A Non-resident CGT disposals: roll-over relief

- (1) Section 152 does not apply in relation to a person who would (apart from that section) be chargeable to capital gains tax under section 14D or 188D in respect of NRCGT gains accruing on the disposal of the old assets, unless the new assets are qualifying residential property interests immediately after the time they are acquired.
- (2) For the purposes of this section an asset is a “qualifying residential property interest” at any time if it—
  - (a) is an interest in UK land, and
  - (b) consists of or includes a dwelling.
- (3) In this section—
  - (a) “dwelling” has the meaning given by paragraph 4 of Schedule B1;
  - (b) “interest in UK land” has the meaning given by paragraph 2 of Schedule B1;
  - (c) “the old assets” and “the new assets” have the same meaning as in section 152;
  - (d) the reference to disposal of the old assets includes a reference to disposal of an interest in them;
  - (e) the reference to acquisition of the new assets includes a reference to acquisition of an interest in them or entering into an unconditional contract for the acquisition of them.]

#### Textual Amendments

- F994** S. 159A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 22](#)

### [<sup>F995</sup>160 Dual resident companies: roll-over relief.

.....

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### Textual Amendments

**F995** S. 160 repealed (with effect in accordance with s. 251(1)(a)(6) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 251(6), [Sch. 26 Pt. VIII\(1\)](#)

### *Stock in trade*

## 161 Appropriations to and from stock.

- (1) Subject to <sup>F996</sup>subsections (3) to (3ZB)] below, where an asset acquired by a person otherwise than as trading stock of a trade carried on by him is appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if he had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to him, he shall be treated as having thereby disposed of the asset by selling it for its then market value.
- (2) If at any time an asset forming part of the trading stock of a person's trade is appropriated by him for any other purpose, or is retained by him on his ceasing to carry on the trade, he shall be treated as having acquired it at that time for a consideration equal to the amount brought into the accounts of the trade in respect of it for tax purposes on the appropriation or on his ceasing to carry on the trade, as the case may be.
- (3) Subject to subsection (4) below, subsection (1) above shall not apply in relation to <sup>F997</sup>a case where a chargeable gain would have accrued to a person on the appropriation of an asset for the purposes of a trade as mentioned in that subsection] <sup>F998</sup>if—
  - (a) he is chargeable to corporation tax in respect of the profits of the trade <sup>F999</sup>under Chapter 2 of Part 3 of CTA 2009 and the trade is carried on wholly or partly in the United Kingdom], or
  - (b) he is chargeable to income tax in respect of the profits of the trade under Chapter 2 of Part 2 of ITTOIA 2005 and the trade is carried on wholly or partly in the United Kingdom,

and he elects] that instead the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for purposes of tax, be treated as reduced by the amount of <sup>F1000</sup>that chargeable gain, and where subsection (1)] does not apply by reason of such an election, the profits of the trade shall be computed accordingly.

<sup>F1001</sup>(3ZA) But if the person—

- (a) meets the requirement of paragraph (a) or (b) of subsection (3), and
- (b) (ignoring any election under this section) would be treated under subsection (1) as making a relevant high value disposal on which an ATED-related gain chargeable to, or loss allowable for the purposes of, capital gains tax under section 2B would accrue,

the person may not elect under subsection (3) but may elect for subsection (3ZB) to apply.

- (3ZB) Subject to subsection (4), where an election is made for this subsection to apply—
  - (a) a gain <sup>F1002</sup>... accruing on the disposal under subsection (1) which is not ATED-related is not a chargeable gain <sup>F1003</sup>... ,
  - (b) the market value of the asset at the time of the appropriation is, for the purposes of computing the profits of the trade for the purposes of tax, to be treated as

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reduced by the amount of any gain <sup>F1004</sup>... which would be a chargeable gain <sup>F1005</sup>... but for paragraph (a), and

- (c) the chargeable gain or allowable loss which accrues on that disposal and is ATED-related is unaffected by the election [<sup>F1006</sup>and a loss which accrues on that disposal which is not ATED-related is also unaffected by the election].]

[<sup>F1007</sup>(3A) An election under subsection (3) [<sup>F1008</sup>or (3ZA)] above shall be made—

- (a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the period of account in which the asset is appropriated for the purposes of the trade as trading stock;
- (b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the asset is appropriated for the purposes of the trade as trading stock;

<sup>F1009</sup> .....

- (4) If a person making an election under subsection (3) [<sup>F1010</sup>or (3ZA)] is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others.

[<sup>F1011</sup>(5) If—

- [<sup>F1012</sup>(a) any person is charged to income tax by virtue of sections 517B and 517C of ITA 2007 (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 517B(7) of that Act is met, and]
- (b) the gain is calculated on the basis that any property was appropriated as trading stock,

the property shall be treated on that basis also for the purposes of this section.]

[<sup>F1013</sup>(6) If—

- [<sup>F1014</sup>(a) any person is charged to corporation tax by virtue of sections 356OB and 356OC of CTA 2010 (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 356OB(7) of that Act is met, and]
- (b) the gain is calculated on the basis that any property was appropriated as trading stock,

the property shall be treated on that basis also for the purposes of this section.]

#### Textual Amendments

- F996** Words in s. 161(1) substituted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 11\(2\)](#)
- F997** Words in s. 161(3) substituted (with effect in accordance with s. 26(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(2\)\(a\)](#)
- F998** Words in s. 161(3) substituted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Income Tax \(Trading and Other Income\) Act 2005 \(Consequential Amendments\) Order 2006 \(S.I. 2006/959\)](#), arts. 1(2), [3\(3\)](#)
- F999** Words in s. 161(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 374](#) (with [Sch. 2 Pts. 1, 2](#))
- F1000** Words in s. 161(3) substituted (with effect in accordance with s. 26(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(2\)\(b\)](#)

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- F1001**S. 161(3ZA)(3ZB) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 11\(3\)](#)
- F1002**Words in s. 161(3ZB)(a) omitted (with effect in accordance with s. 26(4) of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(3\)\(a\)\(i\)](#)
- F1003**Words in s. 161(3ZB)(a) omitted (with effect in accordance with s. 26(4) of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(3\)\(a\)\(ii\)](#)
- F1004**Words in s. 161(3ZB)(b) omitted (with effect in accordance with s. 26(4) of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(3\)\(b\)\(i\)](#)
- F1005**Words in s. 161(3ZB)(b) omitted (with effect in accordance with s. 26(4) of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(3\)\(b\)\(ii\)](#)
- F1006**Words in s. 161(3ZB)(c) inserted (with effect in accordance with s. 26(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 26\(3\)\(c\)](#)
- F1007**S. 161(3A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 36](#)
- F1008**Words in s. 161(3A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 11\(4\)](#)
- F1009**Words in s. 161(3A) repealed (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(16\)](#)
- F1010**Words in s. 161(4) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 11\(5\)](#)
- F1011**S. 161(5) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1034\(1\)](#), [Sch. 1 para. 321](#) (with [Sch. 2](#))
- F1012**S. 161(5)(a) substituted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 79\(10\)](#) (with savings in 2017 c. 32, s. 39(1)(2))
- F1013**S. 161(6) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 240](#) (with [Sch. 2](#))
- F1014**S. 161(6)(a) substituted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(9\)](#) (with savings in 2017 c. 32, s. 39(1)(2))

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

- C240** S. 161 applied (with modifications) (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 26 para. 45\(2\)](#)

*Transfer of business to a company*

**162 Roll-over relief on transfer of business.**

- (1) This section shall apply for the purposes of this Act where a person who is not a company transfers to a company a business as a going concern, together with the whole assets of the business, or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares issued by the company to the person transferring the business.

Any shares so received by the transferor in exchange for the business are referred to below as “the new assets”.

- (2) The amount determined under subsection (4) below shall be deducted from the aggregate of the chargeable gains less allowable losses (“the amount of the gain on the old assets”).
- (3) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—
- (a) the amount determined under subsection (4) below shall be apportioned between the new assets as a whole, and

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- (b) the sums allowable as a deduction under section 38(1)(a) shall be reduced by the amount apportioned to the new asset under paragraph (a) above; and if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the transferor.
- (4) The amount referred to in subsections (2) and (3)(a) above shall not exceed the cost of the new assets but, subject to that, it shall be the fraction—

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

of the amount of the gain on the old assets where—

“A” is the cost of the new assets, and

“B” is the value of the whole of the consideration received by the transferor in exchange for the business;

and for the purposes of this subsection “the cost of the new assets” means any sums which would be allowable as a deduction under section 38(1)(a) if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

- (5) References in this section to the business, in relation to shares or consideration received in exchange for the business, include references to such assets of the business as are referred to in subsection (1) above.

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

**C241** S. 162 modified by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), regs. 1(1), 21)

**C242** S. 162(4) modified (with effect in accordance with art. 1(2)(3), Sch. 1 of the affecting S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), 46(2)

**C243** S. 162(4) modified by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Z7 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), regs. 1(1), 21)

**[<sup>F1015</sup>162] Election for section 162 not to apply**

- (1) Section 162 shall not apply where the transferor makes an election under this section.
- (2) An election under this section must be made by a notice given to an officer of the Board no later than the relevant date.
- (3) Except where subsection (4) below applies, the relevant date is the second anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.
- (4) Where, by the end of the year of assessment following the one in which the transfer of the business took place, the transferor has disposed of all the new assets, the relevant date is the first anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.

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- (5) For the purposes of subsection (4) above—
- (a) a disposal of any of the new assets by the transferor shall be disregarded if it falls within section 58(1) (transfers between [<sup>F1016</sup>spouses and civil partners]); but
  - (b) where a disposal of any assets to a person is disregarded by virtue of paragraph (a) above, a subsequent disposal by that person of any of those assets (other than a disposal to the transferor) shall be regarded as a disposal by the transferor.
- (6) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this section.
- (7) Where, immediately before it was transferred, the business was owned by two or more persons—
- (a) each of them has a separate entitlement to make an election under this section;
  - (b) an election made by a person by virtue of paragraph (a) above shall apply only to—
    - (i) the share of the amount of the gain on the old assets, and
    - (ii) the share of the new assets,
 that is attributable to that person for the purposes of this Act.
- (8) The reference in subsection (7) above to ownership by two or more persons includes, in Scotland as well as elsewhere in the United Kingdom, a reference to ownership by a partnership consisting of two or more persons.
- (9) Expressions used in this section and in section 162 have the same meaning in this section as in that one.

But references in this section to new assets also include any shares or debentures that are treated by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains) as the same asset as the new assets.]

#### **Textual Amendments**

**F1015S.** 162A inserted (with application in accordance with s. 49(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. **49(1)**

**F1016** Words in s. 162A(5)(a) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **111**

#### *[<sup>F1017</sup>Transfer of business from company to shareholders*

#### **Textual Amendments**

**F1017Ss.** 162B, 162C and cross-heading inserted (with effect in accordance with s. 61(6) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **61(1)**

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### **162B Disincorporation relief: assets (including pre-FA 2002 goodwill)**

- (1) This section applies where—
  - (a) a company transfers its business to some or all of the shareholders of the company, and
  - (b) a claim for disincorporation relief in respect of the transfer has been made under section 58 of the Finance Act 2013.
- (2) The disposal and acquisition of any qualifying asset of the business included in the transfer is to be deemed to be for a consideration equal to the lower of—
  - (a) the sums allowable under section 38 as a deduction in the computation of the gain accruing to the company on the disposal of the asset in question, and
  - (b) the market value of the asset.
- (3) In subsection (2) a “qualifying asset” means—
  - (a) goodwill, or
  - (b) an interest in land which is not held as trading stock.
- (4) But subsection (2) does not apply to the goodwill of the business if section 162C applies to it.

### **162C Disincorporation relief: post-FA 2002 goodwill**

- (1) This section applies where—
  - (a) a company transfers its business to some or all of the shareholders of the company,
  - (b) a claim for disincorporation relief in respect of the transfer has been made under section 58 of the Finance Act 2013, and
  - (c) section 849A of CTA 2009 (disincorporation relief: transfer values for post-FA 2002 goodwill) applies to the transfer of the goodwill of the business.
- (2) The acquisition of the goodwill of the business is deemed to be for a consideration equal to the value at which the goodwill is treated as transferred by virtue of section 849A of CTA 2009.]

### *Retirement relief*

#### **F1018 163 Relief for disposals by individuals on retirement from family business.**

.....

#### **Textual Amendments**

**F1018S.** 163 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 140(2)(a), [Sch. 27 Pt. III\(31\)](#)

#### **F1019 164 Other retirement relief.**

.....

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**Textual Amendments**

**F1019S.** 164 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 140(2)(b), [Sch. 27 Pt. III\(31\)](#)

**F1020 CHAPTER IA**

**ROLL-OVER RELIEF ON RE-INVESTMENT**

**Textual Amendments**

**F1020Pt. 5 Ch. 1A** repealed (with effect in accordance with s. 141(2)(a), Sch. 27 Pt. 3(32) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 141(1)(a), [Sch. 27 Pt. 3\(32\)](#)

**F1020 164A Relief on re-investment for individuals.**  
.....

**F1020 164B Roll-over relief on re-investment by trustees.**  
.....

**F1020 164BA Interaction with retirement relief**  
.....

**F1020 164C Restriction applying to retirement relief and roll-over relief on re-investment.**  
.....

**F1020 164D Relief carried forward into replacement shares.**  
.....

**F1020 164E Application of Chapter in cases of an exchange of shares.**  
.....

**F1020 164F Failure of conditions of relief.**  
.....

**F1020 164G Loss of relief in cases where shares acquired on being issued.**  
.....



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*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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F1020 **164K Qualifying investment acquired from husband or wife.**

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F1020 **164L Multiple claims.**

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F1020 **164M Meaning of “qualifying company”.**

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F1020 **164N Property companies etc. not to be qualifying companies.**

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F1020 **164O Qualifying trades.**

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F1020 **164Q Foreign residents.**

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F1020 **164S Exclusion of double relief.**

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F1020 **164T Exclusion of double relief**

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F1020 **164U Interpretation of Chapter IA.**

.....

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## CHAPTER II

### GIFTS OF BUSINESS ASSETS

#### 165 Relief for gifts of business assets.

- (1) If—
- (a) an individual (“the transferor”) makes a disposal otherwise than under a bargain at arm’s length of an asset within subsection (2) below, and
  - (b) a claim for relief under this section is made by the transferor and the person who acquires the asset (“the transferee”) or, where the trustees of a settlement are the transferee, by the transferor alone,
- then, subject to subsection (3) and [F1021sections 166, 167[F1022, [F1023167A,] 169, 169B and 169C]], subsection (4) below shall apply in relation to the disposal.
- (2) An asset is within this subsection if—
- (a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—
    - (i) the transferor, or
    - (ii) his [F1024personal company], or
    - (iii) a member of a trading group of which the holding company is his [F1024personal company], or
  - (b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—
    - (i) the shares or securities are [F1025not listed on a recognised stock exchange], or
    - (ii) the trading company or holding company is the transferor’s [F1024personal company].
- (3) Subsection (4) below does not apply in relation to a disposal if—
- <sup>F1026</sup>(a) .....
  - <sup>F1026</sup>(b) .....
  - [F1027(ba) in the case of a disposal of shares or securities, the transferee is a company,]
  - (c) in the case of a disposal of qualifying corporate bonds, a gain is deemed to accrue by virtue of section 116(10)(b), or
  - (d) subsection (3) of section 260 applies in relation to the disposal (or would apply if a claim for relief were duly made under that section).
- (4) Where a claim for relief is made under this section in respect of a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
  - (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,
- shall each be reduced by an amount equal to the held-over gain on the disposal.
- (5) Part I of Schedule 7 shall have effect for extending the relief provided for by virtue of subsections (1) to (4) above in the case of agricultural property and for applying it in relation to settled property.

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(6) Subject to Part II of Schedule 7 and subsection (7) below, the reference in subsection (4) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (4) above<sup>F1028</sup> ..., and in subsection (7) below that chargeable gain is referred to as the unrelieved gain on the disposal.

(7) In any case where—

- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of section 17(1)) for a disposal in respect of which a claim for relief is made under this section, and
- (b) that actual consideration exceeds the sums allowable as a deduction under section 38,

the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.

[<sup>F1029</sup>(7A) Subsections (7B) and (7C) apply in any case where—

- (a) the disposal is a non-resident CGT disposal, and
- (b) the transferee is resident in the United Kingdom.

(7B) Subsections (4) and (6) have effect in relation to the disposal as if the references to “chargeable gain” were references to “chargeable NRCGT gain”.

(7C) Subsection (7) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to “the chargeable NRCGT gain which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”.]

(8) Subject to subsection (9) below, in this section and Schedule 7—

[<sup>F1030</sup>(a) “personal company”, in relation to an individual, means a company the voting rights in which are exercisable, as to not less than 5 per cent., by that individual;

[<sup>F1031</sup>(aa) “holding company”, “trading company” and “trading group” have the meaning given by section 165A; and]]

(b) “trade”, “profession” and “vocation” have the same meaning as in the Income Tax Acts.

(9) In this section and Schedule 7 and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression “trade” shall be taken to include the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits.

(10) Where a disposal [<sup>F1032</sup>in relation to which subsection (4) above applies] is (or proves to be) a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

(a) the inheritance tax attributable to the value of the asset, and

(b) the amount of the chargeable gain as computed apart from this subsection,

and, in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

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- (11) Where an amount of inheritance tax—
- (a) falls to be redetermined in consequence of the transferor's death within 7 years of making the chargeable transfer in question, or
  - (b) is otherwise varied,
- after it has been taken into account under subsection (10) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

#### Textual Amendments

- F1021** Words in s. 165(1) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 90\(1\)](#)
- F1022** Words in s. 165(1) substituted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(2\)](#)
- F1023** Word in s. 165(1) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 7 para. 23\(2\)](#)
- F1024** Words in s. 165 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by [1993 c. 34, s. 87, Sch. 7 Pt. I para. 1\(1\)](#)
- F1025** Words in s. 165(2)(b)(i) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 90\(3\)](#)
- F1026** S. 165(3)(a)(b) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. III\(31\)](#)
- F1027** S. 165(3)(ba) inserted (with effect in accordance with Sch. 21 para. 10(5) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(3\)](#)
- F1028** Words in s. 165(6) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. III\(31\)](#)
- F1029** S. 165(7A)-(7C) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 7 para. 23\(3\)](#)
- F1030** S. 165(8)(a)(aa) substituted for s. 165(8)(a) (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 140\(4\)](#)
- F1031** S. 165(8)(aa) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 2 para. 33](#)
- F1032** Words in s. 165(10) substituted (with effect in accordance with Sch. 21 para. 10(7) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(5\)](#)

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

- C244** S. 165 modified by S.I. 2006/964, reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\), regs. 1\(1\), 21](#))

#### <sup>F1033</sup>165 Meaning of “holding company”, “trading company” and “trading group”

- (1) This section has effect for the interpretation of section 165 (and this section).
- (2) “Holding company” means a company that has one or more 51% subsidiaries.
- (3) “Trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

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- (4) For the purposes of subsection (3) above “trading activities” means activities carried on by the company—
- (a) in the course of, or for the purposes of, a trade being carried on by it,
  - (b) for the purposes of a trade that it is preparing to carry on,
  - (c) with a view to its acquiring or starting to carry on a trade, or
  - (d) with a view to its acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group, and
    - (ii) if the acquiring company is a member of a group of companies, is not a member of that group.
- (5) Activities do not qualify as trading activities under subsection (4)(c) or (d) above unless the acquisition is made, or the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (6) The reference in subsection (4)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a 51% subsidiary of the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group of companies.
- (7) For the purpose of determining whether a company which has a qualifying shareholding in a joint venture company is a trading company—
- (a) any holding by it of shares in the joint venture company is to be disregarded, and
  - (b) it is to be treated as carrying on an appropriate proportion of the activities of the joint venture company or, where the joint venture company is the holding company of a trading group, of the activities of that group;
- and in paragraph (b) above “appropriate proportion” means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the company.
- (8) “Trading group” means a group of companies—
- (a) one or more of whose members carry on trading activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.
- (9) For the purposes of subsection (8) above “trading activities” means activities carried on by a member of the group—
- (a) in the course of, or for the purposes of, a trade being carried on by any member of the group,
  - (b) for the purposes of a trade that any member of the group is preparing to carry on,
  - (c) with a view to any member of the group acquiring or starting to carry on a trade, or
  - (d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group, and

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- (ii) is not a member of the same group of companies as the acquiring company.
- (10) Activities do not qualify as trading activities under subsection (9)(c) or (d) above unless the acquisition is made, or the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (11) The reference in subsection (9)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a member of the same group of companies as the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture company a member of the same group of companies as the acquiring company.
- (12) For the purpose of determining whether a group of companies is a trading group in a case where any one or more members of the group has a qualifying shareholding in a joint venture company which is not a member of the group—
- (a) every holding of shares in the joint venture company by a member of the group having a qualifying shareholding in it is to be disregarded, and
  - (b) each member of the group having such a qualifying shareholding is to be treated as carrying on an appropriate proportion of the activities of the joint venture company or, where the joint venture company is a holding company of a trading group, of the activities of that group;
- and in paragraph (b) above “appropriate proportion” means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the member of the group.
- (13) For the purposes of this section the activities of the members of a group of companies are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).
- (14) In this section—
- “51% subsidiary” has the meaning given by [<sup>F1034</sup>Chapter 3 of Part 24 of CTA 2010],
- “group of companies” means a company which has one or more 51% subsidiaries together with those subsidiaries,
- “joint venture company” means a company—
- (a) which is a trading company or the holding company of a trading group, and
  - (b) 75% or more of the ordinary share capital of which (in aggregate) is held by not more than 5 persons (the shareholdings of members of a group of companies being regarded for the purposes of this paragraph as held by a single company),
- “ordinary share capital” has the meaning given by section 989 of ITA 2007,
- “qualifying shareholding”, in relation to a company and a joint venture company, means—
- (a) the holding by the company of 10% or more of the ordinary share capital of the joint venture company, or

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- (b) (where the company is a member of a group of companies) the holding by the company and the other members of the group (between them) of 10% or more of that ordinary share capital, and  
“trade” means (subject to section 241(3)) anything which—
- (a) is a trade, profession or vocation, within the meaning of the Income Tax Acts, and
- (b) is conducted on a commercial basis and with a view to the realisation of profits.]

#### Textual Amendments

**F1033**S. 165A inserted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 34](#)

**F1034**Words in s. 165A(14) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 241](#) (with [Sch. 2](#))

### 166 Gifts to non-residents.

- (1) [<sup>F1035</sup>Subject to section 167A, section 165(4)] shall not apply where the transferee is [<sup>F1036</sup>not resident] in the United Kingdom.
- (2) Section 165(4) shall not apply where the transferee is an individual <sup>F1037</sup>... if that individual <sup>F1037</sup>... —
- (a) though resident <sup>F1038</sup>... in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
- (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

#### Textual Amendments

**F1035**Words in s. 166(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 24](#)

**F1036**Words in s. 166(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 99\(2\)](#)

**F1037**Words in s. 166(2) repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 251(7)(a), [Sch. 26 Pt. VIII\(1\)](#)

**F1038**Words in s. 166(2)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 99\(3\)](#)

### 167 Gifts to foreign-controlled companies.

- (1) [<sup>F1039</sup>Subject to section 167A, section 165(4)] shall not apply where the transferee is a company which is within subsection (2) below.
- (2) A company is within this subsection if it is controlled by a person who, or by persons each of whom—
- (a) is [<sup>F1040</sup>not resident] in the United Kingdom, and
- (b) is connected with the person making the disposal.

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- (3) For the purposes of subsection (2) above, a person who (either alone or with others) controls a company by virtue of holding assets relating to that or any other company and who is resident [<sup>F1041</sup>in the United Kingdom is to be regarded as not resident] there if—
- (a) he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements he would not be liable in the United Kingdom to tax on a gain arising on a disposal of the assets.

#### Textual Amendments

**F1039** Words in s. 167(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 25](#)

**F1040** Words in s. 167(2)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 100\(2\)](#)

**F1041** Words in s. 167(3) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 100\(3\)](#)

#### [<sup>F1042</sup>167] **Gifts of UK residential property interests to non-residents**

- (1) This section applies where the disposal in relation to which a claim could be made under section 165 is a disposal of a UK residential property interest to a transferee who is not resident in the United Kingdom and, ignoring section 165—
- (a) a gain would accrue to the transferor on the disposal, and
  - (b) on the assumption that the disposal is a non-resident CGT disposal (whether or not that is the case), that gain would be a chargeable NRCGT gain (see section 57B and Schedule 4ZZB).
- (2) Section 165(4) has effect in relation to the disposal as if it read—
- “(4) Where a claim for relief is made under this section in respect of the disposal, the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, shall be reduced by an amount equal to the held-over gain on the disposal.”
- (3) Where the disposal is a non-resident CGT disposal—
- (a) section 165(4), as modified by subsection (2) of this section, has effect in relation to the disposal as if the reference to “chargeable gain” were a reference to “chargeable NRCGT gain”,
  - (b) section 165(6) has effect in relation to the disposal as if the references to “chargeable gain” were references to “chargeable NRCGT gain”, and
  - (c) section 165(7) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to “the chargeable NRCGT gain which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”.
- (4) Where a claim for relief is made under section 165 in relation to the disposal mentioned in subsection (1), on a subsequent disposal by the transferee of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1), the whole or a corresponding part of the held-over gain (see section 165(6))—



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- (a) is deemed to accrue to the transferee (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as an NRCGT gain chargeable to capital gains tax by virtue of section 14D accruing on a non-resident CGT disposal.
- (5) Where the subsequent disposal mentioned in subsection (4) is (or proves to be) a chargeable transfer for inheritance tax purposes, section 165(10) has effect in relation to the disposal as if—
- (a) the reference to “the chargeable gain accruing to the transferee on the disposal of the asset” were a reference to the chargeable gain accruing on the disposal as computed apart from subsection (4), and
  - (b) the reference in section 165(10)(b) to “the chargeable gain” were a reference to—
    - (i) the chargeable gain chargeable to capital gains tax by virtue of any provision of this Act accruing on the disposal, and
    - (ii) the held-over gain deemed to accrue under subsection (4).
- (6) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

#### Textual Amendments

**F1042S.** 167A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 26](#)

### 168 Emigration of donee.

- (1) If—
- (a) relief is given under section 165 in respect of a disposal to an individual or under section 260 in respect of a disposal to an individual (“the relevant disposal”); and
  - <sup>F1043</sup>(aa) the transferee is resident in the United Kingdom at the time of that disposal; and]
  - (b) at a time when he has not disposed of the asset in question, the transferee <sup>F1044</sup>ceases to be resident] in the United Kingdom,
- then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 165 or 260) on the relevant disposal.
- (2) For the purposes of subsection (1) above the transferee shall be taken to have disposed of an asset before the time there referred to only if he has made a disposal or disposals in connection with which the whole of the held-over gain on the relevant disposal was represented by reductions made in accordance with section 165(4)(b) or 260(3) (b) and where he has made a disposal in connection with which part of that gain was so represented, the amount of the chargeable gain deemed by virtue of this section to accrue to him shall be correspondingly reduced.
- (3) The disposals by the transferee that are to be taken into account under subsection (2) above shall not include any disposal to which section 58 applies; but where any such

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disposal is made by the transferee, disposals by his spouse [<sup>F1045</sup>or civil partner] shall be taken into account under subsection (2) above as if they had been made by him.

- (4) Subsection (1) above shall not apply by reason of a person [<sup>F1046</sup>ceasing to be resident] more than 6 years after the end of the year of assessment in which the relevant disposal was made.
- (5) Subsection (1) above shall not apply in relation to a disposal made to an individual if—
- (a) the reason for his [<sup>F1047</sup>ceasing to be resident] in the United Kingdom is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and
  - (b) he again becomes resident <sup>F1048</sup>... in the United Kingdom within the period of 3 years from the time when he ceases to be so, without having meanwhile disposed of the asset in question;
- and accordingly no assessment shall be made by virtue of subsection (1) above before the end of that period in any case where the condition in paragraph (a) above is, and the condition in paragraph (b) above may be, satisfied.
- (6) For the purposes of subsection (5) above a person shall be taken to have disposed of an asset if he has made a disposal in connection with which the whole or part of the held-over gain on the relevant disposal would, had he been resident in the United Kingdom, have been represented by a reduction made in accordance with section 165(4)(b) or 260(3)(b) and subsection (3) above shall have effect for the purposes of this subsection as it has effect for the purposes of subsection (2) above.
- (7) Where an amount of tax assessed on a transferee by virtue of subsection (1) above is not paid within the period of 12 months beginning with the date when the tax becomes payable then, subject to subsection (8) below, the transferor may be assessed and charged (in the name of the transferee) to all or any part of that tax.
- (8) No assessment shall be made under subsection (7) above more than 6 years after the end of the year of assessment in which the relevant disposal was made.
- (9) Where the transferor pays an amount of tax in pursuance of subsection (7) above, he shall be entitled to recover a corresponding sum from the transferee.
- (10) Gains on disposals made after a chargeable gain has under this section been deemed to accrue by reference to a held-over gain shall be computed without any reduction under section 165(4)(b) or 260(3)(b) in respect of that held-over gain.

#### Textual Amendments

**F1043**S. 168(1)(aa) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 27](#)

**F1044**Words in s. 168(1)(b) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 101\(2\)](#)

**F1045**Words in s. 168(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\), 112](#)

**F1046**Words in s. 168(4) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 101\(3\)](#)

**F1047**Words in s. 168(5)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 101\(4\)\(a\)](#)

**F1048**Words in s. 168(5)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 101\(4\)\(b\)](#)

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## <sup>F1049</sup> 168 Deemed disposal of UK residential property interest under section 168

- (1) Subsection (2) applies if, ignoring subsections (2) to (4)—
  - (a) a gain would accrue to a transferee on a disposal of a UK residential property interest deemed to have been made by virtue of section 168(1), and
  - (b) on the assumption that the disposal is a non-resident CGT disposal, that gain would be an NRCGT gain chargeable to capital gains tax by virtue of section 14D (see section 57B and Schedule 4ZZB).
- (2) The transferee may elect for subsections (3) and (4) to have effect.
- (3) The held-over gain (within the meaning of section 165 or 260) does not accrue to the transferee on that disposal.
- (4) But, on a subsequent disposal of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1)(a), the whole or a corresponding part of the held-over gain which would have accrued to the transferee were it not for subsection (3)—
  - (a) is deemed to accrue to the transferee (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as an NRCGT gain chargeable to capital gains tax by virtue of section 14D accruing on a non-resident CGT disposal.
- (5) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

### Textual Amendments

**F1049S.** 168A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 28](#)

## 169 Gifts into dual resident trusts.

- (1) This section applies where there is or has been a disposal of an asset to the trustees of a settlement in such circumstances that, on a claim for relief, section 165 or 260 applies, or would but for this section apply, so as to reduce the amounts of the chargeable gain and the consideration referred to in section 165(4) or 260(3).
- (2) In this section “a relevant disposal” means such a disposal as is referred to in subsection (1) above.
- (3) Relief under section 165 or 260 shall not be available on a relevant disposal if—
  - (a) at the material time the trustees to whom the disposal is made <sup>F1050</sup>are] resident <sup>F1051</sup>... in the United Kingdom <sup>F1052</sup>... ; and
  - (b) on a notional disposal of the asset concerned occurring immediately after the material time, the trustees would be regarded for the purposes of any double taxation relief arrangements—
    - (i) as resident in a territory outside the United Kingdom; and
    - (ii) as not liable in the United Kingdom to tax on a gain <sup>F1053</sup>accruing] on that disposal.
- (4) In subsection (3) above—

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- (a) “the material time” means the time of the relevant disposal; and
- (b) a “notional disposal” means a disposal by the trustees of the asset which was the subject of the relevant disposal.

#### Textual Amendments

**F1050** Word in s. 169(3)(a) substituted (with effect in accordance with Sch. 12 para. 37(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 37\(1\)\(a\)](#), 41

**F1051** Words in s. 169(3)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 102](#)

**F1052** Words in s. 169(3)(a) repealed (with effect in accordance with Sch. 12 para. 37(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 37\(1\)\(b\)](#), 41, [Sch. 26 Pt. 3\(15\)](#)

**F1053** Word in s. 169(3)(b)(ii) substituted (with effect in accordance with Sch. 12 para. 37(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 37\(2\)](#), 41

#### <sup>F1054</sup>169A Cessation of trade by limited liability partnership

- (1) This section applies where section 59A(1) ceases to apply to a limited liability partnership.
- (2) A member of the partnership who immediately before the time at which section 59A(1) ceases to apply holds an asset, or an interest in an asset, acquired by him—
  - (a) on a disposal to members of a partnership, and
  - (b) for a consideration which is treated as reduced under section 165(4)(b) or 260(3)(b),

shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.]

#### Textual Amendments

**F1054** S. 169A inserted (with effect in accordance with s. 75(5) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [s. 75\(3\)\(5\)](#) (with [Sch. 3](#))

#### 169B Gifts to settlor-interested settlements etc

- (1) Neither section 165(4) nor section 260(3) shall apply in relation to a disposal (“the relevant disposal”)—
  - (a) made by a person (“the transferor”) to the trustees of a settlement, and
  - (b) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, immediately after the making of the relevant disposal,—
  - (a) there is a settlor (see section 169E) who has an interest in the settlement (see section 169F), or
  - (b) an arrangement (see section 169G) subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
  - (a) a chargeable gain would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal,

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- (b) in computing the gain, the allowable expenditure would to any extent fall to be reduced in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
  - (c) immediately after the making of the relevant disposal,—
    - (i) that individual has an interest in the settlement, or
    - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) This section is subject to section 169D (exception for maintenance funds for historic buildings and certain settlements for disabled persons).

### **169C Clawback of relief if settlement becomes settlor-interested etc**

- (1) This section applies in relation to a disposal (“the relevant disposal”)—
  - (a) made by a person (“the transferor”) to the trustees of a settlement,
  - (b) in relation to which section 165(4) or 260(3) applies, or would apart from this section apply, and
  - (c) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, at any time during the clawback period,—
  - (a) there is a settlor who has an interest in the settlement, or
  - (b) an arrangement subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
  - (a) in computing the chargeable gain which would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal, the allowable expenditure would fall to be reduced,
  - (b) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
  - (c) at any time during the clawback period,—
    - (i) that individual has an interest in the settlement, or
    - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) If no claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time, neither section 165(4) nor section 260(3) shall apply in relation to that disposal.
- (5) Subsections (7) to (9) below apply if a claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time.
- (6) But those subsections do not apply if—
  - (a) the transferor is an individual, and
  - (b) he dies before the material time.
- (7) A chargeable gain, of an amount equal to the amount of the held-over gain (within the meaning of section 165 or 260) on the relevant disposal, shall be treated for the

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purposes of tax in respect of chargeable gains as accruing to the transferor at the material time.

- (8) For any chargeable period ending after the making of the relevant disposal, the chargeable gains and allowable losses of—
- (a) the trustees of the settlement, or
  - (b) any person whose title to any property to any extent derives, directly or indirectly, from them,
- shall be determined on the assumption that neither section 165(4)(b) nor section 260(3)(b) ever applied in relation to that disposal.
- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (8) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (10) If a claim for relief under section 165 or 260 in respect of the relevant disposal is revoked, this section shall apply as if the claim had never been made.
- (11) In this section “the clawback period” means the period—
- (a) beginning immediately after the making of the relevant disposal, and
  - (b) ending six years after the end of the year of assessment in which that disposal was made.
- (12) In this section “the material time” means the time at which subsection (1)(c) above first becomes satisfied.
- (13) This section is subject to section 169D.

#### **169D Exceptions to sections 169B and 169C**

- (1) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement in a year of assessment if the trustees have elected<sup>[F1055]</sup>, or could have elected,] that section <sup>[F1056]</sup>508 of ITA 2007 (trustees' election in respect of income arising from heritage maintenance property)] shall have effect in the case of—
- (a) the settlement, or
  - (b) any part of the settlement,
- in relation to that year of assessment.
- (2) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement if the following conditions are satisfied.
- <sup>[F1057]</sup>(3) The first condition is that, immediately after the making of the disposal, the settled property is held on trusts which secure that, during the lifetime of a disabled person—
- (a) if any of the property is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit, and
  - (b) either—
    - (i) the disabled person is entitled to all of the income (if there is any) arising from any of the property, or
    - (ii) if any such income is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit.]

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- (4) The second condition is that if, immediately after the making of the disposal, one or more settlors is an interested settlor, each such settlor must at that time be a disabled beneficiary.
- [<sup>F1058</sup>(4A) Where the income arising from the settled property is held on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), subsection (3) has effect as if the reference to the lifetime of a disabled person were a reference to the period during which the income is held on trust for the disabled person.
- (4B) The trusts on which the settled property is held are not to be treated as falling outside subsection (3) by reason only of—
- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
  - (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
  - (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
  - (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
  - (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or
  - (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).
- (4C) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—
- (a) £3,000, and
  - (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.
- (4D) The Treasury may by order—
- (a) specify circumstances in which subsection (4B)(a) is, or is not, to apply in relation to a trust, and
  - (b) amend the definition of “the annual limit” in subsection (4C).
- (4E) An order under subsection (4D) may—
- (a) make different provision for different cases, and
  - (b) contain transitional and saving provision.
- (4F) A statutory instrument containing an order under subsection (4D) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]
- (5) For the purposes of subsection (4) above a settlor is an “interested settlor” in relation to a settlement if—
- (a) he has an interest in the settlement, or
  - (b) an arrangement subsists under which such an interest will or may be acquired by him;

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and for this purpose, the references to an individual's spouse [<sup>F1059</sup>or civil partner] in section 169F(2) and (3) [<sup>F1060</sup>and to an individual's dependent child in section 169F(2A)] shall be disregarded.

- (6) In subsection (4) above “disabled beneficiary”, in relation to a settlement, means a disabled person who—
- (a) is a beneficiary under the settlement, or
  - (b) would be such a beneficiary if he had the interest in the settlement by virtue of which subsection (5)(b) above applies in relation to him.

[<sup>F1061</sup>(7) In this section “disabled person” has the meaning given by Schedule 1A to the Finance Act 2005.]

<sup>F1062</sup>(10) . . . . .

- (11) The references in subsection (3) above to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as references to the period during which the income is held on trust for him.

#### Textual Amendments

**F1055** Words in s. 169D(1) inserted (with effect in accordance with s. 63(2) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 63\(1\)](#)

**F1056** Words in s. 169D(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 322](#) (with [Sch. 2](#))

**F1057** S. 169D(3) substituted (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 44 para. 12\(2\)](#)

**F1058** S. 169D(4A)-(4F) inserted (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 44 para. 12\(3\)](#)

**F1059** Words in s. 169D(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 113](#)

**F1060** Words in s. 169D(5) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 19\(1\)\(2\)](#)

**F1061** S. 169D(7) substituted for s. 169D(7)-(9) (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 44 para. 12\(4\)](#)

**F1062** S. 169D(10) omitted (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 44 para. 12\(5\)](#)

#### 169E Meaning of “settlor” in sections 169B to 169D and 169G

- (1) For the purposes of this section [<sup>F1063</sup>and], sections 169B to 169D [<sup>F1064</sup>...], a person is a settlor in relation to a settlement if—
- (a) he is an individual, and
  - (b) the settled property consists of, or includes, property originating from him.
- (2) In subsection (1) above, the reference to property originating from a settlor is a reference to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement, and
  - (b) property which wholly or partly represents that property or any part of it.



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- (3) In subsection (2) above, the references to property which a settlor has provided directly or indirectly—
  - (a) include references to property which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but
  - (b) do not include references to property which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person.
- (4) In subsection (2) above, the reference to property which represents other property includes a reference to property which represents accumulated income from that other property.

#### Textual Amendments

**F1063** Word in s. 169E(1) inserted (13.8.2009) by [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 30(a)**

**F1064** Words in s. 169E(1) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 30(b)**

#### 169F Meaning of “interest in a settlement” in sections 169B to 169D

- (1) For the purposes of this section and sections 169B to 169D, an individual is to be regarded as having an interest in a settlement if subsection (2)<sup>[F1065]</sup>, (3) or (3A)<sup>[F1069]</sup> below applies.
- (2) This subsection applies if—
  - (a) any property which <sup>[F1066]</sup>is or] may at any time be comprised in the settlement, or
  - (b) any derived property,  
is, or will or may become, payable to or applicable for the benefit of the individual or his spouse <sup>[F1067]</sup>or civil partner] in any circumstances whatsoever.
- (3) This subsection applies if the individual or his spouse <sup>[F1068]</sup>or civil partner] enjoys a benefit deriving directly or indirectly from—
  - (a) any property which is comprised in the settlement, or
  - (b) any derived property.
- <sup>[F1069]</sup>(3A) This subsection applies if—
  - (a) any property which is or may at any time be comprised in the settlement, or any derived property, is, or will or may become, payable to or applicable for the benefit of a child of the individual, at a time when that child is a dependent child of his, in any circumstances whatsoever, or
  - (b) a dependent child of the individual enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.]
- (4) The references in subsections (2) and (3) above to the spouse <sup>[F1070]</sup>or civil partner] of the individual do not include—
  - (a) a spouse <sup>[F1071]</sup>or civil partner] from whom the individual is separated—
    - (i) under an order of a court,
    - (ii) under a separation agreement, or

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- (iii) in such circumstances that the separation is likely to be permanent, or
- (b) the widow or widower [<sup>F1072</sup>or surviving civil partner] of the individual.
- [<sup>F1073</sup>(4A) In this section—
- (a) “dependent child” means a child who—
- (i) is under the age of 18 years,
- (ii) is unmarried, and
- (iii) does not have a civil partner, and
- (b) “child” includes a stepchild.
- (4B) For the purposes of subsection (3A) above no account shall be taken of a term of a settlement relating to dependent children of an individual in respect of any time at which he has no dependent child.]
- (5) An individual is not to be regarded as having an interest in a settlement by virtue of subsection (2) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
- [<sup>F1074</sup>(a) in the case of a marriage settlement or civil partnership settlement, the death of both parties to the marriage or civil partnership and of all or any of the children of the family of the parties to the marriage or civil partnership, or]
- (b) the death of a child of the individual where the child had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- [<sup>F1075</sup>(5A) In subsection (5) “child of the family”, in relation to parties to a marriage or civil partnership, means a child of one or both of them.]
- (6) In this section “derived property”, in relation to any property, means—
- (a) income from that property,
- (b) property directly or indirectly representing—
- (i) proceeds of that property, or
- (ii) proceeds of income from that property, or
- (c) income from property which is derived property by virtue of paragraph (b) above.

#### Textual Amendments

**F1065** Words in s. 169F(1) substituted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 4(1)(a)**

**F1066** Words in s. 169F(2)(a) inserted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 4(1)(b)**

**F1067** Words in s. 169F(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(2)**

**F1068** Words in s. 169F(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(3)**

**F1069** S. 169F(3A) inserted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 4(1)(c)**

**F1070** Words in s. 169F(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(4)(a)**

**F1071** Words in s. 169F(4)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(4)(b)**

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- F1072** Words in s. 169F(4)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(4)(c)**
- F1073** S. 169F(4A)(4B) inserted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 4(1)(d)**
- F1074** S. 169F(5)(a) substituted (with effect in accordance with reg. 1(6) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(5)**
- F1075** S. 169F(5A) inserted (with effect in accordance with reg. 1(6) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **114(6)**

### 169G Meaning of “arrangement” in sections 169B to 169E and information power

- (1) In sections 169B to 169E “arrangement” or “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

- F1076**(2) .....
- F1076**(3) .....
- F1076**(4) .....
- F1076**(5) .....

#### Textual Amendments

- F1076**S. 169G(2)-(5) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 31**

## [<sup>F1077</sup> CHAPTER 3

### ENTREPRENEURS' RELIEF

#### Textual Amendments

- F1077**Pt. 5 Ch. 3 inserted (with effect in accordance with Sch. 3 para. 5 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 3 para. 2** (with Sch. 3 paras. 6-8)

### 169H Introduction

- (1) This Chapter provides [<sup>F1078</sup>for a lower rate of capital gains tax] in respect of qualifying business disposals (to be known as “entrepreneurs' relief”).
- (2) The following are qualifying business disposals—
  - (a) a material disposal of business assets: see section 169I,
  - (b) a disposal of trust business assets: see section 169J, and
  - (c) a disposal associated with a relevant material disposal: see section 169K.
- (3) But in the case of certain qualifying business disposals, entrepreneurs' relief is given only in respect of disposals of relevant business assets comprised in the qualifying business disposal: see [<sup>F1079</sup>sections 169L and 169LA].

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- (4) Section 169M makes provision requiring the making of a claim for entrepreneurs' relief.
- (5) Sections 169N to 169P make provision as to the amount of entrepreneurs' relief.
- (6) Sections 169Q and 169R make provision about reorganisations.
- (7) [<sup>F1080</sup>Sections 169S and 169SA contain] interpretative provisions for the purposes of this Chapter.

#### **Textual Amendments**

**F1078** Words in s. 169H(1) substituted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 4](#)

**F1079** Words in s. 169H(3) substituted (with effect in accordance with s. 42(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 42\(2\)](#)

**F1080** Words in s. 169H(7) substituted (with effect in accordance with Sch. 13 para. 6(1) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 13 para. 2](#)

### **169I Material disposal of business assets**

- (1) There is a material disposal of business assets where—
  - (a) an individual makes a disposal of business assets (see subsection (2)), and
  - (b) the disposal of business assets is a material disposal (see subsections (3) to (7)).
- (2) For the purposes of this Chapter a disposal of business assets is—
  - (a) a disposal of the whole or part of a business,
  - (b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or
  - (c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.
- (3) A disposal within paragraph (a) of subsection (2) is a material disposal if the business is owned by the individual throughout the period of 1 year ending with the date of the disposal.
- (4) A disposal within paragraph (b) of that subsection is a material disposal if—
  - (a) the business is owned by the individual throughout the period of 1 year ending with the date on which the business ceases to be carried on, and
  - (b) that date is within the period of 3 years ending with the date of the disposal.
- (5) A disposal within paragraph (c) of subsection (2) is a material disposal if condition A<sup>[F1081]</sup>, B, C or D] is met.
- (6) Condition A is that, throughout the period of 1 year ending with the date of the disposal—
  - (a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and
  - (b) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

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- (7) Condition B is that the conditions in paragraphs (a) and (b) of subsection (6) are met throughout the period of 1 year ending with the date on which the company—
- (a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or
  - (b) ceases to be a member of a trading group without continuing to be or becoming a trading company,
- and that date is within the period of 3 years ending with the date of the disposal.
- [ Condition C is that—
- <sup>F1082</sup>(7A) (a) the assets disposed of are relevant EMI shares,
- (b) the option grant date is, or is before, the first date of the period of 1 year ending with the date of the disposal, and
  - (c) throughout that period of 1 year—
    - (i) the company is either a trading company or the holding company of a trading group, and
    - (ii) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.
- (7B) Condition D is that—
- (a) the assets disposed of are relevant EMI shares acquired by the individual before the cessation date,
  - (b) the option grant date is, or is before, the first date of the period of 1 year ending with the cessation date,
  - (c) the conditions in paragraph (c) of subsection (7A) are met throughout that period of 1 year, and
  - (d) the cessation date is within the period of 3 years ending with the date of the disposal.
- (7C) In this section “relevant EMI shares” means—
- (a) shares of a company acquired by an individual to which subsection (7D) applies, or
  - (b) shares of a company to which subsection (7F) applies.
- (7D) This subsection applies to shares of a company acquired by an individual if the individual—
- (a) acquires them on or after 6 April 2013, and
  - (b) acquires them as a result of the exercise of a qualifying option within the meaning given by section 527(4) of ITEPA 2003 (enterprise management incentives) where the option is exercised on or before the tenth anniversary of the date mentioned in section 529(2) of that Act.
- (7E) Subsection (7D) does not apply to shares acquired as a result of the exercise of a qualifying option if—
- (a) a disqualifying event (see section 533 of ITEPA 2003) occurs in relation to the option before its exercise, and
  - (b) it is exercised later than the period mentioned in section 532(1)(b) of ITEPA 2003.
- (7F) This subsection applies to shares of a company if—

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- (a) the shares are the new holding in a case in which section 127 applies in relation to an individual,
  - (b) the original shares in that case are relevant EMI shares (whether by virtue of subsection (7D) or this subsection), and
  - (c) that case is one in which section 127 applies by virtue only of—
    - (i) section 126, or
    - (ii) subject to subsection (7G), section 135(3).
- (7G) Subsection (7F)(c)(ii) applies only if—
- (a) the exchange of shares in question is a qualifying exchange of shares as defined in paragraph 40 of Schedule 5 to ITEPA 2003, and
  - (b) when the exchange occurs, the independence requirement (see paragraph 9 of Schedule 5 to ITEPA 2003) and the trading activities requirement (see paragraphs 13 and 14 of that Schedule) are met in relation to the new company (see paragraph 40(1)(a) of that Schedule).
- (7H) In this section “the original relevant EMI shares”, in relation to shares which are relevant EMI shares by virtue of subsection (7F), means the shares originally acquired by the individual to which subsection (7D) applied.
- (7I) If the shares disposed of are relevant EMI shares by virtue of subsection (7F), in relation to times before the reorganisation mentioned in section 127, in subsection (7A)
- (c) references to the company are to be read as references to (if different)—
    - (a) the company whose shares are the original relevant EMI shares, or
    - (b) if there has been more than one reorganisation since the original relevant EMI shares were acquired—
      - (i) the company whose shares are the original relevant EMI shares, or
      - (ii) if at the time in question the individual is holding relevant EMI shares which are shares of another company, that other company.
- This subsection is subject to subsection (7N).
- (7J) If the shares disposed of are relevant EMI shares by virtue of subsection (7F), the question of whether the requirement of subsection (7B)(a) is met is to be determined by reference to the date of the acquisition of the original relevant EMI shares.
- (7K) Subject to what follows, in subsections (7A)(b) and (7B)(b) “the option grant date” means the date on which the qualifying option in question was granted.
- (7L) Subsections (7M) and (7N) apply if the qualifying option is a replacement option for the purposes of the EMI code (see paragraph 41 of Schedule 5 to ITEPA 2003).
- (7M) In subsections (7A)(b) and (7B)(b) “the option grant date” means—
- (a) the date on which the old option was granted, or
  - (b) if the old option was also a replacement option, the date on which the earlier old option was granted,
- and so on.
- (7N) In relation to any time during the currency of an old option taken into account under subsection (7M), in subsection (7A)(c) references to the company are to be read as references to the company whose shares were the subject of the old option.
- (7O) In subsection (7B) “the cessation date” means the date on which the company—

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- (a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or
  - (b) ceases to be a member of a trading group without continuing to be or becoming a trading company.
- (7P) Subsections (7Q) and (7R) apply in relation to a disposal of relevant EMI shares if—
- (a) the shares were acquired as a result of the exercise of a qualifying option where—
    - (i) a disqualifying event (see section 533 of ITEPA 2003) occurs in relation to the option before its exercise, but
    - (ii) it is exercised within the period mentioned in section 532(1)(b) of ITEPA 2003, or
  - (b) if the shares are relevant EMI shares by virtue of subsection (7F), the original relevant EMI shares were acquired as mentioned in paragraph (a).
- (7Q) Subsection (7A)(b) has effect as if the reference to the date of the disposal were a reference to the date of the disqualifying event.
- (7R) If the disqualifying event is within section 534(1)(c) of ITEPA 2003, subsection (7B) (a) has effect as if the reference to the cessation date were a reference to the first day after the period mentioned in section 532(1)(b) of that Act if that day is later than the cessation date.]
- (8) For the purposes of this section—
- (a) an individual who disposes of (or of interests in) assets used for the purposes of a business carried on by the individual on entering into a partnership which is to carry on the business is to be treated as disposing of a part of the business,
  - (b) the disposal by an individual of the whole or part of the individual's interest in the assets of a partnership is to be treated as a disposal by the individual of the whole or part of the business carried on by the partnership, and
  - (c) at any time when a business is carried on by a partnership, the business is to be treated as owned by each individual who is at that time a member of the partnership.

#### Textual Amendments

**F1081** Words in s. 169I(5) substituted (with effect in accordance with Sch. 24 para. 5(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 1\(2\)](#)

**F1082** S. 169I(7A)-(7R) inserted (with effect in accordance with Sch. 24 para. 5(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 1\(3\)](#)

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

**C245** S. 169I modified (18.3.2015) by [Finance Act 2015 \(c. 11\)](#), [s. 43\(4\)\(5\)](#)

**C246** S. 169I modified (with effect in accordance with Sch. 13 para. 6(1) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 13 para. 6\(2\)](#) (with [Sch. 13 para. 6\(3\)](#))

### 169J Disposal of trust business assets

- (1) There is a disposal of trust business assets where—
- (a) the trustees of a settlement make a disposal of settlement business assets (see subsection (2)),

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- (b) there is an individual who is a qualifying beneficiary (see subsection (3)), and
  - (c) the relevant condition is met (see subsections (4) and (5)).
- (2) In this Chapter “settlement business assets” means—
- (a) assets consisting of (or of interests in) shares in or securities of a company, or
  - (b) assets (or interests in assets) used or previously used for the purposes of a business,
- which are part of the settled property.
- (3) An individual is a qualifying beneficiary if the individual has, under the settlement, an interest in possession (otherwise than for a fixed term) in—
- (a) the whole of the settled property, or
  - (b) a part of it which consists of or includes the settlement business assets disposed of.
- (4) In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of 1 year ending not earlier than 3 years before the date of the disposal—
- (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and
  - (b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group.
- (5) In relation to a disposal of settlement business assets within paragraph (b) of that subsection, the relevant condition is that—
- (a) the settlement business assets are used for the purposes of the business carried on by the qualifying beneficiary throughout the period of 1 year ending not earlier than 3 years before the date of the disposal, and
  - (b) the qualifying beneficiary ceases to carry on the business on the date of the disposal or within the period of three years before that date.
- (6) In subsection (5)—
- (a) the reference to a business carried on by the qualifying beneficiary includes a business carried on by a partnership of which the qualifying beneficiary is a member, and
  - (b) the reference to the qualifying beneficiary ceasing to carry on the business includes the qualifying beneficiary ceasing to be a member of the partnership or the partnership ceasing to carry on the business.

### **169K Disposal associated with relevant material disposal**

<sup>F1083</sup>(1) There is a disposal associated with a relevant material disposal if—

- (a) condition A1, <sup>F1084</sup>A1A,] A2 or A3 is met, and
- (b) conditions B<sup>F1085</sup>, C and D] are met.

(1A) Condition A1 is that an individual (“P”) makes a material disposal of business assets which consists of the disposal of the whole or part of P's interest in the assets of a partnership, and—

- (a) P's disposed of interest is at least a 5% interest in the partnership's assets, and
- (b) at the date of the disposal, no partnership purchase arrangements exist.



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- [<sup>F1086</sup>(1AA) Condition A1A is that P makes a material disposal of business assets which consists of the disposal of the whole of P's interest in the assets of a partnership, and—
- (a) that interest is an interest of less than 5%,
  - (b) P holds at least a 5% interest in the partnership's assets throughout a continuous period of at least 3 years in the 8 years ending with the date of the disposal, and
  - (c) at the date of the disposal, no partnership purchase arrangements exist.
- (1AB) Subject to subsection (6A), for the purposes of conditions A1 and A1A, in relation to the disposal of an interest in the assets of a partnership, “partnership purchase arrangements” means arrangements (other than the material disposal itself) under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share).]
- (1B) Condition A2 is that P makes a material disposal of business assets which consists of the disposal of shares in a company, all or some of which are ordinary shares, and at the date of the disposal—
- (a) the ordinary shares disposed of—
    - (i) constitute at least 5% of the company's ordinary share capital, and
    - (ii) carry at least 5% of the voting rights in the company, and
  - (b) no share purchase arrangements exist.
- (1C) But condition A2 is not met if the disposal of shares is a disposal by virtue of section 122, other than such a disposal treated as made in consideration of a capital distribution from a company which is made in the course of dissolving or winding up the company.
- (1D) Condition A3 is that P makes a material disposal of business assets which consists of the disposal of securities of a company, and at the date of the disposal—
- (a) the securities disposed of constitute at least 5% of the value of the securities of the company, and
  - (b) no share purchase arrangements exist.
- (1E) [<sup>F1087</sup>Subject to subsection (6A),] For the purposes of conditions A2 and A3, in relation to the disposal of shares in or securities of a company (“company A”), “share purchase arrangements” means arrangements [<sup>F1088</sup>(other than the material disposal itself)] under which P or a person connected with P is entitled to acquire shares in or securities of—
- (a) company A, or
  - (b) a company which is a member of a trading group of which company A is a member.
- (2) For the purposes of subsection (1E)(b), a company is treated as a member of a trading group of which company A is a member if, at the date of the disposal mentioned in condition A2 or A3, arrangements exist which it is reasonable to assume will result in the company and company A becoming members of the same trading group.]
- (3) Condition B is that [<sup>F1089</sup>P] makes the disposal as part of [<sup>F1090</sup>P's withdrawal] from participation in the business carried on by the partnership or by the company or (if the company is a member of a trading group) a company which is a member of the trading group.

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<sup>F1091</sup> [ The disposal mentioned in condition B is not treated as part of P's withdrawal from (3A) participation in the business carried on by a partnership if at the date of that disposal there exist any partnership purchase arrangements.

<sup>F1092</sup> [ Subject to subsection (6A), for the purposes of condition B, in relation to a disposal (3AA) mentioned in that condition and a partnership, “partnership purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share), but does not include any arrangements in connection with a material disposal in relation to which condition A1 or A1A is met.]

(3B) The disposal mentioned in condition B is not treated as part of P's withdrawal from participation in the business carried on by a company (“company A”) if at the date of that disposal there exist any [<sup>F1093</sup>share purchase arrangements].

<sup>F1094</sup> [ Subject to subsection (6A), for the purposes of condition B, in relation to a disposal (3BA) mentioned in that condition and company A, “share purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire shares in or securities of—

- (a) company A, or
- (b) a company which is a member of a trading group of which company A is a member,

but does not include any arrangements in connection with a material disposal in relation to which condition A2 or A3 is met.]

(3C) For the purposes of subsection [<sup>F1095</sup>(3BA)](b), a company is treated as a member of a trading group of which company A is a member if, at the date of the disposal mentioned in condition B, arrangements exist which it is reasonable to assume will result in the company and company A becoming members of the same trading group.]

(4) Condition C is that, throughout the period of 1 year ending with the earlier of—

- (a) the date of the material disposal of business assets, and
- (b) the cessation of the business of the partnership or company,

the assets which (or interests in which) are disposed of are in use for the purposes of the business.

<sup>F1096</sup> [ Condition D is that the disposal mentioned in condition B is of an asset which P owns (4A) throughout the period of 3 years ending with the date of that disposal.]

(5) For the purposes of this Chapter the disposal mentioned in Condition B is the disposal associated with a relevant material disposal.

<sup>F1097</sup> [ .....  
<sup>F1098</sup> (6)

<sup>F1099</sup> [ For the purposes of this section, in relation to a material disposal of business assets (6A) and a disposal mentioned in condition B, arrangements are not partnership purchase arrangements or share purchase arrangements if they were made before both disposals and without regard to either of them.]

(7) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

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“securities” includes an interest in securities, and an “interest in securities” includes (in particular) an option to acquire securities;

“shares” includes an interest in shares, and an “interest in shares” includes (in particular) an option to acquire shares.

(8) For the purposes of this section, a person is treated as entitled to acquire anything which the person—

- (a) is entitled to acquire at a future date, or
- (b) will at a future date be entitled to acquire.

(9) For the purposes of this section the assets of—

- (a) a Scottish partnership, or
- (b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such, are to be treated as held by the members of the partnership in the proportions in which they are entitled to share in the [<sup>F1100</sup>capital] profits of the partnership.

References in this section to an individual's interest in the partnership's assets are to be construed accordingly.]

#### Textual Amendments

**F1083S.** 169K(1)-(2) substituted for s. 169K(1)(2) (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(2\)](#)

**F1084**Word in s. 169K(1)(a) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(2\)\(a\)](#)

**F1085**Words in s. 169K(1)(b) substituted (with effect in accordance with s. 84(14) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(2\)\(b\)](#)

**F1086S.** 169K(1AA)(1AB) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(3\)](#)

**F1087**Words in s. 169K(1E) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(4\)\(a\)](#)

**F1088**Words in s. 169K(1E) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(4\)\(b\)](#)

**F1089**Word in s. 169K(3) substituted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(3\)\(a\)](#)

**F1090**Words in s. 169K(3) substituted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(3\)\(b\)](#)

**F1091S.** 169K(3A)-(3C) inserted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(4\)](#)

**F1092**Words in s. 169K(3AA) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(5\)](#)

**F1093**Words in s. 169K(3B) substituted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(6\)](#)

**F1094S.** 169K(3BA) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(7\)](#)

**F1095**Word in s. 169K(3C) substituted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(8\)](#)

**F1096S.** 169K(4A) inserted (with effect in accordance with s. 84(14) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(9\)](#)

**F1097S.** 169K(6) omitted (with effect in accordance with s. 84(13) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 84\(10\)](#)

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- F1098S.** 169K(6)-(9) inserted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(5\)](#)
- F1099S.** 169K(6A) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(11\)](#)
- F1100** Word in s. 169K(9) inserted (with effect in accordance with s. 84(13) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 84\(12\)](#)

**169L Relevant business assets**

- (1) If a qualifying business disposal is one which does not consist of the disposal of (or of interests in) shares in or securities of a company, entrepreneurs' relief is given only in respect of the disposal of relevant business assets comprised in the qualifying business disposal.
- (2) In this Chapter “relevant business assets” means assets (including<sup>F1101</sup>, subject to section 169LA,] goodwill) which are, or are interests in, assets to which subsection (3) applies, other than excluded assets (see subsection (4) below).
- (3) This subsection applies to assets which—
  - (a) in the case of a material disposal of business assets, are assets used for the purposes of a business carried on by the individual or a partnership of which the individual is a member,
  - (b) in the case of a disposal of trust business assets, are assets used for the purposes of a business carried on by the qualifying beneficiary or a partnership of which the qualifying beneficiary is a member, or
  - (c) in the case of a disposal associated with a relevant material disposal, are assets used for the purposes of a business carried on by the partnership or company.
- (4) The following are excluded assets—
  - (a) shares and securities, and
  - (b) assets, other than shares or securities, which are held as investments.

**Textual Amendments**

**F1101** Words in s. 169L(2) inserted (with effect in accordance with s. 42(5) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 42\(3\)](#)

**[<sup>F1102</sup>169LA Relevant business assets: goodwill transferred to a [<sup>F1103</sup>close company]**

- (1) [<sup>F1104</sup>Subject to subsection (1A),] Subsection (4) applies if—
  - (a) as part of a qualifying business disposal, a person (“P”) disposes of goodwill directly or indirectly to a close company (“C”), [<sup>F1105</sup>and]
    - [ immediately after the disposal—
    - <sup>F1106</sup>(aa)
      - (i) P and any relevant connected person together own 5% or more of the ordinary share capital of C or of any company which is a member of a group of companies of which C is a member, or
      - (ii) P and any relevant connected person together hold 5% or more of the voting rights in C or in any company which is a member of a group of companies of which C is a member.]
    - <sup>F1107</sup>(b) .....

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F1107(c) .....

[ Where—

F1108(1A) (a) subsection (1)(aa) applies by virtue of P's ownership, or any relevant connected person's ownership, of C's ordinary share capital, and  
(b) the conditions mentioned in subsection (1B) are met,  
subsection (4) does not apply.

(1B) The conditions referred to in subsection (1A)(b) are—

- (a) P and any relevant connected person dispose of C's ordinary share capital to another company (“A”) such that, immediately before the end of the relevant period, neither P nor any relevant connected person own any of C's ordinary share capital, and
- (b) where A is a close company, immediately before the end of the relevant period—
  - (i) P and any relevant connected person together own less than 5% of the ordinary share capital of A or of any company which is a member of a group of companies of which A is a member, and
  - (ii) P and any relevant connected person together hold less than 5% of the voting rights in A or in any company which is a member of a group of companies of which A is a member.

(1C) In subsection (1B) “the relevant period” means the period of 28 days beginning with the date of the qualifying business disposal, or such longer period as the Commissioners for Her Majesty's Revenue and Customs may by notice allow.]

F1109(2) .....

F1109(3) .....

(4) For the purposes of this Chapter, the goodwill is not one of the relevant business assets comprised in the qualifying business disposal.

(5) If a company—

- (a) is not resident in the United Kingdom, but
  - (b) would be a close company if it were resident in the United Kingdom,
- the company is to be treated as being a close company for the purposes of this section
- F1110  
... .

(6) If a person—

- (a) disposes of goodwill as part of a qualifying business disposal, and
  - (b) is party to relevant avoidance arrangements,
- subsection (4) applies (if it would not otherwise do so).

(7) In subsection (6) “relevant avoidance arrangements” means arrangements the main purpose, or one of the main purposes, of which is to secure—

- (a) that subsection (4) does not apply in relation to the goodwill, F1111 ...

F1111(b) .....

(8) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);  
[F1112“group” is to be construed in accordance with section 170;]

*Status: Point in time view as at 16/11/2017.*

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- [<sup>F1113cc</sup>“relevant connected person” means—
- (a) a company connected with P, and
  - (b) trustees connected with P.]

### Textual Amendments

- F1102** S. 169LA inserted (with effect in accordance with s. 42(5) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 42\(4\)](#)
- F1103** Words in s. 169LA heading substituted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(8\)](#)
- F1104** Words in s. 169LA(1) inserted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(2\)\(a\)](#)
- F1105** Word in s. 169LA(1)(a) inserted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(2\)\(b\)](#)
- F1106** S. 169LA(1)(aa) inserted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(2\)\(c\)](#)
- F1107** S. 169LA(1)(b)(c) omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 85\(2\)\(d\)](#)
- F1108** S. 169LA(1A)-(1C) inserted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(3\)](#)
- F1109** S. 169LA(2)(3) omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 85\(4\)](#)
- F1110** Words in s. 169LA(5) omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 85\(5\)](#)
- F1111** S. 169LA(7)(b) and preceding word omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 85\(6\)](#)
- F1112** Words in s. 169LA(8) inserted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(7\)\(a\)](#)
- F1113** Words in s. 169LA(8) substituted (with effect in accordance with s. 85(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 85\(7\)\(b\)](#)

### 169M Relief to be claimed

- (1) Entrepreneurs' relief is to be given only on the making of a claim.
- (2) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made—
  - (a) in the case of a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
  - (b) otherwise, by the individual.
- (3) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made.
- (4) A claim for entrepreneurs' relief in respect of a qualifying business disposal may only be made if the amount resulting under section 169N(1) is a positive amount.

### 169N Amount of relief: general

- (1) Where a claim is made in respect of a qualifying business disposal—
  - (a) the relevant gains (see subsection (5)) are to be aggregated, and

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- (b) any relevant losses (see subsection (6)) are to be aggregated and deducted from the aggregate arrived at under paragraph (a).
- [<sup>F1114</sup>(2) The resulting amount is to be treated for the purposes of this Act as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made.
- (3) The rate of capital gains tax in respect of that gain is 10%, but this is subject to subsections (4) to (4B).
  - (4) Subsections (4A) and (4B) apply if the aggregate of—
    - (a) the gain mentioned in subsection (2), and
    - (b) the total of so much of each amount resulting under subsection (1) by virtue of its operation in relation to earlier relevant qualifying business disposals (if any) as was—
      - (i) charged at the rate in subsection (3), or
      - (ii) subject to reduction under subsection (2) of this section as originally enacted,exceeds [<sup>F1115</sup>£10 million].
  - (4A) The rate in subsection (3) is to apply only to so much (if any) of the gain mentioned in subsection (2) as (when added to the total mentioned in subsection (4)(b)) does not exceed [<sup>F1116</sup>£10 million].
  - (4B) Section 4 (rates of capital gains tax) is to apply to so much of the gain mentioned in subsection (2) as is not subject to the rate in subsection (3).]
  - (5) In subsection (1)(a) “relevant gains” means—
    - (a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), the gains accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of chargeable gains), and
    - (b) otherwise, the gains accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed).
  - (6) In subsection (1)(b) “relevant losses” means—
    - (a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), any losses accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of allowable losses, on the assumption that notice has been given under section 16(2A) in respect of them), and
    - (b) otherwise, any losses accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed, on that assumption).
  - (7) In [<sup>F1117</sup>subsection (4)] “earlier relevant qualifying business disposals” means—
    - (a) where the qualifying business disposal is made by an individual, earlier qualifying business disposals made by the individual and earlier disposals of trust business assets in respect of which the individual is the qualifying beneficiary, and
    - (b) where the qualifying business disposal is a disposal of trust business assets in respect of which an individual is the qualifying beneficiary, earlier disposals

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of trust business assets in respect of which that individual is the qualifying beneficiary and earlier qualifying business disposals made by that individual.

- (8) If, on the same day, there is both a disposal of trust business assets in respect of which an individual is the qualifying beneficiary and a qualifying business disposal by the individual, this section applies as if the disposal of trust business assets were later.
- (9) Any gain or loss taken into account under subsection (1) is not to be taken into account under this Act as a chargeable gain or an allowable loss.

#### Textual Amendments

- F1114** S. 169N(2)-(4B) substituted for s. 169N(2)-(4) (with effect in accordance with Sch. 1 para. 14 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 5\(2\)](#)
- F1115** Sum in s. 169N(4) substituted (with effect in accordance with s. 9(2) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 9\(1\)\(a\)](#)
- F1116** Sum in s. 169N(4A) substituted (with effect in accordance with s. 9(2) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 9\(1\)\(b\)](#)
- F1117** Words in s. 169N(7) substituted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 5\(3\)](#)

### 169O Amount of relief: special provisions for certain trust disposals

- (1) This section applies where, on a disposal of trust business assets, there is (in addition to the qualifying beneficiary) at least one other beneficiary who, at the material time, has an interest in possession in—
- (a) the whole of the settled property, or
  - (b) a part of it which consists of or includes the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of.
- (2) Only the relevant proportion of the amount which would otherwise result under subsection (1) of section 169N is to be treated as so resulting.
- (3) And the balance of that amount, <sup>F1118</sup>... , is accordingly a chargeable gain for the purposes of this Act.
- (4) For the purposes of this section “the relevant proportion” of an amount is the same proportion of the amount as that which, at the material time—
- (a) the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of, bears to
  - (b) the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part of the settled property.
- (5) In subsection (4) “the qualifying beneficiary's interest” means the interest by virtue of which he is the qualifying beneficiary (and not any other interest the qualifying beneficiary may have).
- (6) In this section “the material time” means the end of the latest period of 1 year which ends not earlier than 3 years before the date of the disposal and—



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- (a) in the case of a disposal of settlement business assets within paragraph (a) of subsection (2) of section 169J, throughout which the conditions in paragraphs (a) and (b) of subsection (4) of that section are met, and
- (b) in the case of a disposal of settlement business assets within paragraph (b) of subsection (2) of that section, throughout which the business is carried on by the qualifying beneficiary.

#### Textual Amendments

**F1118** Words in s. 169O(3) omitted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by virtue of [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 6](#)

### 169P Amount of relief: special provision for certain associated disposals

- (1) This section applies where, on a disposal associated with a relevant material disposal, any of the conditions in subsection (4) is met.
- (2) Only such part of the amount which would otherwise result under subsection (1) of section 169N as is just and reasonable is to be treated as so resulting.
- (3) And the balance of that amount, <sup>F1119</sup>... , is accordingly a chargeable gain for the purposes of this Act.
- (4) The conditions referred to in subsection (1) are—
  - (a) that the assets which (or interests in which) are disposed of are in use for the purposes of the business for only part of the period in which they are in the ownership of the individual,
  - (b) that only part of the assets which (or interests in which) are disposed of are in use for the purposes of the business for that period,
  - (c) that the individual is concerned in the carrying on of the business (whether personally, as a member of a partnership or as an officer or employee of a company which is the individual's personal company) for only part of the period in which the assets which (or interests in which) are disposed of are in use for the purposes of the business, and
  - (d) that, for the whole or any part of the period for which the assets which (or interests in which) are disposed of are in use for the purposes of the business, their availability is dependent on the payment of rent.
- (5) In determining how much of an amount it is just and reasonable to bring into account under subsection (2) regard is to be had to—
  - (a) in a case within paragraph (a) of subsection (4), the length of the period for which the assets are in use as mentioned in that paragraph,
  - (b) in a case within paragraph (b) of that subsection, the part of the assets that are in use as mentioned in that paragraph,
  - (c) in a case within paragraph (c) of that subsection, the length of the period for which the individual is concerned in the carrying on of the business as mentioned in that paragraph, and
  - (d) in a case within paragraph (d) of that subsection, the extent to which any rent paid is less than the amount which would be payable in the open market for the use of the assets.

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### Textual Amendments

**F1119** Words in s. 169P(3) omitted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by virtue of [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 7](#)

## 169Q Reorganisations: disapplication of section 127

- (1) This section applies where—
  - (a) there is a reorganisation (within the meaning of section 126), and
  - (b) the original shares and the new holding (within the meaning of that section) would fall to be treated by virtue of section 127 as the same asset.
- (2) If an election is made under this section, a claim for entrepreneurs' relief may be made as if the reorganisation involved a disposal of the original shares; and if such a claim is made section 127 does not apply.
- (3) An election under this section must be made—
  - (a) if the reorganisation would (apart from section 127) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
  - (b) otherwise, by the individual.
- (4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place.
- (5) The references in this section to a reorganisation (within the meaning of section 126) includes an exchange of shares or securities which is treated as such a reorganisation by virtue of section 135 or 136.

## [<sup>F1120</sup>169R] Reorganisations involving acquisition of qualifying corporate bonds

- (1) This section applies where the calculation under section 116(10)(a) would (apart from this section) have effect to produce a chargeable gain for an individual by reason of a relevant transaction.
- (2) If an election is made under this section, a claim for entrepreneurs' relief may be made as if the relevant transaction involved a disposal of the old asset; and if such a claim is made section 116(10) does not apply.
- (3) An election under this section must be made—
  - (a) if the relevant transaction, so far as it relates to the old asset, would (apart from section 116(10)) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
  - (b) otherwise, by the individual.
- (4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the relevant transaction takes place.
- (5) In this section, “old asset” and “relevant transaction” have the meaning given by section 116.]

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### Textual Amendments

**F1120S.** 169R substituted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 8](#)

## 169S Interpretation of Chapter

- (1) For the purposes of this Chapter “a business” means anything which—
  - (a) is a trade, profession or vocation, and
  - (b) is conducted on a commercial basis and with a view to the realisation of profits.
- (2) References in this Chapter to a disposal of an interest in shares in a company include a disposal of an interest in shares treated as made by virtue of section 122.
- (3) For the purposes of this Chapter “personal company”, in relation to an individual, means a company—
  - (a) at least 5% of the ordinary share capital of which is held by the individual, and
  - (b) at least 5% of the voting rights in which are exercisable by the individual by virtue of that holding.
- (4) For the purposes of subsection (3) if the individual holds any shares in the company jointly or in common with one or more other persons, the individual is to be treated as sole holder of so many of them as is proportionate to the value of the individual's share (and as able to exercise voting rights by virtue of that holding).
- (5) In this Chapter—
  - “disposal associated with a relevant material disposal” has the meaning given by section 169K,
  - “disposal of business assets” has the meaning given by section 169I(2),
  - “disposal of trust business assets” has the meaning given by section 169J,
  - “employment” has the meaning given by section 4 of ITEPA 2003,
  - “entrepreneurs' relief” has the meaning given by section 169H(1),
  - “holding company” has the same meaning as in section 165 (see section 165A),
  - “material disposal of business assets” has the meaning given by section 169I,
  - “office” has the meaning given by section 5(3) of ITEPA 2003,
  - “ordinary share capital” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007),
  - “qualifying business disposal” has the meaning given by section 169H(2),
  - “relevant business asset” has the meaning given by section 169L,
  - “rent”, in relation to an asset, includes any form of consideration given for the use of the asset,
  - “securities”, in relation to a company, includes any debentures of the company which are deemed by subsection (6) of section 251 to be securities for the purposes of that section,
  - “settlement business assets” has the meaning given by section 169J(2),
  - “trade” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007), <sup>F1121</sup>...

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F1121 ..... ]

**Textual Amendments**

F1121 Words in s. 169S(5) omitted (18.3.2015) by virtue of [Finance Act 2015 \(c. 11\), s. 43\(3\)\(5\)](#)

**[<sup>F1122</sup>169S Meaning of “trading company” and “trading group”**

Schedule 7ZA gives the meaning in this Chapter of “trading company” and “trading group”.]

**Textual Amendments**

F1122 S. 169SA inserted (with effect in accordance with Sch. 13 para. 6(1) of the amending Act) by [Finance Act 2016 \(c. 24\), Sch. 13 para. 4](#)

**[<sup>F1123</sup>CHAPTER 4**

ENTREPRENEURS' RELIEF WHERE HELD-OVER GAINS BECOME CHARGEABLE

**Textual Amendments**

F1123 Pt. 5 Ch. 4 inserted (with effect in accordance with s. 44(2) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 44\(1\)](#)

**169T Overview of Chapter**

This Chapter makes provision about claiming entrepreneurs' relief in certain cases where, in relation to held-over gains that originally arose on a business disposal, there is a chargeable event for the purposes of Schedule 5B or 8B (relief for gains invested under the enterprise investment scheme or in social enterprises).

**169U Eligibility conditions for deferred entrepreneurs' relief**

- (1) Section 169V applies if, ignoring the operation of section 169V(2)(b), each of the following conditions is met.
- (2) The first condition is that a chargeable gain (“the first eventual gain”) accrues as a result of the operation of—
  - paragraph 4 of Schedule 5B (enterprise investment scheme), or
  - paragraph 5 of Schedule 8B (investments in social enterprises).
- (3) If the first condition is met, the paragraph and Schedule mentioned in subsection (2) that apply in the case are referred to in this section, and section 169V, as “the relevant paragraph” and “the applicable Schedule”.
- (4) The second condition is—

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- (a) that the first eventual gain accrues in a case in which the original gain would, but for the operation of the applicable Schedule, have accrued on a relevant business disposal, or
  - (b) where the first eventual gain accrues in a case in which the original gain would, but for the operation of the applicable Schedule, have accrued as a result of the operation of either of the paragraphs mentioned in subsection (2), that the underlying disposal is a relevant business disposal.
- (5) The third condition is that a claim for entrepreneurs' relief in respect of the first eventual gain is made, on or before the first anniversary of the 31 January following the tax year in which the first eventual gain accrues, by the individual who made the disposal mentioned in subsection (4)(a) or (b).
- (6) The fourth condition is that the first eventual gain is the first gain to accrue in the case as a result of the operation of the relevant paragraph.
- (7) In subsection (4) “the underlying disposal” means the disposal (not being a disposal within paragraph 3 of Schedule 5B or paragraph 6 of Schedule 8B) by virtue of which Schedule 5B or 8B has effect.
- (8) For the purposes of subsection (4), whether the disposal on which the original gain would have accrued is a relevant business disposal, or whether the underlying disposal is a relevant business disposal, is to be decided according to the law applicable to disposals made at the time the disposal was made.
- (9) In this section—
- “the original gain”, in relation to a particular case, has the same meaning as in the applicable Schedule,
  - “relevant business asset” has the meaning given by section 169L, and
  - “relevant business disposal” means—
- (a) a disposal—
    - (i) within section 169H(2)(a) or (c) (qualifying business disposals), and
    - (ii) consisting of the disposal of (or of interests in) shares in or securities of a company, or
  - (b) a disposal of relevant business assets which is comprised in a disposal—
    - (i) within section 169H(2)(a) or (c), and
    - (ii) not consisting of the disposal of (or of interests in) shares in or securities of a company.

## **169V Operation of deferred entrepreneurs' relief**

- (1) Where this section applies, the following rules have effect.
- (2) The gain mentioned in section 169U(2) (“the first eventual gain”)—
- (a) is treated for ER purposes as the amount resulting from a calculation under section 169N(1) carried out—
    - (i) in respect of a qualifying business disposal made when the first eventual gain accrues, and
    - (ii) because of the claim mentioned in section 169U(5), and
  - (b) except for ER purposes, is not to be taken into account under this Act as a chargeable gain.

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- (3) If the first eventual gain is a part only of the original gain in the case concerned, each part of the original gain that subsequently accrues as a chargeable gain as a result of the operation of the relevant paragraph—
- (a) is treated for ER purposes as the amount resulting from a calculation under section 169N(1) carried out—
    - (i) in respect of a qualifying business disposal made when that chargeable gain so accrues, and
    - (ii) because of the claim mentioned in section 169U(5), and
  - (b) except for ER purposes, is not to be taken into account under this Act as a chargeable gain.
- (4) If the disposal mentioned in paragraph (a) or (b) of section 169U(4) is a disposal within section 169H(2)(c) (qualifying business disposal: disposal associated with a relevant material disposal)—
- (a) a disposal mentioned in subsection (2) or (3) of this section is treated for the purposes of section 169P(1) as a disposal associated with a relevant material disposal, but
  - (b) section 169P applies in relation to that disposal as if the disposal referred to in section 169P(4) were the disposal mentioned in section 169U(4)(a) or (b).
- (5) In this section “ER purposes” means the purposes of—
- (a) section 169N(2) to (4B), (7) and (8), and
  - (b) section 169P.]

## [<sup>F1124</sup>CHAPTER 5

### INVESTORS' RELIEF

#### Textual Amendments

F1124Pt. 5 Ch. 5 inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 14 para. 2](#)

#### *Overview*

#### **169VA Overview of Chapter**

- (1) This Chapter provides for a relief, in the form of a lower rate of capital gains tax, in respect of disposals of (and disposals of interests in) certain ordinary shares in unlisted companies.
- (2) Section 169VB defines “qualifying shares”, “potentially qualifying shares” and “excluded shares”.
- (3) Section 169VC creates the relief, and relief under that section is to be known as “investors' relief”.
- (4) Section 169VD makes provision about disposals from holdings consisting partly of qualifying shares.

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- (5) Sections 169VE to 169VG contain rules for cases where there have been previous disposals from a holding, to determine which shares remain in the holding.
- (6) Sections 169VH and 169VI make provision about disposals by trustees of a settlement.
- (7) Section 169VJ makes provision about disposals of interests in shares.
- (8) Sections 169VK and 169VL provide for a cap on the amount of investors' relief that can be claimed.
- (9) Section 169VM makes provision about claims for investors' relief.
- (10) Sections 169VN to 169VT make provision about how investors' relief applies following a company's reorganisation of its share capital, an exchange of shares or securities or a scheme of reconstruction.
- (11) Sections 169VU to 169VY contain definitions for the purposes of this Chapter.

### *Qualifying shares*

#### **169VB Qualifying shares, potentially qualifying shares and excluded shares**

- (1) Where there is a disposal of all or part of (or of an interest in) a holding of shares in a company, this section applies to determine whether a share which is in the holding at the time immediately before the disposal (“the relevant time”) is for the purposes of this Chapter—
  - (a) a qualifying share,
  - (b) a potentially qualifying share, or
  - (c) an excluded share.
- (2) The share is a “qualifying share” at the relevant time if—
  - (a) the share was subscribed for, within the meaning given by section 169VU, by the person making the disposal (“the investor”),
  - (b) the investor has held the share continuously for the period beginning with the issue of the share and ending with the relevant time (“the share-holding period”),
  - (c) the share was issued on or after 17 March 2016,
  - (d) at the time the share was issued, none of the shares or securities of the company that issued it were listed on a recognised stock exchange,
  - (e) the share was an ordinary share when issued and is an ordinary share at the relevant time,
  - (f) the company that issued the share—
    - (i) was a trading company or the holding company of a trading group (as defined by section 169VV) when the share was issued, and
    - (ii) has been so throughout the share-holding period,
  - (g) at no time in the share-holding period was the investor or a person connected with the investor a relevant employee in respect of that company (within the meaning given by section 169VW), and
  - (h) the period beginning with the date the share was issued and ending with the date of the disposal is at least 3 years.
- (3) The share is a “potentially qualifying share” at the relevant time if—

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- (a) the conditions in subsection (2)(a) to (g) are met, but
  - (b) the period beginning with the date the share was issued and ending with the date of the disposal is less than 3 years.
- (4) The share is an “excluded share” at the relevant time if it is, at that time—
- (a) not a qualifying share, and
  - (b) not a potentially qualifying share.
- (5) This section is subject to Schedule 7ZB (disqualification of share where value received by investor).
- (6) In relation to a share issued on or after 17 March 2016 but before 6 April 2016, any reference in subsection (2)(h) or (3) to “3 years” is to be read as a reference to the minimum period.
- (7) In subsection (6) “the minimum period” means the period of 3 years extended by a period equal in length to the period beginning with the date the share was issued and ending with 5 April 2016.

### *The relief*

#### **169VC Investors' relief**

- (1) This section applies where—
- (a) a qualifying person disposes of a holding, or part of a holding, of shares in a company, and
  - (b) immediately before that disposal some or all of the shares in the holding are qualifying shares.
- (2) If—
- (a) a chargeable gain accrues to the qualifying person on the disposal, and
  - (b) a claim for relief under this section is made,
- the rate of capital gains tax in respect of the relevant gain is 10 per cent.
- (3) In subsection (2) “the relevant gain” means—
- (a) where immediately before the disposal all the shares in the holding are qualifying shares, the chargeable gain on the disposal;
  - (b) where at that time only some of the shares in the holding are qualifying shares, the appropriate part of that chargeable gain (defined by section 169VD).
- (4) In this section—
- (a) subsection (1) is subject to section 169VH (disposals by trustees of a settlement: further conditions for relief), and
  - (b) subsection (2) is subject to—
    - section 169VI (reduction of relief for certain disposals by trustees of a settlement), and
    - sections 169VK and 169VL (cap on investors' relief).
- (5) A reference in subsection (3) to the chargeable gain on the disposal, or to the appropriate part of that gain, is a reference to that chargeable gain, or (as the case may be) that part, after any deduction of allowable losses which is made in accordance with this Act from that chargeable gain or from that part.



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- (6) For the application of this section to disposals of interests in shares, see section 169VJ.
- (7) In this Chapter a “qualifying person” means—
- (a) an individual, or
  - (b) the trustees of a settlement.

### **169VD Disposal where holding consists partly of qualifying shares**

- (1) This section applies where—
- (a) a disposal (“the disposal concerned”) is made as mentioned in section 169VC(1), and
  - (b) at the time immediately before the disposal, only some of the shares in the holding are qualifying shares.
- (2) Where this section applies, for the purposes of section 169VC(3) “the appropriate part” of the chargeable gain on the disposal is so much of that chargeable gain as is found by multiplying it by the appropriate fraction.
- (3) The appropriate fraction is—
- $$\frac{Q}{T}$$
- where—
- Q is the number of qualifying shares found under subsection (4), and
- T is the total number of shares disposed of in the disposal concerned.
- (4) The number of qualifying shares found under this subsection is—
- (a) all the qualifying shares in the holding at the time immediately before the disposal concerned, or
  - (b) if less, such number of those qualifying shares as equals the number of shares disposed of in that disposal.

### **169VE Which shares are in holding immediately before disposal**

- (1) This section applies where—
- (a) a particular disposal is made as mentioned in section 169VC(1)(a) (“the current disposal”),
  - (b) there have been one or more previous disposals of shares from the holding mentioned in section 169VC(1) before the current disposal, and
  - (c) it is necessary to determine for the purposes of this Chapter which shares are to be treated as in the holding immediately before the current disposal (and, accordingly, which shares are to be treated as having been disposed of in those previous disposals).
- (2) In the case of a previous disposal as regards which investors' relief has been claimed or is being claimed, the shares to be treated as disposed of in that previous disposal are to be determined in accordance with the rules in section 169VF.
- (3) In the case of a previous disposal not falling within subsection (2), the shares to be treated as disposed of in that previous disposal are to be determined in accordance with the rules in section 169VG.

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### **169VF Shares treated as disposed of in previous disposal where claim made**

- (1) The rules referred to in section 169VE(2) are as follows; and in this section “the disposal concerned” means the previous disposal mentioned in section 169VE(2).
- (2) There are to be treated as having been disposed of in the disposal concerned—
  - (a) all the qualifying shares in the holding at the time immediately before that disposal (“the material time”), or
  - (b) if less, such number of those qualifying shares as equals the number of shares disposed of in that disposal.
- (3) If—
  - (a) the number of qualifying shares in the holding at the material time was less than the total number of shares disposed of, and
  - (b) excluded shares were in the holding at the material time,
 the available excluded shares are also to be treated as having been disposed of.
- (4) “The available excluded shares” means—
  - (a) all the excluded shares in the holding at the material time, or
  - (b) if less, such number of those excluded shares as is equal to the difference between—
    - (i) the total number of shares disposed of, and
    - (ii) the number of qualifying shares in the holding at the material time.
- (5) If the number of shares treated under subsections (2) to (4) as disposed of in the disposal concerned is less than the total number of shares disposed of, such number of the potentially qualifying shares in the holding at the material time as is equal to the difference are also to be treated as having been disposed of.
- (6) Where the number of potentially qualifying shares in the holding at the material time exceeds the difference mentioned in subsection (5), under that subsection potentially qualifying shares acquired later are to be treated as disposed of in preference to ones acquired earlier.
- (7) In this section “disposed of” (without more) means disposed of in the disposal concerned.

### **169VG Shares treated as disposed of in previous disposal: no claim made**

- (1) The rules referred to in section 169VE(3) are as follows; and in this section “the disposal concerned” means the previous disposal mentioned in section 169VE(3).
- (2) If any excluded shares were in the holding at the time immediately before the disposal concerned (“the material time”), the maximum number of excluded shares are to be treated as having been disposed of in the disposal concerned.
- (3) “The maximum number of excluded shares” means—
  - (a) all the excluded shares in the holding at the material time, or
  - (b) if less, such number of those excluded shares as is equal to the number of shares disposed of.
- (4) If—

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- (a) there were no excluded shares in the holding at the material time, or the number of such shares was less than the total number of shares disposed of, and
  - (b) potentially qualifying shares were in the holding at the material time, the available potentially qualifying shares are to be treated as having been disposed of.
- (5) “The available potentially qualifying shares” means—
- (a) all the potentially qualifying shares in the holding at the material time, or
  - (b) if less, such number of those potentially qualifying shares as is equal to the difference between—
    - (i) the total number of shares disposed of, and
    - (ii) the number of excluded shares in the holding at the material time.
- (6) Where the number of potentially qualifying shares in the holding at the material time exceeds the difference mentioned in subsection (5), potentially qualifying shares acquired later are to be treated as disposed of in preference to ones acquired earlier.
- (7) If the number of shares treated under subsections (2) to (5) as disposed of in the disposal concerned is less than the total number of shares disposed of, such number of the qualifying shares in the holding at the material time as is equal to the difference are to be treated as having been disposed of.
- (8) In this section “disposed of” (without more) means disposed of in the disposal concerned.

*Trustees of a settlement: special provision*

**169VH Disposals by trustees: further conditions for relief**

- (1) Where a disposal falling within section 169VC(1)(a) and (b) is made by the trustees of a settlement, section 169VC does not apply to the disposal unless there is at least one individual who is an eligible beneficiary in respect of the disposal.
- (2) For the purposes of this section, an individual is an “eligible beneficiary” in respect of the disposal if—
  - (a) at the time immediately before the disposal, the individual has under the settlement an interest in possession in settled property that includes or consists of the holding of shares mentioned in section 169VC(1),
  - (b) the individual has had such an interest in possession under the settlement throughout the period of 3 years ending with the date of the disposal,
  - (c) at no time in that period has the individual been a relevant employee in respect of the company that issued the shares (within the meaning given by section 169VW), and
  - (d) the individual has (by the time of the claim under section 169VC in respect of the disposal) elected to be treated as an eligible beneficiary in respect of the disposal.
- (3) For the purposes of subsection (2)(d), an individual elects to be treated as an eligible beneficiary in respect of a disposal if the individual tells the trustees (by whatever means) that he or she wishes to be so treated; and an election under subsection (2)(d) may be withdrawn by the individual at any time until the claim is made.

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- (4) In this section “interest in possession” does not include an interest in possession for a fixed term.
- (5) In relation to a disposal made by the trustees of a settlement, any reference in section 169VB(2)(g) to the investor is to be read as a reference to any trustee of the settlement.

### **169VI Disposals by trustees: relief reduced in certain cases**

- (1) Subsection (2) applies where—
  - (a) a disposal falling within section 169VC(1)(a) and (b) is made by the trustees of a settlement,
  - (b) section 169VC applies to the disposal by reason of there being at least one individual who is an eligible beneficiary in respect of the disposal (see section 169VH), and
  - (c) at the time immediately before the disposal, there are two or more persons each of whom has under the settlement an interest in possession in the settled property.
- (2) In such a case the reference in section 169VC(2) to the relevant gain is to be read as a reference—
  - (a) to the eligible beneficiary's share of the relevant gain (see subsections (3) to (6)), or
  - (b) if there is more than one individual who is an eligible beneficiary in respect of the disposal, to so much of the relevant gain as is equal to the aggregate of the eligible beneficiaries' shares of that gain.
- (3) In this section—
  - “eligible beneficiary” has the meaning given by section 169VH(2);
  - “relevant gain” has the meaning given by section 169VC(3);
  - “the settled property” means settled property that includes or consists of the holding of shares mentioned in section 169VC(1).
- (4) Subsection (5) applies to determine for the purposes of this Chapter, in relation to any individual who is an eligible beneficiary in respect of a disposal within section 169VC(1) made by the trustees of a settlement, that individual's share of the relevant gain.
- (5) That individual's share of the relevant gain on the disposal is so much of the relevant gain on the disposal as bears to the whole of that gain the same proportion as X bears to Y, where—
  - X is the interest in possession (other than for a fixed term) which, at the time immediately before the disposal, that individual has under the settlement in the income from the holding of shares mentioned in section 169VC(1), and
  - Y is all the interests in that income that persons (including that individual) with interests in possession in that holding have under the settlement at that time.

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### *Disposals of interests in shares*

#### **169VJ Disposals of interests in shares: joint holdings etc**

- (1) In section 169VC(1)(a), the reference to the case where a qualifying person disposes of a holding, or part of a holding, of shares in a company includes the case where a qualifying person disposes of an interest in a relevant holding.
- (2) In this section a “relevant holding” means either—
  - (a) a number of shares in a company which are of the same class and were acquired in the same capacity jointly by the same two or more persons including the qualifying person, or
  - (b) a number of shares in a company which are of the same class and were acquired in the same capacity by the qualifying person solely.
- (3) In this section—
  - (a) “an interest” in a relevant holding means any interests of the qualifying person, in any of the shares in the relevant holding, which are by virtue of section 104 to be regarded as a single asset, and
  - (b) references to an interest include part of an interest.
- (4) Where section 169VC(1) applies by reason of this section, section 169VD(3) and (4) have effect as if any reference to the number of shares disposed of were a reference to the number of shares an interest in which is disposed of.
- (5) In relation to a disposal by the trustees of a settlement of an interest in a relevant holding falling within subsection (2)(a), sections 169VH(2) and 169VI(3) and (5) have effect as if any reference to the holding of shares mentioned in section 169VC(1) were to the interest disposed of.
- (6) In accordance with subsection (1)—
  - (a) in sections 169VN(1)(d), 169VP(1)(d) and 169VS(1)(d) (reorganisations), any reference to a disposal of all or part of a holding includes a disposal by the qualifying person of an interest in the holding, and
  - (b) the reference in section 169VT(2) to a disposal of the original shares is to be read, in relation to a case where the original shares fall within subsection (2) (a) above, as a reference to a disposal of the qualifying person's interest in those shares.

### *Cap on relief*

#### **169VK Cap on relief for disposal by an individual**

- (1) This section applies if, on a disposal within section 169VC(1) made by an individual (“the individual concerned”), the aggregate of—
  - (a) the amount of the relevant gain on the disposal (“the gain in question”),
  - (b) the total amount of any gains that, in relation to earlier disposals by the individual concerned, were charged at the rate in section 169VC(2), and
  - (c) the total amount of any reckonable trust gains that, on any previous trust disposals in respect of which the individual concerned was an eligible beneficiary, were charged at the rate in section 169VC(2),exceeds £10 million.

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- (2) The rate in section 169VC(2) applies only to so much (if any) of the gain in question as, when added to the aggregate of the total amounts mentioned in subsection (1)(b) and (c), does not exceed £10 million.
- (3) Section 4 (rates of capital gains tax) applies to so much of the gain in question as is not subject to the rate in section 169VC(2).
- (4) In this section—
  - “eligible beneficiary”, in relation to a disposal, is to be read in accordance with section 169VH(2);
  - “reckonable trust gain”, in relation to a trust disposal in respect of which the individual concerned was an eligible beneficiary, means—
    - (a) if section 169VI(1)(c) applied in relation to the disposal, that individual's share of the relevant gain on that disposal, within the meaning given by section 169VI(4) and (5);
    - (b) otherwise, the relevant gain on that disposal;
  - “the relevant gain”, in relation to a disposal, has the meaning given by section 169VC(3);
  - “trust disposal” means a disposal by the trustees of a settlement.

#### **169VL Cap on relief for disposal by trustees of a settlement**

- (1) This section applies where—
  - (a) a disposal (“the disposal in question”) is made by the trustees of a settlement,
  - (b) that disposal is within section 169VC(1), and
  - (c) there is an excess amount in relation to an individual who is an eligible beneficiary in respect of the disposal in question (“the individual concerned”).
- (2) For the purposes of this section there is an “excess amount” in relation to the individual concerned if the aggregate of—
  - (a) the amount of the current gain,
  - (b) the total amount of any gains that, in relation to earlier disposals made by the individual concerned, were charged at the rate in section 169VC(2), and
  - (c) the total amount of any reckonable trust gains that, on any previous trust disposals in respect of which the individual concerned was an eligible beneficiary, were charged at the rate in section 169VC(2),
 exceeds £10 million.
- (3) The rate in section 169VC(2) applies to the current gain only to the extent (if any) that the current gain when added to the aggregate of the total amounts mentioned in subsection (2)(b) and (c) does not exceed £10 million.
- (4) Section 4 (rates of capital gains tax) applies to so much of the current gain as is not subject to the rate in section 169VC(2).
- (5) In this section—
  - “the current gain” means the reckonable trust gain on the disposal in question;
  - “eligible beneficiary”, in relation to a disposal, is to be read in accordance with section 169VH(2);

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“reckonable trust gain”, in relation to any trust disposal in respect of which the individual concerned is an eligible beneficiary, means—

- (a) if section 169VI(1)(c) applies in relation to the disposal, that individual's share of the relevant gain on that disposal, within the meaning given by section 169VI(4) and (5);
- (b) otherwise, the relevant gain on that disposal;

“the relevant gain”, in relation to a disposal, has the meaning given by section 169VC(3);

“trust disposal” means a disposal by the trustees of a settlement.

### *Claims for relief*

#### **169VM Claims for relief**

- (1) Any claim for investors' relief must be made—
  - (a) in the case of a disposal by an individual, by that individual;
  - (b) in the case of a disposal by the trustees of a settlement, jointly by—
    - (i) the trustees, and
    - (ii) the eligible beneficiary in respect of the disposal, within the meaning given by section 169VH(2) (or, if more than one, all those eligible beneficiaries).
- (2) Any claim for investors' relief in respect of a disposal must be made on or before the first anniversary of the 31 January following the tax year in which the disposal is made.

### *Reorganisations*

#### **169VN Reorganisations where no consideration given**

- (1) This section applies where—
  - (a) there is a reorganisation within the meaning of section 126,
  - (b) immediately before the reorganisation, a qualifying person holds ordinary shares which, in relation to that reorganisation, are original shares within the meaning of section 126,
  - (c) on the reorganisation that person does not give or become liable to give any consideration for, or for any part of, a new holding, and
  - (d) at a time after the reorganisation, there is a disposal of all or part of a new holding.
- (2) In this section a “new holding” means—
  - (a) the holding that immediately after the reorganisation is (in relation to the original shares) the new holding within the meaning of section 126, or
  - (b) where the new holding within the meaning of section 126 consists of two or more actual holdings, any of those actual holdings.
- (3) Subsections (4) and (5) apply for the purposes of determining (for any purpose of this Chapter) the status of shares that immediately before the disposal mentioned in subsection (1)(d) are in the new holding mentioned there (“the new holding concerned”).

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- (4) Where a number of the original shares were—
- (a) subscribed for by the qualifying person,
  - (b) issued on a particular date (“the relevant issue date”), and
  - (c) held continuously by that person for a particular period ending immediately before the reorganisation (“the period concerned”),
- the following assumption is to be made.
- (5) That assumption is that an appropriate number of the new shares were—
- (a) subscribed for by the qualifying person,
  - (b) issued on the relevant issue date, and
  - (c) had by the time immediately after the reorganisation already been held continuously by that person for the period concerned.
- (6) In subsections (4) and (5)—
- “the appropriate number” has the meaning given by section 169VO;
- “the original shares” means the shares held by the qualifying person immediately before the reorganisation that were original shares in relation to the reorganisation;
- “the new shares” means the shares that immediately after the reorganisation were in the new holding concerned (including such, if any, of the original shares as remained after the reorganisation and were in that holding).
- (7) In this section a reference to the “status” of a share is to whether it is qualifying, potentially qualifying or excluded.
- (8) Section 169VE applies to determine, for the purposes of this Chapter, which shares are included in a holding immediately before a reorganisation as it applies for the purposes of determining which shares are included in a holding immediately before a particular disposal.
- (9) References in this section to consideration are to be read in accordance with section 128(2).

### **169VO The appropriate number**

- (1) The “appropriate number” for the purposes of section 169VN(5) is the number found by multiplying the number of shares that are in the new holding concerned immediately after the reorganisation by the fraction—

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

where—

A is the number of the original shares that were—

- (a) subscribed for by the qualifying person,
- (b) issued on the relevant issue date, and
- (c) continuously held by that person for the period concerned, and

B is the total number of the original shares.

- (2) In this section—
- “the new holding concerned” has the meaning given by section 169VN(3);
- “the original shares” has the meaning given by section 169VN(6);



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“the relevant issue date” has the meaning given by section 169VN(4);  
“the period concerned” has the meaning given by section 169VN(4).

### **169VP Reorganisations where consideration given**

- (1) This section applies where—
  - (a) there is a reorganisation within the meaning of section 126,
  - (b) immediately before the reorganisation, a qualifying person holds ordinary shares which, in relation to that reorganisation, are original shares within the meaning of section 126,
  - (c) on the reorganisation that person gives or becomes liable to give consideration for shares ( “ shares issued for consideration ” ) which—
    - (i) are issued to that person on the reorganisation, and
    - (ii) immediately after the reorganisation are in a new holding, and
  - (d) at a time after the reorganisation, there is a disposal of all or part of that new holding.
- (2) In this section a “new holding” means—
  - (a) the holding that immediately after the reorganisation is (in relation to the original shares) the new holding within the meaning of section 126, or
  - (b) where the new holding within the meaning of section 126 consists of two or more actual holdings, any of those actual holdings.
- (3) In determining, for any purpose of this Chapter, the status of shares that immediately before the disposal mentioned in subsection (1)(d) are in the new holding mentioned there—
  - (a) the date of issue of the shares issued for consideration is to be taken to be their actual date of issue (rather than the date of issue of any of the original shares), and
  - (b) in relation to any part of the new holding for which consideration was not given, sections 169VN(3) to (6) and 169VO apply but as if any reference to the new holding concerned were to that part of the new holding.
- (4) Section 169VN(3) to (6) and 169VO also apply in relation to any other holding which is a new holding in relation to the reorganisation and as respects which the person did not, on the reorganisation, give or become liable to give any consideration.
- (5) In this section a reference to the “status” of a share is to whether it is qualifying, potentially qualifying or excluded.
- (6) References in this section to consideration are to be read in accordance with section 128(2).

### **169VQ Exchange of shares for those in another company**

- (1) This section applies where section 135 applies in relation to an issue of shares in a company (“company B”) in exchange for shares in another company (“company A”).
- (2) For the purposes of sections 169VN to 169VP—
  - (a) companies A and B are to be treated as if they were the same company, and
  - (b) the exchange of shares is to be treated as if it were a reorganisation of that company's share capital.

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### **169VR New shares issued on scheme of reconstruction**

- (1) This section applies where—
  - (a) section 136 applies in relation to an arrangement between a company (“company A”) and the persons holding shares, or any class of shares, in company A, under which another company (“company B”) issues shares to those persons, and
  - (b) under section 136(2)(a) those persons are treated as exchanging shares in company A for the shares held by them in consequence of the arrangement.
- (2) For the purposes of sections 169VN to 169VP—
  - (a) companies A and B are to be treated as if they were the same company, and
  - (b) the exchange of shares is to be treated as if it were a reorganisation of that company's share capital.
- (3) In the following provisions of this Chapter, any reference to an exchange of shares includes anything that section 136(2)(a) treats as an exchange of shares.

### **169VS Modification of conditions for being a qualifying share**

- (1) This section applies where—
  - (a) an ordinary share (“the original share”) is subscribed for by a qualifying person (“the investor”);
  - (b) the conditions in section 169VB(2)(c) and (d) are met in relation to the original share,
  - (c) the share is involved in an exchange of shares treated under section 169VQ or 169VR as a reorganisation of share capital, and accordingly is included in the original shares within the meaning of section 169VN(6), and
  - (d) subsequently there is a disposal of all or part of a holding of shares that in relation to that exchange is a new holding within the meaning given by section 169VN(2).
- (2) As respects a share which is in that holding immediately before that disposal, the conditions in section 169VB(2)(f) and (g) are to be regarded as met if (and only if)—
  - (a) in relation to the period beginning with the issue of the original share and ending with the exchange of shares, those conditions were met by the original share, and
  - (b) in relation to the period beginning with the exchange of shares and ending with the disposal, those conditions were met by a share representing the original share.
- (3) Accordingly—
  - (a) in section 169VB(2)(f) and (g) as they apply to the original share, any reference to the share-holding period is to be read as to the period mentioned in subsection (2)(a) above, and
  - (b) in section 169VB(2)(f) and (g) as they apply to a share representing the original share, any reference to the share-holding period is to be read as to the period mentioned in subsection (2)(b) above.
- (4) In subsection (1)(c) “the share” includes a share that, following a reorganisation or following an exchange of shares in relation to which section 169VQ or 169VR applies, represents the original share, and subsections (2) and (3) apply in such a case with the necessary modifications.

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### **169VT Election to disapply section 127**

- (1) This section applies where—
  - (a) there is—
    - (i) a reorganisation (within the meaning of section 126), or
    - (ii) an exchange of shares which is treated as such a reorganisation by virtue of section 135 or 136, and
  - (b) the original shares and the new holding would fall to be treated by virtue of section 127 as the same asset.
- (2) If an election is made under this section, a claim for investors' relief may be made as if the reorganisation or exchange of shares involved a disposal of the original shares; and if such a claim is made section 127 and sections 169VN to 169VS do not apply.
- (3) Any election under this section must be made—
  - (a) if the reorganisation or exchange of shares would (apart from section 127) involve a disposal by the trustees of a settlement, jointly by—
    - (i) the trustees, and
    - (ii) the person who if the disposal were made would be the eligible beneficiary in respect of the disposal, within the meaning given by section 169VH(2) (or, if more than one, all the persons who would be such eligible beneficiaries);
  - (b) otherwise, by the individual concerned.
- (4) Any election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation or exchange of shares takes place.
- (5) In this section “the original shares” and “the new holding” have the meaning given by section 126.

### *Supplemental*

### **169VU “Subscribe” etc**

- (1) For the purposes of this Chapter (other than this subsection) a person “subscribes for” a share in a company if—
  - (a) that person subscribes for the share,
  - (b) the share is issued to that person by the company for consideration consisting wholly of cash,
  - (c) the share is fully paid up at the time it is issued,
  - (d) the share is subscribed for, and issued, for genuine commercial reasons and not as part of arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage to any person, and
  - (e) the share is subscribed for, and issued, by way of a bargain at arm's length.
- (2) In subsection (1) “arrangements” and “tax advantage” have the same meaning as in section 16A.
- (3) If—
  - (a) an individual (“A”) subscribed for, or is treated under this subsection as having subscribed for, any shares,

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- (b) A transferred the shares to another individual (“B”) during their lives, and
- (c) A was living together with B as B's spouse or civil partner at the time of the transfer,

B is to be treated for the purposes of this Chapter as having subscribed for the shares.

- (4) Accordingly, for the purposes of this Chapter any period for which A held the shares continuously is to be added to, and treated as part of, the period for which B held the shares continuously.
- (5) In this Chapter, apart from subsections (3) and (4), references to a person's having subscribed for a share include the person's having subscribed for the share jointly with any other person (and references to a person's holding a share or to a share being issued to a person are to be read accordingly).

### **169VV “Trading company” etc**

- (1) In this Chapter “trading company” and “the holding company of a trading group” have the same meaning as in section 165 (see section 165A).
- (2) For the purposes of this Chapter a company is not to be regarded as ceasing to be a trading company, or the holding company of a trading group, merely because of anything done in consequence of—
  - (a) the company, or any of its subsidiaries, being in administration or receivership, or
  - (b) a resolution having been passed, or an order made, for the winding up of the company or any of its subsidiaries.
- (3) But subsection (2) applies only if—
  - (a) the entry into administration or receivership, or the resolution or order for winding up, and
  - (b) everything done as a result of the company concerned being in administration or receivership, or as a result of that resolution or order,
 is for genuine commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### **169VW “Relevant employee”**

- (1) This section applies to determine for the purposes of—
  - (a) section 169VB(2)(g), or
  - (b) section 169VH(2)(c),
 whether a particular person has at any time in the relevant period been a “relevant employee” in respect of the issuing company.
- (2) A person who has at any time in the relevant period been an officer or employee of—
  - (a) the issuing company, or
  - (b) a connected company,
 is to be regarded as having at that time been a relevant employee in respect of the issuing company, but this is subject to subsections (3) and (5).
- (3) If—
  - (a) a person is an unremunerated director of the issuing company or a connected company at any time in the relevant period, and

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- (b) the condition in subsection (4) is met,  
the fact that the person holds that directorship at that time does not make the person a relevant employee in respect of the issuing company at that time.
- (4) The condition referred to in subsection (3) is that at no time before the relevant period had the person mentioned in that subsection, or a person connected with that person, been—
- (a) connected with the issuing company, or
- (b) involved in carrying on (whether on the person's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the issuing company or a company connected with that company.
- (5) If—
- (a) a person becomes an employee of the issuing company or a connected company at a time which is—
- (i) within the relevant period, but
- (ii) not within the first 180 days of that period,
- (b) at the beginning of the relevant period, there was no reasonable prospect that the person would become such an employee within the relevant period, and
- (c) the person is not at any time in the relevant period a director of the issuing company or a connected company,
- that employment of the person does not make the person a relevant employee in respect of the issuing company at any time in the relevant period.
- (6) For the purposes of subsection (5) there is a “reasonable prospect” of a thing if it is more likely than not.
- (7) In this section—
- “director” is to be read in accordance with section 452 of CTA 2010,
- “connected company” means a company which at any time in the relevant period is connected with the issuing company (and it does not matter for this purpose whether that time is a time when the person in question is an officer or employee of either company);
- “the issuing company” means the company mentioned in (as the case may be) section 169VB(2)(g) or section 169VH(2)(c);
- “the relevant period” means the period mentioned in (as the case may be) section 169VB(2)(g) or section 169VH(2)(c);
- “unremunerated director” has the meaning given by section 169VX.

#### **169VX “Unremunerated director”**

- (1) For the purposes of section 169VW a person (“the person concerned”) is an “unremunerated director” of the issuing company or a connected company at a particular time in the relevant period if that person is a director of that company at that time and—
- (a) does not receive in the relevant period any disqualifying payment from the issuing company or a related person, and
- (b) is not entitled to receive any such payment in respect of that period or any part of it.
- (2) In this section “disqualifying payment” means any payment other than—

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- (a) a payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the person concerned in the performance of his or her duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment to which the dividend or distribution relates,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, or
  - (f) any necessary and reasonable remuneration which is—
    - (i) paid for qualifying services that are provided to the issuing company or a related person in the course of a trade or profession carried on wholly or partly in the United Kingdom, and
    - (ii) taken into account in calculating for tax purposes the profits of that trade or profession.
- (3) In this section a “related person” means—
- (a) a connected company of which the person concerned is a director, or
  - (b) any person connected with the issuing company or with a company within paragraph (a).
- (4) In this section any reference to a payment to the person concerned includes a payment made to that person indirectly or to that person's order or for that person's benefit.
- (5) In this section “qualifying services” means services which are—
- (a) not secretarial or managerial services, and
  - (b) not services of a kind provided by the person to whom they are provided.
- (6) In this section the following expressions have the same meaning as in section 169VW—
- “connected company”;
  - “director”;
  - “issuing company”;
  - “relevant period”.

## **169VY General definitions**

In this Chapter—

- “employee” (except in the expression “relevant employee”, which is to be read in accordance with section 169VW) has the meaning given by section 4 of ITEPA 2003;
- “employment” has the meaning given by section 4 of ITEPA 2003;
- “exchange of shares” is to be read in accordance with section 169VR(3);
- “excluded share” has the meaning given by section 169VB;
- a “holding” of shares in a company means a holding of such shares which by virtue of section 104(1) is to be regarded as a single asset;
- “investors' relief” has the meaning given by section 169VA(3);

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“office” has the meaning given by section 5(3) of ITEPA 2003;  
“ordinary shares”, in relation to a company, means any shares forming part of the company's ordinary share capital (within the meaning given by section 989 of ITA 2007);  
“potentially qualifying share” has the meaning given by section 169VB;  
“qualifying person” has the meaning given by section 169VC(7);  
“qualifying share” has the meaning given by section 169VB;  
“subscribe” is to be read in accordance with section 169VU;  
“trading company” and “the holding company of a trading group” are to be read in accordance with section 169VV.]

## PART VI

COMPANIES, OIL, INSURANCE ETC.

### CHAPTER I

COMPANIES

#### *Groups of companies*

#### **170 Interpretation of sections 171 to 181.**

- (1) This section has effect for the interpretation of sections 171 to 181 except in so far as the context otherwise requires, and in those sections—
- (a) “profits” means income and chargeable gains, and
  - (b) “trade” includes “vocation”, and includes also an office or employment.

Until 6th April 1993 paragraph (b) shall have effect with the addition at the end of the words “or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts”.

- (2) Except as otherwise provided—

- <sup>F1125</sup>(a) .....
- (b) subsections (3) to (6) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;
- (c) in applying [<sup>F1126</sup>section 1154(3) of CTA 2010 (meaning of “75% subsidiary”)] any share capital of a [<sup>F1127</sup>registered society (see section 1119 of that Act)] shall be treated as ordinary share capital; and
- (d) “group” and “subsidiary” shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.

- (3) Subject to subsections (4) to (6) below—

- (a) a company (referred to below and in sections 171 to 181 as the “principal company of the group”) and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but

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- (b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.
- (4) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.
- (5) Where a company (“the subsidiary”) is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (3)(b) above, the subsidiary may, where the requirements of subsection (3) above are satisfied, itself be the principal company of another group notwithstanding subsection (4) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.
- (6) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of 2 or more groups (the principal company of each group being referred to below as the “head of a group”), it is a member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—
- (a) it is a member of the group it would be a member of if, in applying subsection (3)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,
  - (b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,
  - (c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,
  - (d) it is a member of the group the head of which owns directly or indirectly a percentage of the company’s ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in <sup>F1128</sup>section 1154(2) of CTA 2010).
- (7) For the purposes of this section and sections 171 to 181, a company (“the subsidiary”) is an effective 51 per cent. subsidiary of another company (“the parent”) at any time if and only if—
- (a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and
  - (b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.
- <sup>F1129</sup>(8) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsections (6) and (7) as if—
- (a) references to section 151(4)(a) and (b) of that Act were references to subsections (6) and (7) above, <sup>F1130</sup>...
  - <sup>F1131</sup>(aa) in section 158 of that Act after subsection (2) there were inserted—



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- “(2A) But for those purposes a person carrying on a business of banking is not treated as a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business.”, and]
- (b) sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Act were omitted.]
- (9) For the purposes of this section and sections 171 to 181, references to a company apply only to—
- (a) a company [<sup>F1132</sup>as defined in section 1(1) of the Companies Act 2006 (c. 46)], and
- (b) a company [<sup>F1133</sup>(other than a limited liability partnership)] which is constituted under any other Act or a Royal Charter or letters patent or <sup>F1134</sup>... is formed under the law of a country or territory outside the United Kingdom, and
- (c) a [<sup>F1135</sup>registered society (see section 1119 of CTA 2010)]<sup>F1136</sup> ... ; and
- <sup>F1137</sup>(cc) an incorporated friendly society within the meaning of the Friendly Societies Act 1992; and]
- (d) a building society.
- (10) For the purposes of this section and sections 171 to 181, a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a member of another group, the first group and the other group shall be regarded as the same, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.
- <sup>F1138</sup>(10A) Where the principal company of a group (Group 1)—
- (a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),
- (b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or
- (c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),
- Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.]
- (11) For the purposes of this section and sections 171 to 181, the passing of a resolution or the making of an order, or any other act, for the winding-up of a member of a group of companies shall not be regarded as the occasion of that or any other company ceasing to be a member of the group.
- (12) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the <sup>M30</sup>Transport Act 1962 and the new authorities within the meaning of the <sup>M31</sup>Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any

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2 or more such bodies charged at different times with the same or related functions were members of a group.

- (13) Subsection (12) shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter VI of Part XII of the Taxes Act.
- (14) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within the meaning of section 9(1) of the <sup>M32</sup>Transport Act 1968 as if that Executive were a company within the meaning of those sections.

### Textual Amendments

- F1125** S. 170(2)(a) repealed (with effect in accordance with Sch. 29 para. 1(2), Sch. 40 Pt. II(12) Note 4 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), Sch. 29 para. 1(1)(a), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))
- F1126** Words in s. 170(2)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 242(2)** (with Sch. 2)
- F1127** Words in s. 170(2)(c) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, **Sch. 4 para. 50(2)** (with Sch. 5) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 39 paras. 6(a)**, 15)
- F1128** Words in s. 170(6)(d) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 242(3)** (with Sch. 2)
- F1129** S. 170(8) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 242(4)** (with Sch. 2)
- F1130** Word in s. 170(8)(a) omitted (with retrospective effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Corporation Tax Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2902\)](#), arts. 1(1), **2(2)(a)**
- F1131** S. 170(8)(aa) inserted (with retrospective effect in accordance with art. 1(2) of the amending S.I.) by [The Corporation Tax Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2902\)](#), arts. 1(1), **2(2)(b)**
- F1132** Words in s. 170(9)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **3(2)(c)**
- F1133** Words in s. 170(9)(b) inserted (6.4.2001) by [Finance Act 2001 \(c. 9\)](#), s. **75(4)(6)** (with Sch. 3)
- F1134** Words in s. 170(9)(b) repealed (with effect in accordance with Sch. 29 para. 1(2), Sch. 40 Pt. II(12) Note 4 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), Sch. 29 para. 1(1)(b), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))
- F1135** Words in s. 170(9)(c) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, **Sch. 4 para. 50(3)** (with Sch. 5) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 39 paras. 6(b)**, 15)
- F1136** Words in s. 170(9)(c) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 375, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F1137** S. 170(9)(cc) inserted (with application in accordance with s. 136(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. **136(1)**
- F1138** S. 170(10A) inserted (with effect in accordance with s. 62(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. **62(1)**

### Modifications etc. (not altering text)

- C247** S. 170 extended (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. **148(9)**
- C248** S. 170 applied (23.3.1995) by [The Exchange Gains and Losses \(Deferral of Gains and Losses\) Regulations 1994 \(S.I. 1994/3228\)](#), regs. 1(2), **4(1)**
- C249** S. 170 applied (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **Sch. 9 para. 11(5)**

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- C250** S. 170 applied (with effect in accordance with s. 81(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 81(7)**
- C251** Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**
- C252** Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2
- C253** S. 170 applied (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 26 para. 28(6)**
- C254** S. 170 applied (with modifications) (1.8.2004) by Finance Act 2004 (c. 12), **ss. 307(4)**, 319(2) (with s. 314)
- C255** Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C256** S. 170 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **37(1)**
- C257** S. 170 modified (E.W.S.) (1.9.2012) by The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (S.I. 2012/1868), regs. 1, **7(5)**
- C258** S. 170(2)-(11) applied (with modifications) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 554Z(5)** (as inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 2 para. 1**)
- C259** S. 170(3)-(6) applied (with effect in accordance with s. 1184(1) of the affecting Act) by Corporation Tax Act 2010 (c. 4), **ss. 996(3)**, 1184(1) (with Sch. 2)
- C260** S. 170(3) modified (16.11.2017 for specified purposes) by Finance (No. 2) Act 2017 (c. 32), s. 66(4), **Sch. 17 para. 8(7)** (with Sch. 17 para. 32)
- C261** S. 170(7)(8) applied (with modifications) (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), arts. 1(2), **19(12)**
- C262** S. 170(7) modified by 1988 c. 1, s. 209(8E) (as inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(3)**)
- C263** S. 170(12)-(14) applied (with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **ss. 773(2)**, 1329(1) (with Sch. 2 Pts. 1, 2)

#### Marginal Citations

- M30** 1962 c. 46.  
**M31** 1968 c. 73.  
**M32** 1968 c. 73.

### Transactions within groups

#### 171 Transfers within a group: general provisions.

[<sup>F1139</sup>(1) Where—

- (a) a company (“company A”) disposes of an asset to another company (“company B”) at a time when both companies are members of the same group, and
- (b) the conditions in subsection (1A) below are met,

company A and company B are treated for the purposes of corporation tax on chargeable gains as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal.

(1A) The conditions referred to in subsection (1)(b) above are—

- (a) that company A is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately before that time, and

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- (b) that company B is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately after that time.

For this purpose an asset is a “chargeable asset” in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section [F1140 10B] form part of its chargeable profits for corporation tax purposes.]

- (2) Subsection (1) above shall not apply where the disposal is—

- (a) a disposal of a debt due from [F1141 company B] effected by satisfying the debt or part of it; or
- (b) a disposal of redeemable shares in a company on the occasion of their redemption; or
- [F1142 (ba) a relevant high value disposal on which (ignoring subsection (1)) there accrues to company A an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B; or]
- (c) a disposal by or to an investment trust; or
- [F1143 (cc) a disposal by or to a venture capital trust; or]
- [F1144 (cd) a disposal by or to a qualifying friendly society; or]
- (d) a disposal to a dual resident investing company; [F1145 ... [F1146; or
- (da) a disposal by or to a company [F1147 which is, or is a member of, a UK REIT within the meaning of Part 12 of CTA 2010] (Real Estate Investment Trusts); [F1148 or
- (db) a disposal by company A in fulfilment of its obligations under an option granted to company B at a time when those companies were not members of the same group;]

- [F1145 (e) . . . . .

and the reference in subsection (1) above to [F1149 company A] disposing of an asset shall not apply to anything which under section 122 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in that section) from that company, whether or not involving a reduction of capital.

- (3) Subsection (1) above shall not apply to a transaction treated [F1150 by section 127 as it applies by virtue of section 135] as not involving a disposal by [F1151 company A].

- [F1152 (3A) . . . . .

- (4) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money’s worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

- [F1153 (5) In subsection (2)(cd) above “qualifying friendly society” means a company which is a qualifying society for the purposes of [F1154 section 165 of the Finance Act 2012] (incorporated friendly societies entitled to exemption from income tax and corporation tax on certain profits).]

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[<sup>F1155</sup>(6) Subsection (1) above applies notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition.

But where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale or acquisition to which this section applies.]

#### Textual Amendments

- F1139** S. 171(1)(1A) substituted for s. 171(1) (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 2\(2\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1140** Word in s. 171(1A) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)
- F1141** Words in s. 171(2)(a) substituted (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), Sch. 29 para. 2(3)(a) (with [Sch. 29 para. 46\(5\)](#))
- F1142** S. 171(2)(ba) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 12](#)
- F1143** S. 171(2)(cc) inserted (with application in accordance with s. 135(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 135\(1\)](#)
- F1144** S. 171(2)(cd) inserted (with application in accordance with s. 136(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 136\(2\)](#)
- F1145** S. 171(2)(e) and preceding word repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 251(7)(b), [Sch. 26 Pt. VIII\(1\)](#)
- F1146** S. 171(2)(da) and preceding word inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 135](#)
- F1147** Words in s. 171(2)(da) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 243](#) (with [Sch. 2](#))
- F1148** S. 171(2)(db) and preceding word inserted (with effect in accordance with Sch. 5 para. 10(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 10\(1\)](#)
- F1149** Words in s. 171(2) substituted (with effect in accordance with [Sch. 29 para. 2\(6\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 2\(3\)\(b\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1150** Words in s. 171(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(10\)](#)
- F1151** Words in s. 171(3) substituted (with effect in accordance with [Sch. 29 para. 2\(6\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 2\(4\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1152** S. 171(3A) omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 9\(b\), 12](#)
- F1153** S. 171(5) inserted (with application in accordance with s. 136(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 136\(3\)](#)
- F1154** Words in s. 171(5) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 18 para. 16](#)
- F1155** S. 171(6) added (with effect in accordance with [Sch. 29 para. 2\(6\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 2\(5\)](#) (with [Sch. 29 para. 46\(5\)](#))

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

- C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), Sch. 3 paras. 1, [4\(1\)](#)
- C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), [ss. 419\(3\), 425\(2\)](#); [S.I. 1999/3434](#), art. 2
- C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 9 para. 35\(a\)](#) (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), Sch. 1
- C264** S. 171 excluded (27.7.1993 with application as mentioned in s. 165(1)) by [1993 c. 34](#), s. 169, [Sch. 17 para. 7\(2\)\(b\)](#)

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- C265** Ss. 171, 172 restricted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 131\(1\)\(2\)\(a\)](#)
- C266** S. 171 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation of Securitisation Companies Regulations 2006 \(S.I. 2006/3296\), regs. 1\(1\), 18\(1\)](#)
- C267** S. 171 excluded (with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Taxation of Insurance Securitisation Companies Regulations 2007 \(S.I. 2007/3402\), regs. 1\(1\), 9\(2\)](#)
- C268** S. 171 excluded (with effect in accordance with s. 1329(1) of the affecting Act) by [Corporation Tax Act 2009 \(c. 4\), ss. 830\(1\), 1329\(1\) \(with Sch. 2 Pts. 1, 2\)](#)
- C269** S. 171 modified (with effect in accordance with s. 1184(1) of the affecting Act) by [Corporation Tax Act 2010 \(c. 4\), ss. 601, 1184\(1\) \(with Sch. 2\)](#)
- C270** S. 171 excluded (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\), s. 118\(6\)\(c\) \(with s. 147, Sch. 17\)](#)
- C271** S. 171(1) excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 2\(3\)](#)
- C272** S. 171(1) excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 7\(3\)](#)
- C273** S. 171(1) excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 25\(3\)](#)
- C274** S. 171(1) restricted (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\), Sch. 3 para. 4\(1\)](#)
- C275** S. 171(1) excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\), s. 149\(1\), Sch. 7 para. 2\(2\) \(with Sch. 7 para. 9\(1\)\)](#)
- C276** S. 171(1) excluded (1.2.2001) by [Transport Act 2000 \(c. 38\), s. 275\(1\), Sch. 7 paras. 2\(4\), 20\(5\); S.I. 2001/57, art. 3\(1\)](#)
- C277** S. 171(2)(cc) excluded (with effect in accordance with reg. 1(2)(b) of the amending S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\), regs. 1\(1\), 12\(2\)](#)

## <sup>F1156</sup>**171A Election to reallocate gain or loss to another member of the group**

- (1) This section applies where—
- (a) a chargeable gain or an allowable loss accrues to a company (“company A”) in respect of an asset (or would so accrue but for an election under this section),
  - (b) at the time of accrual, company A and another company (“company B”) are members of the same group, and
  - (c) had company A disposed of the asset to company B immediately before the time of accrual, section 171(1) would have applied.
- (2) In determining for the purposes of subsection (1)(c) whether subsection (1) of section 171 would have applied, it is to be assumed that subsection (1A)(b) of that section read—
- “(b) that, at the time of the disposal, company B is resident in the United Kingdom, or carrying on a trade in the United Kingdom through a permanent establishment there.”
- (3) In this section “the time of accrual” means the time the chargeable gain or allowable loss accrues to company A (or would so accrue but for an election under this section).
- (4) Companies A and B may make a joint election to transfer the chargeable gain or allowable loss, or such part of it as is specified in the election, from company A to company B [<sup>F1157</sup>(but see subsection (4A))].

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[<sup>F1158</sup>(4A) An election may not be made under this section to transfer the whole or part of a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on such a trade.

(4B) In subsection (4A)—

“ring fence chargeable gain”, in relation to a company, means—

- (a) a chargeable gain accruing to the company on a material disposal within the meaning of section 197 (disposals of interests in oil fields etc: ring fence provisions), or
- (b) a chargeable gain treated as accruing to the company by virtue of section 197(4);

“ring fence trade” has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).]

(5) An election under this section must be made—

- (a) by notice to an officer of Revenue and Customs, and
- (b) no later than two years after the end of the accounting period of company A in which the time of accrual falls.

(6) An election, or two or more elections made simultaneously, is or are of no effect if, taken together with each earlier election (if any) made in respect of the same gain or loss, it or they would (apart from this subsection) have effect in relation to an amount exceeding the gain or loss.

<sup>F1159</sup>(7) . . . . .

(8) For the effect of an election under this section, see section 171B.]

#### Textual Amendments

**F1156** Ss. 171A-171C substituted for s. 171A (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 12 para. 1](#)

**F1157** Words in s. 171A(4) inserted (with effect in accordance with s. 181(4)(5) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 181\(2\)](#)

**F1158** S. 171A(4A)(4B) inserted (with effect in accordance with s. 181(4)(5) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 181\(3\)](#)

**F1159** S. 171A(7) omitted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 2](#)

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

**C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), [s. 198\(2\)](#), [Sch. 9 para. 35\(a\)](#) (with [s. 38\(2\)](#)); [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

**C278** Ss. 171A-171C modified (with effect in accordance with s. 1184(1) of the affecting Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 601](#), [1184\(1\)](#) (with [Sch. 2](#))

[<sup>F1156</sup>**171B Election under section 171A: effect**

- (1) This section applies where an election is made under section 171A.
- (2) The effect of the election is that the chargeable gain or allowable loss, or such amount of it as is specified in the election, is treated as accruing not to company A but to company B.

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- (3) The gain or loss treated as accruing to company B is to be taken to accrue at the time that, had the election not been made, it would have accrued to company A.
- (4) Where company B is not resident in the United Kingdom, the gain or loss treated as accruing to it is to be taken to accrue in respect of a chargeable asset held by it.
- (5) For this purpose an asset is a “chargeable asset” in relation to a company at any time if any gain accruing to the company on a disposal of the asset by the company at that time would be a chargeable gain and would by virtue of section 10B form part of its chargeable profits for corporation tax purposes.
- (6) Any payment made by company A to company B or by company B to company A, in pursuance of an agreement between them in connection with the election—
  - (a) is not to be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) is not for any purposes of the Corporation Tax Acts to be regarded as a distribution,
 provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the election, as accruing to company B.]

#### Textual Amendments

**F1156** Ss. 171A-171C substituted for s. 171A (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 12 para. 1](#)

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

**C278** Ss. 171A-171C modified (with effect in accordance with s. 1184(1) of the affecting Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 601, 1184\(1\)](#) (with [Sch. 2](#))

### <sup>F1156</sup>**171Elections under section 171A: insurance companies**

- (1) This section applies where —
  - (a) an election is made under section 171A in relation to a gain or loss, and
  - (b) company B is an insurance company.
- (2) For the purposes of section 171A(1)(c), [<sup>F1160</sup>section 118 of the Finance Act 2012] (disposals of certain assets by and to insurance companies to fall outside the rule in section 171) is to be disregarded.
- (3) Subsection (2) does not apply if—
  - (a) company A is an insurance company, and
  - (b) the gain or loss arose in respect of the disposal of an asset that, immediately before the disposal, was [<sup>F1161</sup>held for the purposes of the company's long-term business].
- (4) The chargeable gain or allowable loss treated as accruing to company B as a result of the election is to be treated [<sup>F1162</sup>for the purposes of section 210A (ring-fencing of losses) as a non-BLAGAB chargeable gain or (as the case may be) a non-BLAGAB allowable loss].

<sup>F1163</sup>(5) . . . . . ]



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#### Textual Amendments

- F1156** Ss. 171A-171C substituted for s. 171A (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 12 para. 1](#)
- F1160** Words in s. 171C(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 77\(2\)](#)
- F1161** Words in s. 171C(3)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 77\(3\)](#)
- F1162** Words in s. 171C(4) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 77\(4\)](#)
- F1163** S. 171C(5) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 77\(5\)](#)

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

- C278** Ss. 171A-171C modified (with effect in accordance with s. 1184(1) of the affecting Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 601, 1184\(1\)](#) (with Sch. 2)

### <sup>F1164</sup>172 Transfer of United Kingdom branch or agency.

#### Textual Amendments

- F1164** S. 172 repealed (with effect in accordance with Sch. 29 para. 3(2), Sch. 40 Pt. 2(12) Note 5 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 3\(1\)](#), [Sch. 40 Pt. II\(12\)](#) (with Sch. 29 para. 46(5))

### [<sup>F1165</sup>173] Transfers within a group: trading stock.

(1) Where—

- (a) a company (“company A”) acquires an asset as trading stock of a trade to which this section applies,
- (b) the acquisition is from a company (“company B”) that at the time of the acquisition is a member of the same group of companies, and
- (c) the asset did not form part of the trading stock of any such trade carried on by company B,

company A is treated for the purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where—

- (a) a company (“company C”) disposes of an asset forming part of the trading stock of a trade to which this section applies carried on by that company,
- (b) the disposal is to another company (“company D”) that at the time of the disposal is a member of the same group of companies, and
- (c) the asset is acquired by company D otherwise than as trading stock of any such trade carried on by it,

company C is treated for the purposes of section 161 as having appropriated the asset immediately before the disposal for some purpose other than the purpose of use as trading stock.

(3) The trades to which this section applies are—

- (a) any trade carried on by a company resident in the United Kingdom, and

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- (b) any trade carried on in the United Kingdom through a [<sup>F1166</sup>permanent establishment] by a company not so resident.]

#### Textual Amendments

**F1165** S. 173 substituted (with effect in accordance with Sch. 29 para. 11(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 11\(1\)](#) (with [Sch. 29 para. 46\(5\)](#))

**F1166** Words in s. 173(3)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(1\)\(b\)](#)

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

**C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), [ss. 419\(3\)](#), 425(2); [S.I. 1999/3434](#), art. 2

**C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), [s. 198\(2\)](#), [Sch. 9 para. 35\(a\)](#) (with [s. 38\(2\)](#)); [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**C279** S. 173 excluded (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 118\(6\)\(c\)](#) (with [s. 147](#), [Sch. 17](#))

### 174 Disposal or acquisition outside a group.

<sup>F1167</sup>(1) .....

<sup>F1167</sup>(2) .....

<sup>F1167</sup>(3) .....

- (4) Schedule 2 shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group [<sup>F1168</sup>in a transfer to which section 171(1) applied], as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

<sup>F1169</sup>(5) .....

#### Textual Amendments

**F1167** S. 174(1)-(3) repealed (with effect in accordance with Sch. 40 Pt. II(12) Note 6 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))

**F1168** Words in s. 174(4) substituted (with effect in accordance with Sch. 29 para. 13(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 13\(2\)](#) (with [Sch. 29 paras. 13\(5\)](#), 46(5))

**F1169** S. 174(5) repealed (with effect in accordance with Sch. 29 para. 13(4), Sch. 40 Pt. II(12) Note 6 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 13\(3\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 paras. 13\(5\)](#), 46(5))

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

**C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), [ss. 419\(3\)](#), 425(2); [S.I. 1999/3434](#), art. 2

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- C255** Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C280** S. 174 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 21(2)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

## 175 Replacement of business assets by members of a group.

- (1) Subject to subsection (2) below, for the purposes of sections 152 to 158 all the trades <sup>F1170</sup>to which this section applies] carried on by members of a group of companies shall, for the purposes of corporation tax on chargeable gains, be treated as a single trade <sup>F1171</sup>... .

<sup>F1172</sup>(1A) The trades to which this section applies are—

- (a) any trade carried on by a company that is resident in the United Kingdom, and
- (b) any trade carried on in the United Kingdom through a <sup>F1173</sup>permanent establishment] by a company not so resident.]

- (2) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company <sup>F1174</sup>... and in this subsection “the old assets” and “the new assets” have the same meanings as in section 152.

<sup>F1175</sup>(2A) Section 152 <sup>F1176</sup>or 153] shall apply where—

- (a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies,
- (b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and

<sup>F1177</sup>(ba) [ the conditions in subsection (2AA) below are met, and]

- (c) the claim is made by both companies, as if both companies were the same person.

[ The conditions referred to in subsection (2A)(ba) above are—

- <sup>F1178</sup>(2AA) (a) that the company making the disposal is resident in the United Kingdom at the time of the disposal, or the assets are chargeable assets in relation to that company immediately before that time, and
- (b) that the acquiring company is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time.

For this purpose an asset is a “chargeable asset” in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section <sup>F1179</sup>10B] form part of its chargeable profits for corporation tax purposes.]

(2B) Section 152 <sup>F1180</sup>or 153] shall apply where a company which is a member of a group of companies but is not carrying on a trade—

- (a) disposes of assets (or an interest in assets) used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade, or

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- (b) acquires assets (or an interest in assets) taken into use, and used only, for those purposes,  
as if the first company were carrying on that trade.
- (2C) <sup>[F1181]</sup>Neither section 152 nor section 153 shall apply if the acquisition of, or of the interest in, the new assets—
- is made by a company which is a member of a group of companies, and
  - is one to which any of the <sup>[F1182]</sup>no gain/no loss provisions] applies <sup>[F1183]</sup>or is one where, by virtue of section 195B, 195C or 195E, neither a gain nor a loss accrues to the person making the disposal].]
- <sup>[F1184]</sup>(3) Section 154(2) applies where the company making the claim is a member of a group of companies—
- as if all members of the group for the time being carrying on a trade to which this section applies were the same person, and
  - in accordance with subsection (1) above, as if all those trades were the same trade;
- so that the gain accrues to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).]
- (4) Subsection (2) above shall apply where the acquisition took place before 20th March 1990 and the disposal takes place within the period of 12 months beginning with the date of the acquisition or such longer period as the Board may by notice allow with the omission of the words from “or a company” to “the acquisition”.

#### Textual Amendments

- F1170** Words in s. 175(1) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 10\(2\)](#) (with [Sch. 29 paras. 10\(8\)](#), [46\(5\)](#))
- F1171** Words in s. 175(1) repealed (with effect in accordance with Sch. 29 Pt. VIII(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 29 Pt. VIII\(4\)](#)
- F1172** S. 175(1A) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 10\(3\)](#) (with [Sch. 29 paras. 10\(8\)](#), [46\(5\)](#))
- F1173** Words in s. 175(1A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(1\)\(b\)](#)
- F1174** Words in s. 175(2) repealed (with effect in accordance with s. 251(1)(a)(8) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 251\(8\)](#), [Sch. 26 Pt. VIII\(1\)](#)
- F1175** S. 175(2A)-(2C) inserted (retrospectively as respects s. 175(2A), with application in accordance with s. 48(5) of the amending Act as respects s. 175(2B)(2C)) by [Finance Act 1995 \(c. 4\)](#), [s. 48\(1\)\(3\)](#) (with [s. 48\(4\)\(5\)](#))
- F1176** Words in s. 175(2A) inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 141\(3\)\(a\)](#)
- F1177** S. 175(2A)(ba) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 10\(4\)](#) (with [Sch. 29 paras. 10\(8\)](#), [46\(5\)](#))
- F1178** S. 175(2AA) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 10\(5\)](#) (with [Sch. 29 paras. 10\(8\)](#), [46\(5\)](#))
- F1179** Word in s. 175(2AA) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)
- F1180** Words in s. 175(2B) inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 141\(3\)\(a\)](#)
- F1181** Words in s. 175(2C) substituted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 141\(3\)\(b\)](#)

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**F1182** Words in s. 175(2C) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 62**

**F1183** Words in s. 175(2C)(b) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 4**

**F1184** S. 175(3) substituted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 10(6)** (with Sch. 29 paras. 10(8), 46(5))

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), Sch. 3 paras. 1, **4(1)**

**C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

**C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

**C281** S. 175(2A)(c) restricted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), **s. 48(4)**

*Losses attributable to depreciable transactions*

**176 Depreciable transactions within a group.**

- (1) This section has effect as respects a disposal of shares in, or securities of, a company (“the ultimate disposal”) if the value of the shares or securities has been materially reduced by a depreciable transaction effected [<sup>F1185</sup>within the period of 6 years ending with the disposal]; and for this purpose “depreciable transaction” means—
  - (a) any disposal of assets at other than market value by one member of a group of companies to another, or
  - (b) any other transaction satisfying the conditions of subsection (2) below, except that a transaction shall not be treated as a depreciable transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.
- (2) The conditions referred to in subsection (1)(b) above are—
  - (a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and
  - (b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.
- (3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section [<sup>F1186</sup>641] of the Companies Act [<sup>F1186</sup>2006] shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.
- (4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as [<sup>F1187</sup>is] just and reasonable having regard to the depreciable transaction, but if the person making the ultimate disposal is not a member of that group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciable transaction which took place when that person was not a member of that group.

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- (5) [<sup>F1188</sup>A reduction under subsection (4) above shall be made] on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after 31st March 1982 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.
- (6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 6 years after the depreciatory transaction, shall be reduced to such extent as [<sup>F1189</sup>is] just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal, but the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.

- (7) For the purposes of this section—
- (a) “securities” includes any loan stock or similar security whether secured or unsecured,
  - (b) references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group, <sup>F1190</sup> ...
  - <sup>F1190</sup>(c) .....
- (8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 24(2) that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.
- (9) In any case where the ultimate disposal is not one to which section 35(2) applies, the references above to 31st March 1982 shall be read as references to 6th April 1965.

#### Textual Amendments

**F1185** Words in s. 176(1) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 9 para. 3](#)

**F1186** Figures in s. 176(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\), arts. 1\(1\), 9](#)

**F1187** Words in s. 176(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 57\(1\)](#)

**F1188** Words in s. 176(5) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 57\(2\)](#)

**F1189** Words in s. 176(6) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 57\(1\)](#)

**F1190** S. 176(7)(c) and preceding word repealed (with effect in accordance with Sch. 29 para. 24(2) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 24\(1\), Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))

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

- C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)
- C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), [ss. 419\(3\)](#), [425\(2\)](#); [S.I. 1999/3434](#), art. 2
- C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 9 para. 35\(a\)](#) (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)
- C282** S. 176 modified (27.7.1993) by [1993 c. 37](#), s. 12, [Sch. 2 Pt. I para. 18\(2\)](#)
- C283** S. 176 applied (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), s. 105, [Sch. 15 para. 8\(9\)](#)
- C284** S. 176(1) applied (23.3.1995) by [The Exchange Gains and Losses \(Transitional Provisions\) Regulations 1994 \(S.I. 1994/3226\)](#), regs. 1(2), [9\(6\)](#)
- C285** S. 176(2) applied (23.3.1995) by [The Exchange Gains and Losses \(Transitional Provisions\) Regulations 1994 \(S.I. 1994/3226\)](#), regs. 1(2), [14\(4\)](#)

### **177 Dividend stripping.**

- (1) The provisions of this section apply where one company (“the first company”) has a holding in another company (“the second company”) and the following conditions are fulfilled—
- that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,
  - that the first company is not a dealing company in relation to the holding,
  - that a distribution is or has been made to the first company in respect of the holding, and
  - that the effect of the distribution is that the value of the holding is or has been materially reduced.
- (2) Where this section applies in relation to a holding, section 176 shall apply, subject to subsection (3) below, in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section <sup>[<sup>F1191</sup>140A,</sup>]<sup>[<sup>F1192</sup>or 171]</sup> applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.
- (3) The distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.
- (4) This section shall be construed as one with section 176, and in any case where the ultimate disposal is not one to which section 35(2) applies, the reference in subsection (1)(c) above to a distribution does not include a distribution made before 30th April 1969.
- (5) For the purposes of this section a company is “a dealing company” in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company’s trading profits.
- (6) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—

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- (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
  - (b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (7) For the purposes of subsection (1) above—
- (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
  - (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,
- and section 286 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words "or to acquire a holding in".

#### Textual Amendments

**F1191** Words in s. 177(2) inserted (*retrosp.*) by 1992 c. 48, s. 46(1)(6)

**F1192** Words in s. 177(2) substituted (with effect in accordance with Sch. 29 para. 25(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 25(1) (with Sch. 29 para. 46(5))

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

**C251** Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, 4(1)

**C252** Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), ss. 419(3), 425(2); S.I. 1999/3434, art. 2

**C255** Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 9 para. 35(a) (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

**C286** S. 177: modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, Sch. 17 paras. 5(1); modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, Sch. 17 paras. 5(3); modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993, s. 169, Sch. 17 paras. 6(2); modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, Sch. 17 paras. 6(3)

#### [<sup>F1193</sup> 177A Restriction on set-off of pre-entry losses.

Schedule 7A to this Act (which makes provision in relation to losses accruing to a company before the time when it becomes a member of a group of companies <sup>F1194</sup>...) shall have effect.]

#### Textual Amendments

**F1193** S. 177A inserted (27.7.1993 with application as mentioned in s. 88(3)) by 1993 c. 34, s. 88(1)

**F1194** Words in s. 177A omitted (with effect in accordance with Sch. 11 paras. 11, 12 of the amending Act) by virtue of Finance Act 2011 (c. 11), Sch. 11 para. 1

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

**C251** Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, 4(1)



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**C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), **ss. 419(3)**, 425(2); [S.I. 1999/3434](#), art. 2

**C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), Sch. 1

### *[<sup>F1195</sup>Pre-entry gains]*

#### **Textual Amendments**

**F1195**S. 177B and cross-heading inserted (with effect in accordance with s. 137(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 137(1)**

### <sup>F1196</sup>**177** ~~Restrictions on setting losses against pre-entry gains.~~

#### **Textual Amendments**

**F1196**S. 177B repealed (with effect in accordance with s. 70(6)-(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 70(4), **Sch. 26 Pt. 3(9)** (with s. 70(10)-(11))

### *Companies leaving groups*

### <sup>F1197</sup>**178** ~~Company ceasing to be member of group: pre-appointed day cases.~~

#### **Textual Amendments**

**F1197**S. 178 repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 26](#), **Sch. 40 Pt. II(12)** (with [Sch. 29 para. 46\(5\)](#))

### **179** ~~Company ceasing to be member of group: post-appointed day cases.~~

<sup>F1198</sup>(1) This section applies where—

- (a) a company (“company A”) acquires an asset from another company (“company B”) at a time when [<sup>F1199</sup>company A and company B are members of the same group],
- (b) the conditions in subsection (1A) below are met, and
- (c) company A ceases to be a member of that group within the period of six years after the time of the acquisition.

References in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.

(1A) The conditions referred to in subsection (1)(b) above are—

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- (a) that company A is resident in the United Kingdom at the time it acquires the asset, or the asset is a chargeable asset in relation to that company immediately after that time, and
- (b) that company B is resident in the United Kingdom at the time of that acquisition, or the asset is a chargeable asset in relation to that company immediately before that time.

**F1200** . . . . . ]

[<sup>F1201</sup>(1AA) If shares in a company are transferred as part of the process of the transfer of a business to which section 140A or 140C applies and in consequence of the transfer the company ceases to be a member of a group (“Group 1”)—

- (a) the company shall not be treated for the purposes of this section as having left Group 1, and
- (b) if the transferee is a member of a group (“Group 2”) and in consequence of the transfer the company becomes a member of Group 2 it shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.]

[<sup>F1202</sup>(1B) Where, as part of the process of a merger to which section 140E applies, a company which is a member of a group (“Group 1”) ceases to exist and in consequence of that cessation—

- (a) assets are transferred to the transferee, or
- (b) shares in one or more companies which were also members of the group are transferred to the transferee,

a company which has ceased to exist, or the shares in which have been transferred to the transferee, shall not be treated for the purposes of this section as having left Group 1.

(1C) If subsection (1B) applies in relation to a company then for the purposes of this section—

- (a) the transferee and a company which has ceased to exist in consequence of the merger shall be treated as the same entity, and
- (b) if the transferee is a member of a group (“Group 2”) following the merger (whether or not as the principal company of the group) a company which was a member of Group 1 and became a member of Group 2 in consequence of the merger shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.

(1D) In subsections (1B) and (1C), “transferor” and “transferee” have the meaning given by section 140E(9).]

[<sup>F1203</sup>(2) Where two companies cease to be members of the group at the same time, subsection (1) does not have effect as respects the acquisition of an asset by one of the companies from the other if condition A or B is met.

(2ZA) Condition A is that the companies—

- (a) are both 75 per cent subsidiaries and effective 51 per cent subsidiaries of another company on the date of the acquisition, and
- (b) remain both 75 per cent subsidiaries and effective 51 per cent subsidiaries of that other company until immediately after they cease to be members of the group.

(2ZB) Condition B is that one of the companies—

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- (a) is both a 75 per cent subsidiary and an effective 51 per cent subsidiary of the other on the date of the acquisition, and
- (b) remains both a 75 per cent subsidiary and an effective 51 per cent subsidiary of the other until immediately after the companies cease to be members of the group.]

[<sup>F1204</sup>(2A) [<sup>F1205</sup>Subsection (2AA) applies where]—

- [<sup>F1206</sup>(a) a company (“company A”) acquired an asset from another company (“company B”) at a time when both company A and company B were members of the same group (“the first group”),
  - (aa) company A has ceased to be a member of the first group,]
  - (b) subsection (2) above applies in the case of [<sup>F1207</sup>company A’s] ceasing to be a member of the first group so that subsection (1) above does not have effect as respects the acquisition of that asset,
- [<sup>F1208</sup>(c) at the time company A ceases to be a member of the first group there is a connection between that group and the group of companies of which company A becomes a member on leaving the first group (“the second group”), and
- (d) subsequently—
  - (i) company A ceases to be a member of the second group, or
  - (ii) (before sub-paragraph (i) applies) there ceases to be a connection between the two groups.]

[ Where this subsection applies—

- <sup>F1209</sup>(2AA) (a) in a case within subsection (2A)(d)(ii), for the purposes of this section (other than subsection (2A)) as it applies as respects the acquisition, company A and any associated company are to be treated as having ceased to be members of the second group at the time the connection between the two groups ceases,
- (b) subsection (1) has effect in relation to company A’s ceasing to be a member of the second group as if it had been the second group of which both companies had been members at the time of the acquisition, and
- (c) subsection (2) may operate to prevent subsection (1) applying by virtue of paragraph (b), unless subsection (2AB) applies.

(2AB) This subsection applies if company A’s ceasing to be a member of the first group at the same time as one or more associated companies forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of a liability to corporation tax.]

(2B) For the purposes of subsection (2A) above there is a connection between the first group and the second group [<sup>F1210</sup>at a particular time if, at that time,], the company which is the principal company of that group is under the control of—

- (a) the company which is the principal company of the first group or, if that group no longer exists, which was the principal company of that group when [<sup>F1211</sup>company A] ceased to be a member of it;
- (b) any [<sup>F1212</sup>person or persons who control the company mentioned in paragraph (a) above or who have had it under their] control at any time in the period since [<sup>F1211</sup>company A] ceased to be a member of the first group; or
- (c) any [<sup>F1213</sup>person or persons who have, at any time in that period, had under their] control either—
  - (i) a company which would have [<sup>F1214</sup>been a person falling] within paragraph (b) above if it had continued to exist, or

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- (ii) a company which would have <sup>F1214</sup>been a person falling] within this paragraph (whether by reference to a company which would have <sup>F1214</sup>been a person falling] within that paragraph or to a company or series of companies falling within this sub-paragraph).]

<sup>F1215</sup>(2C) This section shall not have effect as respects any asset if, before the time when <sup>F1211</sup>company A] ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101A(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.]

<sup>F1216</sup>(2D) This section shall not have effect as respects any asset if, before the time when <sup>F1211</sup>company A] ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101C(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.]

- (3) If, when <sup>F1211</sup>company A] ceases to be a member of the group, <sup>F1211</sup>company A], or an associated company also leaving the group, owns, otherwise than as trading stock—
- (a) the asset, or
  - (b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

then, subject to subsection (4) below, <sup>F1211</sup>company A] shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

<sup>F1217</sup>(3A) Any chargeable gain or allowable loss which would otherwise accrue to company A on the sale referred to in subsection (3) does not so accrue if—

- (a) company A ceases to be a member of the group in consequence of—
  - (i) a disposal of shares in company A or another member of the group made by a member of the group, or
  - (ii) two or more such disposals,
- (b) either—
  - (i) subsection (3B) applies to the disposal or, if there is more than one disposal, to at least one of them, or
  - (ii) sub-paragraph (i) does not apply but had subsection (3B) applied to the disposal or, if there is more than one disposal, to each of them, any gain arising on the disposal or disposals would not have been a chargeable gain by virtue of Schedule 7AC, and
- (c) in the absence of this subsection, section 535 of CTA 2010 (UK REITS: exemption of gains) would not apply to the chargeable gain or allowable loss which would accrue to company A on the sale.

(3B) This subsection applies to a disposal of shares if—

- (a) the company making the disposal is resident in the United Kingdom at the time of the disposal,
- (b) the shares are chargeable assets in relation to that company immediately before that time, or
- (c) any part of the chargeable gain or allowable loss accruing on the disposal is treated as a gain or loss accruing to a person by virtue of section 13(2) (attribution of gains to members of non-resident companies).

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In this section “group disposal” means a disposal within subsection (3A)(a) to which this subsection applies and the company making the disposal is referred to as “the transferor company”.

- (3C) For the purposes of subsections (3A) and (3B), the question whether there is a disposal is to be determined ignoring section 127 (share reorganisations etc treated as not involving disposal).
- (3D) If subsection (3A) applies, any chargeable gain or allowable loss accruing to the transferor company on a group disposal (other than a group disposal to which section 127 applies) is to be calculated—
- (a) where a chargeable gain would accrue to company A in the absence of subsection (3A), as if the amount of the consideration for the group disposal were increased by the amount of the gain, and
  - (b) where an allowable loss would accrue to company A in the absence of subsection (3A), as if an amount equal to the amount of the loss were a sum allowable under section 38 as a deduction in the computation of the gain or loss accruing on the group disposal.
- (3E) If subsection (3A) applies, and section 127 applies to a group disposal, any chargeable gain or allowable loss accruing to the transferor company on a disposal of the new holding arising from the group disposal (or any part of that holding) is to be calculated—
- (a) where a chargeable gain would accrue to company A in the absence of subsection (3A)—
    - (i) as if an amount equal to the amount of the gain were excluded from the expenditure allowable as a deduction under section 38 in the computation of the gain or loss accruing on the disposal (but not so as to reduce that expenditure below nil), and
    - (ii) where (ignoring sub-paragraph (i)) the amount of the gain exceeds the expenditure allowable as such a deduction, as if a gain equal to that excess accrued on the disposal of the new holding (or, if the disposal is of a part of the new holding, a gain equal to the corresponding part of that excess accrued on that disposal), in addition to any gain or loss that actually accrues on the disposal of the new holding or part, and
  - (b) where an allowable loss would accrue to company A in the absence of subsection (3A), as if an amount equal to the amount of the loss were a sum allowable under section 38 as a deduction in the computation of the gain or loss accruing on the disposal.

In this subsection “new holding” has the meaning given by section 126.

- (3F) If there is more than one group disposal, the references in subsections (3D) and (3E) to the amount of the gain or loss which would accrue to company A in the absence of subsection (3A) are to be read, in relation to each disposal, as references to—
- (a) such proportion of that amount as the transferor companies in relation to the group disposals jointly elect as the appropriate proportion in relation to the disposal in question, or
  - (b) where no election is made, the proportion of that amount attributable to that disposal if that amount is divided equally between the group disposals.
- (3G) An election under subsection (3F) must—
- (a) specify the appropriate proportion in relation to each group disposal, and

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- (b) be made, by notice to an officer of Revenue and Customs, no later than 2 years after the end of the first accounting period of a company in which any chargeable gain or allowable loss on a group disposal accrues.
- (3H) If a group disposal by a company consists of shares of more than one class, then, for the purposes of subsections (3D) and (3E), the company may apportion any increase or deduction to be made between the classes of shares in such manner as it considers appropriate.]
- (4) Any chargeable gain or allowable loss [<sup>F1218</sup>accruing] to [<sup>F1219</sup>company A] on the sale referred to in subsection (3) above shall be treated as accruing to [<sup>F1219</sup>company A][<sup>F1220</sup>at whichever is the later of the following, that is to say—
- (a) the time immediately after the beginning of the accounting period of that company in which or, as the case may be, at the end of which the company ceases to be a member of the group; and
  - (b) the time when under subsection (3) above it is treated as having reacquired the asset;
- [<sup>F1221</sup>and sections 138 to 142 of CTA 2010 have effect accordingly as if the actual circumstances were as they are treated as having been].]
- [<sup>F1222</sup>(5) Subsections (6) to (8) apply where—
- (a) in the absence of subsection (6), company A would be treated by virtue of subsection (3) as selling an asset at any time, by reason of ceasing to be a member of the group, and
  - (b) company A ceases to be a member of the group by reason only of the fact that the principal company of that group becomes a member of another group.]
- (6) [<sup>F1223</sup>Subsection (3) does not apply to treat company A as selling the asset at that time; but] if—
- (a) within 6 years of that time [<sup>F1224</sup>company A] ceases at any time (“the relevant time”) to satisfy the following conditions, and
  - (b) at the relevant time, [<sup>F1224</sup>company A], or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
- [<sup>F1224</sup>company A] shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.
- (7) Those conditions are—
- (a) that [<sup>F1225</sup>company A] is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (5) above, and
  - (b) that [<sup>F1225</sup>company A] is an effective 51 per cent. subsidiary of one or more of those members.
- [<sup>F1226</sup>(7A) Any chargeable gain or allowable loss which would otherwise accrue to company A on the sale referred to in subsection (6) does not so accrue if—
- (a) company A ceases at the relevant time to satisfy the conditions in subsection (7) in consequence of—
    - (i) a disposal of shares in company A, or another member of the other group mentioned in subsection (5)(b), made by a member of that other group, or

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- (ii) two or more such disposals,
  - (b) either—
    - (i) subsection (3B) applies to the disposal or, if there is more than one disposal, to at least one of them, or
    - (ii) sub-paragraph (i) does not apply but had subsection (3B) applied to the disposal or, if there is more than one disposal, to each of them, any gain arising on the disposal or disposals would not have been a chargeable gain by virtue of Schedule 7AC, and
  - (c) in the absence of this subsection, section 535 of CTA 2010 (UK REITS: exemption of gains) would not apply to the chargeable gain or allowable loss which would accrue to company A on the sale.
- (7B) Where subsection (7A) applies, subsections (3C) to (3H) apply to the calculation of any chargeable gain or allowable loss accruing on a disposal within subsection (7A) (a to which subsection (3B) applies (a “relevant disposal”) with the following modifications—
- (a) in subsections (3C) to (3H) for the references to a group disposal substitute references to a relevant disposal, and
  - (b) in subsections (3C), (3D) and (3E) for the references to subsection (3A) substitute references to subsection (7A).]
- (8) Any chargeable gain or allowable loss accruing to [<sup>F1227</sup>company A on the sale referred to in subsection (6) is to be treated as accruing immediately before the relevant time.]
- (9) Where—
- (a) by virtue of this section a company is treated as having sold an asset at any time, and
  - (b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30 [<sup>F1228</sup>or 31], any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,
- subsections (3) and (6) above shall have effect as if the market value at that time had been that amount greater.
- [<sup>F1229</sup>(9A) [<sup>F1230</sup>Sections 450 and 451 of CTA 2010] (meaning of control) shall have effect for the purposes of subsection (2B) above as [<sup>F1231</sup>they have] effect for the purposes of [<sup>F1232</sup>Part 10 of CTA 2010]; but a person carrying on a business of banking shall not for the purposes of that subsection be regarded as having control of any company by reason only of having, or of the consequences of having exercised, any rights of that person in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business.]
- (10) For the purposes of this section—
- [<sup>F1233</sup>(a) two companies are associated with each other if one is a 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of another company],
  - (b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,
  - (c) an asset acquired by [<sup>F1234</sup>company A] shall be treated as the same as an asset owned at a later time by that company or an associated company if the value

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of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

- [<sup>F1235</sup>(10A) For the purposes of this section an asset is a “chargeable asset” in relation to a company at any time if any gain accruing to the company on a disposal of the asset by the company at that time—
- (a) would be a chargeable gain and would by virtue of section 10B form part of its chargeable profits for corporation tax purposes, or
  - (b) would, but for Schedule 7AC (exemptions for disposals by companies with substantial shareholdings), be within paragraph (a).]

<sup>F1236</sup>(11) .....

<sup>F1236</sup>(12) .....

- (13) Where under this section [<sup>F1237</sup>company A] is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

#### Textual Amendments

- F1198**S. 179(1)(1A) substituted for s. 179(1) (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 4\(2\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1199**Words in s. 179(1)(a) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 3\(2\)](#)
- F1200**Words in s. 179(1A) omitted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 3\(3\)](#)
- F1201**S. 179(1AA) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 9](#) (with S.I. 2008/1579, [reg. 4\(1\)](#) (with S.I. 2008/1579, reg. 4(1)))
- F1202**S. 179(1B)-(1D) substituted for s. 179(1B)(1C) (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 2 para. 7](#) (with S.I. 2008/1579, reg. 4(1))
- F1203**S. 179(2)-(2ZB) substituted for s. 179(2) (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 3\(4\)](#)
- F1204**S. 179(2A)(2B) inserted (with effect in accordance with s. 49(3) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 49\(1\)](#)
- F1205**Words in s. 179(2A) substituted (with effect in accordance with s. 31(5) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 31\(2\)\(a\)](#)
- F1206**S. 179(2A)(a)(aa) substituted for s. 179(2A)(a) (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 3\(5\)](#)
- F1207**Words in s. 179(2A)(b) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 4\(3\)\(b\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1208**S. 179(2A)(c)(d) substituted (with effect in accordance with s. 31(5) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 31\(2\)\(b\)](#)
- F1209**S. 179(2AA)(2AB) inserted (with effect in accordance with s. 31(5) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 31\(3\)](#)
- F1210**Words in s. 179(2B) substituted (with effect in accordance with s. 31(5) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 31\(4\)](#)
- F1211**Words in s. 179(2B)-(3) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 4\(4\)](#) (with [Sch. 29 para. 46\(5\)](#))



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- F1212** Words in s. 179(2B)(b) substituted (with effect in accordance with s. 139(2) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 139\(1\)\(a\)](#)
- F1213** Words in s. 179(2B)(c) substituted (with effect in accordance with s. 139(2) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 139\(1\)\(b\)](#)
- F1214** Words in s. 179(2B)(c) substituted (with effect in accordance with s. 139(2) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 139\(1\)\(c\)](#)
- F1215** S. 179(2C) inserted (with application in accordance with s. 133(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 133\(2\)](#)
- F1216** S. 179(2D) inserted (with application in accordance with s. 135(5) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 135\(3\)](#)
- F1217** S. 179(3A)-(3H) inserted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(6\)](#)
- F1218** Word in s. 179(4) substituted (with effect in accordance with s. 44(3)(5) of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 8 para. 2](#)
- F1219** Words in s. 179(4) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 4\(4\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1220** Words in s. 179(4) substituted (27.7.1993 with effect as mentioned in s. 89(2)) by [1993 c. 34, s. 89\(1\)\(2\)](#)
- F1221** Words in s. 179(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 244\(2\)](#) (with [Sch. 2](#))
- F1222** S. 179(5) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(7\)](#)
- F1223** Words in s. 179(6) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(8\)\(a\)](#)
- F1224** Words in s. 179(6) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(8\)\(b\)](#)
- F1225** Words in s. 179(7) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(9\)](#)
- F1226** S. 179(7A)(7B) inserted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(10\)](#)
- F1227** Words in s. 179(8) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(11\)](#)
- F1228** Words in s. 179(9)(b) inserted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 9 para. 4](#)
- F1229** S. 179(9A) inserted (with effect in accordance with s. 49(3) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 49\(2\)](#)
- F1230** Words in s. 179(9A) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 244\(3\)\(a\)](#) (with [Sch. 2](#))
- F1231** Words in s. 179(9A) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 244\(3\)\(b\)](#) (with [Sch. 2](#))
- F1232** Words in s. 179(9A) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 244\(3\)\(c\)](#) (with [Sch. 2](#))
- F1233** S. 179(10)(a) substituted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(12\)](#)
- F1234** Words in s. 179(10)(c) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 4\(4\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1235** S. 179(10A) inserted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 10 para. 3\(13\)](#)
- F1236** S. 179(11)(12) repealed (with effect in accordance with Sch. 29 para. 4(7), Sch. 40 Pt. II(12) Note 8 of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 4\(5\), Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F1237** Words in s. 179(13) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 4\(4\)](#) (with [Sch. 29 para. 46\(5\)](#))

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

- C251** Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**
- C252** Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2
- C255** Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C287** S. 179 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(1)**  
 S. 179: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 51(2)**
- C288** S. 179 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 8(1)-(3)**
- C289** S. 179 applied (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 8(5)**
- C290** S. 179 restricted (3.5.1994) by Finance Act 1994 (c. 9), **s. 250(2)**
- C291** S. 179 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 8(1)(2)** (with Sch. 4 paras. 8(3), 14); S.I. 1994/2189, art. 2, Sch.
- C292** S. 179 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 8(4)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.
- C293** S. 179 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 5(1)(2) (with Sch. 3 para. 5(4))
- C294** S. 179 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 6** (with Sch. 7 para. 9(1))
- C295** S. 179 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **3(4)**, **4(2)**
- C296** S. 179 modified (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), Sch. 33 paras. 3, **9**; S.I. 1999/3434, **art. 2**
- C297** S. 179 modified (1.2.2001) by Transport Act 2000 (c. 38), s. 275(1), Sch. 7 paras. 8-10; S.I. 2001/57, **art. 3(1)**
- C298** S. 179 modified (15.1.2001) by Transport Act 2000 (c. 38), s. 275(1), **Sch. 26 paras. 11, 20, 25, 32**; S.I. 2000/3376, art. 2
- C299** S. 179 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 paras. 5, 19** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C300** S. 179 modified (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 26**; S.I. 2005/1909, art. 2, Sch.
- C301** S. 179 modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 31**
- C302** S. 179 excluded (with effect in accordance with reg. 1(2) of the affecting S.I.) by The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971), regs. 1(1), **17, 18(3)**
- C303** S. 179 modified (with effect in accordance with reg. 1(2) of the affecting S.I.) by The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971), regs. 1(1), **18(4)**

#### **Commencement Information**

- I3** s. 179: 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

### **[<sup>F1238</sup>179ZA] Claim for adjustment of calculations under section 179**

(1) This section applies where—

- (a) a gain accrues to a company (“company A”) on a sale referred to in subsection (3) or (6) of section 179, or
- (b) a gain would so accrue but for subsection (3A) or (7A) of that section.

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- (2) If subsection (3D) or (3E) of that section applies in relation to one or more group disposals (within the meaning of that section)—
  - (a) the company making the disposal, or
  - (b) if there is more than one disposal, the companies making those disposals acting jointly,may make a claim for the amount of the gain to be treated for the purposes of the subsection in question as reduced by an amount specified in the claim.
- (3) In any other case, company A may make a claim for the amount of the gain to be treated for all purposes of this Act as reduced by an amount specified in the claim.
- (4) Where a claim is made under subsection (2) or (3), the gain must be treated, for the purposes mentioned in the subsection in question, as reduced by such amount (if any) as is just and reasonable.
- (5) In determining the amount which is just and reasonable regard must be had, in particular, to any transaction as a direct or indirect result of which company A or any associated company (within the meaning of section 179(10)) acquired the asset to which the gain relates.
- (6) Where under this section the gain accruing to company A on a sale referred to in subsection (3) or (6) of section 179 is treated as reduced by an amount (“the permitted deduction”), the subsection in question has effect, so far as it provides for the immediate reacquisition of the asset by company A, as if the reference to market value of the asset were to its market value less the permitted deduction.]

**Textual Amendments**

**F1238S.** 179ZA inserted (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 4](#)

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

**C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), [ss. 419\(3\)](#), [425\(2\)](#); [S.I. 1999/3434](#), art. 2

**C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. [198\(2\)](#), [Sch. 9 para. 35\(a\)](#) (with s. [38\(2\)](#)); [S.I. 2004/2575](#), art. [2\(1\)](#), [Sch. 1](#)

**F1239** ~~179A~~ **Reallocation within group of gain or loss accruing under section 179**

**Textual Amendments**

**F1239S.** 179A repealed (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 5\(a\)](#)

**F1240** ~~179B~~ **Roll-over of degrouping charge on business assets**

*Status: Point in time view as at 16/11/2017.*

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### Textual Amendments

**F1240S.** 179B repealed (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 5\(b\)](#)

## <sup>F1241</sup>180 Transitional provisions.

.....

### Textual Amendments

**F1241S.** 180 repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 27](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))

## 181 Exemption from charge under 178 or 179 in the case of certain mergers.

- (1) Subject to the following provisions of this section, [<sup>F1242</sup>section 179 shall not] apply in a case where—
- (a) as part of a merger, a company (“company A”) ceases to be a member of a group of companies (“the A group”); and
  - (b) <sup>F1243</sup>... the merger was carried out for bona fide commercial reasons and <sup>F1243</sup>... the avoidance of liability to tax was not the main or one of the main purposes of the merger.
- (2) In this section “merger” means an arrangement (which in this section includes a series of arrangements)—
- (a) whereby one or more companies (“the acquiring company” or, as the case may be, “the acquiring companies”) none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A; and
  - (b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent. of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies; and
  - (c) in respect of which the conditions in subsection (4) below are fulfilled.
- (3) For the purposes of subsection (2) above, a member of a group of companies shall be treated as carrying on as one business the activities of that group.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that not less than 25 per cent. by value of each of the interests acquired as mentioned in paragraphs (a) and (b) of subsection (2) above consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in subsection (2) (b), consists of a holding of share capital (of any description) or debentures or both; and

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- (b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(a) above is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(b) above; and
- (c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (2) (a) above, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in subsection (2)(b) above;

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

F1244(5) .....

**Textual Amendments**

**F1242** Words in s. 181(1) substituted (with effect in accordance with Sch. 29 para. 28(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 28\(1\)\(a\)](#) (with [Sch. 29 para. 46\(5\)](#))

**F1243** Words in s. 181(1)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 58](#), [Sch. 41 Pt. V\(10\)](#)

**F1244** S. 181(5) repealed (with effect in accordance with Sch. 29 para. 28(2), Sch. 40 Pt. II(12) Note 9 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 28\(1\)\(b\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

**C252** Ss. 170-181 restricted (12.1.2000) by [Greater London Authority Act 1999 \(c. 29\)](#), [ss. 419\(3\)](#), 425(2); [S.I. 1999/3434](#), art. 2

**C255** Ss. 170-181 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 9 para. 35\(a\)](#) (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Restriction on indexation allowance for groups and associated companies*

**F1245 182 Disposals of debts.**

.....

**Textual Amendments**

**F1245** Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(7), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

**F1245 183 Disposals of shares.**

.....

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#### Textual Amendments

**F1245**Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(7), **Sch. 26 Pt. V(8)** (with [Sch. 12](#))

### <sup>F1245</sup>**184 Definitions and other provisions supplemental to sections 182 and 183.**

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#### Textual Amendments

**F1245**Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(7), **Sch. 26 Pt. V(8)** (with [Sch. 12](#))

### <sup>F1246</sup>*Restrictions on buying losses or gains etc*

#### Textual Amendments

**F1246**Ss. 184A-184F and cross-heading inserted (with effect in accordance with s. 70(6)-(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 70(2)** (with [s. 70\(10\)-\(11\)](#))

## **184A Restrictions on buying losses: tax avoidance schemes**

- (1) This section applies for the purposes of corporation tax in respect of chargeable gains if—
  - (a) at any time (“the relevant time”) there is a qualifying change of ownership in relation to a company (“the relevant company”) (see section 184C),
  - (b) a loss (a “qualifying loss”) accrues to the relevant company or any other company on a disposal of a pre-change asset (see subsection (3)),
  - (c) the change of ownership occurs directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage (see section 184D), and
  - (d) the advantage involves the deduction of a qualifying loss from any chargeable gains (whether or not it also involves anything else).
- (2) A qualifying loss accruing to a company is not to be deductible from chargeable gains accruing to the company <sup>F1247</sup>....
- (3) In this section a “pre-change asset” means an asset which was held by the relevant company before the relevant time (but see also sections 184E and 184F).
- (4) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (5) For the purposes of this section it does not matter—
  - (a) whether a qualifying loss accrues before, after or at the relevant time,
  - (b) whether a qualifying loss accrues at a time when there are no chargeable gains from which it could be deducted (or could otherwise have been deducted), or

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- (c) whether the tax advantage is secured for the company to which a qualifying loss accrues or for any other company.

#### Textual Amendments

**F1247** Words in s. 184A(2) repealed (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 32\(2\), Sch. 27 Pt. 2\(4\)](#)

### 184B Restrictions on buying gains: tax avoidance schemes

- (1) This section applies for the purposes of corporation tax in respect of chargeable gains if—
- (a) at any time (“the relevant time”) there is a qualifying change of ownership in relation to a company (“the relevant company”) (see section 184C),
  - (b) a gain (a “qualifying gain”) accrues to the relevant company or any other company on a disposal of a pre-change asset (see subsection (3)),
  - (c) the change of ownership occurs directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage, and
  - (d) the advantage involves the deduction of a loss from a qualifying gain (whether or not it also involves anything else).
- (2) In the case of a qualifying gain accruing to a company, a loss accruing to the company is not to be deductible from the gain <sup>F1248</sup> ... .
- (3) In this section a “pre-change asset” means an asset which was held by the relevant company before the relevant time (but see also sections 184E and 184F).
- (4) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (5) For the purposes of this section it does not matter—
- (a) whether a qualifying gain accrues before, after or at the relevant time,
  - (b) whether a qualifying gain accrues at a time when there are no losses which could be deducted (or could otherwise have been deducted) from the gain, or
  - (c) whether the tax advantage is secured for the company to which a qualifying gain accrues or for any other company.

#### Textual Amendments

**F1248** Words in s. 184B(2) repealed (with effect in accordance with s. 32(8) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 32\(3\), Sch. 27 Pt. 2\(4\)](#)

### 184C Sections 184A and 184B: meaning of “qualifying change of ownership”

- (1) For the purposes of sections 184A and 184B, there is a qualifying change of ownership in relation to a company at any time if any one or more of the following occur at that time—
- (a) the company joins a group of companies (see subsections (2) to (5)),
  - (b) the company ceases to be a member of a group of companies,

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- (c) the company becomes subject to different control (see subsections (6) to (9)).
- (2) Whether a company is a member of a group of companies at any time is determined in accordance with section 170.
- (3) But, apart from in the excepted case, nothing in section 170(10) or (10A) is to prevent all the companies of one group from being regarded as joining another group when the principal company of the first group becomes a member of the other group at any time.
- (4) The excepted case is the case where—
  - (a) the persons owning the shares of the principal company of the first group immediately before that time are the same as the persons owning the shares of the principal company of the other group immediately after that time,
  - (b) the principal company of the other group was not the principal company of any group immediately before that time, and
  - (c) immediately after that time the principal company of the other group had assets consisting entirely (or almost entirely) of shares of the principal company of the first group.
- (5) For this purpose, references to shares of a company are to the shares comprised in the issued share capital of the company.
- (6) The general rule is that a company becomes subject to different control at any time if any one or more of the following occur—
  - (a) a person has control of the company at that time (whether alone or together with one or more others) and the person did not previously have control of the company,
  - (b) a person has control of the company at that time together with one or more others and the person previously had control of the company alone,
  - (c) a person ceases to have control of the company at that time (whether the person had control alone or together with one or more others).
- (7) The general rule is subject to the following exceptions.
- (8) A company does not become subject to different control in any case where it joins a group of companies and the case is the excepted case mentioned above.
- (9) A company (“the subsidiary”) does not become subject to different control at any time in any case where—
  - (a) immediately before that time the subsidiary is the 75 per cent. subsidiary of another company, and
  - (b) (although there is a change in the direct ownership of the subsidiary) that other company continues immediately after that time to own it as a 75 per cent. subsidiary.

#### **184D Sections 184A and 184B: meaning of “tax advantage”**

For the purposes of sections 184A and 184B, “tax advantage” means—

- (a) relief or increased relief from corporation tax,
- (b) repayment or increased repayment of corporation tax,
- (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax, or
- (d) the avoidance of a possible assessment to corporation tax.



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## **184E Sections 184A and 184B: “pre-change assets”: basic rules**

- (1) If—
  - (a) a company other than the relevant company makes a disposal of an asset, and
  - (b) the asset has been disposed of at any time after the relevant time by a disposal to which section 171(1) does not apply (a “non-section 171(1) transfer”),the asset ceases to be regarded as a pre-change asset for the purposes of sections 184A and 184B (but see also subsections (10) and (11)).
- (2) But (without affecting the generality of the provision made by the following subsection) if, on a non-section 171(1) transfer,—
  - (a) an asset would cease to be regarded as a pre-change asset as a result of subsection (1), and
  - (b) the company making the non-section 171(1) transfer retains any interest in or over the asset,that interest is to be regarded as a pre-change asset for the purposes of sections 184A and 184B.
- (3) If—
  - (a) the relevant company or any other company holds an asset (“the new asset”) at or after the relevant time,
  - (b) the value of the new asset derives in whole or in part from a pre-change asset, and
  - (c) the new asset is not acquired by the company concerned as a result of a non-section 171(1) transfer,the new asset is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.
- (4) For this purpose the cases in which the value of an asset may be derived from any other asset include any case where—
  - (a) assets have been merged or divided,
  - (b) assets have changed their nature, or
  - (c) rights or interests in or over assets have been created or extinguished.
- (5) If a pre-change asset is “the old asset” for the purposes of section 116 (reorganisations, conversions and reconstructions), “the new asset” for the purposes of that section is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.
- (6) If a pre-change asset is the “original shares” for the purposes of sections 127 to 131 (reorganisation or reduction of share capital), the “new holding” for the purposes of those sections is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.
- (7) The following subsection applies if, as a result of the application of a relevant deferral provision in the case of a disposal of a pre-change asset (“the original disposal”),—
  - (a) a gain or loss that would otherwise accrue to a company does not so accrue, or
  - (b) any part of any such gain is treated as forming part of a single chargeable gain which does not accrue to the company on the original disposal,and a gain or loss does, wholly or partly in consequence of the application of that provision in the case of the original disposal, accrue to the company or any other company on a subsequent occasion.

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- (8) So much of the gain or loss accruing on the subsequent occasion as accrues in consequence of the application of the relevant deferral provision in the case of the original disposal is to be regarded for the purposes of sections 184A and 184B as accruing on a disposal of a pre-change asset (so far as it would not otherwise be so regarded).
- (9) A “relevant deferral provision” means any of the following—
- (a) section 139 (reconstruction involving transfer of business),
  - (b) section 140 (postponement of charge on transfer of assets to non-resident company),
  - (c) section 140A (transfer of a UK trade),
  - (d) section 140E (merger leaving assets within UK tax charge),
  - (e) sections 152 and 153 (replacement of business assets),
  - (f) section 187 (postponement of charge on deemed disposal under section 185).
- (10) If—
- (a) a pre-change asset of the relevant company is transferred to another company (“the transferee company”),
  - (b) any of sections 139, 140A and 140E apply to the companies in the case of the asset, and
  - (c) the transfer of the asset is made directly or indirectly in consequence of, or otherwise in connection with, the arrangements mentioned in section 184A or 184B,
- the asset is to be regarded as a “pre-change asset” in the hands of the transferee company for the purposes of sections 184A and 184B.
- (11) In such a case, subsection (1) applies as if the reference in paragraph (a) of that subsection to the relevant company were to the transferee company.

#### **184F Sections 184A and 184B: “pre-change assets”: pooling rules**

- (1) This section applies, in the case of any pre-change asset of the relevant company or any pre-change asset of any company which is acquired on a disposal to which section 171(1) applies, if—
- (a) the pre-change asset consists of a holding of securities which falls as a result of any provision of Chapter 1 of Part 4 to be regarded as a single asset (“the pre-change pooled asset”), and
  - (b) as a result of any disposal or acquisition at any time after the relevant time, any securities (“the other securities”) would (but for this section) be regarded as forming part of the pre-change pooled asset.
- (2) None of the other securities are to be regarded for the purposes of this Act as forming part of the pre-change pooled asset.
- (3) But this does not prevent the other securities from being regarded, as a result of any provision of that Chapter, as forming part of or constituting a different, single asset (“the other pooled asset”).
- (4) Securities of the same class as the other securities which are disposed of at or after the relevant time—
- (a) are to be identified first with the other securities or securities forming part of the other pooled asset,

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- (b) are to be identified next with securities forming part of the pre-change pooled asset (if the number of securities disposed of exceeds the number identified in accordance with paragraph (a)), and
  - (c) subject to paragraphs (a) and (b), are to be identified in accordance with the provisions applicable apart from those paragraphs.
- (5) The above identification rules apply even if some or all of the securities disposed of are otherwise identified—
- (a) by the disposal, or
  - (b) by a transfer or delivery giving effect to it;
- but where a company disposes of securities in one capacity, they are not to be identified with securities which it holds, or can dispose of, only in some other capacity.
- (6) Chapter 1 of Part 4 has effect subject to this section.
- (7) In this section—
- “pre-change asset” means an asset which is pre-change asset for the purposes of section 184A or 184B,
  - “securities” does not include relevant securities as defined in section 108 but, subject to that, means—
    - (a) shares or securities of a company, and
    - (b) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired.
- (8) For the purposes of this section, shares or securities of a company are not to be treated as being of the same class unless—
- (a) they are so treated by the practice of a recognised stock exchange, or
  - (b) they would be so treated if dealt with on a recognised stock exchange.]

#### <sup>F1249</sup>**184A** ~~184A~~ **Avoidance involving losses: schemes converting income to capital**

- (1) This section applies for the purposes of corporation tax in respect of chargeable gains if conditions A to D are satisfied.
- <sup>F1250</sup>(2) Condition A is that a receipt or other amount arises to a company directly or indirectly in consequence of, or otherwise in connection with, any arrangements.
- (3) Condition B is that—
- (a) that amount falls to be taken into account in calculating a chargeable gain (the “relevant gain”) which accrues to a company (“the relevant company”), and
  - (b) losses accrue (or have accrued) to the relevant company (whether before or after or as part of the arrangements).]
- (4) Condition C is that, but for the arrangements, an amount would have fallen to be taken into account wholly or partly instead of <sup>F1251</sup>the amount mentioned in subsection (2) in calculating the income chargeable to corporation tax—
- (a) of the relevant company, or
  - (b) of a company which, at any qualifying time, is a member of the same group as the relevant company.
- (5) Condition D is that—
- (a) the main purpose of the arrangements, or

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- (b) one of the main purposes of the arrangements, is to secure a tax advantage that involves the deduction of any of the losses from the relevant gain (whether or not it also involves anything else).
- (6) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied, they may give the relevant company a notice in respect of the arrangements (but see also section 184I).
- (7) If, when the notice is given, conditions A to D are satisfied, no loss accruing to the relevant company at any time is to be deductible from the relevant gain.
- (8) A notice under this section must—
- (a) specify the arrangements,
  - (b) specify the accounting period in which the relevant gain accrues, and
  - (c) inform the relevant company of the effect of this section.
- (9) If relevant gains accrue in more than one accounting period, a single notice under this section may specify all the accounting periods concerned.
- (10) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- “group”, in relation to companies, means a group determined in accordance with section 170,
- “qualifying time”, in relation to any arrangements, means any time which falls in the period—
- (a) beginning with the time at which the arrangements are made, and
  - (b) ending with the time at which the matters (other than any tax advantage) intended to be secured by the arrangements are secured,
- “tax advantage” has the meaning given by section 184D.

#### Textual Amendments

**F1249**Ss. 184G-184I inserted (with effect in accordance with s. 71(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 71\(1\)](#)

**F1250**S. 184G(2)(3) substituted (with effect in accordance with s. 63(3) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 63\(1\)\(a\)](#)

**F1251**Words in s. 184G(4) substituted (with effect in accordance with s. 63(3) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 63\(1\)\(b\)](#)

### 184H Avoidance involving losses: schemes securing deductions

- (1) This section applies for the purposes of corporation tax in respect of chargeable gains if conditions A to D are satisfied.
- (2) Condition A is that—
- (a) a chargeable gain (the “relevant gain”) accrues to a company (“the relevant company”) directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
  - (b) losses accrue (or have accrued) to the relevant company <sup>F1252</sup>... (whether before or after or as part of the arrangements).

*Status: Point in time view as at 16/11/2017.*

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- [<sup>F1253</sup>(3) Condition B is that the relevant company, or a company connected with the relevant company, becomes entitled to an income deduction directly or indirectly in consequence of, or otherwise in connection with, the arrangements.]
- (4) Condition C is that the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage that involves both—
- [<sup>F1254</sup>(a) that income deduction, and]
- (b) the deduction of any of the losses from the relevant gain, whether or not it also involves anything else.
- (5) Condition D is that the arrangements are not excluded arrangements. For this purpose arrangements are excluded arrangements if—
- (a) the arrangements are made in respect of land or any estate or interest in land,
- (b) the arrangements fall within [<sup>F1255</sup>section 835(1) or 836(1) of CTA 2010] (sale and lease-back: limitation on tax reliefs),
- (c) the person to whom the payment mentioned in that subsection is payable is not a company connected with the relevant company, and
- (d) the arrangements are made between persons dealing at arm's length.
- (6) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied, they may give the company a notice in respect of the arrangements (but see also section 184I).
- (7) If, when the notice is given, conditions A to D are satisfied, no loss accruing to the company at any time is to be deductible from the relevant gain.
- (8) A notice under this section must—
- (a) specify the arrangements,
- (b) specify the accounting period in which the relevant gain accrues, and
- (c) inform the relevant company of the effect of this section.
- (9) If relevant gains accrue in more than one accounting period, a single notice under this section may specify all the accounting periods concerned.
- (10) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- [<sup>F1256</sup>“income deduction” means—
- (a) a deduction in calculating income for corporation tax purposes, or
- (b) a deduction from total profits,]
- “tax advantage” has the meaning given by section 184D.
- (11) For the purposes of this section it does not matter whether the tax advantage is secured for the relevant company or for any other company.

#### Textual Amendments

**F1249**Ss. 184G-184I inserted (with effect in accordance with s. 71(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. **71(1)**

**F1252**Words in s. 184H(2)(b) omitted (with effect in accordance with s. 63(3) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), s. **63(2)(a)**

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- F1253S.** 184H(3) substituted (with effect in accordance with s. 63(3) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 63\(2\)\(b\)](#)
- F1254S.** 184H(4)(a) substituted (with effect in accordance with s. 63(3) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 63\(2\)\(c\)](#)
- F1255**Words in s. 184H(5)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 245 \(with Sch. 2\)](#)
- F1256**Words in s. 184H(10) inserted (with effect in accordance with s. 63(3) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 63\(2\)\(d\)](#)

## 184I Notices under sections 184G and 184H

- (1) Subsection (2) applies if—
  - (a) the Board give a notice under section 184G or 184H (a “relevant notice”) to a company that specifies an accounting period, and
  - (b) the notice is given before the company has made its company tax return for that accounting period.
- (2) If the company makes its return for that period before the end of the applicable 90 day period (see subsection (12)), it may—
  - (a) make a return that disregards the notice, and
  - (b) at any time after making the return and before the end of the applicable 90 day period, amend the return for the purpose of complying with the provision referred to in the notice.
- (3) If a company has made a company tax return for an accounting period, the Board may give the company a relevant notice in relation to that period only if a notice of enquiry has been given to the company in respect of its return for that period.
- (4) After any enquiries into the return for that period have been completed [<sup>F1257</sup>in relation to any matters], the Board may give the company a relevant notice [<sup>F1258</sup>relating to those matters] only if requirements A and B are met.
- (5) Requirement A is that at the time the enquiries [<sup>F1259</sup>referred to in subsection (4)] were completed, the Board could not have been reasonably expected, on the basis of information made available—
  - (a) to them before that time, or
  - (b) to an officer of theirs before that time,
 to have been aware that the circumstances were such that a relevant notice could have been given to the company in relation to that period.
- (6) For the purposes of requirement A, paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 (information made available) applies as it applies for the purposes of paragraph 44(1).
- (7) Requirement B is that—
  - (a) the company or any other person was requested to produce or provide information during an enquiry into the return for that period [<sup>F1260</sup>(so far as relating to the matters in question)], and
  - (b) if the request had been duly complied with, the Board could reasonably have been expected to give the company a relevant notice in relation to that period.
- (8) If—
  - (a) a company makes a company tax return for an accounting period, and

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- (b) the company is subsequently given a relevant notice that specifies that period, it may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the applicable 90 day period.
- (9) If the relevant notice is given to the company after it has been given a notice of enquiry in respect of its return for the period, no closure notice may be given in relation to its company tax return until—
- the end of the applicable 90 day period, or
  - the earlier amendment of its company tax return for the purpose of complying with the provision referred to in the notice.
- [ Subsection (9) does not apply to a partial closure notice which does not relate to any <sup>F1261</sup>(9A) matter to which the relevant notice relates.]
- (10) If the relevant notice is given to the company after any enquiries into the return for the period are completed, [<sup>F1262</sup>so far as relating to the matters to which the relevant notice relates,] no discovery assessment may be made as regards the chargeable gain to which the notice relates until—
- the end of the applicable 90 day period, or
  - the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.
- (11) Subsections (2)(b) and (8) do not prevent a company tax return for a period becoming incorrect if—
- a relevant notice is given to the company in relation to that period,
  - the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the provision referred to in the notice, and
  - the return ought to have been so amended.
- (12) In this section—
- “the applicable 90 day period”, in relation to a relevant notice, means the period of 90 days beginning with the day on which the notice is given,
- “closure notice” means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998,
- “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of that Schedule, as read with paragraph 4 of that Schedule,
- “discovery assessment” means an assessment under paragraph 41 of that Schedule,
- “notice of enquiry” means a notice under paragraph 24 of that Schedule.]

#### Textual Amendments

- F1249**Ss. 184G-184I inserted (with effect in accordance with s. 71(4) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 71\(1\)](#)
- F1257**Words in s. 184I(4) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 15 para. 22\(2\)\(a\)](#)
- F1258**Words in s. 184I(4) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 15 para. 22\(2\)\(b\)](#)
- F1259**Words in s. 184I(5) substituted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 15 para. 22\(3\)](#)

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**F1260** Words in s. 184I(7)(a) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 22(4)**

**F1261** S. 184I(9A) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 22(5)**

**F1262** Words in s. 184I(10) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 22(6)**

### *Non-resident and dual resident companies*

#### **185 Deemed disposal of assets on company ceasing to be resident in U.K.**

- (1) This section and section 187 apply to a company if, at any time (“the relevant time”), the company ceases to be resident in the United Kingdom.
- (2) The company shall be deemed for all purposes of this Act—
  - (a) to have disposed of all its assets, other than assets excepted from this subsection by subsection (4) below, immediately before the relevant time; and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) Section 152 shall not apply where the company—
  - (a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and
  - (b) acquires the new assets, or its interest in those assets, after that time, unless the new assets are excepted from this subsection by subsection (4) below.
- (4) If at any time after the relevant time the company carries on a trade in the United Kingdom through a [<sup>F1263</sup>permanent establishment]—
  - (a) any assets which, immediately after the relevant time, are situated in the United Kingdom and are used in or for the purposes of the trade, or are used or held for the purposes of the [<sup>F1263</sup>permanent establishment], shall be excepted from subsection (2) above; and
  - (b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (3) above;

and references in this subsection to assets situated in the United Kingdom include references to exploration or exploitation assets and to exploration or exploitation rights.

- [<sup>F1264</sup>(4A) Subsection (4) applies to an overseas life insurance company in the case of its long-term business with—
- (a) the omission from paragraph (a) of the words “are situated in the United Kingdom and”; and
  - (b) the omission from paragraph (b) of the words “are so situated and”.]
- (5) In this section—
- (a) “designated area”, “exploration or exploitation activities” and “exploration or exploitation rights” have the same meanings as in section 276;
  - (b) “exploration or exploitation assets” means assets used or intended for use in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;



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(c) “the old assets” and “the new assets” have the same meanings as in section 152;

and a company shall not be regarded for the purposes of this section as ceasing to be resident in the United Kingdom by reason only that it ceases to exist.

#### Textual Amendments

**F1263** Words in s. 185(4) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(b\)](#)

**F1264** S. 185(4A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 78](#)

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\), Sch. 3 paras. 1, 4\(1\)](#)

**C304** S. 185 excluded (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\), Sch. 3 paras. 1, 3\(4\)](#)

### **<sup>F1265</sup>186 Deemed disposal of assets on company ceasing to be liable to U.K. taxation.**

.....

#### Textual Amendments

**F1265** S. 186 repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 251\(9\), Sch. 26 Pt. VIII\(1\)](#)

### **187 Postponement of charge on deemed disposal under section 185 or 186.**

(1) If—

(a) immediately after the relevant time, a company to which this section applies by virtue of section 185<sup>F1266</sup>... (“the company”) is a 75 per cent. subsidiary of another company (“the principal company”) which is resident in the United Kingdom; and

(b) the principal company and the company so elect, by notice given to the inspector within 2 years after that time,

this Act shall have effect in accordance with the following provisions.

(2) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(a) that disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses; and

(b) the whole of that gain shall be treated as not accruing to the company on that disposal but an equivalent amount (“the postponed gain”) shall be brought into account in accordance with subsections (3) and (4) below.

(3) If at any time within 6 years after the relevant time the company disposes of any assets (“relevant assets”) the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole or the appropriate proportion of the

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postponed gain so far as not already taken into account under this subsection or subsection (4) below.

In this subsection “the appropriate proportion” means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(4) If at any time after the relevant time—

- (a) the company ceases to be a 75 per cent. subsidiary of the principal company on the disposal by the principal company of ordinary shares of the company;
- (b) after the company has ceased to be such a subsidiary otherwise than on such a disposal, the principal company disposes of such shares; or
- (c) the principal company ceases to be resident in the United Kingdom,

there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole of the postponed gain so far as not already taken into account under this subsection or subsection (3) above.

(5) If at any time—

- (a) the company has allowable losses which have not been allowed as a deduction from chargeable gains; and
- (b) a chargeable gain accrues to the principal company under subsection (3) or (4) above,

then, if and to the extent that the principal company and the company so elect by notice given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

(6) In this section—

“deemed disposal” means a disposal which, by virtue of section 185(2) <sup>F1267</sup> ... is deemed to have been made;

“foreign assets” means any assets of the company which, immediately after the relevant time, are situated outside the United Kingdom and are used in or for the purposes of a trade carried on outside the United Kingdom;

“ordinary share” means a share in the ordinary share capital of the company;

“the relevant time” has the meaning given by section 185(1) <sup>F1267</sup> ... .

(7) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital is owned directly by that other company.

#### Textual Amendments

**F1266** Words in s. 187(1)(a) repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9)(a), **Sch. 26 Pt. VIII(1)**

**F1267** Words in s. 187(6) repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9)(b), **Sch. 26 Pt. VIII(1)**

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

**C251** Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), **Sch. 3 paras. 1, 4(1)**

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**[<sup>F1268</sup>187] Deemed disposal under section 185: ATED-related gains and losses**

- (1) This section applies if—
  - (a) (ignoring subsections (2) and (3)) a gain or loss would accrue to a company on a disposal of an asset deemed to have been made by virtue of section 185(2), and
  - (b) that gain or loss is an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax under section 2B.
- (2) That gain or loss does not accrue to the company on that disposal.
- (3) But, on a subsequent disposal of the whole or part of the asset, the whole or a corresponding part of the gain or loss—
  - (a) is deemed to accrue to the company (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as an ATED-related gain or loss accruing on a relevant high value disposal.
- (4) Nothing in this section affects the treatment, for the purposes of this Act, of any gain or loss which is not ATED-related and accrues on the disposal of the asset deemed to have been made by virtue of section 185(2).]

**Textual Amendments**

**F1268S.** 187A inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 13](#)

**[<sup>F1269</sup>187] Deemed disposal of UK residential property interest under section 185**

- (1) This section applies if, ignoring subsections (3) and (4)—
  - (a) a gain or loss would accrue to a company on a disposal of a UK residential property interest deemed to have been made by virtue of section 185(2), and
  - (b) on the assumptions in subsection (2), that gain or loss would be an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D or 188D (see section 57B and Schedule 4ZZB).
- (2) The assumptions are that—
  - (a) the disposal is a non-resident CGT disposal, and
  - (b) any claim which the company could make under section 14F is made.
- (3) No gain or loss accrues to the company on that disposal.
- (4) But, on a subsequent disposal of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1)(a), the whole or a corresponding part of the gain or loss which would have accrued to the company were it not for subsection (3)—
  - (a) is deemed to accrue to the company (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D accruing on a non-resident CGT disposal.

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- (5) A company may make an election for subsections (3) and (4) not to apply in relation to the disposal mentioned in subsection (1)(a).
- (6) Such an election must be made within 2 years after the day on which the company ceases to be resident in the United Kingdom.
- (7) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

#### Textual Amendments

**F1269S.** 187B inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 29](#)

### 188 Dual resident companies: deemed disposal of certain assets.

**F1270**  
.....

#### Textual Amendments

**F1270S.** 188 repealed (retrospective to 30.11.1993) by [Finance Act 1994 \(c. 9\)](#), s. 251(1)(a)(10), [Sch. 26 Pt. 8\(1\)](#)

### *<sup>F1271</sup> Pooling of NRCGT gains and losses*

#### Textual Amendments

**F1271Ss.** 188A-188K and cross-heading inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 30](#)

### 188A Election for pooling

- (1) A “pooling election” is an election which—
  - (a) specifies the date from which the election is to have effect (the “effective date” of the election), and
  - (b) is made by all those members of a group (the “potential pooling group”) which are qualifying members.
- (2) For this purpose the “qualifying members” of a group are all the companies which are members of that group and meet the qualifying conditions on the effective date of the election.
- (3) The “qualifying conditions” are met by a company at any time when it—
  - (a) is not resident in the United Kingdom,
  - (b) is a closely-held company,
  - (c) is not a company carrying on life assurance business (as defined in section 56 of the Finance Act 2012),
  - (d) does not hold any chargeable residential assets, and

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- (e) holds an asset the disposal of which would be a disposal of a UK residential property interest.
- (4) For the purposes of subsection (3), an asset is a “chargeable residential asset” at any time if a disposal of the asset at that time would be a non-resident CGT disposal but for section 14B(5) (gains forming part of chargeable profits for corporation tax purposes by virtue of section 10B etc) [<sup>F1272</sup>or section 14B(6) (gains on certain disposals treated as trading profits)].
- (5) The day on which a pooling election is made must not be later than the 30th day after the day specified as its effective date.
- (6) A pooling election is irrevocable.
- (7) In this section—
  - “closely-held company” is to be interpreted in accordance with Part 1 of Schedule C1;
  - “group” is to be interpreted in accordance with section 170.

#### Textual Amendments

**F1272** Words in s. 188A(4) inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(10\)](#) (with savings in 2017 c. 32, s. 39(1)(2))

### 188B Meaning of “NRCGT group”

- (1) The companies which make a pooling election form an NRCGT group.
- (2) An NRCGT group continues to exist as long as at least one member of the NRCGT group continues to be a member of the potential pooling group and to meet the conditions in paragraphs (a) to (d) of section 188A(3).
- (3) See also section 188F (companies becoming eligible to join NRCGT group) and section 188G (company ceasing to be a member of an NRCGT group).

### 188C Transfers within an NRCGT group

- (1) This section applies where a company (“company A”) makes a non-resident CGT disposal to another company (“company B”) at a time when both companies are members of the same NRCGT group.
- (2) In subsections (3) to (5) “the asset” means the asset which is the subject of that disposal.
- (3) For the relevant purposes (see subsection (4))—
  - (a) company A's acquisition of the asset is treated as company B's acquisition of the asset,
  - (b) everything done by company A in relation to the asset in the period of company A's ownership of the asset is accordingly treated as done by company B, and
  - (c) the disposal mentioned in subsection (1) is accordingly disregarded.
- (4) The “relevant purposes” means the purposes of—

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- (a) the determination of whether or not an NRCGT gain or loss accrues on the disposal mentioned in subsection (1) or any subsequent disposal of the asset;
  - (b) the determination of the amount of any such gain or loss;
  - (c) the treatment for capital gains tax purposes of any such gain or loss.
- (5) Accordingly, references in subsection (3) to an acquisition made by, or anything else done by, company A include anything that company A is treated as having done as a result of the application of this section in relation to an earlier disposal of the asset.
- (6) Nothing in this section affects the treatment of the disposal in question for any other purposes (including the computation of any gains or losses, other than NRCGT gains or losses, that may accrue on the disposal).

#### **188D Person chargeable to capital gains tax on NRCGT gains accruing to members of an NRCGT group**

- (1) The relevant body for a tax year (“year Y”) of an NRCGT group (see subsection (4)) is chargeable to capital gains tax in respect of chargeable NRCGT gains accruing to members of the group in the tax year on non-resident CGT disposals (and section 14D(1) does not apply to such gains).
- (2) Capital gains tax is charged on the total amount of chargeable NRCGT gains accruing in year Y to members of the NRCGT group, after deducting—
- (a) any allowable NRCGT losses accruing in year Y to any member of the NRCGT group,
  - (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous tax year, any allowable NRCGT losses which in any previous tax year (not earlier than the tax year 2015-16) accrued to any member of the NRCGT group, and
  - (c) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous tax year, any allowable losses (not falling within paragraph (b)) on disposals of UK residential property interests which in any previous tax year (not earlier than the tax year 1965-66) accrued to any company which is, at any time in year Y, a member of the NRCGT group.
- (3) The only deductions that can be made in calculating the total amount of chargeable NRCGT gains accruing as mentioned in subsection (2) are those permitted by this section.
- (4) The “relevant body” of an NRCGT group for a tax year is the body constituted by all the companies which are members of that NRCGT group at any time in that tax year.
- (5) This Act and the Management Act have effect with any modifications that may be necessary in relation to cases where the relevant body of an NRCGT group is chargeable to capital gains tax in accordance with this section.

#### **188E Further provision about group losses**

- (1) Relief is not to be given under this Act more than once in respect of a group loss or any part of a group loss.
- (2) Relief is not to be given under this Act in respect of a group loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.

*Status: Point in time view as at 16/11/2017.*

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- (3) No relief is to be given otherwise than in accordance with this section for group losses.
- (4) In this section “group loss” means an NRCGT loss accruing to a member of an NRCGT group.

#### **188F Companies becoming eligible to join an NRCGT group**

- (1) A company which is not a member of an NRCGT group and is eligible to become a member of that group may elect to do so.
- (2) A company is eligible to become a member of an NRCGT group at any time when it—
  - (a) is a member of the potential pooling group, and
  - (b) meets the qualifying conditions.

But see subsections (3) and (4).

- (3) Subsection (4) applies if, throughout a period of 12 months, a company—
  - (a) holds a UK residential asset, and
  - (b) is eligible to become a member of an NRCGT group.
- (4) If the company has not elected to become a member of the NRCGT group by the end of that period of 12 months, the company is not eligible to become a member of the NRCGT group at any time after the end of that period of 12 months.
- (5) The effect of subsection (4) in relation to a company expires if at any time the company—
  - (a) no longer holds the whole or part of any UK residential asset that was held by the company at any time in the 12 month period referred to in subsection (3), but
  - (b) holds another UK residential asset.
- (6) For the purposes of this section a person holds a “UK residential asset” at any time when the person holds an interest in UK land the disposal of which would be a disposal of a UK residential property interest.

#### **188G Company ceasing to be a member of an NRCGT group**

- (1) A company ceases to be a member of an NRCGT group if it ceases—
  - (a) to be a member of the potential pooling group, or
  - (b) to meet the any of the conditions in paragraphs (a) to (d) of section 188A(3).
- (2) Where a company ceases to be a member of an NRCGT group, the company is treated for the purposes of this Act and the Management Act as having—
  - (a) disposed of the relevant assets immediately before the company ceased to be a member of the NRCGT group, and
  - (b) immediately re-acquired them,  
at their market value at that time.
- (3) References in subsection (2) to a company ceasing to be a member of an NRCGT group do not apply to cases where a company ceases to be a member of the potential pooling group in consequence of another member of that group ceasing to exist.

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- (4) Subsection (2) does not apply in a case where all the companies which are members of an NRCGT group cease to be members of that NRCGT group by reason only of an event which causes—
- (a) the principal company of the potential pooling group to cease to be a closely-held company, or
  - (b) the head of a sub-group of which they are members, to cease to be a closely-held company or to become a member of another group (as defined in section 170).
- (5) Subsection (2) does not apply where a company which is a member of an NRCGT group ceases to be a member of the potential pooling group by reason only of the fact that the principal company of the potential pooling group becomes a member of another group (as defined in section 170).
- (6) In subsection (2) “the relevant assets” means any assets the company holds immediately before it ceases to be a member of the NRCGT group the disposal of which would be a disposal of a UK residential property interest (see Schedule B1).
- (7) For the purposes of this section—
- “sub-group” means anything that would be a group (as defined in section 170) in the absence of subsections (4) and (6) of section 170;
  - the “head” of a sub-group is the company which is not a 75% subsidiary of any other member of the sub-group;
  - references to the “principal company” of the potential pooling group are to be interpreted in accordance with section 170.

### **188H The responsible members of an NRCGT group**

- (1) Anything required or authorised to be done under this Act or the Management Act by or in relation to the relevant body of an NRCGT group is required or authorised to be done by or in relation to all the responsible members of that NRCGT group for that tax year.
- (2) The “responsible members” of an NRCGT group for a tax year are—
- (a) all the companies which are members of the NRCGT group at any time in that tax year, and
  - (b) any companies which have subsequently become members of the NRCGT group.
- (3) This section is subject to section 188J (representative company).

### **188I Joint and several liability of responsible members**

Where the responsible members of an NRCGT group are liable, in connection with their responsibility under section 188H to make a payment of tax or interest on unpaid tax, or pay any other amount, that liability is a joint and several liability of those responsible members.

### **188J The representative company of an NRCGT group**

- (1) Anything required or authorised to be done under this Act or the Management Act by or in relation to the relevant body of an NRCGT group may instead be done by



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or in relation to the company which is for the time being the representative company of the group.

- (2) This includes the making of the declaration required by section 9(2) or 12ZB(4)(b) of the Management Act (declaration that return is correct and complete).
- (3) The “representative company” means a member of the NRCGT group nominated by all the members of that group for the purposes of this section.
- (4) A nomination under subsection (3), or the revocation of such a nomination, has effect only after written notice of the nomination or revocation has been given to an officer of Revenue and Customs.

### **188K Interpretation of sections 188A to 188J**

- (1) In sections 188A to 188J—
  - (a) references to the “relevant body” of an NRCGT group are to be interpreted in accordance with section 188D(4);
  - (b) references to an NRCGT gain or loss accruing to a member of an NRCGT group are to such a gain or loss accruing to a company at a time when the company is a member of the NRCGT group.
- (2) In sections 188A to 188J and this section—
  - “company” is to be interpreted in accordance with section 170(9);
  - “interest in UK land” has the same meaning as in Schedule B1;
  - “pooling election” has the meaning given by section 188A(1);
  - “potential pooling group”, in relation to an NRCGT group, is to be interpreted in accordance with section 188A(1)(b);
  - “qualifying conditions” has the meaning given by section 188A(3).]

*Recovery of tax otherwise than from tax-payer company*

### **189 Capital distribution of chargeable gains: recovery of tax from shareholder.**

- (1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—
  - (a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or
  - (b) the distribution constitutes such a disposal of assets;and that person is referred to below as “the shareholder”.
- (2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—
  - (a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

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- (b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (3) The date referred to in subsection (2) above is whichever is the later of—
  - (a) the date when the tax becomes due and payable by the company; and
  - (b) the date when the assessment was made on the company.
- (4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.
- (5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.
- (6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may by order appoint this section shall have effect—
  - (a) with the substitution for the words in subsection (3) after “above” of the words “is the date when the tax becomes payable by the company”; and
  - (b) with the omission of the words in subsection (4) from “together” to the end of the subsection.
- (7) In this section “capital distribution” has the same meaning as in section 122.

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), Sch. 3 paras. 1, **4(1)**

**Commencement Information**

**I4** S. 189: 30.9.1993 appointed for the purposes of s. 189 by [S.I. 1992/3066](#), **art. 2(2)(d)**

**[<sup>F1273</sup>190] Tax recoverable from another group company or controlling director.**

- (1) This section applies where—
  - (a) a chargeable gain has accrued to a company (“the taxpayer company”),
  - (b) the condition in subsection (2) below is met, and
  - (c) the whole or part of the corporation tax assessed on the company for the accounting period in which the gain accrued (“the relevant accounting period”) is unpaid at the end of the period of six months after it became payable.
- (2) The condition referred to in subsection (1)(b) above is—
  - (a) that the taxpayer company is resident in the United Kingdom at the time when the gain accrued, or
  - (b) that the gain forms part of the taxpayer company's chargeable profits for corporation tax purposes by virtue of section [<sup>F1274</sup>10B].
- (3) The following persons may, by notice under this section, be required to pay the unpaid tax—

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- (a) if the taxpayer company was a member of a group at the time when the gain accrued—
    - (i) a company which was at that time the principal company of the group, and
    - (ii) any other company which in any part of the period of twelve months ending with that time was a member of that group and owned the asset disposed of, or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset; and
  - (b) if the gain forms part of the chargeable profits of the taxpayer company for corporation tax purposes by virtue of section [F127510B], any person who is, or during the period of twelve months ending with the time when the gain accrued was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.
- (4) The Board may serve a notice on a person within subsection (3) above requiring him, within 30 days of the service of the notice, to pay—
- (a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the relevant accounting period, or
  - (b) if less, an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.
- (5) The notice must state—
- (a) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid,
  - (b) the date when it first became payable, and
  - (c) the amount required to be paid by the person on whom the notice is served.
- (6) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (7) Any notice under this section must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined.
- (8) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (7) above shall be taken to be the date on which the determination was made.
- (9) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in subsection (7) above shall be taken to be the latest of—
- (a) the last date on which notice of enquiry may be given into the return containing the self-assessment;
  - (b) if notice of enquiry is given, 30 days after the enquiry is completed;
  - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion;

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- (d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;
  - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.
- (10) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (7) above shall be taken to be—
- (a) where there is no appeal against the assessment, the date when the tax becomes due and payable;
  - (b) where there is such an appeal, the date on which the appeal is finally determined.
- (11) A person who has paid an amount in pursuance of a notice under this section may recover that amount from the taxpayer company.
- (12) A payment in pursuance of a notice under this section is not allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (13) In this section—
- [<sup>F1276</sup>“director”, in relation to a company, has the meaning given by section 67(1) and (2) of ITEPA 2003 and includes any person falling within section 452(1) of CTA 2010;]
  - “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with [<sup>F1277</sup>sections 450 and 451 of CTA 2010]);
  - “group” and “principal company” have the meaning which would be given by section 170 if in that section for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.]

#### Textual Amendments

**F1273**S. 190 substituted for ss. 190, 191 (with effect in accordance with Sch. 29 para. 9(3) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 9(1)** (with [Sch. 29 paras. 9\(4\), 46\(5\)](#))

**F1274**Word in s. 190(2)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 27 para. 2(3)**

**F1275**Word in s. 190(3)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 27 para. 2(3)**

**F1276**Words in s. 190(13) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 246(a)** (with [Sch. 2](#))

**F1277**Words in s. 190(13) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 246(b)** (with [Sch. 2](#))

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

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## Demergers

### 192 Tax exempt distributions.

- (1) This section has effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by 2 or more companies not belonging to the same group or by 2 or more independent groups.
- (2) Where a company makes [<sup>F1278</sup>a distribution which is exempt by virtue of section 1076 of CTA 2010]—
  - (a) the distribution shall not be a capital distribution for the purposes of section 122; and
  - (b) sections 126 to 130 shall, with the necessary modifications, apply as if that company and the subsidiary whose shares are transferred were the same company and the distribution were a reorganisation of its share capital.
- (3) Subject to subsection (4) below, [<sup>F1279</sup>section 179 shall not] apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution.
- (4) Subsection (3) does not apply if within 5 years after the making of the exempt distribution there is chargeable payment; and the time for making an assessment under section <sup>F1280</sup>... 179 by virtue of this subsection shall not expire before the end of 3 years after the making of the chargeable payment.
- (5) In this section—
  - “chargeable payment” has the meaning given in [<sup>F1281</sup>section 1088 of CTA 2010];
  - “exempt distribution” means a distribution which is exempt by virtue of [<sup>F1282</sup>section 1076 or 1077 of CTA 2010]; and
  - “group” means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries.
- (6) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—
  - (a) 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; or
  - (b) any share capital 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.

#### Textual Amendments

**F1278** Words in s. 192(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 247(2)** (with Sch. 2)

**F1279** Words in s. 192(3) substituted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 29 para. 29** (with Sch. 29 para. 46(5))

**F1280** Words in s. 192(4) repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. II(12)**

**F1281** Words in s. 192(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 247(3)(a)** (with Sch. 2)

**F1282** Words in s. 192(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 247(3)(b)** (with Sch. 2)

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

**C251** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

*[<sup>F1283</sup>Disposals by companies with substantial shareholding*

**Textual Amendments**

**F1283S.** 192A and cross-heading inserted (with application in accordance with s. 44(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 44\(1\)](#)

**192A Exemptions for gains or losses on disposal of shares etc**

Schedule 7AC (exemptions for disposal of shares etc by companies with substantial shareholding) has effect.]

**CHAPTER II**

OIL AND MINING INDUSTRIES

*Oil exploration and exploitation*

**<sup>F1284</sup>193 Roll-over relief not available for gains on oil licences.**

.....

**Textual Amendments**

**F1284S.** 193 repealed (with effect in accordance with s. 103(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), s. 103(1), [Sch. 20 Pt. IV\(2\)](#)

**194 Disposals of oil licences relating to undeveloped areas.**

- (1) In this section any reference to a disposal (including a part disposal) is a reference to a disposal made by way of a bargain at arm's length.
- (2) If, at the time of the disposal, the licence relates to an undeveloped area, then, to the extent that the consideration for the disposal consists of—
  - (a) another licence which at that time relates to an undeveloped area or an interest in another such licence, or
  - (b) 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 licence disposed of,
 the value of that consideration shall be treated as nil for the purposes of this Act.
- (3) If the disposal of a licence which, at the time of the disposal, relates to an undeveloped area is part of a larger transaction under which one party makes to another disposals of 2 or more licences, each of which at the time of the disposal relates to an undeveloped area, the reference in subsection (2)(b) above to the licensed area in relation to the

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licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those 2 or more licences.

(4) In relation to a disposal of a licence which, at the time of the disposal, relates to an undeveloped area, being a disposal—

- (a) which is a part disposal of the licence in question, and
- (b) part but not the whole of the consideration for which falls within paragraph (a) or paragraph (b) of subsection (2) above,

section 42 shall not apply unless the amount or value of the part of the consideration which does not fall within one of those paragraphs is less than the aggregate of the amounts which, if the disposal were a disposal of the whole of the licence rather than a part disposal, would be—

- (i) the relevant allowable expenditure, as defined in section 53; and
- (ii) the indexation allowance on the disposal.

(5) Where section 42 has effect in relation to such a disposal as is referred to in subsection (4) above, it shall have effect as if, for subsection (2) thereof, there were substituted the following subsection—

“(2) The apportionment shall be made 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 aggregate referred to in section 194(4) on the other hand (call that aggregate C),

and the fraction of the said 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.”

## 195 Allowance of certain drilling expenditure etc.

(1) On the disposal of a licence, relevant qualifying expenditure incurred by the person making the disposal—

- (a) in searching for oil anywhere in the licensed area, or
- (b) in ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the licensed area or what the reserves of oil of any such oil-bearing area are,

shall be treated as expenditure falling within section 38(1)(b).

(2) Expenditure incurred as mentioned in subsection (1) above is relevant expenditure if, and only if—

- (a) it is expenditure of a capital nature on [<sup>F1285</sup>research and development]; and
- [<sup>F1286</sup>(b) either it is expenditure in respect of which the person was entitled to an allowance under section 441 of the Capital Allowances Act (research and development allowances) for a relevant chargeable period which began before

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the date of the disposal or it would have been such expenditure if the trading condition had been fulfilled, and

- (c) on the disposal, section 443 of that Act (disposal values) applies in relation to the expenditure or would apply if the trading condition had been fulfilled (and the expenditure had accordingly been qualifying expenditure under Part 6 of that Act).]

- (3) In subsection (2) above and subsection (4) below, the expression “if the trading condition had been fulfilled” means, in relation to expenditure of a capital nature on [<sup>F1285</sup>research and development], if, after the expenditure was incurred but before the disposal concerned was made, the person incurring the expenditure had set up and commenced a trade connected with that research [<sup>F1287</sup>and development]; and in subsection (2)(b) above—

“relevant chargeable period” has the same meaning as in [<sup>F1288</sup>section 441 of the Capital Allowances Act]; <sup>F1289</sup> ...

<sup>F1289</sup> .....

- (4) Relevant expenditure is qualifying expenditure only to the extent that it does not exceed the [<sup>F1290</sup>disposal value] which, by reason of the disposal—

<sup>F1291</sup>(a) is required to be brought into account under section 443 of the Capital Allowances Act; or

- (b) would be required to be so brought into account if the trading condition had been fulfilled (and the expenditure had accordingly been qualifying expenditure under Part 6 of that Act).]

<sup>F1292</sup>(5) .....

- (6) Where, on the disposal of a licence, subsection (1) above has effect in relation to any relevant qualifying expenditure [<sup>F1293</sup>in respect of which the person had not in fact been entitled to an allowance] as mentioned in subsection (2)(b) above—

(a) no allowance shall be made in respect of that expenditure under [<sup>F1294</sup>section 441 of the Capital Allowances Act]; <sup>F1295</sup> ...

<sup>F1295</sup>(b) .....

- (7) Where, on the disposal of a licence which is a part disposal, subsection (1) above has effect in relation to any relevant qualifying expenditure, then, for the purposes of section 42, that expenditure shall be treated as wholly attributable to what is disposed of (and, accordingly, shall not be apportioned as mentioned in that section).

- <sup>F1296</sup>(8) In this section “research and development” has the same meaning as in [<sup>F1297</sup>Part 6 of the Capital Allowances Act (research and development allowances)].]

#### Textual Amendments

**F1285** Words in s. 195(2)(3) substituted (with effect in accordance with s. 68(2) of the amending Act) by

[Finance Act 2000 \(c. 17\)](#), [Sch. 19 para. 12\(2\)](#)

**F1286** S. 195(2)(b)(c) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 79\(1\)](#)

**F1287** Words in s. 195(3) inserted (with effect in accordance with s. 68(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 19 para. 12\(3\)](#)

**F1288** Words in s. 195(3) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 79\(2\)](#)

(a)

**F1289** Words in s. 195(3) repealed (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 79\(2\)\(b\)](#), [Sch. 4](#)



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- F1290** Words in s. 195(4) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(3\)](#)
- F1291** S. 195(4)(a)(b) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(3\)](#)
- F1292** S. 195(5) repealed (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(4\), Sch. 4](#)
- F1293** Words in s. 195(6) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(5\)\(a\)](#)
- F1294** Words in s. 195(6)(a) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(5\)\(b\)](#)
- F1295** S. 195(6)(b) and preceding word omitted (22.3.2001) by virtue of [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(5\)\(c\)](#)
- F1296** S. 195(8) inserted (with effect in accordance with s. 68(2) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 19 para. 12\(4\)](#)
- F1297** Words in s. 195(8) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 79\(6\)](#)

## <sup>F1298</sup> 195 Oil licence swaps

- (1) Sections 195B to <sup>F1299</sup>195F] apply for the purposes of corporation tax on chargeable gains.
- (2) In those sections—
  - “licence-consideration swap” means a case where conditions A, B, C and D are met;
  - “mixed-consideration swap” means a case where conditions A, B, C and E are met.
- (3) Condition A is that a company (“company A”) disposes of one or more UK licences to another company (“company B”), by way of a bargain at arm's length (“disposal A”).
- (4) Condition B is that company B disposes of one or more UK licences to company A, by way of a bargain at arm's length (“disposal B”).
- (5) Condition C is that either or both of the following paragraphs applies—
  - (a) the licence, or at least one of the licences, comprised in disposal A relates to a developed area;
  - (b) the licence, or at least one of the licences, comprised in disposal B relates to a developed area.
- (6) Condition D is that both—
  - (a) disposal A is the only consideration given for disposal B, and
  - (b) disposal B is the only consideration given for disposal A.
- (7) Condition E is that either—
  - (a) disposal A is the only consideration given for disposal B, or
  - (b) disposal B is the only consideration given for disposal A,(and accordingly one of the disposals is part of the consideration given for the other disposal).
- (8) In this section and sections 195B to 196 a reference to disposal of a UK licence includes—
  - (a) a disposal of an interest in a UK licence, and
  - (b) a disposal of a UK licence, or an interest in a UK licence, only so far as the licence relates to part of the licensed area.

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#### Textual Amendments

**F1298**Ss. 195A-195E inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 5](#)

**F1299**Word in s. 195A(1) substituted (with effect in accordance with Sch. 15 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 15 para. 1](#)

### 195B Licence-consideration swap

- (1) This section applies to a licence-consideration swap.
- (2) Each company participating in the swap is to be treated as follows.
- (3) As regards the licence, or each licence, which the company disposes of, the company is to be treated as if it had disposed of that licence for a consideration of such amount as to secure that on the disposal neither a gain nor a loss accrues to the company.
- (4) In a case where the company acquires only one licence, the company is to be treated as if it had acquired the licence for a consideration of the same amount as the deemed disposal consideration.
- (5) In a case where the company acquires two or more licences, as regards each licence acquired, the company is to be treated as if it had acquired that licence for a consideration of—

$$\text{DDC} \times \text{ATA}$$

where—

DDC is the deemed disposal consideration,

A is the value of the licence acquired, and

TA is total value of all the licences acquired.

- (6) In this section “deemed disposal consideration”, in relation to a company participating in the swap, means—
  - (a) the amount of the consideration for which the company is, under subsection (3), treated as having disposed of its licence (if the company disposes of only one licence), or
  - (b) the aggregate of all such amounts (if the company disposes of two or more licences).

#### Textual Amendments

**F1298**Ss. 195A-195E inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 5](#)

### 195C Company that receives mixed consideration: N exceeds C

- (1) This section applies to a mixed-consideration swap if—
  - (a) the no gain/no loss loss amount (“N”) of the company that receives the mixed consideration (“company R”), exceeds

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- (b) the amount of non-licence consideration (“C”) which company R receives.
- (2) In a case where company R acquires only one licence, company R is to be treated as if it had acquired the licence for a consideration of—

NC

- (3) In a case where company R acquires two or more licences, as regards each licence acquired, company R is to be treated as if it had acquired the licence for a consideration of—

$(NC) \times ATA$

where—

A is the value of the licence acquired, and

TA is total value of all the licences acquired.

- (4) The disposal by company R of a licence under the swap is to be taken to be one on which neither a gain nor a loss accrues.
- (5) But (despite subsection (4)), the disposal by company R is not a no gain/no loss disposal for the purposes of section 56.
- (6) For the purposes of the application of sections 53 and 54, any enactment is to be disregarded insofar as it provides that, if the other company which acquires a licence under the swap (“company G”) subsequently disposes of the licence, company R's acquisition of the licence is to be treated as company G's acquisition of it.
- (7) In this section the reference to the no gain/no loss amount of company R is a reference to—
- (a) in a case where company R disposes of only one licence, company R's no gain/no loss amount in relation to that disposal, or
- (b) in a case where company R disposes of two or more licences, the aggregate of company R's no gain/no loss amounts in relation to all of those disposals.

#### Textual Amendments

F1298Ss. 195A-195E inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by  
[Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 5](#)

### 195D Company that receives mixed consideration: N does not exceed C

- (1) This section applies to a mixed-consideration swap if—
- (a) the no gain/no loss amount (“N”) of the company that receives the mixed consideration (“company R”) does not exceed
- (b) the amount of non-licence consideration (“C”) which company R receives.
- (2) As regards the licence, or each licence, which company R acquires, company R is to be treated as if it had acquired the licence for nil consideration.
- (3) In a case where company R disposes of only one licence, company R is to be treated as if, on the disposal of the licence, there had arisen a gain of—

CN

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- (4) In a case where company R disposes of two or more licences, as regards each licence disposed of, company R is to be treated as if, on the disposal of the licence, there had arisen a gain of—

$$(CN) \times DTD$$

where—

D is the value of the licence disposed of, and

TD is total value of all the licences disposed of.

#### Textual Amendments

**F1298Ss.** 195A-195E inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 5](#)

### 195E Company that gives mixed consideration

- (1) This section applies to a mixed-consideration swap—
- (a) whatever the no gain/no loss amount (“N”) of the company that gives the mixed consideration (“company G”), and
  - (b) whatever the amount of the non-licence consideration (“C”) which company G gives.

- (2) In a case where company G acquires only one licence, company G is to be treated as if it had acquired the licence for a consideration of—

$$N+C$$

- (3) In a case where company G acquires two or more licences, as regards each licence acquired, company G is to be treated as if it had acquired the licence for a consideration of—

$$(N+C) \times ATA$$

where—

A is the value of the licence acquired, and

TA is total value of all the licences acquired.

- (4) The disposal by company G of a licence under the swap is to be taken to be one on which neither a gain nor a loss accrues.
- (5) But (despite subsection (4)), the disposal by company G is not a no gain/no loss disposal for the purposes of section 56.
- (6) For the purposes of the application of sections 53 and 54, any enactment is to be disregarded insofar as it provides that, if the other company which acquires a licence under the swap (“company R”) subsequently disposes of the licence, company G’s acquisition of the licence is to be treated as company R’s acquisition of it.
- (7) In this section the reference to the no gain/no loss amount of company G is a reference to—

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- (a) in a case where company G disposes of only one licence, company G's no gain/no loss amount in relation to that disposal, or
- (b) in a case where company G disposes of two or more licences, the aggregate of company G's no gain/no loss amounts in relation to all of those disposals.]

#### Textual Amendments

**F1298**Ss. 195A-195E inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 5**

### <sup>F1300</sup>**195 Reimbursed expenditure**

- (1) This section applies if—
  - (a) expenditure is incurred by company A or company B (see section 195A) on a licence disposed of by it under a licence-consideration swap or mixed-consideration swap,
  - (b) the expenditure is incurred before the disposal,
  - (c) the expenditure falls within section 38(1)(b), and
  - (d) the expenditure is reimbursed or effectively reimbursed (whether by way of adjustment of the non-licence consideration (if any) or otherwise) by the company (“the other company”) to whom the disposal is made (whether before, on or after the date of the disposal).
- (2) The expenditure is to be treated for the purposes of this Act as expenditure —
  - (a) incurred by the other company on the licence immediately after the disposal, and
  - (b) which falls within section 38(1)(b).]

#### Textual Amendments

**F1300**S. 195F inserted (with effect in accordance with Sch. 15 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 15 para. 2**

### **196 Interpretation of sections 194 <sup>F1301</sup>to <sup>F1302</sup>195F** .

- (1) For the purposes of section 194 <sup>F1303</sup>and this section], a <sup>F1304</sup>UK licence] relates to an undeveloped area at any time if—
  - (a) for no part of the licensed area has consent for development been granted to the licensee by the <sup>F1305</sup>Oil and Gas Authority] on or before that time; and
  - (b) for no part of the licensed area has a programme of development been served on the licensee or approved by the <sup>F1305</sup>Oil and Gas Authority] on or before that time.
- <sup>F1306</sup>(1A) For the purposes of section 194 a licence other than a UK licence relates to an undeveloped area at any time if, at that time—
  - (a) no development has actually taken place in any part of the licensed area; and
  - (b) no condition for the carrying out of development anywhere in that area has been satisfied—

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- (i) by the grant of any consent by the authorities of a country or territory exercising jurisdiction in relation to the area; or
  - (ii) by the approval or service on the licensee, by any such authorities, of any programme of development.]
- [<sup>F1307</sup>(1B) In sections 195A to [<sup>F1308</sup>195F], a reference to a UK licence that relates to a developed area is a reference to any UK licence apart from one that relates to an undeveloped area.]
- (2) Subsections (4) and (5) of section 36 of the <sup>M33</sup>Finance Act 1983 (meaning of “development”) shall have effect in relation to [<sup>F1309</sup>subsections (1) [<sup>F1310</sup>to (1B)] above] as they have effect in relation to subsection (2) of that section.
- (3) In relation to a licence under the <sup>M34</sup>Petroleum (Production) Act (Northern Ireland) 1964 any reference in subsection (1) [<sup>F1311</sup>or (1B)] above to the [<sup>F1305</sup>Oil and Gas Authority] shall be construed as a reference to the Department of Economic Development.
- (4) In relation to a disposal to which section 194 applies of a licence under which the buyer acquires an interest in the licence only so far as it relates to part of the licensed area, any reference in subsection (1) or subsection (3) of that section or subsection (1) above to the licensed area shall be construed as a reference only to that part of the licensed area to which the buyer’s acquisition relates.
- [<sup>F1312</sup>(5) In sections 194 [<sup>F1313</sup>to [<sup>F1314</sup>195F]] and this section—
- “foreign oil concession” means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;
  - “interest” in relation to a licence, includes, where there is an agreement which—
    - (a) relates to oil from the whole or any part of the licensed area, and
    - (b) was made before the extraction of the oil to which it relates,
  - any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;
  - “licence” means any UK licence or foreign oil concession;
  - [<sup>F1315</sup>“licence-consideration swap” has the meaning given in section 195A(2);]
  - “licensed area” (subject to subsection (4) above)—
    - (a) in relation to a UK licence, has the same meaning as in Part I of the <sup>M35</sup>Oil Taxation Act 1975; and
    - (b) in relation to a foreign oil concession, means the area to which the concession applies;
  - “licensee”—
    - (a) in relation to a UK licence, has the same meaning as in Part I of the Oil Taxation Act 1975; and
    - (b) in relation to a foreign oil concession, means the person with the concession or any person having an interest in it;
  - [<sup>F1316</sup>“mixed consideration” means consideration that consists partly of disposal of a UK licence;]
  - [<sup>F1316</sup>“mixed-consideration swap” has the meaning given in section 195A(2);]

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[<sup>F1316</sup>“no gain/no loss amount”, in relation to a company that disposes of a UK licence, means the amount that would be taken to be the consideration for the disposal if section 56(2) applied to the disposal;]

[<sup>F1316</sup>“non-licence consideration” means consideration that does not consist of disposal of a UK licence, <sup>F1317</sup> ... ;]

“oil”—

(a) except in relation to a UK licence, means any petroleum (within the meaning of [<sup>F1318</sup>Part I of the Petroleum Act 1998]); and

(b) in relation to such a licence, has the same meaning as in Part I of the Oil Taxation Act 1975;

“overseas petroleum” means any oil that exists in its natural condition at a place to which neither [<sup>F1318</sup>Part I of the Petroleum Act 1998] nor the <sup>M36</sup>Petroleum (Production) Act (Northern Ireland) 1964 applies; and

[<sup>F1316</sup>“swap arrangements”, in relation to a licence-consideration swap or a mixed-consideration swap, means the arrangements under which the swap takes place;]

“UK licence” means a licence within the meaning of Part I of the <sup>M37</sup>Oil Taxation Act 1975.

(5A) References in sections 194 and 195 to a part disposal of a licence shall include references to the disposal of any interest in a licence.]

[<sup>F1319</sup>(5B) Subsections (5C) to (5F) apply for the purposes of sections 195A to 195F.

(5C) Any determination—

(a) of the consideration given for disposal A or disposal B,

(b) of the non-licence consideration, or

(c) of the value of a licence comprised in disposal A or disposal B,

is to be made as at the time the swap arrangements are entered into.

But this is subject to subsections (5D) to (5F).

(5D) Subsections (5E) and (5F) apply if, under the swap arrangements, economic benefits and liabilities under the licences concerned are treated as passing at a time (“the effective time”) which falls before or after the day on which the arrangements are entered into.

(5E) Any determination—

(a) of the consideration given for disposal A or disposal B,

(b) of the non-licence consideration, or

(c) of the value of a licence comprised in disposal A or disposal B,

is to be made as at the effective time.

(5F) But if the swap arrangements make provision for an increase in the non-licence consideration to reflect the period between the effective time and the time it is payable, the non-licence consideration is to be treated as if it were the amount found by making a corresponding increase in the amount determined under subsection (5E).]

(6) In section 194—

(a) “exploration work”, in relation to any area, means work carried out for the purpose of searching for oil anywhere in that area;

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- (b) “appraisal work”, in relation to any area, means work carried out for the purpose of ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the area concerned or what the reserves of oil of any such oil-bearing area are.

### Textual Amendments

- F1301** Words in s. 196 heading substituted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(2)**
- F1302** Word in s. 196 heading substituted (with effect in accordance with Sch. 15 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 15 para. 3(2)**
- F1303** Words in s. 196(1) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(3)**
- F1304** Words in s. 196(1) substituted (with effect in accordance with s. 181(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **s. 181(1)**
- F1305** Words in s. 196 substituted (1.10.2016) by [The Petroleum \(Transfer of Functions\) Regulations 2016 \(S.I. 2016/898\)](#), regs. 1(2), **11**
- F1306** S. 196(1A) inserted (with effect in accordance with s. 181(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **s. 181(2)**
- F1307** S. 196(1B) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(4)**
- F1308** Word in s. 196(1B) substituted (with effect in accordance with Sch. 15 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 15 para. 3(3)**
- F1309** Words in s. 196(2) substituted (with effect in accordance with s. 181(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **s. 181(2)**
- F1310** Words in s. 196(2) substituted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(5)**
- F1311** Words in s. 196(3) substituted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(6)**
- F1312** S. 196(5)(5A) substituted for s. 196(5) (retrospectively and with effect in accordance with s. 181(4)(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **s. 181(3)**
- F1313** Words in s. 196(5) substituted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(7)(a)**
- F1314** Word in s. 196(5) substituted (with effect in accordance with Sch. 15 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 15 para. 3(4)(a)**
- F1315** Words in s. 196(5) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(7)(b)**
- F1316** Words in s. 196(5) inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 40 para. 6(7)(c)**
- F1317** Words in s. 196(5) omitted (with effect in accordance with Sch. 15 para. 4 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 15 para. 3(4)(b)**
- F1318** Words in s. 196(5) substituted (15.2.1999) by [Petroleum Act 1998 \(c. 17\)](#), s. 52(4), **Sch. 4 para. 32(3)** (with Sch. 3); S.I. 1999/161, art. 2(1)
- F1319** S. 196(5B)-(5F) substituted for s. 196(5B) (with effect in accordance with Sch. 15 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 15 para. 3(5)**

### Marginal Citations

- M33** 1983 c. 28.  
**M34** 1964 c. 28 (N.I.).  
**M35** 1975 c. 22.  
**M36** 1964 c. 28 (N.I.).  
**M37** 1975 c. 22.



*Status: Point in time view as at 16/11/2017.*

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## 197 Disposals of interests in oil fields etc: ring fence provisions.

- (1) This section applies where in pursuance of a transfer by a participator in an oil field of the whole or part of his interest in the field, there is—
  - (a) a disposal of an interest in oil to be won from the oil field; or
  - (b) a disposal of an asset used in connection with the field;and section 12 of the <sup>M38</sup>Oil Taxation Act 1975 (interpretation of Part I of that Act) applies for the interpretation of this subsection and the reference to the transfer by a participator in an oil field of the whole or part of his interest in the field shall be construed in accordance with paragraph 1 of Schedule 17 to the <sup>M39</sup>Finance Act 1980.
- (2) In this section “material disposal” means—
  - (a) a disposal falling within paragraph (a) or paragraph (b) of subsection (1) above; or
  - (b) the sale of an asset referred to in section <sup>F1320</sup>... 179(3) where the asset was acquired by the chargeable company (within the meaning of that section) on a disposal falling within one of those paragraphs.
- (3) For any chargeable period in which a chargeable gain or allowable loss accrues to any person (“the chargeable person”) on a material disposal (whether taking place in that period or not), subject to subsection (6) below there shall be aggregated—
  - (a) the chargeable gains accruing to him in that period on such disposals, and
  - (b) the allowable losses accruing to him in that period on such disposals,and the lesser of the 2 aggregates shall be deducted from the other to give an aggregate gain or, as the case may be, an aggregate loss for that chargeable period.
- (4) For the purposes of tax in respect of chargeable gains—
  - (a) the several chargeable gains and allowable losses falling within paragraphs (a) and (b) of subsection (3) above shall be left out of account; and
  - (b) the aggregate gain or aggregate loss referred to in that subsection shall be treated as a single chargeable gain or allowable loss accruing to the chargeable person in the chargeable period concerned on the notional disposal of an asset; and
  - (c) if in any chargeable period there is an aggregate loss, then, except as provided by subsection (5) below, it shall not be allowable as a deduction against any chargeable gain arising in that or any later period, other than an aggregate gain treated as accruing in a later period by virtue of paragraph (b) above (so that the aggregate gain of that later period shall be reduced or extinguished accordingly); and
  - (d) if in any chargeable period there is an aggregate gain, no loss shall be deducted from it except in accordance with paragraph (c) above; and
  - (e) without prejudice to any indexation allowance which was taken into account in determining an aggregate gain or aggregate loss under subsection (3) above, no further indexation allowance shall be allowed on a notional disposal referred to in paragraph (b) above.
- (5) In any case where—
  - (a) by virtue of subsection (4)(b) above, an aggregate loss is treated as accruing to the chargeable person in any chargeable period, and
  - (b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

*Status: Point in time view as at 16/11/2017.*

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the whole, or such portion as is specified in the claim, of the aggregate loss shall be treated for the purposes of this Act as an allowable loss arising in that chargeable period otherwise than on a material disposal.

- (6) In any case where a loss accrues to the chargeable person on a material disposal made to a person who is connected with him—
- (a) the loss shall be excluded from those referred to in paragraph (b) of subsection (3) above and, accordingly, shall not be aggregated under that subsection; and
  - (b) except as provided by subsection (7) below, section 18 shall apply in relation to the loss as if, in subsection (3) of that section, any reference to a disposal were a reference to a disposal which is a material disposal; and
  - (c) to the extent that the loss is set against a chargeable gain by virtue of paragraph (b) above, the gain shall be excluded from those referred to in paragraph (a) of subsection (3) above and, accordingly, shall not be aggregated under that subsection.
- (7) In any case where—
- (a) the losses accruing to the chargeable person in any chargeable period on material disposals to a connected person exceed the gains accruing to him in that chargeable period on material disposals made to that person at a time when they are connected persons, and
  - (b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection, the whole, or such part as is specified in the claim, of the excess referred to in paragraph (a) above shall be treated for the purposes of section 18 as if it were a loss accruing on a disposal in that chargeable period, being a disposal which is not a material disposal and which is made by the chargeable person to the connected person referred to in paragraph (a) above.
- (8) Where a claim is made under subsection (5) or subsection (7) above, 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 operation of that subsection.

#### Textual Amendments

**F1320** Words in s. 197(2)(b) repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. II\(12\)](#)

#### Marginal Citations

**M38** 1975 c. 22.

**M39** 1980 c. 48.

### 198 Replacement of business assets used in connection with oil fields.

(1) If the consideration which a person obtains on a material disposal is applied, in whole or in part, as mentioned in subsection (1) of section 152 or 153, that section shall not apply unless the new assets are taken into use, and used only, for the purposes of the ring fence trade.

(2) Subsection (1) above has effect notwithstanding subsection (8) of section 152.

[<sup>F1321</sup>(2A) But subsection (1) is subject to section 198A(3)(a).]

*Status: Point in time view as at 16/11/2017.*

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[<sup>F1322</sup>(3) Where—

- (a) section 152 or 153 applies in relation to any of the consideration on a material disposal, and
- (b) the asset which constitutes the new assets for the purposes of that section is a depreciating asset,

section 154(2)(b) is to have effect as if the reference to a trade carried on by the claimant were a reference solely to the claimant's ring fence trade.]

(4) In any case where sections 152 to 154 have effect in accordance with subsections (1) to (3) above, the operation of section 175 shall be modified as follows—

- (a) only those members of a group which actually carry on a ring fence trade shall be treated for the purposes of those sections as carrying on a single trade which is a ring fence trade; and
- (b) only those activities which, in relation to each individual member of the group, constitute its ring fence trade shall be treated as forming part of that single trade.

(5) In this section—

- (a) “material disposal” has the meaning assigned to it by section 197; and
- (b) “ring fence trade” means a trade consisting of [<sup>F1323</sup>activities falling within the definition of “oil-related activities” in section 16(2) of ITTOIA 2005 or section 274 of CTA 2010].

#### Textual Amendments

**F1321**S. 198(2A) inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 11](#)

**F1322**S. 198(3) substituted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 10](#)

**F1323**Words in s. 198(5)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 248](#) (with [Sch. 2](#))

[<sup>F1324</sup>**198** ~~Ring fence reinvestment: whole consideration reinvested~~

(1) This section applies if a person (“P”) makes a disposal and acquisition which—

- (a) is a ring fence reinvestment, and
- (b) qualifies for roll-over relief.

(2) P may make a claim under this section in relation to the disposal and acquisition.

(3) If P makes a claim under this section—

- (a) section 152 does not apply to any of the disposal consideration, and
- (b) any gain accruing to P on the disposal is not a chargeable gain.

(4) In this section “disposal consideration” means the whole of the consideration obtained on the disposal made by P.

*Status: Point in time view as at 16/11/2017.*

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#### **Textual Amendments**

**F1324**Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 12](#)

### **198B Ring fence reinvestment: part of consideration reinvested**

- (1) This section applies if a person (“P”) makes a disposal and acquisition which—
  - (a) is a ring fence reinvestment, and
  - (b) qualifies for section 153 relief.
- (2) P may make a claim under this section in relation to the disposal and acquisition.
- (3) If P makes a claim under this section—
  - (a) section 153(1)(a) applies in relation to P and the disposal, but
  - (b) section 153(1)(b) does not apply to P and the acquisition.

#### **Textual Amendments**

**F1324**Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 12](#)

### **198C Provisional application of sections 198A and 198B**

- (1) This section applies where a person (“P”) carrying on a ring fence trade who for a consideration disposes of, or of an interest in, any assets (“the old assets”) declares, in P's return for the chargeable period in which the disposal takes place—
  - (a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets (“the new assets”),
  - (b) that the acquisition will take place as mentioned in section 152(3),
  - (c) that the disposal and acquisition will be a ring fence reinvestment,
  - (d) that P intends to make a claim under section 198A or 198B in relation to the disposal and acquisition, and
  - (e) that P has not made, and will not make, a declaration under section 153A in relation to the disposal and acquisition.
- (2) Until the declaration ceases to have effect, section 198A or 198B applies as if the acquisition had taken place and the person had made a claim under that section.
- (3) The declaration ceases to have effect as follows—
  - (a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 198A or 198B, on the day on which it is so withdrawn or superseded, and
  - (b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.
- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—
  - (a) are to be made by making or amending assessments or by repayment or discharge of tax, and

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- (b) are to be so made despite any limitation on the time within which assessments or amendments may be made.
- (5) If—
- (a) P makes a declaration under this section, and
  - (b) the disposal and acquisition is not a ring fence reinvestment, but qualifies for roll-over relief or section 153 relief,
- on P making a claim, the declaration is to have effect as also a declaration under section 153A.
- (6) In this section “the relevant day” means—
- (a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place, and
  - (b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.
- (7) Section 152(6), (10) and (11) apply for the purposes of this section as they apply for the purposes of section 152.

#### **Textual Amendments**

**F1324**Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 12](#)

### **198D No double claims**

- (1) If P makes a claim under section 198A or 198B, no other relevant claim may be made in respect of the relevant acquisition.
- (2) P may make a claim under section 198A or 198B (“the new claim”), if P has previously made a claim under section 152 or 153 (“the previous claim”) in respect of the relevant acquisition.
- (3) But P may make the new claim only if the previous claim is withdrawn at or before the time the new claim is made.
- (4) If the new claim is made in accordance with subsections (2) and (3), all necessary adjustments—
  - (a) are to be made by making or amending assessments or by repayment or discharge of tax, and
  - (b) are to be so made despite any limitation on the time within which assessments or amendments may be made.
- (5) In this section—
  - “relevant acquisition” means the acquisition of the new assets that is comprised in the disposal and acquisition to which a claim under section 198A or 198B or declaration under section 198C relates;
  - “relevant claim” means a claim under section 152, 153, 198A or 198B.

*Status: Point in time view as at 16/11/2017.*

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### Textual Amendments

**F1324**Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 40 para. 12**

## 198E Ring fence reinvestments and disposal consideration

- (1) This section applies for the purposes of sections 198A to 198G.
- (2) A disposal and acquisition is a ring fence reinvestment if—
  - (a) the disposal was—
    - (i) a material disposal, or
    - (ii) a disposal of a UK licence which relates to an undeveloped area,
  - (b) the old assets were used only for the purposes of P's ring fence trade,
  - (c) the new assets are taken into use, and used only, for the purposes of one or more of the following trades—
    - (i) P's ring fence trade;
    - (ii) if P is a member of a group of companies (within the meaning given in section 170), a ring fence trade of another member of that group, and
  - (d) the new assets are oil assets.
- (3) If the disposal consists of—
  - (a) disposal of a licence to which section 195D(3) applies, or
  - (b) disposal of two or more licences to which section 195D(4) applies,
 the consideration for the disposal is to be taken to be the whole of the non-licence consideration obtained on the disposal (which is referred to as “C” in section 195D).
- (4) Accordingly, in sections 198A to 198G (including section 198A(4)), any reference to the consideration obtained on the disposal has effect subject to subsection (3).
- (5) Each of the following is an “oil asset” for the purposes of this section—
  - (a) an interest in oil to be won from an oil field,
  - (b) an asset used in connection with an oil field,
  - (c) a structure which is to be placed on the seabed of the United Kingdom continental shelf,
  - (d) an asset used wholly in the winning of oil, or in the measuring of oil won, in the United Kingdom otherwise than from an oil field,
  - (e) an asset used for the initial treatment or storage of oil in the United Kingdom,
  - (f) an asset used for the transportation of oil from an oil field to the United Kingdom, and
  - (g) a UK licence which relates to an undeveloped area.
- (6) Section 12 of the Oil Taxation Act 1975 (interpretation of Part 1 of that Act) applies for the interpretation of subsection (5)(a) to (f).
- (7) Expressions used in this section and in section 152 have the same meanings in this section as in section 152.
- (8) In this section a reference to a UK licence which relates to an undeveloped area has the same meaning as in section 194 (see section 196).

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(9) In this section—

“material disposal” has the meaning given in section 197;

“ring fence trade” has the meaning given in section 198.

#### Textual Amendments

F1324Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by Finance Act 2009 (c. 10), [Sch. 40 para. 12](#)

### 198F Qualification for roll-over relief

- (1) This section applies for the purposes of sections 198A and 198B and section 198G.
- (2) A disposal and acquisition qualifies for roll-over relief if—
  - (a) the consideration for the disposal is applied in an acquisition as mentioned in section 152(1), and
  - (b) section 152(1)(a) and (b) would apply to the disposal and acquisition if the appropriate claim were made.
- (3) Subsections (4) to (6) apply in deciding whether a disposal and acquisition is one that qualifies for roll-over relief.
- (4) Section 152(8) is to be disregarded.
- (5) Section 198A is to be disregarded.
- (6) Subject to subsections (4) to (5), all the circumstances are to be taken into account, including section 153(1) and section 198(1) and (2).

#### Textual Amendments

F1324Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by Finance Act 2009 (c. 10), [Sch. 40 para. 12](#)

### 198G Qualification for section 153 relief

- (1) This section applies for the purposes of sections 198B and 198C.
- (2) A disposal and acquisition qualifies for section 153 relief if—
  - (a) section 153(1) applies to part of the amount or value of the consideration for the disposal,
  - (b) section 153(1)(a) and (b) would apply to the disposal and acquisition if the appropriate claim were made, and
  - (c) the disposal and acquisition would qualify for roll-over relief but for the disapplication of section 152(1) by section 153(1).
- (3) Subsections (4) to (6) apply in deciding whether a disposal and acquisition is one that qualifies for section 153 relief.
- (4) Section 153(2) has effect subject to section 198F(4) and (5).
- (5) Section 198B is to be disregarded.

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- (6) Subject to subsections (4) and (5), all the circumstances are to be taken into account, including section 198(1).]

**Textual Amendments**

**F1324**Ss. 198A-198G inserted (with effect in accordance with Sch. 40 para. 13 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 40 para. 12](#)

**[<sup>F1325</sup>198H] Acquisition by member of same group**

Section 198A or 198B is to apply where—

- (a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies (within the meaning given in section 170),
- (b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and
- (c) the claim under that section is made by both companies, as if both companies were the same person.]

**Textual Amendments**

**F1325**S. 198H inserted (with effect in accordance with s. 17(2) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 17\(1\)](#)

**[<sup>F1326</sup>198E] Exploration, appraisal and development expenditure**

- (1) The incurring of exploration, appraisal and development expenditure in the course of a ring fence trade is to be treated for the purposes of sections 198A to 198H as the acquisition of assets—
  - (a) which are the new assets mentioned in section 152,
  - (b) which are taken into use, and used only, for the purposes of the ring fence trade,
  - (c) which are oil assets, and
  - (d) which fall within the classes of assets listed in section 155.
- (2) The reference in subsection (1) to sections 198A to 198H includes sections 152, 153, 175 and 198(1) so far as they apply for the purpose of determining whether a disposal and acquisition qualifies for roll-over relief or section 153 relief (within the meaning given in section 198F or 198G).
- (3) Section 198C has effect in relation to expenditure within subsection (1) of this section as if subsection (5) of that section were omitted.
- (4) References in this section to exploration, appraisal and development expenditure are to expenditure on oil and gas exploration, appraisal and development activities which is treated as such under generally accepted accounting practice.
- (5) Nothing in this section affects sections 152, 153, 175 and 198(1) so far as they apply otherwise than for the purposes of sections 198A to 198H.
- (6) In this section—



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“oil asset” has the meaning given in section 198E(5);  
“ring fence trade” has the meaning given in section 198.]

#### Textual Amendments

**F1326S.** 198I inserted (with effect in accordance with Sch. 15 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 15 para. 5](#)

### [<sup>F1327</sup>198.Oil and gas: reinvestment after pre-trading disposal

- (1) This section applies if a company which is an E&A company makes a disposal of, or of the company's interest in, relevant E&A assets and that disposal is—
  - (a) a disposal of, or of an interest in, a UK licence which relates to an undeveloped area, or
  - (b) a disposal of an asset used in an area covered by a licence under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 which authorises the company to undertake E&A activities.
- (2) If—
  - (a) the consideration which the company obtains for the disposal is applied by the company, within the permitted reinvestment period—
    - (i) on E&A expenditure at a time when the company is an E&A company, or
    - (ii) on oil assets taken into use, and used only, for the purposes of a ring fence trade carried on by it, and
  - (b) the company makes a claim under this subsection in relation to the disposal, any gain accruing to the company on the disposal is not a chargeable gain.
- (3) If part only of the amount or value of the consideration for the disposal is applied as described in subsection (2)(a)—
  - (a) subsection (2) does not apply, but
  - (b) subsection (4) applies if all of the amount or value of the consideration is so applied except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal.
- (4) If the company makes a claim under this subsection in relation to the disposal, the company is to be treated for the purposes of this Act as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in subsection (3)(b) (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain).
- (5) The incurring of expenditure is within “the permitted reinvestment period” if the expenditure is incurred in the period beginning 12 months before and ending 3 years after the disposal, or at such earlier or later time as the Commissioners for Her Majesty's Revenue and Customs may by notice allow.
- (6) Subsections (6), (7), (10) and (11) of section 152 apply for the purposes of this section as they apply for the purposes of section 152, except that—
  - (a) in subsection (6) the reference to a trade is to be read as a reference to E&A activities or a ring fence trade,

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- (b) in subsection (7), the reference to the old assets is to be read as a reference to the assets disposed of as mentioned in subsection (1) of this section, and
- (c) in subsection (7), the references to the trade are to be read as references to the E&A activities.

(7) In this section—

“E&A activities” means oil and gas exploration and appraisal in the United Kingdom or an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964;

“E&A company” means a company which carries on E&A activities and does not carry on a ring fence trade;

“E&A expenditure” means expenditure on E&A activities which is treated as such under generally accepted accounting practice;

“oil asset” has the same meaning as in section 198E, and section 198I applies for the purposes of this section as it applies for the purposes of section 198E;

“relevant E&A assets” means assets which—

- (a) are used, and used only, for the purposes of E&A activities carried on by the company throughout the period of ownership, and
- (b) are within the classes of assets listed in section 155 (with references to “the trade” in that section being read as references to the E&A activities);

“ring fence trade” has the meaning given by section 277 of CTA 2010;

“UK licence” means a licence within the meaning of Part 1 of the Oil Taxation Act 1975;

and a reference to a UK licence which relates to an undeveloped area has the same meaning as in section 194 (see section 196).

#### Textual Amendments

**F1327**Ss. 198J-198L inserted (with effect in accordance with s. 71(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), s. **71(1)**

### 198K Provisional application of section 198J

- (1) This section applies where a company for a consideration disposes of, or of an interest in, any assets at a time when it is an E&A company and declares, in the company's return for the chargeable period in which the disposal takes place—
  - (a) that the whole or any specified part of the consideration will be applied, within the permitted reinvestment period—
    - (i) on E&A expenditure at a time when the company is an E&A company, or
    - (ii) on expenditure on oil assets which are taken into use, and used only, for the purposes of the company's ring fence trade, and
  - (b) that the company intends to make a claim under section 198J(2) or (4) in relation to the disposal.
- (2) Until the declaration ceases to have effect, section 198J applies as if the expenditure had been incurred and the person had made such a claim.
- (3) The declaration ceases to have effect as follows—

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- (a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim under section 198J, on the day on which it is so withdrawn or superseded, and
  - (b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.
- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—
- (a) are to be made by making or amending assessments or by repayment or discharge of tax, and
  - (b) are to be so made despite any limitation on the time within which assessments or amendments may be made.
- (5) In this section “the relevant day” means the fourth anniversary of the last day of the accounting period in which the disposal took place.
- (6) For the purposes of this section—
- (a) sections (6), (10) and (11) of section 152 apply as they apply for the purposes of that section, except that in subsection (6) the reference to a trade is to be read as a reference to E&A activities or a ring fence trade, and
  - (b) terms used in this section which are defined in section 198J have the meaning given by that section.

#### Textual Amendments

**F1327Ss. 198J-198L** inserted (with effect in accordance with s. 71(2) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 71\(1\)](#)

### 198L Expenditure by member of same group

- (1) Section 198J applies where—
- (a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies (within the meaning of section 170),
  - (b) the E&A expenditure or expenditure on oil assets is by another company which, at the time the expenditure is incurred, is a member of the same group, and
  - (c) the claim under section 198J is made by both companies, as if both companies were the same person.
- (2) “E&A company”, “E&A expenditure” and “oil assets” have the meaning given by section 198J.]

#### Textual Amendments

**F1327Ss. 198J-198L** inserted (with effect in accordance with s. 71(2) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 71\(1\)](#)

*Status: Point in time view as at 16/11/2017.*

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## 199 Exploration or exploitation assets: deemed disposals

- (1) Where an exploration or exploitation asset which is a mobile asset ceases to be chargeable in relation to a person by virtue of ceasing to be dedicated to an oil field in which he, or a person connected with him, is or has been a participator, he shall be deemed for all purposes of this Act—
  - (a) to have disposed of the asset immediately before the time when it ceased to be so dedicated, and
  - (b) immediately to have reacquired it, at its market value at that time.
- (2) Where a person [<sup>F1328</sup>in respect of whom the residence condition (see section 2(1A)) is not met] ceases to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of this Act—
  - (a) to have disposed immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency of every asset to which subsection (3) below applies, and
  - (b) immediately to have reacquired every such asset, at its market value at that time.
- (3) This subsection applies to any exploration or exploitation asset, other than a mobile asset, used in or for the purposes of the trade at or before the time of the deemed disposal.
- (4) A person shall not be deemed by subsection (2) above to have disposed of an asset if, immediately after the time when he ceases to carry on the trade in the United Kingdom through a branch or agency, the asset is used in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area.
- (5) Where in a case to which subsection (4) above applies the person ceases to use the asset in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area, he shall be deemed for all purposes of this Act—
  - (a) to have disposed of the asset immediately before the time when he ceased to use it in or for the purposes of such activities, and
  - (b) immediately to have reacquired it, at its market value at that time.
- (6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—
  - (a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or
  - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section [<sup>F1329</sup>10B].
- (7) In this section—
  - (a) “exploration or exploitation asset” means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;
  - (b) “designated area” and “exploration or exploitation activities” have the same meanings as in section 276; and

*Status: Point in time view as at 16/11/2017.*

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- (c) the expressions “dedicated to an oil field” and “participator” shall be construed as if this section were included in Part I of the <sup>M40</sup>Oil Taxation Act 1975.

#### Textual Amendments

**F1328** Words in s. 199(2) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 103](#)

**F1329** Word in s. 199(6)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)

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

**C305** S. 199(2)(4) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(b\)](#)

#### Marginal Citations

**M40** 1975 c. 22.

### <sup>F1330</sup>**200 Limitation of losses on disposal of oil industry assets held on 31st March 1982.**

#### Textual Amendments

**F1330** S. 200 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(7), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

### *Mineral leases*

### <sup>F1331</sup>**201 Royalties.**

#### Textual Amendments

**F1331** S. 201 repealed (with effect in accordance with Sch. 39 para. 45(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 45\(1\)](#)

### **202 Capital losses.**

- (1) This section has effect in relation to capital losses which accrue during the currency of a mineral lease or agreement [<sup>F1332</sup>entered into before the relevant date], and applies in any case where, at the time of the occurrence of a relevant event in relation to a mineral lease or agreement [<sup>F1333</sup>entered into before that date], the person who immediately before that event occurred was entitled to receive mineral royalties under the lease or agreement (“the taxpayer”) has an interest in the land to which the mineral lease or agreement relates (“the relevant interest”).

[<sup>F1334</sup>(1A) For the purposes of this section “the relevant date” means—

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- (a) for the purposes of capital gains tax, 6 April 2013; and
  - (b) for the purposes of corporation tax in respect of chargeable gains, 1 April 2013.]
- (2) For the purposes of this section, a relevant event occurs in relation to a mineral lease or agreement—
    - (a) on the expiry or termination of the mineral lease or agreement;
    - (b) if the relevant interest is disposed of, or is treated as having been disposed of by virtue of any provision of this Act.
  - (3) On the expiry or termination of a mineral lease or agreement [F1335 entered into before the relevant date] the taxpayer shall, if he makes a claim in that behalf, be treated for purposes of tax in respect of chargeable gains as if he had disposed of and immediately reacquired the relevant interest for a consideration equal to its market value, but a claim may not be made under this subsection—
    - (a) if the expiry or termination of the mineral lease or agreement is also a relevant event falling within subsection (2)(b) above; nor
    - (b) unless, on the notional disposal referred to above, an allowable loss would accrue to the taxpayer.
  - (4) In this section “the terminal loss”, in relation to a relevant event in respect of which a claim is made under subsection (3) above, means the allowable loss which accrues to the taxpayer by virtue of the notional disposal occurring on that relevant event by virtue of that subsection.
  - (5) On making a claim under subsection (3) above, the taxpayer shall specify whether he requires the terminal loss to be dealt with in accordance with subsection (6) or subsections (9) to (11) below.
  - (6) Where the taxpayer requires the loss to be dealt with in accordance with this subsection it shall be treated as an allowable loss accruing to him in the chargeable period in which the mineral lease or agreement expires.
  - (7) If on the occurrence of a relevant event falling within subsection (2)(b) above, an allowable loss accrues to the taxpayer on the disposal or notional disposal which constitutes that relevant event, the taxpayer may make a claim under this subsection requiring the loss to be dealt with in accordance with subsections (9) to (11) below and not in any other way.
  - (8) In subsections (9) to (11) below “the terminal loss” in relation to a relevant event in respect of which a claim is made under subsection (7) above means the allowable loss which accrues to the taxpayer as mentioned in that subsection.
  - (9) Where, as a result of a claim under subsection (3) or (7) above, the terminal loss is to be dealt with in accordance with this subsection, then, subject to subsection (10) below, it shall be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for chargeable periods preceding that in which the relevant event giving rise to the terminal loss occurred and falling wholly or partly within the period of 15 years ending with the date of that event.
  - (10) The amount of the terminal loss which, by virtue of subsection (9) above, is to be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for any chargeable period shall not exceed the amount of the gain which in that period was treated, by virtue of

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section 201(1), as accruing to the taxpayer in respect of mineral royalties under the mineral lease or agreement in question; and subject to this limit any relief given to the taxpayer by virtue of subsection (9) above shall be given as far as possible for a later rather than an earlier chargeable period.

- (11) If in any case where relief has been given to the taxpayer in accordance with subsections (9) and (10) above there remains an unexpended balance of the terminal loss which cannot be applied in accordance with those subsections, there shall be treated as accruing to the taxpayer in the chargeable period in which the relevant event occurs an allowable loss equal to that unexpended balance.

#### Textual Amendments

- F1332** Words in s. 202(1) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 46\(2\)\(a\)](#)  
**F1333** Words in s. 202(1) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 46\(2\)\(b\)](#)  
**F1334** S. 202(1A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 46\(3\)](#)  
**F1335** Words in s. 202(3) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 46\(4\)](#)

### 203 Provisions supplementary to <sup>F1336</sup>section 202].

- <sup>F1337</sup>(1) Sections 274 to 276 of CTA 2009 (meaning of “mineral royalties” etc) apply for the interpretation of this section and <sup>F1338</sup>section 202<sup>F1339</sup>(despite their repeal by paragraph 44(1)(c) of Schedule 39 to the Finance Act 2012)].
- (2) No claim under section 202(3) or (7) shall be allowed unless it is made within <sup>F1340</sup>4 years] from the date of the relevant event by virtue of which the taxpayer is entitled to make the claim.
- (3) All such repayments of tax shall be made as may be necessary to give effect to any such claim.

#### Textual Amendments

- F1336** Words in s. 203 heading substituted (with effect in accordance with Sch. 39 para. 45(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 45\(2\)\(b\)](#)  
**F1337** S. 203(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 378](#) (with [Sch. 2 Pts. 1, 2](#))  
**F1338** Words in s. 203(1) substituted (with effect in accordance with Sch. 39 para. 45(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 45\(2\)\(a\)](#)  
**F1339** Words in s. 203(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 47](#)  
**F1340** Words in s. 203(2) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 29](#); S.I. 2009/403, art. 2(2) (with art. 10)

## CHAPTER III

### INSURANCE

#### <sup>F1341</sup>204 Policies of insurance and non-deferred annuities

- (1) A gain accruing on a disposal of, or of an interest in, the rights conferred by a non-life policy of insurance is not a chargeable gain (but see subsection (2)).

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- (2) If a disposal is of, or of an interest in, the rights conferred by a non-life policy of insurance of the risk of—
- (a) any kind of damage to assets, or
  - (b) the loss or depreciation of assets,
- the exemption under subsection (1) does not apply so far as those rights relate to chargeable assets.
- (3) For this purpose “chargeable assets” means assets on the disposal of which a chargeable gain—
- (a) may accrue, or
  - (b) might have accrued.
- (4) Nothing in subsections (1) and (2) prevents sums received under a non-life policy of insurance of the risk of—
- (a) any kind of damage to assets, or
  - (b) the loss or depreciation of assets,
- from being sums derived from the assets for the purposes of this Act (and, in particular, for the purposes of section 22).
- (5) A gain accruing on a disposal of, or of an interest in, the rights conferred by a contract for an annuity is not a chargeable gain if the annuity is—
- (a) a non-deferred annuity, or
  - (b) an annuity granted (or deemed to be granted) under the Government Annuities Act 1929.
- (6) If any investments or other assets are, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder—
- (a) the policy holder's acquisition of the assets, and
  - (b) the disposal of the assets to the policy holder,
- are to be taken for the purposes of this Act to be for a consideration equal to the market value of the assets.
- (7) In this section “interest”, in relation to any rights, means an interest as a co-owner of the rights.
- (8) It does not matter—
- (a) whether the rights are owned jointly or in common, or
  - (b) whether or not the interests of the co-owners are equal.
- (9) In this section a “non-deferred annuity” means an annuity—
- (a) which is not granted under a contract for a deferred annuity, and
  - (b) which is granted in the ordinary course of a business of granting annuities on the life of any person,
- and it does not matter whether the annuity includes instalments of capital.
- (10) In this section a “non-life policy of insurance” means—
- (a) a contract made in the course of a capital redemption business, [<sup>F1342</sup>within the meaning of]<sup>F1343</sup> section 56(3) of the Finance Act 2012], and
  - (b) any <sup>F1344</sup>... policy of insurance which is not a policy of insurance on the life of any person.]



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**Textual Amendments**

**F1341**S. 204 substituted (with effect in accordance with s. 73(4) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 73\(2\)](#)

**F1342**Words in s. 204(10) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 7 para. 61\(a\)](#) (with [Sch. 7 Pt. 2](#))

**F1343**Words in s. 204(10)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 79](#)

**F1344**Word in s. 204(10) repealed (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 7 para. 61\(b\), Sch. 27 Pt. 2\(7\)](#) (with [Sch. 7 Pt. 2](#))

**205 Disallowance of insurance premiums as expenses.**

Without prejudice to the provisions of section 39, there shall be excluded from the sums allowable as a deduction in the computation of the gain accruing on the disposal of an asset any premiums or other payments made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

**F1345** **206** .....

**Textual Amendments**

**F1345**S. 206 repealed (27.7.1993, the repeal of subsections (2)-(5) having effect for the year 1994-95 and subsequent years of assessment, the repeal of subsection (1) having effect for the year 1992-93 and subsequent years of assessment, as mentioned in Notes 4, 5) by [1993 c. 34, s. 213, Sch. 23 Pt. III](#) Table(12) Notes 4, 5; S. 206 further amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by [1993 c. 34, ss. 183\(7\), 184\(3\)](#)

**F1346** **207** .....

**Textual Amendments**

**F1346**S. 207 repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years as mentioned in Note 2) by [1993 c. 34, s. 213, Sch. 23 Pt. III](#) Table(12) Note 2

**F1347** **208** .....

**Textual Amendments**

**F1347**S. 208 repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years as mentioned in Sch. 23, Pt. III Table (12) Note 2) by [1993 c. 34, s. 213, Sch. 23 Pt. III](#) Table(12) Note 2

**F1348** **209** .....

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### Textual Amendments

**F1348S.** 209 repealed (27.7.1993, the repeal of subsections (1)(2)(6) having effect for the year 1994-95 and subsequent years of assessment, the repeal of subsections (3)-(5) having effect for the year 1992-3 and subsequent years of assessment, as mentioned in Notes 4, 5) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(12) Notes 4, 5; s. 209 further amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by 1993 c. 34, **ss. 183(8)(a)(b), 184(3)**

### <sup>F1349</sup>210 Life assurance and deferred annuities.

- (1) This section has effect in relation to any policy of insurance or contract for a deferred annuity on the life of any person.
- (2) A gain accruing on a disposal of, or of an interest in, the rights conferred by the policy of insurance or contract for a deferred annuity is not a chargeable gain unless subsection (3) below applies.
- (3) This subsection applies if—
  - (a) (in the case of a disposal of the rights) the rights or any interest in the rights, or
  - (b) (in the case of a disposal of an interest in the rights) the rights, the interest or any interest from which the interest directly or indirectly derives (in whole or in part),
 have or has at any time been acquired by any person for actual consideration (as opposed to consideration deemed to be given by any enactment relating to the taxation of chargeable gains).
- (4) For the purposes of subsection (3) above —
  - (a) (in the case of a policy of insurance) amounts paid under the policy by way of premiums, and
  - (b) (in the case of a contract for a deferred annuity) amounts paid under the contract, whether by way of premiums or as lump sum consideration,
 do not constitute actual consideration.
- (5) And for those purposes actual consideration for—
  - (a) a disposal which is made by one spouse <sup>F1350</sup>or civil partner] to the other or is an approved post-marriage disposal <sup>F1351</sup>or an approved post-civil partnership disposal], or
  - (b) a disposal to which section 171(1) applies,
 is to be treated as not constituting actual consideration.
- (6) For the purposes of subsection (5)(a) above a disposal is an approved post-marriage disposal <sup>F1352</sup>or an approved post-civil partnership disposal] if—
  - (a) it is made in consequence of the dissolution or annulment of a marriage <sup>F1353</sup>or civil partnership] by one person who was a party to the marriage <sup>F1353</sup>or civil partnership] to the other,
  - (b) it is made with the approval, agreement or authority of a court (or other person or body) having jurisdiction under the law of any country or territory or pursuant to an order of such a court (or other person or body), and
  - (c) the rights disposed of were, or the interest disposed of was, held by the person by whom the disposal is made immediately before the marriage <sup>F1354</sup>or civil partnership] was dissolved or annulled.

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- (7) Subsection (8) below applies for the purposes of tax on chargeable gains where—
- (a) (if that subsection did not apply) a loss would accrue on a disposal of, or of an interest in, the rights conferred by the policy of insurance or contract for a deferred annuity, but
  - (b) if sections 37 and 39 were disregarded, there would accrue on the disposal a loss of a smaller amount, a gain or neither a loss nor a gain.
- (8) If (disregarding those sections) a loss of a smaller amount would accrue, that smaller amount is to be taken to be the amount of the loss accruing on the disposal; and in any other case, neither a loss nor a gain is to be taken to accrue on the disposal.
- (9) But subsection (8) above does not affect the treatment for the purposes of tax on chargeable gains of the person who acquired rights, or an interest in rights, on the disposal.
- (10) The occasion of—
- (a) the receipt of the sum or sums assured by the policy of insurance,
  - (b) the transfer of investments or other assets to the owner of the policy of insurance in accordance with the policy, or
  - (c) the surrender of the policy of insurance,
- is for the purposes of tax on chargeable gains an occasion of a disposal of the rights (or of all of the interests in the rights) conferred by the policy of insurance.
- (11) The occasion of—
- (a) the receipt of the first instalment of the annuity under the contract for a deferred annuity, or
  - (b) the surrender of the rights conferred by the contract for a deferred annuity,
- is for the purposes of tax on chargeable gains an occasion of a disposal of the rights (or of all of the interests in the rights) conferred by the contract for a deferred annuity.
- (12) Where there is a disposal on the occasion of the receipt of the first instalment of the annuity under the contract for a deferred annuity—
- (a) in the case of a disposal of the rights conferred by the contract, the consideration for the disposal is the aggregate of the amount or value of the first instalment and the market value at the time of the disposal of the right to receive the further instalments of the annuity, and
  - (b) in the case of a disposal of an interest in the rights, the consideration for the disposal is such proportion of that aggregate as is just and reasonable;
- and no gain accruing on any subsequent disposal of, or of any interest in, the rights is a chargeable gain (even if subsection (3) above applies).
- (13) In this section “interest”, in relation to rights conferred by a policy of insurance or contract for a deferred annuity, means an interest as a co-owner of the rights (whether the rights are owned jointly or in common and whether or not the interests of the co-owners are equal).]

#### Textual Amendments

**F1349S.** 210 substituted (with effect in accordance with s. 157(2) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 157\(1\)](#)

**F1350** Words in s. 210(5)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **116(2)(a)**

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**F1351** Words in s. 210(5)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **116(2)(b)**

**F1352** Words in s. 210(6) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **116(3)(a)**

**F1353** Words in s. 210(6)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **116(3)(b)**

**F1354** Words in s. 210(6)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **116(3)(c)**

## <sup>F1355</sup> **210 Ring-fencing of losses**

(1) Section 8(1) has effect in relation to insurance companies subject to the provisions of this section.

<sup>F1356</sup>(2) Non-BLAGAB allowable losses accruing to an insurance company are allowable as a deduction from the shareholders' share (if any) of the BLAGAB chargeable gains accruing to the company (but are not otherwise allowable as a deduction from the BLAGAB chargeable gains accruing to the company).]

(3) BLAGAB allowable losses accruing to an insurance company are allowable as a deduction from non-BLAGAB chargeable gains accruing to the company as permitted by the following provisions of this section (and not otherwise).

(4) They are allowable as a deduction from only so much of non-BLAGAB chargeable gains accruing to the company in an accounting period as exceeds the aggregate of—

- (a) non-BLAGAB allowable losses accruing to the company in the accounting period, and
- (b) non-BLAGAB allowable losses previously accruing to the company which have not been allowed as a deduction from chargeable gains accruing in any previous accounting period.

(5) And they are allowable as a deduction from non-BLAGAB chargeable gains accruing to the company in an accounting period only to the extent that they do not exceed the permitted amount for the accounting period.

(6) The permitted amount for the first accounting period of an insurance company in relation to which this section has effect is the aggregate of—

- (a) the amount by which shareholders' share for that accounting period of BLAGAB allowable losses accruing to the company in the accounting period exceeds the shareholders' share of BLAGAB chargeable gains so accruing, and
- (b) the shareholder's share for the immediately preceding accounting period of BLAGAB allowable losses previously accruing to the company which have not been allowed as a deduction from chargeable gains accruing in that immediately preceding accounting period or any earlier accounting period.

(7) The permitted amount for any subsequent accounting period of the company is arrived at by—

- (a) deducting from the permitted amount for the immediately preceding accounting period the amount of any BLAGAB allowable losses allowed as a deduction from non-BLAGAB chargeable gains accruing to the company in the immediately preceding accounting period, and
- (b) adjusting the result in accordance with subsection (8) or (9) below.

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- (8) If the BLAGAB chargeable gains accruing to the company in the subsequent accounting period exceed the BLAGAB allowable losses so accruing, the amount arrived at under subsection (7)(a) above is reduced by a fraction of which—
- (a) the denominator is the BLAGAB allowable losses accruing to the company in any previous accounting period which have not been allowed as a deduction from chargeable gains accruing to the company in any previous accounting period, and
  - (b) the numerator is so many of those allowable losses as are allowed as a deduction from BLAGAB chargeable gains accruing to the company in the accounting period.
- (9) If the BLAGAB allowable losses accruing to the company in the subsequent accounting period exceed the BLAGAB chargeable gains so accruing, the amount arrived at under subsection (7)(a) above is increased by the shareholders' share of the amount by which those allowable losses exceed those chargeable gains.
- <sup>F1357</sup>(10) For the purposes of this section the “shareholders' share” of BLAGAB chargeable gains or BLAGAB allowable losses accruing to an insurance company in an accounting period is determined as follows.
- (10A) If the company has an I - E profit for the accounting period—
- (a) find the percentage (including, if applicable, nil) of the I - E profit that is not represented by the policyholders' share of that profit as determined in accordance with section 103 of the Finance Act 2012, and
  - (b) then multiply that percentage by the amount of the BLAGAB chargeable gains or BLAGAB allowable losses.
- The result is the shareholder's share of the BLAGAB chargeable gains or BLAGAB allowable losses.
- (10B) If the company does not have an I - E profit for the accounting period, the shareholders' share of the BLAGAB chargeable gains or BLAGAB allowable losses is nil.
- (10C) In determining for the purposes of subsections (10A) and (10B) whether or not the company has an I - E profit for an accounting period, assume that non-BLAGAB allowable losses cannot be deducted to any extent from BLAGAB chargeable gains (and, accordingly, assume that section 95 is not included in the Finance Act 2012).]
- (11) In arriving at <sup>F1358</sup>the shareholders' share] of chargeable gains accruing to an insurance company under <sup>F1359</sup>subsections (10) to (10C)] above there is to be ignored—
- (a) any deduction under section 202(9) (mineral leases: capital losses),
  - (b) any reduction under section 213(3) (spreading of losses from deemed disposal of holdings of unit trust etc), and
  - (c) any amount carried back under <sup>F1360</sup>section 389(1) of CTA 2009] (non-trading deficit on loan relationships).

<sup>F1361</sup>(12) .....

(13) In this section—

“BLAGAB allowable losses”, in relation to an insurance company, means allowable losses referable<sup>F1362</sup>, in accordance with Chapter 4 of Part 2 of the Finance Act 2012,] to the company's basic life assurance and general annuity business,

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“BLAGAB chargeable gains”, in relation to an insurance company, means chargeable gains referable<sup>F1362</sup>, in accordance with Chapter 4 of Part 2 of the Finance Act 2012,] to the company’s basic life assurance and general annuity business,

“non-BLAGAB allowable losses”, in relation to an insurance company, means allowable losses of the company which are not BLAGAB allowable losses,

“non-BLAGAB chargeable gains”, in relation to an insurance company, means chargeable gains of the company which are not BLAGAB chargeable gains,<sup>F1363</sup> ...

<sup>F1363</sup>

.....]

#### Textual Amendments

**F1355S.** 210A inserted (with effect in accordance with Sch. 33 para. 14(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 14\(1\)](#)

**F1356S.** 210A(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(2\)](#)

**F1357S.** 210A(10)-(10C) substituted for s. 210A(10)(10A) (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(3\)](#)

**F1358** Words in s. 210A(11) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(4\)\(a\)](#)

**F1359** Words in s. 210A(11) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(4\)\(b\)](#)

**F1360** Words in s. 210A(11)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 379\(3\)](#) (with Sch. 2 Pts. 1, 2)

**F1361S.** 210A(12) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(5\)](#)

**F1362** Words in s. 210A(13) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(6\)\(a\)](#)

**F1363** Words in s. 210A(13) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 80\(6\)\(b\)](#)

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

**C306** S. 210A modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), [reg. 34A](#) (as inserted by S.I. 2007/2134, regs. 1(1)(2), 27)

### <sup>F1364</sup>**210** Disposal and acquisition of <sup>F1365</sup>section 119 or 120 securities]

- (1) Subsections (2) to (4) below apply in a case where, within a period of 10 days, an insurance company disposes of a number of <sup>F1366</sup>section 119 or 120 securities] and (whether subsequently or previously) acquires a number of <sup>F1366</sup>section 119 or 120 securities] if—
  - (a) the securities disposed of decrease the size of a <sup>F1367</sup>chargeable section 119 or 120 holding],
  - (b) the securities acquired increase the size of the same <sup>F1367</sup>chargeable section 119 or 120 holding], and
  - (c) (apart from this section) an allowable loss would accrue on the disposal.
- (2) The securities disposed of shall be identified with the securities acquired.
- (3) The securities disposed of shall be identified with securities acquired before the disposal rather than securities acquired after the disposal and—
  - (a) in the case of securities acquired before the disposal, with those acquired later rather than those acquired earlier, and

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- (b) in the case of securities acquired after the disposal, with those acquired earlier rather than those acquired later.
- (4) Where securities acquired could be identified with securities disposed of either at an earlier or at a later date, they shall be identified with the former rather than the latter; and the identification of securities acquired with securities disposed of on any occasion shall preclude their identification with securities comprised in a later disposal.
- (5) Subsections (2) to (4) above have effect subject to section 105(1).
- (6) Subsections (2) to (4) above do not apply to—
  - (a) securities which are [<sup>F1368</sup>assets within section 212(1).]<sup>F1369</sup> ...
  - <sup>F1369</sup>(b) .....
- (7) Subsections (2) to (4) above do not apply if—
  - (a) the securities disposed of are [<sup>F1370</sup>assets wholly matched to BLAGAB liabilities and the assets are] appropriated to a BLAGAB internal linked fund,
  - (b) the securities acquired are, on acquisition, appropriated to that or another internal linked fund, and
  - (c) the disposal and acquisition are made with a view to adjusting the value of the assets of that fund, or of those funds, in order to match its or their liabilities.
- <sup>F1371</sup>(8) In this section—
  - “BLAGAB internal linked fund” means an internal linked fund all the assets appropriated to which are matched wholly to BLAGAB liabilities,
  - “chargeable section 119 or 120 holding” means a holding which is a separate holding as a result of section 119(1)(a), (c) or (d) or section 120(1) (a), (c) or (d) of the Finance Act 2012 (and section 121(1) and (2) of that Act),
  - “internal linked fund”, in relation to an insurance company, means an account—
    - (a) to which assets matched to the company's life assurance liabilities are appropriated by the company, and
    - (b) which may be divided into units the value of which is determined by the company by reference to the value of those assets, and
  - “section 119 or 120 securities” means securities within the meaning of section 119 or 120 of the Finance Act 2012 (see section 121(6)).]]

#### Textual Amendments

- F1364**S. 210B inserted (with effect in accordance with Sch. 33 para. 15(2)(3) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 15(1)**
- F1365**Words in s. 210B heading substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 81(5)**
- F1366**Words in s. 210B(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 81(2)(a)**
- F1367**Words in s. 210B(1)(a)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 81(2)(b)**
- F1368**Words in s. 210B(6)(a) substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 10 para. 5(2)**
- F1369**S. 210B(6)(b) and preceding word repealed (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 62(a)**, **Sch. 27 Pt. 2(7)** (with **Sch. 7 Pt. 2**)
- F1370**Words in s. 210B(7)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 81(3)**
- F1371**S. 210B(8) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 81(4)**

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

**C307** S. 210B modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), **35**

### [<sup>F1372</sup>**210C** Losses on disposal of authorised investment fund assets to connected manager

(1) Section 18(3) does not apply in relation to a loss accruing on the disposal by an insurance company of authorised investment fund assets to the manager of the authorised investment fund.

(2) In this section—

“authorised investment fund assets” means assets [<sup>F1373</sup>held by the company for the purposes of its long-term business that consist of] rights under an authorised unit trust or shares in an open-ended investment company,

“the manager of the authorised investment fund” means—

(a) in the case of an authorised unit trust, the person who is the manager of the unit trust scheme for the purposes of Chapter 3 of Part 17 of the Financial Services and Markets Act 2000, and

(b) in the case of an open-ended investment company, a director or other person having responsibility for the management of its scheme property, and

“open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies.]

#### Textual Amendments

**F1372**S. 210C inserted (with effect in accordance with Sch. 10 para. 17(4) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 10 para. 3**

**F1373**Words in s. 210C(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 82**

### **211 Transfers of business.**

[<sup>F1374</sup>(1) This section applies where an insurance business transfer scheme has effect to transfer business which consists of the effecting or carrying out of contracts of long-term insurance from one person (“the transferor”) to another (“the transferee”).

<sup>F1375</sup>(1A) . . . . . ]

[<sup>F1376</sup>(2) Where this section applies the transferor and the transferee are treated for the purposes of corporation tax on chargeable gains as if any assets included in the transfer which—

(a) immediately before they are acquired by the transferee, were assets [<sup>F1377</sup>held by the transferor for the purposes of its long-term business], and

(b) immediately after they are so acquired are assets [<sup>F1378</sup>held by the transferee for the purposes of its long-term business],

were acquired for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the transferor on the disposal.



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[<sup>F1379</sup>(2A) The reference in subsection (2) above to assets included in the transfer does not include [<sup>F1380</sup>assets which formed part of the long-term business fixed capital of the company in question].]

(3) Subsection (2) above is subject to section 212.]

<sup>F1381</sup>(3) . . . . .

[<sup>F1382</sup>(4) Subsection (2) does not apply in relation to assets which are referable to the long-term business of the transferor if all the income of the transferor's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.]

#### Textual Amendments

**F1374S.** 211(1)(1A) substituted (with effect in accordance with art. 66(2) of the amending S.I.) for s. 211(1) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), 66(1)

**F1375S.** 211(1A) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)

**F1376S.** 211(2)(3) substituted for s. 211(2)(2A) (with effect in accordance with Sch. 9 para. 17(1) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 14\(2\)](#)

**F1377** Words in s. 211(2)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 83\(2\)\(a\)](#)

**F1378** Words in s. 211(2)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 83\(2\)\(b\)](#)

**F1379S.** 211(2A) inserted (with effect in accordance with Sch. 10 para. 17(2)(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 2\(4\)](#)

**F1380** Words in s. 211(2A) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 83\(3\)](#)

**F1381S.** 211(3) repealed (with effect in accordance with Sch. 29 paras. 5(4), 30(5), Sch. 40 Pt. II(12) Note 10 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 30\(4\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))

**F1382S.** 211(4) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 83\(4\)](#)

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

**C308** S. 211(1) modified (with effect in accordance with reg. 1 of the amending S.I.) by [The Friendly Societies \(Taxation of Transfers of Business\) Regulations 1995 \(S.I. 1995/171\)](#), regs. 1, [4\(1\)\(2\)\(e\)](#)

[<sup>F1383</sup>~~211~~**211ZA** **Transfers of business: transfer of unused losses**

(1) This section applies where—

- (a) an insurance business transfer scheme has effect to transfer business consisting of or including basic life assurance and general annuity business from one person (“the transferor”) to another (“the transferee”) or more than one others (“the transferees”), and
- (b) the transferor has relevant unused losses.

(2) For the purposes of subsection (1)(b) above the transferor has relevant unused losses if—

- (a) BLAGAB allowable losses accrue to the transferor in the accounting period ending with the day of the transfer or have so accrued in any earlier accounting period, and
- (b) they are not deducted from chargeable gains accruing to the transferor in that accounting period and have not been deducted from chargeable gains so accruing in any previous accounting period.

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- [ For the purposes of subsection (2) above, where there is no accounting period of the <sup>F1384</sup>(2A) transferor ending with the day of the transfer—
- (a) there is deemed to be such an accounting period,
  - (b) BLAGAB allowable losses which would have accrued to the transferor in that accounting period are deemed to have accrued to the transferor in that accounting period, and
  - (c) if those BLAGAB allowable losses would not have been deducted from chargeable gains accruing to the transferor in that accounting period, they are deemed to be relevant unused losses.]
- (3) Subject as follows—
- (a) for the purposes of ascertaining the transferor’s total profits for any accounting period [<sup>F1385</sup>ending] after that in which the transfer takes place, the relevant unused losses are deemed not to have accrued to the transferor, but
  - (b) (instead) they are treated as accruing to the transferee (in accordance with subsection (4) below).
- (4) The losses treated as accruing to the transferee under subsection (3)(b) above shall be deemed to be BLAGAB allowable losses accruing to the transferee in the accounting period of the transferee in which the transfer takes place.
- (5) But those losses are not allowable as a deduction from chargeable gains accruing before the transfer takes place.
- (6) For the purposes of section 210A (ring-fencing of losses), the shareholders' share of those losses is to be taken to be the same proportion as would be the shareholders' share of them if they had remained losses of the transferor.
- (7) If only part of the transferor’s basic life assurance and general annuity business is transferred, subsection (3) above applies as if the references to the relevant unused losses were to such part of the relevant unused losses as is appropriate.
- (8) If the transfer is to more than one others, subsection (3)(b) above applies as if the reference to the relevant unused losses being treated as accruing to the transferee were to such part of the relevant unused losses as is appropriate being treated as accruing to each of the transferees.
- (9) Any question arising as to the operation of subsection (7) or (8) above shall be determined [<sup>F1386</sup>in the same manner as an appeal, and both the transferor and the transferee shall be entitled to be a party to any proceedings].
- (10) In this section “BLAGAB allowable losses” means allowable losses referable [<sup>F1387</sup>, in accordance with Chapter 4 of Part 2 of the Finance Act 2012,] to the transferor’s basic life assurance and general annuity business.]

#### Textual Amendments

**F1383S.** 211ZA inserted (with effect in accordance with Sch. 33 para. 21(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 21\(1\)](#)

**F1384S.** 211ZA(2A) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), [28\(2\)](#)

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**F1385** Word in s. 211ZA(3)(a) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **28(3)**

**F1386** Words in s. 211ZA(9) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 180**

**F1387** Words in s. 211ZA(10) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 84**

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

**C309** S. 211ZA modified (with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), **36**

[<sup>F1388</sup>**211A** **Gains of insurance company from venture capital investment partnership**

Schedule 7AD to this Act has effect with respect to the gains of an insurance company from a venture capital investment partnership.]

**Textual Amendments**

**F1388** S. 211A inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **s. 85(1)**

[<sup>F1389</sup>**211B** **Transfers of assets to certain collective investment schemes**

- (1) Subsection (2) applies if—
  - (a) an asset of an insurance company is made subject to a collective investment scheme which is—
    - (i) an authorised contractual scheme which is a co-ownership scheme, or
    - (ii) a relevant offshore fund,
  - (b) that is wholly in exchange for the company being issued with units in the scheme, and
  - (c) the condition in subsection (3) is met.
- (2) For the purposes of corporation tax on chargeable gains, the company is to be treated—
  - (a) as having disposed of the asset mentioned in subsection (1)(a) for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the company, and
  - (b) as having acquired the units mentioned in subsection (1)(b) for a consideration of the same amount.
- (3) The condition is that—
  - (a) immediately before the asset mentioned in subsection (1)(a) is made subject to the scheme, the asset was an asset held by the company for the purposes of its long-term business within one of the long-term business categories, and
  - (b) immediately after the asset is made subject to the scheme, the units mentioned in subsection (1)(b) are assets held by the company for the purposes of its long-term business within the same category.
- (4) For the purposes of subsection (3), a “long-term business category” is—
  - (a) if the company is a UK life insurance company, a long-term business category set out in section 116(2) of the Finance Act 2012 (subject to section 116(3)), or

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- (b) if the company is an overseas life insurance company, a UK long-term business category set out in section 117(2) of that Act (subject to section 117(3)).
- (5) In subsection (1), “relevant offshore fund” has the same meaning as in section 103A (application of Act to certain offshore funds).
- (6) In this section, in relation to a relevant offshore fund, “units” means rights in the fund which are treated as shares under section 103A.]

**Textual Amendments**

**F1389S.** 211B inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013](#) (S.I. 2013/1400), regs. 1(1), 4 (with reg. 1(2))

**212 Annual deemed disposal of holdings of unit trusts etc.**

- (1) Where at the end of an accounting period the assets [<sup>F1390</sup>held by an insurance company for the purposes of its long-term business] include—
  - (a) rights under an authorised unit trust, or
  - (b) [<sup>F1391</sup>interests in an offshore fund <sup>F1392</sup>... ] [<sup>F1393</sup>, or
  - <sup>F1394</sup>(ba) [ units in an authorised contractual scheme which is a co-ownership scheme, or
  - (c) shares in a company [<sup>F1395</sup>which is, or is a member of, a UK REIT within the meaning of Part 12 of CTA 2010] (Real Estate Investment Trusts).]

then, subject to the following provisions of this section and to section 213, the company shall be deemed for the purposes of corporation tax on capital gains to have disposed of and immediately reacquired each of the assets concerned at its market value at that time.

- <sup>F1396</sup>(2) .....
- <sup>F1397</sup>(2A) .....
- <sup>F1398</sup>(3) .....
- <sup>F1398</sup>(4) .....
- <sup>F1399</sup>(5) .....
- <sup>F1398</sup>(6) .....
- <sup>F1399</sup>(6A) .....
- <sup>F1399</sup>(7) .....
- <sup>F1400</sup>(7A) .....
- <sup>F1401</sup>(8) .....

[<sup>F1402</sup>(9) This section applies to an overseas life insurance company as if references in subsection (1) to assets were to such of the assets concerned as are UK assets.

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- (10) Assets (whether situated in the United Kingdom or elsewhere) are “UK assets” if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business.]

### Textual Amendments

- F1390** Words in s. 212(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 85\(2\)](#)
- F1391** Words in s. 212(1)(b) substituted (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 127\(3\)\(a\)](#)
- F1392** Words in s. 212(1)(b) omitted (8.6.2013) by virtue of [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\), regs. 1\(1\), 5\(a\) \(with reg. 1\(2\)\)](#)
- F1393** S. 212(1)(c) and preceding word inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 137](#)
- F1394** S. 212(1)(ba) inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\), regs. 1\(1\), 5\(b\) \(with reg. 1\(2\)\)](#)
- F1395** Words in s. 212(1)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 249 \(with Sch. 2\)](#)
- F1396** S. 212(2) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\), Sch. 16 para. 85\(3\)](#)
- F1397** S. 212(2A) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 10 para. 5\(3\)\(a\), Sch. 27 Pt. 2\(10\)](#)
- F1398** S. 212(3)(4)(6) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by [1993 c. 34, ss. 91\(2\)\(b\), 213, Sch. 23 Pt. III Table\(8\) Note](#)
- F1399** S. 212(5)-(7) repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 127\(3\)\(b\), Sch. 2](#)
- F1400** S. 212(7A) repealed (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 8 para. 18, Sch. 27 Pt. 2\(8\) \(with Sch. 8 Pt. 2\)](#)
- F1401** S. 212(8) repealed (27.7.1993 with effect as mentioned in s. 91(1)) by [1993 c. 34, ss. 91\(1\), 213, Sch. 23 Pt. III Table\(8\) Note](#)
- F1402** S. 212(9)(10) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 85\(4\)](#)

### Modifications etc. (not altering text)

- C310** S. 212 modified (31.7.1992) by [S.I. 1992/1655, arts. 1, 21](#)  
S. 212 amended (27.7.1993) by [1993 c. 34, s. 91\(1\)](#)  
S. 212 excluded (27.7.1993) by [1993 c. 34, s. 91\(1\)](#)
- C311** S. 212 modified (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 105, Sch. 15 para. 15\(2\)](#)
- C312** S. 212 modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\), regs. 1\(1\), 37 \(as amended by S.I. 2007/2134, regs. 1\(1\)\(2\), 28\)](#)
- C313** S. 212 modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Tax Exempt Business\) Regulations 2007 \(S.I. 2007/2145\), regs. 1\(1\), 13](#)
- C314** S. 212 excluded by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), reg. 51\(2\) \(as substituted \(with effect in accordance with reg. 1\(2\) of the amending S.I.\) by S.I. 2008/3159, regs. 1\(1\), 15\)](#)
- C315** S. 212 modified (with effect in accordance with reg. 2(2) of the amending S.I.) by [The Insurance Companies and CFCs \(Avoidance of Double Charge\) Regulations 2012 \(S.I. 2012/3044\), regs. 1\(1\), 6](#)

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## 213 Spreading of gains and losses under section 212.

- (1) Any chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of section 212 to have been made at the end of a company's accounting period shall be treated as not accruing to it, but instead—
- (a) there shall be ascertained the difference (“the net amount”) between the aggregate of those gains and the aggregate of those losses, and
  - (b) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company at the end of the accounting period, and
  - (c) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing at the end of each succeeding accounting period until the whole amount has been accounted for.
- [<sup>F1403</sup>(1A) Subsection (1) above shall not apply to chargeable gains or allowable losses except so far as they are gains or losses which—
- (a) are referable[<sup>F1404</sup>, in accordance with Chapter 4 of Part 2 of the Finance Act 2012,] to basic life assurance and general annuity business [<sup>F1405</sup> ... ]
- (2) For any accounting period of less than one year, the fraction of one-seventh referred to in subsection (1)(c) above shall be proportionately reduced; and where this subsection has had effect in relation to any accounting period before the last for which subsection (1)(c) above applies, the fraction treated as accruing at the end of that last accounting period shall also be adjusted appropriately.
- (3) [<sup>F1406</sup>Subject to [<sup>F1407</sup>subsection (8H)] below,] Where—
- (a) the net amount for an accounting period of an insurance company represents an excess of gains over losses,
  - (b) the net amount for [<sup>F1408</sup>either of the next 2] accounting periods (after taking account of any reductions made by virtue of this [<sup>F1409</sup>section]) represents an excess of losses over gains,
  - (c) there is (after taking account of any such reductions) no net amount for [<sup>F1410</sup>the intervening accounting period (if there is one)],
- [<sup>F1411</sup>(ca) [<sup>F1412</sup>the intervening accounting period (if there is one) is not] an accounting period in which the company joined a group of companies, and]
- (d) within 2 years after the end of the later accounting period the company makes a claim for the purpose in respect of the whole or part of the net amount for that period,
- the net amounts for both the earlier and the later period shall be reduced by the amount in respect of which the claim is made.
- [<sup>F1413</sup>(3A) .....
- [<sup>F1414</sup>(3B) .....
- (4) Subject to subsection (5) below, where a company ceases to carry on [<sup>F1415</sup>long-term] business before the end of the last of the accounting periods for which subsection (1) (c) above would apply in relation to a net amount, the fraction of that amount that is treated as accruing at the end of the accounting period ending with the cessation shall be such as to secure that the whole of the net amount has been accounted for.
- [<sup>F1416</sup>(4ZA) Subsection (4) applies in relation to an overseas life insurance company with the insertion after “long-term business” of the words “in the United Kingdom through a permanent establishment”.]

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- [<sup>F1417</sup>(4ZB) Subject to subsection (5) below, where a company—
- (a) acquired units in a collective investment scheme where section 211B(2) applied in relation to that acquisition, and
  - (b) other than by virtue of section 212, disposes of some or all of those units during the period of three years after the end of the accounting period of the company in which the acquisition took place,
- the fraction of any net amount that is treated as accruing at the end of the accounting period of the company in which the disposal occurs is to be adjusted so as to secure that the whole of the chargeable gain or allowable loss attributable to the units disposed of which has been taken into account in determining the net amount has been accounted for; and fractions of the net amount treated as accruing at the end of subsequent accounting periods are to be adjusted accordingly.
- (4ZC) For the purposes of subsection (4ZB) (notwithstanding the provisions of Chapter 1 of Part 4 (shares, securities, options etc))—
- (a) units in a collective investment scheme acquired as mentioned in subsection (4ZB)(a) are treated as being disposed of before other units in the scheme or, where there are different classes of unit in the scheme, units of the same class held by the company, and
  - (b) where units are acquired as mentioned in subsection (4ZB)(a) at different times, units acquired at a later time are treated as disposed of before units acquired at an earlier time or, where there are different classes of unit in the scheme, units of the same class acquired at an earlier time.
- (4ZD) In subsections (4ZB) and (4ZC), in relation to a relevant offshore fund, “units” means rights in the fund which are treated as shares under section 103A (application of Act to certain offshore funds).
- (4ZE) In subsection (4ZD), “relevant offshore fund” has the same meaning as in section 103A.]
- [<sup>F1418</sup>(4A) The following provisions apply where an insurance business transfer scheme has effect to transfer business which consists of the effecting or carrying out of contracts of long-term insurance from one person (“the transferor”) to another (“the transferee”).
- (5) Subject to subsections (5A) to (7) below, any chargeable gain or allowable loss which ([<sup>F1419</sup>making the assumptions in subsection (5ZA) below]) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.]
- [<sup>F1420</sup>(5ZA) The assumptions referred to in subsection (5) above are—
- (a) that the transferor had continued to carry on the business transferred after the transfer, and
  - (b) where there is no accounting period of the transferor ending with the day of the transfer, that for the purposes of section 212 and this section, there was such an accounting period.]

[<sup>F1421</sup>(5A) Subsection (5) above shall not apply where the transferee is resident outside the United Kingdom unless the business to which the transfer relates is carried on by the transferee, for a period beginning with the time when the transfer takes effect, through a [<sup>F1422</sup>permanent establishment] in the United Kingdom.]

    - (6) Where subsection (5) above has effect, the amount of the gain or loss accruing at the end of the first accounting period of the transferee ending after the day when the

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transfer takes place shall be calculated as if that accounting period began with the day after the transfer.

- (7) Where the transfer is of part only of the transferor's <sup>F1423</sup>long-term] business, subsection (5) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.
- (8) Any question arising as to the operation of subsection (7) above shall be determined <sup>F1424</sup>in the same manner as an appeal, and both the transferor and the transferee shall be entitled to be a party to any proceedings].

<sup>F1425</sup>(8A) Subsection (8B) below applies where—

- <sup>F1426</sup>(a) .....
- (b) the transferor and the transferee are, at the time of the transfer, members of the same group,
- (c) the <sup>F1427</sup>transferred assets] net amount for the accounting period of the transferor ending with the day of the transfer, or for the immediately preceding accounting period of the transferor, (“the relevant pre-transfer period of the transferor”) represents an excess of gains over losses,
- (d) the <sup>F1427</sup>transferred assets] net amount for the accounting period of the transferee in which the transfer takes place, or for the immediately following accounting period of the transferee, (“the relevant post-transfer period of the transferee”) represents an excess of losses over gains (after taking account of any reductions made by virtue of this section), and
- (e) within 2 years after the end of the relevant post-transfer period of the transferee, the transferor and the transferee make a joint election in respect of the whole or part of the net amount for that period by notice to an officer of the Board.

(8B) Subject to subsections (8C) to (8E) and (8H) below, the <sup>F1428</sup>transferred assets] net amounts for both the relevant pre-transfer period of the transferor and the relevant post-transfer period of the transferee shall be reduced by the amount in respect of which the election is made.

(8C) Subsection (8B) above does not apply if—

- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer.

(8D) If—

- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period ending with the day of the transfer,

subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferee in which the transfer takes place.

(8E) If—

- (a) the relevant post-transfer period of the transferee is the accounting period in which the transfer takes place, and



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- (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer,
- subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferor ending with the day of the transfer.
- (8F) The conditions referred to in subsections (8D) and (8E) above are that—
- (a) there is (after taking account of any reductions made by virtue of this section) no [<sup>F1429</sup>transferred assets] net amount for the accounting period, and
  - (b) the company whose accounting period it is did not join a group of companies in the accounting period.
- (8G) A copy of the notice containing an election under subsection (8A)(e) above must accompany the tax return for the relevant post-transfer period of the transferee; and paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.
- (8H) [<sup>F1430</sup>Subsection (3) above has] effect where the company, or the transferee, in question joins a group of companies in the accounting period for which the net amount represents an excess of losses over gains as if a claim or election could not be made in respect of that net amount except to the extent (if any) [<sup>F1431</sup>that the net amount would still arise even if losses accruing after the date on which the company or transferee joined the group of companies were disregarded].
- [ Subsections (8A) and (8B) above have effect where the company, or the transferee, in  
<sup>F1432</sup>(8HA) question joins a group of companies in the accounting period for which the transferred assets net amount represents an excess of losses over gains as if a claim or election could not be made in respect of that net amount except to the extent (if any) that the transferred assets net amount would still arise even if losses accruing after the date on which the company or transferee joined the group of companies were disregarded.]
- (8I) References in this section to a company joining a group of companies are to be construed in accordance with [<sup>F1433</sup>section 184C as if those references were contained in that section; and in subsection (8A)(b) above “group” has the same meaning as in that section].]
- <sup>F1434</sup>(8J) “Transferred assets net amount” means a net amount ascertained in accordance with section 213(1)(a) but only in relation to those assets referred to in section 212(1) which are transferred by the insurance business transfer scheme from the transferor to the transferee.]
- <sup>F1435</sup>(9) .....
- <sup>F1436</sup>(10) .....

#### Textual Amendments

**F1403**S. 213(1A) inserted (27.7.1993) by 1993 c. 37, s. 91(4)

**F1404**Words in s. 213(1A) substituted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 16 para. 86(2)

**F1405**Words in s. 213(1A) repealed (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 64, Sch. 27 Pt. 2(7) (with Sch. 7 Pt. 2)

**F1406**Words in s. 213(3) inserted (with effect in accordance with s. 137(6) of the amending Act) by Finance Act 1998 (c. 36), s. 137(3)(a)

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- F1407** Words in s. 213(3) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(2)(a)**
- F1408** Words in s. 213(3)(b) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(2)(b)**
- F1409** Word in s. 213(3)(b) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(2)(b)**
- F1410** Words in s. 213(3)(c) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(2)(c)**
- F1411** S. 213(3)(ca) substituted for word at end of s. 213(3)(c) (with effect in accordance with s. 137(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 137(3)(b)**
- F1412** Words in s. 213(3)(ca) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(2)(d)**
- F1413** S. 213(3A) repealed (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(3)**, **Sch. 43 Pt. 3(12)**
- F1414** S. 213(3B) repealed (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(3)**, **Sch. 43 Pt. 3(12)**
- F1415** Word in s. 213(4) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), **73(2)(a)**
- F1416** S. 213(4ZA) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 86(3)**
- F1417** S. 213(4ZB)-(4ZE) inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), **6** (with reg. 1(2))
- F1418** S. 213(4A)(5) substituted for s. 213(5) (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(4)**
- F1419** Words in s. 213(5) substituted for the words "assuming that the transferor had continued to carry on the business transferred after the transfer" (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(2)**
- F1420** S. 213(5ZA) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(3)**
- F1421** S. 213(5A) inserted (with effect in accordance with s. 53(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 9 para. 4**
- F1422** Words in s. 213(5A) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **s. 153(1)(b)**
- F1423** Word in s. 213(7) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), **73(2)(a)**
- F1424** Words in s. 213(8) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 181**
- F1425** S. 213(8A)-(8I) inserted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 16(5)**
- F1426** S. 213(8A)(a) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(4)(a)**
- F1427** Words in s. 213(8A)(c)(d) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(4)(b)**
- F1428** Words in s. 213(8B) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(5)**
- F1429** Words in s. 213(8F)(a) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(6)**

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- F1430** Words in s. 213(8H) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(7)**
- F1431** Words in s. 213(8H) substituted (with effect in accordance with s. 70(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. **70(5)(a)** (with s. 70(10)-(11))
- F1432** S. 213(8HA) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(8)**
- F1433** Words in s. 213(8I) substituted (with effect in accordance with s. 70(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. **70(5)(b)** (with s. 70(10)-(11))
- F1434** S. 213(8J) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(9)**
- F1435** S. 213(9) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, s. 213, [Sch. 23 Pt. III](#) Table(8) Note
- F1436** S. 213(10) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **29(10)**

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

- C316** S. 213 modified (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), s. 105, [Sch. 15 para. 15\(2\)](#)
- C317** S. 213 modified (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Capital Redemption Business\) \(Modification of the Corporation Tax Acts\) Regulations 1999 \(S.I. 1999/498\)](#), regs. 1, **11(2)**
- C318** S. 213(1A) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), **38**
- C319** S. 213(5) modified (with effect in accordance with reg. 1 of the amending S.I.) by [The Friendly Societies \(Taxation of Transfers of Business\) Regulations 1995 \(S.I. 1995/171\)](#), regs. 1, **4(1)(2)(e)**

**[<sup>F1437</sup>213] Power to modify ss. 212 and 213 etc in case of CFCs that are offshore funds**

- (1) The Treasury may make regulations for the purpose mentioned in subsection (2) in any case where—
- an insurance company to which the I - E rules apply is deemed to make a disposal under section 212 of an interest in an offshore fund,
  - the offshore fund is a CFC, and
  - there is (or, but for the regulations, would be) a CFC charge on the insurance company referable to its relevant interest in the CFC for the accounting period in which the disposal is deemed to have been made.
- (2) The regulations are to be made for the purpose of modifying the operation of—
- section 212 or 213,
  - the CFC rules, or
  - the I - E rules,
- in relation to any accounting period of the insurance company so as to reduce the charge to tax.
- (3) The regulations may—
- make different provision for different cases or circumstances, and

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- (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) The provision that may be made as a result of subsection (3)(b) includes provision modifying any other provision of the Corporation Tax Acts.
- (5) In this section—
  - “CFC” and “CFC charge” have the same meanings as in Part 9A of TIOPA 2010 (see section 371VA),
  - “the CFC rules” means the rules contained in that Part, and
  - “offshore fund” has the meaning given by section 355 of TIOPA 2010.]

.....

**Textual Amendments**  
 F1437S. 213A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 87](#)

<sup>F1438</sup>**214 Transitional provisions.**

.....

.....

**Textual Amendments**  
 F1438S. 214 repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 5\(3\)\(b\)](#), [Sch. 27 Pt. 2\(10\)](#)

<sup>F1439</sup>**214 Further transitional provisions.**

.....

.....

**Textual Amendments**  
 F1439S. 214A repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 5\(3\)\(c\)](#), [Sch. 27 Pt. 2\(10\)](#)

<sup>F1440</sup>**214B Modification of Act in relation to overseas life insurance companies.**

.....

.....

**Textual Amendments**  
 F1440S. 214B repealed (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2006 \(S.I. 2006/3271\)](#), [reg. 1](#), [Sch. Pt. 1](#)

<sup>F1441</sup>**214BA Interpretation**

.....

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**Textual Amendments**

**F1441**S. 214BA repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 14\(5\)\(a\)](#), [Sch. 27 Pt. 2\(10\)](#)

**CHAPTER IV**

**MISCELLANEOUS CASES**

*[<sup>F1442</sup>Re-organisations of mutual businesses]*

**Textual Amendments**

**F1442**S. 214C and cross-heading inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 7](#)

**<sup>F1443</sup>214** **Gains not eligible for taper relief.**

**Textual Amendments**

**F1443**S. 214C and cross-heading omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 35](#)

*Building societies etc.*

**215 Disposal of assets on amalgamation of building societies etc.**

If, in the course of or as part of an amalgamation of 2 or more building societies or a transfer of engagements from one building society to another, there is a disposal of an asset by one society to another, both shall be treated for the purposes of corporation tax on chargeable gains as if the asset were 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.

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

**C320** Ss. 215, 216 restricted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 131\(1\)\(2\)\(a\)](#)

**216 Assets transferred from society to company.**

(1) This section and section 217 apply where there is a transfer of the whole of a building society's business to a company ("the successor company") in accordance with section 97 and the other applicable provisions of the <sup>M41</sup>Building Societies Act 1986.

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- (2) Where the society and the successor company are not members of the same group at the time of the transfer—
- (a) they shall be treated for the purposes of corporation tax on capital gains as if any asset disposed of as part of the transfer were acquired by the successor company for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the society, and
  - (b) if because of the transfer any company ceases to be a member of the same group as the society, that event shall not cause section <sup>F1444</sup>... 179 to have effect as respects any asset acquired by the company from the society or any other member of the same group.
- (3) Where the society and the successor company are members of the same group at the time of the transfer but later cease to be so, that later event shall not cause section <sup>F1445</sup>... 179 to have effect as respects—
- (a) any asset acquired by the successor company on or before the transfer from the society or any other member of the same group, or
  - (b) any asset acquired from the society or any other member of the same group by any company other than the successor company which is a member of the same group at the time of the transfer.
- (4) Subject to subsection (6) below, where a company which is a member of the same group as the society at the time of the transfer—
- (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
  - (b) subsequently ceases to be a member of that group,
- section <sup>F1445</sup>... 179 shall have effect on that later event as respects any relevant asset acquired by the company otherwise than from the successor company as if it had been acquired from the successor company.
- (5) In subsection (4) above “relevant asset” means any asset acquired by the company—
- (a) from the society, or
  - (b) from any other company which is a member of the same group at the time of the transfer,
- when the company and the society, or the company, the society and the other company, were members of the same group.
- (6) Subsection (4) above shall not apply if the company which acquired the asset and the company from which it was acquired (one being a 75 per cent. subsidiary of the other) cease simultaneously to be members of the same group as the successor company but continue to be members of the same group as one another.
- (7) For the purposes of this section “group” shall be construed in accordance with section 170.

#### **Textual Amendments**

**F1444** Words in s. 216(2)(b) repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. II\(12\)](#)

**F1445** Words in s. 216(3)(4) repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. II\(12\)](#)

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

**C320** Ss. 215, 216 restricted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 131\(1\)\(2\)\(a\)](#)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Marginal Citations**

**M41** 1986 c. 53.

**217 Shares, and rights to shares, in successor company.**

(1) Where, in connection with the transfer, there are conferred on members of the society—

- (a) any rights to acquire shares in the successor company in priority to other persons, or
- (b) any rights to acquire shares in that company for consideration of an amount or value lower than the market value of the shares, or
- (c) any rights to free shares in that company,

any such right so conferred on a member shall be regarded for the purposes of tax on chargeable gains as an option (within the meaning of section 144) granted to, and acquired by, him for no consideration and having no value at the time of that grant and acquisition.

(2) Where, in connection with the transfer, shares in the successor company are issued by that company, or disposed of by the society, to a member of the society, those shares shall be regarded for the purposes of tax on chargeable gains—

- (a) as acquired by the member for a consideration of an amount or value equal to the amount or value of any new consideration given by him for the shares (or, if no new consideration is given, as acquired for no consideration); and
- (b) as having, at the time of their acquisition by the member, a value equal to the amount or value of the new consideration so given (or, if no new consideration is given, as having no value);

but this subsection is without prejudice to the operation of subsection (1) above, where applicable.

(3) Subsection (4) below applies in any case where—

- (a) in connection with the transfer, shares in the successor company are issued by that company, or disposed of by the society, to [<sup>F1446</sup>the trustees of a settlement] on terms which provide for the transfer of those shares to members of the society for no new consideration; <sup>F1447</sup> ...

<sup>F1448</sup>(b) .....

(4) Where this subsection applies, then, for the purposes of tax on chargeable gains—

- (a) the shares shall be regarded as acquired by the trustees for no consideration;
- (b) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by him for no consideration and as having no value at the time of its acquisition;
- (c) where a member becomes absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on his becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within section 60(1), for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees (and accordingly section 71 shall not apply in relation to that occasion); and
- (d) on the disposal by a member of an interest in the settled property, other than the disposal treated as occurring for the purposes of paragraph (c) above, any

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gain accruing shall be a chargeable gain (and accordingly section 76(1) shall not apply in relation to the disposal).

(5) Where, in connection with the transfer, the society disposes of any shares in the successor company, then, for the purposes of this Act, any gains [<sup>F1449</sup>accruing] on the disposal shall not be chargeable gains.

(6) In this section—

“free shares”, in relation to a member of the society, means any shares issued by the successor company, or disposed of by the society, to that member in connection with the transfer but for no new consideration;

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

“new consideration” means consideration other than—

- (a) consideration provided directly or indirectly out of the assets of the society; or
- (b) consideration derived from a member’s shares or other rights in the society.

(7) References in this section to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include references to the case where he would become so entitled but for being an infant or otherwise under disability.

#### **Textual Amendments**

**F1446** Words in s. 217(3)(a) substituted (with effect in accordance with Sch. 12 para. 20(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 20\(1\)\(a\)\(i\)](#)

**F1447** Word in s. 217(3)(a) repealed (with effect in accordance with Sch. 12 para. 20(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 20\(1\)\(a\)\(ii\)](#), [Sch. 26 Pt. 3\(15\)](#)

**F1448** S. 217(3)(b) repealed (with effect in accordance with Sch. 12 para. 20(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 20\(1\)\(b\)](#), [Sch. 26 Pt. 3\(15\)](#)

**F1449** Word in s. 217(5) substituted (with effect in accordance with Sch. 12 para. 20(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 20\(1\)\(c\)](#)

<sup>F1450</sup>*[Friendly societies]*

#### **Textual Amendments**

**F1450** Cross heading inserted (19.2.1993) by [1992 c. 48, s. 56](#), [Sch. 9 para. 21\(3\)](#); [S.I. 1993/236, art. 2](#)

#### <sup>F1451</sup>**217A Transfer of assets on incorporation of registered friendly society.**

- (1) This section and section 217B apply where a registered friendly society is incorporated under the Friendly Societies Act 1992 (“the 1992 Act”).
- (2) In this section and section 217B—
  - (a) “the registered society” means the society before the incorporation, and
  - (b) “the incorporated society” means the society after the incorporation.



*Status: Point in time view as at 16/11/2017.*

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- (3) For the purposes of corporation tax on chargeable gains—
- (a) any asset of the registered society that by virtue of section 6(2) or (3) of the 1992 Act is transferred to the incorporated society,
  - (b) any asset of a branch of the registered society that by virtue of section 6(4) of the 1992 Act is transferred to the incorporated society, and
  - (c) any asset of a branch of the registered society that is identified in a scheme under section 6(5) of the 1992 Act,
- shall be taken to be disposed of by the registered society or branch and acquired by the incorporated society on the incorporation for a consideration of such amount as to secure that on the disposal neither a gain nor a loss accrues to the registered society or branch.]

#### Textual Amendments

F1451S. 217A inserted (19.2.1993) by 1992 c. 48, s. 56, [Sch. 9 para. 21\(3\)](#); S.I. 1993/236, [art.2](#)

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

C321 S. 217A restricted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 131\(1\)\(2\)\(a\)](#)

### [<sup>F1452</sup>217] **Rights of members in registered society equated with rights in incorporated society.**

- (1) In this section, “change of membership” means a change effected by Schedule 4 to the 1992 Act whereby a member of the registered society or of a branch of the registered society becomes a member of the incorporated society or of a branch of the incorporated society.
- (2) For the purposes of this Act, a change of membership shall not be taken to involve any disposal or acquisition of an asset by the member concerned, but all the interests and rights in the incorporated society or a branch of the incorporated society that he has immediately after the change, taken together, shall be treated as a single asset which—
  - (a) was acquired by the first relevant acquisition, and
  - (b) was added to by any subsequent relevant acquisitions.
- (3) In subsection (2) above, “relevant acquisition” means an acquisition by which the member acquired any interest or right in the registered society or a branch of the registered society that he had immediately before the change of membership.]

#### Textual Amendments

F1452S. 217B inserted (19.2.1993) by 1992 c. 48, s. 56, [Sch. 9 para. 21\(3\)](#); S.I. 1993/236, [art.2](#)

### [<sup>F1453</sup>217] **Subsequent disposal of assets by incorporated society etc.**

- (1) Where any asset acquired on a disposal to which section 217A(3) applies is subsequently disposed of by the incorporated society, section 41 shall apply as if any capital allowance made to the registered society in respect of the asset had been made to the incorporated society.

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[<sup>F1454</sup>(2) If the disposal by the incorporated society is in the circumstances mentioned in subsection (8) of section 41, the disposal to which section 217A(3) applies shall for the purposes of that subsection be taken to have been a previous transfer of the asset in such circumstances.]]

#### Textual Amendments

**F1453S.** 217C inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

**F1454S.** 217C(2) substituted (with effect in accordance with Sch. 29 para. 32(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 32(1)** (with Sch. 29 para. 46(5))

#### *[<sup>F1455</sup><sup>F1456</sup>Registered societies] and co-operatives*

#### Textual Amendments

**F1455S.** 217D and cross-heading inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 250** (with Sch. 2)

**F1456** Words in s. 217D cross-heading substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, **Sch. 4 para. 51** (with Sch. 5)

### **217D Disposal of assets on union, amalgamation or transfer of engagements**

- (1) Subsection (2) applies if—
- (a) there is a union or amalgamation of two or more relevant bodies or a transfer of engagements from one relevant body to another, and
  - (b) in the course of, or as part of, that union, amalgamation or transfer there is a disposal of an asset by one relevant body to another.
- (2) Both bodies are treated for the purposes of corporation tax on chargeable gains as if the asset were acquired from the body making the disposal for a consideration which is of the amount needed to secure that on the disposal neither a gain nor a loss accrues to the body making the disposal.
- (3) In this section “relevant body” means—
- [<sup>F1457</sup>(a) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969,]
  - [<sup>F1458</sup>(aa) a society registered as a credit union under the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),]
  - (b) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Co-Operative Society, or
  - (c) a UK agricultural or fishing co-operative, as defined in section 1058 of CTA 2010.]

#### Textual Amendments

**F1457S.** 217D(3)(a) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, **Sch. 4 para. 52** (with Sch. 5)

**F1458S.** 217D(3)(aa) inserted (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 39 para. 1, 15**

*Status: Point in time view as at 16/11/2017.*

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The <sup>F1459</sup>Regulator of Social Housing, <sup>F1460</sup>the Secretary of State] and housing associations

#### Textual Amendments

**F1459** Words in s. 218 cross-heading substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 17\(5\)](#); S.I. 2010/862, art. 2 (with Sch.)

**F1460** Words in s. 218 cross-heading substituted (1.11.1998) by [Government of Wales Act 1998 \(c. 38\), ss. 140, 158\(1\), Sch. 16 para. 80](#); S.I. 1998/2244, art. 5

## 218 Disposals of land between the <sup>F1461</sup>Regulator of Social Housing, <sup>F1462</sup>the Secretary of State] or Scottish Homes and housing associations.

(1) Where—

- (a) in accordance with a scheme approved under section 5 of the <sup>M42</sup>Housing Act 1964 or paragraph 5 of Schedule 7 to the <sup>M43</sup>Housing Associations Act 1985<sup>F1463</sup>, or in accordance with a requirement imposed under section 253 of the Housing and Regeneration Act 2008,], <sup>F1464</sup>the Regulator of Social Housing] acquires from a housing association the association's interest in all the land held by the association for carrying out its objects, or
- (b) after <sup>F1464</sup>the Regulator of Social Housing] has so acquired from a housing association all the land so held by it <sup>F1465</sup>the Regulator] disposes to a single housing association of the whole of that land (except any part previously disposed of or agreed to be disposed of otherwise than to a housing association), together with all related assets,

then both parties to the disposal of the land to or, as the case may be, by <sup>F1464</sup>the Regulator of Social Housing] shall be treated for the purposes of corporation tax in respect of chargeable gains as if the land and any related assets disposed of therewith (and each part of that land and those assets) were acquired from the party making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that party.

- (2) In subsection (1) above, “housing association” has the same meaning as in the <sup>M44</sup>Housing Associations Act 1985, and “related assets” means, in relation to an acquisition of land by <sup>F1464</sup>the Regulator of Social Housing], assets acquired by <sup>F1465</sup>the Regulator] in accordance with the same scheme as that land, and in relation to a disposal of land by <sup>F1464</sup>the Regulator of Social Housing], assets held by <sup>F1465</sup>the Regulator] for the purposes of the same scheme as that land.
- (3) This section shall also have effect with the substitution of the words <sup>F1466</sup>“the Secretary of State”] for the words “<sup>F1464</sup>the Regulator of Social Housing]” and “<sup>F1465</sup>the Regulator]” in each place where they occur.
- (4) This section shall also have effect with the substitution of the words “ Scottish Homes ” for the words “<sup>F1464</sup>the Regulator of Social Housing]” and “<sup>F1465</sup>the Regulator]” in each place where they occur.

#### Textual Amendments

**F1461** Words in s. 218 heading substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 17\(5\)](#); S.I. 2010/862, art. 2 (with Sch.)

**F1462** Words in s. 218 heading substituted (1.11.1998) by [Government of Wales Act 1998 \(c. 38\), ss. 140, 158\(1\), Sch. 16 para. 80](#); S.I. 1998/2244, art. 5

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- F1463** Words in s. 218(1)(a) inserted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 17\(4\)](#); S.I. 2010/862, art. 2 (with Sch.)
- F1464** Words in s. 218 substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 17\(2\)](#); S.I. 2010/862, art. 2 (with Sch.)
- F1465** Words in s. 218 substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 17\(3\)](#); S.I. 2010/862, art. 2 (with Sch.)
- F1466** Words in s. 218(3) substituted (1.11.1998) by [Government of Wales Act 1998 \(c. 38\), ss. 140, 158\(1\), Sch. 16 para. 78](#); S.I. 1998/2244, art. 5

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

- C322** S. 218 modified (E.W.) (1.12.2008) by [The Transfer of Housing Corporation Functions \(Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/2839\), arts. 1\(1\), 3, Sch. para. 1](#) (with art. 6)

#### Marginal Citations

- M42** 1964 c. 56.  
**M43** 1985 c. 69.  
**M44** 1985 c. 69.

### <sup>F1468</sup>219<sup>F1467</sup> Disposals by housing related bodies.]

(1) In any case where—

- (a) [<sup>F1469</sup>a housing regulator][<sup>F1470</sup>or the Homes and Communities Agency] disposes of any land to a [<sup>F1471</sup>relevant housing provider], or
- (b) a [<sup>F1471</sup>relevant housing provider] disposes of any land to another [<sup>F1471</sup>relevant housing provider], or
- (c) in pursuance of a direction of [<sup>F1472</sup>a housing regulator] given under [<sup>F1473</sup>section 167 of the Housing and Regeneration Act 2008][<sup>F1474</sup>, section 106 of the Housing (Scotland) Act 2010], Part I of the Housing Act 1996 or Part I of the Housing Associations Act 1985 (as the case may be) requiring it to do so, a [<sup>F1471</sup>relevant housing provider] disposes of any of its property, other than land, to another [<sup>F1471</sup>relevant housing provider], or
- (d) a [<sup>F1471</sup>relevant housing provider] or an unregistered self-build society disposes of any land to [<sup>F1475</sup>a housing regulator][<sup>F1476</sup>, the Homes and Communities Agency or the Greater London Authority],

both parties to the disposal shall be treated for the purposes of tax on chargeable gains as if the land or property disposed of were acquired from [<sup>F1477</sup>the housing regulator][<sup>F1478</sup>, the Homes and Communities Agency], [<sup>F1471</sup>relevant housing provider] or unregistered self-build society making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to [<sup>F1477</sup>the housing regulator][<sup>F1479</sup>, the Homes and Communities Agency] or, as the case may be, that [<sup>F1471</sup>relevant housing provider] or society.

(2) In this section—

[<sup>F1480</sup>“housing regulator” means the Regulator of Social Housing][<sup>F1481</sup>, the Scottish Housing Regulator], [<sup>F1482</sup>the Secretary of State] or Scottish Homes;  
 [<sup>F1483</sup>“relevant housing provider” means—

- (a) a non-profit registered provider of social housing,
- (b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996, or
- (c) a body registered in the register maintained under [<sup>F1484</sup>section 20(1) of the Housing (Scotland) Act 2010].]

*Status: Point in time view as at 16/11/2017.*

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“unregistered self-build society” has the same meaning as in the Housing Associations Act 1985.]

#### Textual Amendments

- F1467**S. 219 heading substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(4)**; S.I. 2010/862, art. 2 (with Sch.)
- F1468**S. 219 substituted (1.10.1996) by [The Housing Act 1996 \(Consequential Provisions\) Order 1996 \(S.I. 1996/2325\)](#), art. 1(2), **Sch. 2 para. 20(2)**
- F1469**Words in s. 219(1)(a) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(2)(a)**; S.I. 2010/862, art. 2 (with Sch.)
- F1470**Words in s. 219(1)(a) inserted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 62(a)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)
- F1471**Words in s. 219(1) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(2)(b)**; S.I. 2010/862, art. 2 (with Sch.)
- F1472**Words in s. 219(1)(c) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(2)(a)**; S.I. 2010/862, art. 2 (with Sch.)
- F1473**Words in s. 219(1)(c) inserted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(2)(c)**; S.I. 2010/862, art. 2 (with Sch.)
- F1474**Words in s. 219(1)(c) inserted (1.4.2012) by [The Housing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2012 \(S.I. 2012/700\)](#), art. 1(3), **Sch. para. 4(2)**
- F1475**Words in s. 219(1)(d) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(2)(a)**; S.I. 2010/862, art. 2 (with Sch.)
- F1476**Words in s. 219(1)(d) substituted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), **Sch. 19 para. 32**; S.I. 2012/628, art. 6(i) (with arts. 9, 11, 14, 15, 17)
- F1477**Words in s. 219(1) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(2)(d)**; S.I. 2010/862, art. 2 (with Sch.)
- F1478**Words in s. 219(1) inserted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 62(c)(i)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)
- F1479**Words in s. 219(1) inserted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 62(c)(ii)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)
- F1480**Words in s. 219(2) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(3)(a)**; S.I. 2010/862, art. 2 (with Sch.)
- F1481**Words in s. 219(2) inserted (1.4.2012) by [The Housing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2012 \(S.I. 2012/700\)](#), art. 1(3), **Sch. para. 4(3)(a)**
- F1482**Words in s. 219(2) substituted (1.11.1998) by virtue of [Government of Wales Act 1998 \(c. 38\)](#), ss. 140, 158(1), **Sch. 16 para. 79**; S.I. 1998/2244, art. 5
- F1483**Words in s. 219(2) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 9 para. 18(3)(b)**; S.I. 2010/862, art. 2 (with Sch.)
- F1484**Words in s. 219(2) substituted (1.4.2012) by [The Housing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2012 \(S.I. 2012/700\)](#), art. 1(3), **Sch. para. 4(3)(b)**

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

- C323** S. 219 modified (E.W.) (1.12.2008) by [The Transfer of Housing Corporation Functions \(Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/2839\)](#), arts. 1(1), 3, **Sch. para. 1** (with art. 6)

## 220 Disposals by Northern Ireland housing associations.

(1) In any case where—

- (a) a registered Northern Ireland housing association disposes of any land to another such association, or

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- (b) in pursuance of a direction of the Department of the Environment for Northern Ireland given under Chapter II of Part VII of the <sup>M45</sup>Housing (Northern Ireland) Order 1981 requiring it to do so, a registered Northern Ireland housing association disposes of any of its property, other than land, to another such association,

both parties to the disposal shall be treated for the purposes of tax on chargeable gains as if the land or property disposed of were acquired from the association making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that association.

- (2) In subsection (1) above “registered Northern Ireland housing association” means a registered housing association within the meaning of Part VII of the Order referred to in paragraph (b) of that subsection.

**Marginal Citations**

**M45** [S.I. 1981/156 \(N.I.3\)](#).

*Other bodies*

<sup>F1485</sup>**221 Harbour authorities.**

.....

**Textual Amendments**

**F1485S.** 221 repealed (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 15](#)

**PART VII**

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

*Private residences*

**222 Relief on disposal of private residence.**

- (1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—
- (a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or
  - (b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.
- (2) In this section “the permitted area” means, subject to subsections (3) and (4) below, an area (inclusive of the site of the dwelling-house) of 0.5 of a hectare.

*Status: Point in time view as at 16/11/2017.*

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- [<sup>F1486</sup>(3) Where the area required for the reasonable enjoyment of the dwelling-house (or of the part in question) as a residence, having regard to the size and character of the dwelling-house, is larger than 0.5 of a hectare, that larger area shall be the permitted area.]
- (4) Where part of the land occupied with a residence is and part is not within subsection (1) above, then (up to the permitted area) that part shall be taken to be within subsection (1) above which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.
- (5) So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period—
- (a) the individual may conclude that question by notice to [<sup>F1487</sup>an officer of the Board] given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to [<sup>F1487</sup>an officer of the Board] as respects any period beginning not earlier than 2 years before the giving of the further notice,
- <sup>F1488</sup>(b) .....
- <sup>F1489</sup> .....
- (6) In the case of [<sup>F1490</sup>an individual living with his spouse or civil partner]—
- (a) there can only be one residence or main residence for both, so long as living together and, where a notice under subsection (5)(a) above affects both [<sup>F1491</sup>the individual and his spouse or civil partner], it must be given by both,
- <sup>F1492</sup> ...
- <sup>F1493</sup>(b) .....
- [<sup>F1494</sup>(6A) Where an individual has determined, by giving notice under subsection (5)(a), that a residence is the individual's main residence, that determination does not cease to be effective at any time by reason only of the fact that, at that time, another of the individual's residences is treated by section 222B(1) as not being occupied as a residence (or, having been so treated, is no longer so treated).]
- (7) In this section and sections [<sup>F1495</sup>222A] to 226, “the period of ownership” where the individual has had different interests at different times shall be taken to begin from the first acquisition taken into account in arriving at the expenditure which under Chapter III of Part II is allowable as a deduction in the computation of the gain to which this section applies, and in the case of [<sup>F1496</sup>an individual living with his spouse or civil partner]—
- (a) if the one disposes of, or of his or her interest in, the dwelling-house or part of a dwelling-house which is their only or main residence to the other, and in particular if it passes on death to the other as legatee, the other's period of ownership shall begin with the beginning of the period of ownership of the one making the disposal, and
- (b) if paragraph (a) above applies, but the dwelling-house or part of a dwelling-house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was his only or main residence as if it was also that of the other.
- (8) If at any time during an individual's period of ownership of a dwelling-house or part of a dwelling-house he—
- (a) resides in living accommodation which is for him job-related <sup>F1497</sup> ..., and

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- (b) intends in due course to occupy the dwelling-house or part of a dwelling-house as his only or main residence,
- this section and sections 223 to 226 shall apply as if the dwelling-house or part of a dwelling-house were at that time occupied by him as a residence.
- <sup>F1498</sup>(8A) Subject to subsections (8B), (8C) and (9) below, for the purposes of subsection (8) above living accommodation is job-related for a person if—
- (a) it is provided for him by reason of his employment, or for his spouse <sup>F1499</sup>or civil partner] by reason of <sup>F1500</sup>the spouse's or civil partner's] employment, in any of the following cases—
- (i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;
- (ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;
- (iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements;
- or
- (b) under a contract entered into at arm's length and requiring him or his spouse <sup>F1499</sup>or civil partner] to carry on a particular trade, profession or vocation, he or his spouse <sup>F1499</sup>or civil partner] is bound—
- (i) to carry on that trade, profession or vocation on premises or other land provided by another person (whether under a tenancy or otherwise); and
- (ii) to live either on those premises or on other premises provided by that other person.
- (8B) If the living accommodation is provided by a company and the employee is a director of that or an associated company, subsection (8A)(a)(i) or (ii) above shall not apply unless—
- (a) the company of which the employee is a director is one in which he or she has no material interest; and
- (b) either—
- (i) the employment is as a full-time working director, or
- (ii) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property, or
- (iii) the company is <sup>F1501</sup>a charitable company].
- (8C) Subsection (8A)(b) above does not apply if the living accommodation concerned is in whole or in part provided by—
- (a) a company in which the borrower or his spouse <sup>F1502</sup>or civil partner] has a material interest; or
- (b) any person or persons together with whom the borrower or his spouse <sup>F1502</sup>or civil partner] carries on a trade or business in partnership.
- (8D) For the purposes of this section—
- (a) a company is an associated company of another if one of them has control of the other or both are under the control of the same person; and



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- (b) “employment”, “director”, “full-time working director”, “material interest” and “control”, in relation to a body corporate, have [<sup>F1503</sup>the meanings given by Chapter 2 of Part 3 of ITEPA 2003].]
- (9) [<sup>F1504</sup>Subsections (8A)(b) and (8C) above] shall apply for the purposes of subsection (8) above only in relation to residence on or after 6th April 1983 in living accommodation which is job-related [<sup>F1505</sup>for the purposes of that subsection].
- (10) Apportionments of consideration shall be made wherever required by this section or sections 223 to 226 and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

### Textual Amendments

- F1486**S. 222(3) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 59\(2\)](#)
- F1487**Words in s. 222(5)(a) substituted (with effect in accordance with Sch. 22 para. 7(1) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 1\(2\)](#)
- F1488**S. 222(5)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 59\(3\)\(a\)](#), [Sch. 41 Pt. V\(10\)](#)
- F1489**Words in s. 222(5) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 59\(3\)\(b\)](#), [Sch. 41 Pt. V\(10\)](#)
- F1490**Words in s. 222(6) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [117\(2\)\(a\)](#)
- F1491**Words in s. 222(6)(a) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [117\(2\)\(b\)](#)
- F1492**Word in s. 222(6) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 59\(4\)](#), [Sch. 41 Pt. V\(10\)](#)
- F1493**S. 222(6)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 59\(4\)](#), [Sch. 41 Pt. V\(10\)](#)
- F1494**S. 222(6A) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 2\(a\)](#)
- F1495**Word in s. 222(7) substituted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 2\(b\)](#)
- F1496**Words in s. 222(7) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [117\(3\)](#)
- F1497**Words in s. 222(8)(a) repealed (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 17\(2\)](#), [Sch. 20 Pt. III\(7\)](#)
- F1498**S. 222(8A)-(8D) inserted (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 17\(3\)](#)
- F1499**Words in s. 222(8A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [117\(4\)\(a\)](#)
- F1500**Words in s. 222(8A)(a) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [117\(4\)\(b\)](#)
- F1501**Words in s. 222(8B)(b)(iii) substituted (with effect in accordance with S.I. 2012/736, art. 8) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 13\(2\)](#), 34(2); S.I. 2012/736, art. 8
- F1502**Words in s. 222(8C) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [117\(5\)](#)
- F1503**Words in s. 222(8D)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 6 para. 213](#) (with [Sch. 7](#))
- F1504**Words in s. 222(9) substituted (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 17\(4\)\(a\)](#)

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**F1505** Words in s. 222(9) substituted (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 17\(4\)\(b\)](#)

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

**C324** S. 222(8A)-(8D) applied by Inheritance Tax Act 1984 (c. 51), s. 8H(7) (as inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [s. 9\(4\)](#))

**[<sup>F1506</sup>222] Determination of main residence: non-resident CGT disposals**

- (1) This section applies where—
- (a) an individual (“P”) makes a disposal of, or of an interest in—
    - (i) a dwelling-house, or part of a dwelling-house, which was at any time in P's period of ownership occupied by P as a residence, or
    - (ii) land (as mentioned in section 222(1)(b)) which P had for P's own occupation and enjoyment with that residence as its garden or grounds, and
  - (b) the disposal is a non-resident CGT disposal (see section 14B).

In the remainder of this section the residence concerned is referred to as “the dwelling-house”.

- (2) So far as it is necessary for the purposes of section 222, P may determine, by a notice under this section, which of 2 or more residences (of which one is the dwelling-house) was P's main residence for any period within P's period of ownership of the dwelling-house.
- (3) A notice under this section may vary, as respects any period within P's period of ownership of the dwelling-house, a notice previously given under section 222(5)(a).
- See also subsections (4) and (7).
- (4) A notice under this section may not vary a notice previously given under section 222(5)
- (a) as respects any period for which the previous notice had the effect of determining whether or not a disposed of residence was P's main residence.
- (5) In subsection (4) “disposed of residence” means one of P's residences which was disposed of (in whole or in part) before the date of the disposal mentioned in subsection (1)(a).
- (6) A notice under this section—
- (a) must be given in the NRCGT return in respect of the disposal mentioned in subsection (1)(a), and
  - (b) may not subsequently be varied, whether by a notice under this section or section 222(5)(a).
- (7) Where a notice under this section affects both P and an individual (“X”) who was, in the period to which the notice relates (“the relevant period”), P's spouse or civil partner living with P—
- (a) in a case where each of P and X is required to make an NRCGT return in respect of the disposal of an interest in the dwelling-house, notice given by P under this section is effective as respects any part of the relevant period when P and X were living together as spouses or civil partners only if notice to the same effect is also given under this section by X in respect of that period;

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- (b) in any other case, notice given by P under this section is effective as respects any part of the relevant period when P and X were living together as spouses or civil partners only if it is accompanied by written notification from X agreeing to the terms of the notice in respect of that period.

(8) Nothing in subsection (2) affects the application of section 222(5) in relation to P.

#### Textual Amendments

F1506Ss. 222A-222C inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by  
[Finance Act 2015 \(c. 11\), Sch. 9 para. 3](#)

### 222B Non-qualifying tax years

- (1) For the purposes of sections 222 to 226 the dwelling-house or part of a dwelling-house mentioned in section 222(1) is treated as not being occupied as a residence by the individual so mentioned (“P”) at any time in P’s period of ownership which falls within—
  - (a) a non-qualifying tax year, or
  - (b) a non-qualifying partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

- (2) Except where the disposal mentioned in section 222(1) is a non-resident CGT disposal, subsection (1) does not have effect in respect of any tax year or partial tax year before the tax year 2015-16.
- (3) A tax year the whole of which falls within P’s period of ownership is “a non-qualifying tax year” in relation to the dwelling-house if—
  - (a) neither P nor P’s spouse or civil partner was resident for that tax year in the territory in which the dwelling-house is situated, and
  - (b) the day count test was not met by P with respect to the dwelling-house for that tax year (see section 222C).
- (4) A partial tax year is “a non-qualifying partial tax year” in relation to the dwelling-house if—
  - (a) neither P nor P’s spouse or civil partner was resident for the tax year in question in the territory in which the dwelling-house is situated, and
  - (b) the day count test was not met by P with respect to the dwelling-house for that partial tax year.
- (5) Where part only of a tax year falls within P’s period of ownership, that part is a “partial tax year” for the purposes of this section.
- (6) For the purposes of this section an individual is resident in a territory outside the United Kingdom (“the overseas territory”) for a tax year (“year X”) in relation to which condition A or B is met.
- (7) Condition A is that the individual is, in respect of a period or periods making up more than half of year X, liable to tax in the overseas territory under the law of that territory by reason of the individual’s domicile or residence.

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- (8) Condition B is that the individual would be resident in the overseas territory for year X in accordance with the statutory residence test in Part 1 of Schedule 45 to the Finance Act 2013, if in Parts 1 and 2 of that Schedule—
- (a) any reference to the United Kingdom (however expressed) were read as a reference to the overseas territory,
  - (b) “overseas” meant anywhere outside that territory, and
  - (c) in paragraph 26 (meaning of “work”), sub-paragraphs (2) to (4), (6) and (7) were disregarded.
- (9) In applying the statutory residence test in accordance with subsection (8), any determination of whether—
- (a) the individual was resident in the overseas territory for a tax year preceding year X, or
  - (b) another individual is resident in the overseas territory for year X,
- is to be made in accordance with the statutory residence test, as modified by subsection (8).
- (10) Section 11(1)(a) (visiting forces etc) is to be disregarded in determining for the purposes of this section whether or not an individual is resident in the United Kingdom.
- (11) Subsection (1) is subject to—
- (a) section 222(8) (job-related accommodation), and
  - (b) section 223(3) (absence reliefs).

#### **Textual Amendments**

**F1506**Ss. 222A-222C inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 3](#)

### **222C Day count test**

- (1) This section explains how P meets the day count test (see section 222B) with respect to the dwelling-house or part of a dwelling-house mentioned in section 222(1) for a full or partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

- (2) P meets that test for a tax year with respect to the dwelling-house if, during that year, P spends at least 90 days in one or more qualifying houses.
- (3) P meets that test for a partial tax year with respect to the dwelling-house if, during that partial tax year, P spends at least the relevant number of days in one or more qualifying houses.
- (4) To find the relevant number of days for the purposes of subsection (3), multiply 90 days by the relevant fraction and round up the result to the nearest whole number of days if necessary.
- (5) The relevant fraction is—

X Y

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where—

“X” is the number of days in the partial tax year;

“Y” is the number of days in the tax year.

- (6) For the purposes of subsections (2) and (3) the days need not be consecutive, and days spent in different qualifying houses may be aggregated.
- (7) A day spent by P's spouse or civil partner in a dwelling-house or part of a dwelling-house which is a qualifying house in relation to P counts as a day spent by P in the qualifying house (but no day is to be counted twice as a result of this subsection).
- (8) For the purposes of this section, a day counts as a day spent by an individual in a qualifying house if—
  - (a) the individual is present at the house at the end of the day, or
  - (b) the individual—
    - (i) is present in the house for some period during the day, and
    - (ii) the next day, has stayed overnight in the house.
- (9) For the purposes of this section—
  - (a) the dwelling-house is a qualifying house in relation to P, and
  - (b) any other dwelling-house or part of a dwelling-house which is situated in the same territory as the dwelling-house is a qualifying house in relation to P at any particular time if at that time any of the following has an interest in it—
    - (i) P,
    - (ii) an individual who is P's spouse or civil partner at that time, and
    - (iii) an individual who is P's spouse or civil partner at the time of disposal of the dwelling-house.
- (10) In this section “partial tax year” has the meaning given by section 222B(5).]

#### Textual Amendments

F1506Ss. 222A-222C inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by  
[Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 3](#)

### 223 Amount of relief.

- (1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last [<sup>F1507</sup>18 months] of that period.
- (2) Where subsection (1) above does not apply, a fraction of the gain shall not be a chargeable gain, and that fraction shall be—
  - (a) the length of the part or parts of the period of ownership during which the dwelling-house or the part of the dwelling-house was the individual's only or main residence, but inclusive of the last [<sup>F1508</sup>18 months] of the period of ownership in any event, divided by
  - (b) the length of the period of ownership.

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(3) For the purposes of [<sup>F1509</sup>sections 222(5) and 222A and] subsections (1) and (2) above—

- (a) a period of absence not exceeding 3 years (or periods of absence which together did not exceed 3 years), and in addition
- (b) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the United Kingdom [<sup>F1510</sup>or lived with a spouse or civil partner who worked in such an employment or office], and in addition
- (c) any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual was prevented from residing in the dwelling-house or part of the dwelling-house in consequence of the situation of his place of work or in consequence of any condition imposed by his employer requiring him to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of his duties, [<sup>F1511</sup>and in addition,]

[<sup>F1512</sup>(d) any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual lived with a spouse or civil partner in respect of whom paragraph (c) applied in respect of that period (or periods),]

shall be treated as if in that period of absence the dwelling-house or the part of the dwelling-house [<sup>F1513</sup>were occupied by the individual as a residence][<sup>F1514</sup>if conditions A and B are met.]

[<sup>F1515</sup>(3A) Condition A is that before the period there was a time when the dwelling-house was the individual’s only or main residence.

(3B) Condition B is that after the period—

- (a) in a case falling within paragraph (a), (b), (c) or (d) of subsection (3), there was a time when the dwelling-house was the individual’s only or main residence,
- (b) in a case falling within paragraph (b), (c) or (d) of that subsection, the individual was prevented from resuming residence in the dwelling-house in consequence of the situation of the individual’s place of work or a condition imposed by the terms of the individual’s employment requiring the individual to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of his duties, or
- (c) in a case falling within paragraph (b), (c) or (d) of that subsection, the individual lived with a spouse or civil partner to whom paragraph (b) of this subsection applied.]

(4) Where a gain to which section 222 applies accrues to any individual and the dwelling-house in question or any part of it is or has at any time in his period of ownership been wholly or partly let by him as residential accommodation, the part of the gain, if any, which (apart from this subsection) would be a chargeable gain by reason of the letting, shall be such a gain only to the extent, if any, to which it exceeds whichever is the lesser of—

- (a) the part of the gain which is not a chargeable gain by virtue of the provisions of subsection (1) to (3) above <sup>F1516</sup>... ; and
- (b) £40,000.

<sup>F1517</sup>(5) .....

<sup>F1517</sup>(6) .....

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- [<sup>F1518</sup>(7) In this section “period of ownership”—
- (a) does not include any period before 31 March 1982, and
  - (b) where the whole or part of the gain to which section 222 applies is an NRCGT gain chargeable to capital gains tax by virtue of section 14D, does not include any period before 6 April 2015 (but see subsection (7A)).
- (7A) Paragraph (b) of the definition of “period of ownership” does not apply in a case where paragraph 9 of Schedule 4ZZB applies by virtue of sub-paragraph (1)(b) of that paragraph (the individual has made an election for the retrospective basis of computation to apply).
- (7B) In this section “period of absence” means a period during which the dwelling-house or the part of the dwelling-house was not occupied by the individual as a residence.]
- [<sup>F1519</sup>(8) This section is subject to—
- (a) section 224 (amount of relief: further provisions),
    - [<sup>F1520</sup>(aa) section 225D (private residence of adult placement carer),]<sup>F1521</sup> ...
    - [<sup>F1522</sup>(ab) section 225E (disposals by disabled persons or persons in care homes etc), and]
  - (b) section 226A (private residence relief: cases where relief obtained under section 260).]

### Textual Amendments

- F1507** Words in s. 223(1) substituted (with effect in accordance with s. 58(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 58\(2\)\(a\)](#)
- F1508** Words in s. 223(2)(a) substituted (with effect in accordance with s. 58(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 58\(2\)\(a\)](#)
- F1509** Words in s. 223(3) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 9 para. 4\(2\)\(a\)](#)
- F1510** Words in s. 223(3)(b) inserted (with effect in accordance with art. 7(5) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\), arts. 1\(1\), 7\(2\)](#)
- F1511** Words in s. 223(3)(c) inserted (with effect in accordance with art. 7(5) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\), arts. 1\(1\), 7\(3\)](#)
- F1512** S. 223(3)(d) inserted (with effect in accordance with art. 7(5) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\), arts. 1\(1\), 7\(4\)](#)
- F1513** Words in s. 223(3) substituted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 9 para. 4\(2\)\(b\)](#)
- F1514** Words in s. 223(3) substituted (with effect in accordance with art. 8(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\), arts. 1\(1\), 8\(2\)](#)
- F1515** S. 223(3A)(3B) inserted (with effect in accordance with art. 8(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\), arts. 1\(1\), 8\(3\)](#)
- F1516** Words in s. 223(4)(a) repealed (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 22 para. 2\(2\), Sch. 42 Pt. 2\(15\)](#)
- F1517** S. 223(5)(6) omitted (with effect in accordance with s. 58(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\), s. 58\(2\)\(b\)](#)
- F1518** S. 223(7)-(7B) substituted for s. 223(7) (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 9 para. 4\(3\)](#)
- F1519** S. 223(8) inserted (with effect in accordance with Sch. 22 paras. 7(3)(4), 8 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 22 para. 2\(3\)](#)

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**F1520S.** 223(8)(aa) inserted (with effect in accordance with s. 16(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 16\(1\)](#)

**F1521** Word in s. 223(8) omitted (with effect in accordance with s. 58(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\), s. 58\(2\)\(c\)](#)

**F1522S.** 223(8)(ab) inserted (with effect in accordance with s. 58(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 58\(2\)\(c\)](#)

## **[<sup>F1523</sup>223A Amount of relief: non-resident CGT disposals**

- (1) This section applies where—
  - (a) the individual mentioned in section 223(1) (“P”) acquired the asset to which the gain mentioned in section 222(1) is attributable before 6 April 2015, and
  - (b) P’s period of ownership for the purposes of section 223 begins on that date because of section 223(7)(b).
- (2) Times before 6 April 2015 are to be ignored in determining whether or not condition A in section 223 is met in relation to a period of absence, unless P elects that this subsection is not to apply in relation to the period.
- (3) An election under subsection (2)—
  - (a) must specify which day before 6 April 2015 P relies on in relation to the period of absence for the purpose of meeting condition A in section 223, and
  - (b) must be made in the NRCGT return in respect of the disposal.
- (4) Where P has made an election under subsection (2), section 223 applies as if relevant prior periods of absence counted against the maximum periods (and maximum aggregate periods) specified in subsection (3)(a), (c) and (d) of that section.
- (5) In relation to a maximum period (or maximum aggregate period) specified in paragraph (a), (c) or (d) of section 223(3), “relevant prior period of absence” means a period of absence which would have counted against that maximum period (or maximum aggregate period) if the bridge period were included in the period of ownership.
- (6) In subsection (5) “the bridge period” means the period beginning with the day specified in the election and ending with 5 April 2015.
- (7) In this section “period of absence” has the same meaning as in section 223.]

### **Textual Amendments**

**F1523S.** 223A inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 9 para. 5](#)

## **224 Amount of relief: further provisions.**

- (1) If the gain [<sup>F1524</sup>accrues on] the disposal of a dwelling-house or part of a dwelling-house part of which is used exclusively for the purpose of a trade or business, or of a profession or vocation, the gain shall be apportioned and section 223 shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.



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- (2) If at any time in the period of ownership there is a change in what is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling-house for the purpose of a trade or business, or of a profession or vocation, or for any other purpose, the relief given by section 223 [<sup>F1525</sup>may be adjusted in a manner which is just and reasonable].
- (3) Section 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.

[<sup>F1526</sup>(4) This section is subject to section 225D (private residence of adult placement carer).]

#### Textual Amendments

**F1524** Words in s. 224(1) substituted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 3\(2\)](#)

**F1525** Words in s. 224(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 60](#)

**F1526** S. 224(4) inserted (with effect in accordance with s. 16(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 16\(2\)](#)

## 225 Private residence occupied under terms of settlement.

[<sup>F1527</sup>(1)] Sections 222 to 224 shall also apply in relation to a gain accruing to [<sup>F1528</sup>the trustees of a settlement] on a disposal of settled property being an asset within section 222(1) where, during the period of ownership of [<sup>F1529</sup>the trustees], the dwelling-house or part of the dwelling-house mentioned in that subsection has been the only or main residence of a person [<sup>F1530</sup>(“B”)] entitled to occupy it under the terms of the settlement, and in those sections as so applied—

(a) references to the individual shall be taken as references to [<sup>F1531</sup>the trustees] except in relation to [<sup>F1532</sup>the matters dealt with in subsection (2),]

(b) the notice which may be given to [<sup>F1533</sup>an officer of the Board] under section 222(5)(a) shall be a joint notice by [<sup>F1534</sup>the trustees] and [<sup>F1535</sup>B, and]

[<sup>F1536</sup>(c) the notice which may be given by the trustees under section 222A is effective only if it is accompanied by written notification from B agreeing to the terms of the notice;]

[<sup>F1537</sup>but section 223 (as so applied) shall apply only on the making of a claim by the trustees].

[<sup>F1538</sup>(2) In sections 222 to 224, as applied by subsection (1), references to the individual, in relation to—

(a) the occupation of the dwelling-house or part of the dwelling-house,

(b) residence in a territory, or

(c) meeting the day count test,

are to be taken as references to B.]

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### Textual Amendments

- F1527**S. 225 renumbered as s. 225(1) (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 6\(2\)](#)
- F1528**Words in s. 225 substituted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 4\(2\)\(a\)](#)
- F1529**Words in s. 225 substituted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 4\(2\)\(b\)](#)
- F1530**Word in s. 225(1) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 6\(3\)\(a\)](#)
- F1531**Words in s. 225(a) substituted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 4\(3\)](#)
- F1532**Words in s. 225(1)(a) substituted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 6\(3\)\(b\)](#)
- F1533**Words in s. 225(b) substituted (with effect in accordance with Sch. 22 para. 7(1)(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 4\(4\)\(a\)](#)
- F1534**Words in s. 225(b) substituted (with effect in accordance with Sch. 22 para. 7(1)(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 4\(4\)\(b\)](#)
- F1535**Words in s. 225(1)(b) substituted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 6\(3\)\(c\)](#)
- F1536**S. 225(1)(c) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 6\(3\)\(d\)](#)
- F1537**Words in s. 225 inserted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 4\(5\)](#)
- F1538**S. 225(2) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 6\(4\)](#)

### [<sup>F1539</sup>225] Private residence held by personal representatives

- (1) Sections 222 to 224 shall also apply in relation to a gain accruing to the personal representatives of a deceased person on a disposal of an asset within section 222 (1) if the following conditions are satisfied.
- (2) The first condition is that, immediately before and immediately after the death of the deceased person, the dwelling-house or part of the dwelling-house mentioned in section 222 (1) was the only or main residence of one or more individuals.
- (3) The second condition is that—
  - (a) that individual or one of those individuals has a relevant entitlement, or two or more of those individuals have relevant entitlements, and
  - (b) the relevant entitlement accounts for, or the relevant entitlements together account for, 75% or more of the net proceeds of disposal;
 and for this purpose “relevant entitlement” means an entitlement as legatee of the deceased person to, or to an interest in possession in, the whole or any part of the net proceeds of disposal.
- (4) In subsection (3) above “net proceeds of disposal” means—
  - (a) the proceeds of the disposal of the asset realised by the personal representatives, less
  - (b) any incidental costs allowable as a deduction in accordance with section 38(1)
  - (c) in computing the gain accruing to the personal representatives on that disposal,

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but on the assumption that none of the proceeds is required to meet the liabilities of the deceased person's estate (including any liability to inheritance tax).

(5) In sections 222 to 224 as applied by this section—

(a) references to the individual shall be taken as references to the personal representatives except in relation to [<sup>F1540</sup>the matters dealt with in paragraph (aa),]

<sup>F1541</sup> [(aa) in relation to the occupation of the dwelling-house or part of the dwelling-house, residence in a territory, or meeting the day count test, references to the individual are to be taken as references to a qualifying individual,]

(b) the notice which may be given to an officer of the Board under section 222(5) (a) shall be a joint notice by the personal representatives and the individual or individuals entitled to occupy the dwelling-house or part of the dwelling-house [<sup>F1542</sup>and

(c) the notice which may be given by the personal representatives under section 222A is effective only if it is accompanied by written notification from the individual or individuals entitled to occupy the dwelling-house or part of the dwelling-house agreeing to the terms of the notice.]

(6) But section 223 (as so applied) shall apply only on the making of a claim by the personal representatives.

[ In subsection (5)(aa) “a qualifying individual” means an individual—

- <sup>F1543</sup>(7) (a) who has a relevant entitlement, and  
(b) by virtue of whom the first condition is met.]]

#### Textual Amendments

**F1539S.** 225A inserted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 5](#)

**F1540** Words in s. 225A(5)(a) substituted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 7\(2\)\(a\)](#)

**F1541S.** 225A(5)(aa) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 7\(2\)\(b\)](#)

**F1542S.** 225A(5)(c) and preceding word inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 7\(2\)\(c\)](#)

**F1543S.** 225A(7) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 9 para. 7\(3\)](#)

#### [<sup>F1544</sup>225] Disposals in connection with divorce, etc

(1) Where an individual—

- (a) ceases to live with his spouse or civil partner in a dwelling-house or part of a dwelling-house which is their only or main residence, and  
(b) subsequently disposes of, or of an interest in, the dwelling-house or part to the spouse or civil partner,

then, if conditions A to C are met, sections 222 to 224 shall apply as if the dwelling-house or part continued to be the individual's only or main residence until the disposal.

(2) Condition A is that the disposal mentioned in subsection (1)(b) is pursuant to—

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- (a) an agreement between the individual and his spouse or civil partner made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or civil partnership, their judicial separation or the making of a separation order in respect of them, or their separation in other circumstances such that the separation is likely to be permanent, or
- (b) an order of a court—
  - (i) made on granting an order or a decree of divorce or nullity of marriage, for the dissolution or annulment of the civil partnership, or for judicial separation,
  - (ii) made in connection with the dissolution or annulment of the marriage or civil partnership or the parties' judicial separation and which is made at any time after the granting of such an order or decree,
  - (iii) made at any time under section 22A, 23, 23A, 24 or 24A of the Matrimonial Causes Act 1973,
  - (iv) made at any time under article 25 or 26 of the Matrimonial Causes (Northern Ireland) Order 1978,
  - (v) made under section 8 of the Family Law (Scotland) Act 1985, including incidental orders made by virtue of section 14 of that Act, or
  - (vi) made at any time under any provision of Schedule 5 to the Civil Partnership Act 2004 that corresponds to any of the provisions mentioned in paragraphs (iii) and (iv).
- (3) Condition B is that in the period between the individual ceasing to reside in the dwelling-house or part of the dwelling-house and the disposal to the spouse or civil partner, the dwelling-house or part continues to be the only or main residence of the spouse or civil partner.
- (4) Condition C is that the individual has not given notice under section 222(5) [<sup>F1545</sup>or 222A] that another dwelling-house or part of a dwelling-house is to be treated as the individual's main residence for any part of that period.
- (5) Section 223 (as applied by this section) shall apply only on the making of a claim by the individual.]

#### **Textual Amendments**

**F1544**S. 225B inserted (with effect in accordance with art. 9(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **9(1)**

**F1545**Words in s. 225B(4) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), **Sch. 9 para. 8**

#### **[<sup>F1546</sup>225] Sale of private residence under certain agreements with employer, etc**

- (1) This section applies where—
  - (a) an individual disposes of, or of an interest in, a dwelling-house or a part of a dwelling-house which is the individual's only or main residence (“the initial disposal”),
  - (b) the individual does so as a consequence of a change to the situation of the individual's place of work or that of a co-owner of the dwelling-house or the interest, being a change that is required by the employer of the individual or the co-owner, and

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- (c) the initial disposal is under a home purchase agreement.
- (2) If—
- (a) under the terms of the agreement the individual receives, within three years of the initial disposal, a share of any profit made by the purchaser upon the purchaser's disposal of, or of an interest in, the dwelling-house or part of the dwelling-house, and
  - (b) the receipt of that sum would be treated (apart from this section) as a disposal falling within section 22 (disposal where capital sums derived from assets),
- that receipt shall be treated for the purposes of this Act as a gain attributable to the initial disposal but accruing to the individual at the time the sum is received.
- (3) In this section—
- “home purchase agreement” means an agreement—
    - (a) made with the employer or a person operating under an agreement with the employer (“the purchaser”),
    - (b) which includes a term entitling the individual to receive a share of any such profit as is mentioned in subsection (2)(a);
  - “co-owner”, in relation to any individual (“A”), means another individual who holds an interest jointly or in common with A, whether or not the interests of the co-owners are equal.]

#### Textual Amendments

**F1546S.** 225C inserted (with effect in accordance with art. 10(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **10(1)**

#### [<sup>F1547</sup>**225D** Private residence of adult placement carer

- (1) This section applies where a gain to which section 222 applies accrues to an individual (“A”) and, at any time during A's period of ownership, part of the dwelling-house was occupied by another person (“B”)—
- (a) in England and Wales, pursuant to an adult placement scheme,
  - (b) in Scotland, pursuant to arrangements which constitute or form part of an adult placement service involving the provision of accommodation for B, or
  - (c) in Northern Ireland, pursuant to arrangements made with an adult placement agency for the provision of accommodation for B.
- (2) For the purposes of this Part, in determining the periods during which the dwelling-house, or any part of the dwelling-house, was A's only or main residence, B's occupation of part of the dwelling-house pursuant to the scheme or arrangement is to be disregarded.
- (3) For the purposes of section 224, the occupation of the part of the dwelling-house by B pursuant to the scheme or arrangement does not amount to the use of that part of the dwelling-house by A exclusively for the purpose of a trade, business, profession or vocation.
- (4) In this section—
- “adult placement agency” means an organisation or undertaking—

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- (a) that arranges for the provision of care and support (including accommodation) for persons in need, and
- (b) in respect of which a requirement to register arises under Article 12 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003,
  - “adult placement scheme” means a scheme—
    - (a) under which an individual agrees with the person carrying on the scheme to provide care and support (including accommodation) to an adult who is in need of it, and
    - (b) in respect of which a requirement to register arises under section 11 of the Care Standards Act 2000, and
- “adult placement service” has the meaning given by paragraph 11 of schedule 12 to the Public Services Reform (Scotland) Act 2010.]

#### **Textual Amendments**

**F1547S.** 225D inserted (with effect in accordance with s. 16(4)(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 16\(3\)](#)

#### **[<sup>F1548</sup>225D] Disposals by disabled persons or persons in care homes etc**

- (1) This section applies where a gain to which section 222 applies accrues to an individual and—
  - (a) the conditions in subsection (2) are met, or
  - (b) the conditions in subsection (3) are met.
- (2) The conditions mentioned in subsection (1)(a) are that at the time of the disposal—
  - (a) the individual is a disabled person or a long-term resident in a care home, and
  - (b) the individual does not have any other relevant right in relation to a private residence.
- (3) The conditions mentioned in subsection (1)(b) are that at the time of the disposal—
  - (a) the individual's spouse or civil partner is a disabled person or a long-term resident in a care home, and
  - (b) neither the individual nor the individual's spouse or civil partner has any other relevant right in relation to a private residence.
- (4) Where this section applies, the references in section 223(1) and (2)(a) to 18 months are treated as references to 36 months.
- (5) An individual is a “long-term resident” in a care home at the time of the disposal if at that time the individual —
  - (a) is resident there, and
  - (b) has been resident there, or can reasonably be expected to be resident there, for at least three months.
- (6) An individual has “any other relevant right in relation to a private residence” at the time of the disposal if—
  - (a) at that time—

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- (i) the individual owns or holds an interest in a dwelling-house or part of a dwelling-house other than that in relation to which the gain accrued, or
  - (ii) the trustees of a settlement own or hold an interest in a dwelling-house or part of a dwelling-house other than that in relation to which the gain accrued, and the individual is entitled to occupy that dwelling-house or part under the terms of the settlement, and
- (b) section 222 would have applied to any gain accruing to the individual or trustees on the disposal at that time of, or of that interest in, that dwelling house or part (or would have applied if a notice under subsection (5) of that section [<sup>F1549</sup> or under section 222A] had been given).
- (7) In the application of this section in relation to a gain to which section 222 applies by virtue of section 225 (private residence occupied under terms of settlement)—
- (a) the reference in subsection (1) of this section to an individual is to the trustees of the settlement;
  - (b) the references in subsections (2) to (6) of this section to the individual are to the person entitled under the terms of the settlement, as mentioned in section 225.
- (8) In this section—
- “care home” means an establishment that provides accommodation together with nursing or personal care;
  - “disabled person” has the meaning given by Schedule 1A to FA 2005.]

#### Textual Amendments

**F1548S.** 225E inserted (with effect in accordance with s. 58(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 58\(2\)\(c\)](#)

**F1549** Words in s. 225E(6)(b) inserted (with effect in accordance with Sch. 9 para. 10 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 9 para. 9](#)

## 226 Private residence occupied by dependent relative before 6th April 1988.

- (1) Subject to subsection (3) below, this section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in, a dwelling-house or part of a dwelling-house which, on 5th April 1988 or at any earlier time in his period of ownership, was the sole residence of a dependent relative of the individual, provided rent-free and without any other consideration.
- (2) If the individual so claims, such relief shall be given in respect of it and its garden or grounds as would be given under sections 222 to 224 if the dwelling-house (or part of the dwelling-house) had been the individual’s only or main residence in the period of residence by the dependent relative, and shall be so given in addition to any relief available under those sections apart from this section.
- (3) If in a case within subsection (1) above the dwelling-house or part ceases, whether before 6th April 1988 or later, to be the sole residence (provided as mentioned above) of the dependent relative, any subsequent period of residence beginning on or after that date by that or any other dependent relative shall be disregarded for the purposes of subsection (2) above.

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- (4) Not more than one dwelling-house (or part of a dwelling-house) may qualify for relief as being the residence of a dependent relative of the claimant at any one time nor, in the case of [<sup>F1550</sup>an individual and his spouse or civil partner living with him], as being the residence of a dependent relative of the claimant or of the claimant's [<sup>F1551</sup>spouse or civil partner] at any one time.
- <sup>F1552</sup>(5) .....
- (6) In this section “dependent relative” means, in relation to an individual—
- (a) any relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or
  - (b) his or his wife's mother who, whether or not incapacitated, is either widowed, or living apart from her husband, or a single woman in consequence of dissolution or annulment of marriage.
- (7) If the individual mentioned in subsection (6) above is a woman the references in that subsection to the individual's wife shall be construed as references to the individual's husband.

#### **Textual Amendments**

**F1550** Words in s. 226(4) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **118(a)**

**F1551** Words in s. 226(4) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **118(b)**

**F1552** S. 226(5) repealed (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), Sch. 20 para. 61, **Sch. 41 Pt. V(10)**

#### **[<sup>F1553</sup>226] Private residence relief: cases where relief obtained under section 260**

- (1) This section applies where—
- (a) section 223 applies, or would apart from this section apply, in relation to a gain or part of a gain accruing to an individual or the trustees of a settlement (“the transferor”) on a disposal (the “later disposal”),
  - (b) in computing the chargeable gain which would, apart from section 223, accrue to the transferor on the later disposal, the allowable expenditure would fall to be reduced, and
  - (c) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim or claims under section 260 in respect of one or more earlier disposals (whether or not made to the transferor).
- (2) If a claim for relief under section 260 in respect of—
- (a) the earlier disposal, or
  - (b) if there were two or more such disposals, any of them,
- is made on or before the making of the later disposal, section 223 shall not apply in relation to the gain or part of a gain accruing on the later disposal.
- (3) If a claim for relief under section 260 in respect of—
- (a) the earlier disposal, or
  - (b) if there were two or more such disposals, any of them,



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is made after the making of the later disposal and subsection (2) above does not apply, it is to be assumed for the purposes of capital gains tax that section 223 never applied in relation to the gain or part of a gain accruing on the later disposal.

- (4) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (3) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (5) Where the later disposal is made by the trustees of a settlement, the references in subsections (2) and (3) above to the making of the later disposal shall be read as references to the making of a claim for relief under section 223 in respect of the gain or part of a gain accruing on that disposal.
- (6) If a claim for relief under section 260 in respect of an earlier disposal is revoked, this section shall apply as if the claim had never been made.
- (7) This section is subject to section 226B (exception for maintenance funds for historic buildings).

#### Textual Amendments

**F1553**Ss. 226A, 226B inserted (with effect in accordance with Sch. 22 paras. 7(3)(4), 8 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 6](#)

#### **226B** Exception to section 226A

- (1) Section 226A shall not apply in relation to a later disposal made by the trustees of a settlement if the trustees have elected that section [<sup>F1554</sup>508 of ITA 2007 (trustees' election in respect of income arising from heritage maintenance property)] shall have effect in the case of—
  - (a) the settlement, or
  - (b) any part of the settlement,in relation to each year of assessment in which a relevant earlier disposal is made.
- (2) In this section “relevant earlier disposal”, in relation to a later disposal, means an earlier disposal in respect of which a claim mentioned in section 226A(1)(c) is made.
- (3) This section is to be construed as one with section 226A.]

#### Textual Amendments

**F1553**Ss. 226A, 226B inserted (with effect in accordance with Sch. 22 paras. 7(3)(4), 8 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 22 para. 6](#)

**F1554**Words in s. 226B(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 323](#) (with [Sch. 2](#))

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### *Employee share ownership trusts*

#### **227 Conditions for roll-over relief.**

- (1) Relief is available under section 229(1) where each of the 6 conditions set out in subsections (2) to (7) below is fulfilled.
- (2) The first condition is that a person (“the claimant”) makes a disposal of shares, or his interest in shares, to [<sup>F1555</sup>the trustees of a settlement] which—
  - (a) is a qualifying employee share ownership trust at the time of the disposal, and
  - (b) was established by a company (“the founding company”) which immediately after the disposal is a trading company or the holding company of a trading group.
- (3) The second condition is that the shares—
  - (a) are shares in the founding company,
  - (b) form part of the ordinary share capital of the company,
  - (c) are fully paid up,
  - (d) are not redeemable, and
  - (e) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by paragraph 7(2) of Schedule 5 to the <sup>M46</sup>Finance Act 1989.
- (4) The third condition is that, at any time in the entitlement period, the trustees—
  - (a) are beneficially entitled to not less than 10 per cent. of the ordinary share capital of the founding company,
  - (b) are beneficially entitled to not less than 10 per cent. of any profits available for distribution to equity holders of the founding company, and
  - (c) would be beneficially entitled to not less than 10 per cent. of any assets of the founding company available for distribution to its equity holders on a winding-up.
- (5) The fourth condition is that the claimant obtains consideration for the disposal and, at any time in the acquisition period, all the amount or value of the consideration is applied by him in making an acquisition of assets or an interest in assets (“replacement assets”) which—
  - (a) are, immediately after the time of the acquisition, chargeable assets in relation to the claimant, and
  - (b) are not shares in, or debentures issued by, the founding company or a company which is (at the time of the acquisition) in the same group as the founding company;

but the preceding provisions of this subsection shall have effect without the words “, at any time in the acquisition period,” if the acquisition is made pursuant to an unconditional contract entered into in the acquisition period.
- (6) The fifth condition is that, at all times in the proscribed period, there are no unauthorised arrangements under which the claimant or a person connected with him may be entitled to acquire any of the shares, or an interest in or right deriving from any of the shares, which are the subject of the disposal by the claimant.
- (7) The sixth condition is that no chargeable event occurs in relation to the trustees in—
  - (a) the chargeable period in which the claimant makes the disposal,

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- (b) the chargeable period in which the claimant makes the acquisition, or
- (c) any chargeable period falling after that mentioned in paragraph (a) above and before that mentioned in paragraph (b) above.

#### Textual Amendments

**F1555** Words in s. 227(2) substituted (with effect in accordance with Sch. 12 para. 21(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 21\(1\)](#)

#### Marginal Citations

**M46** 1989 c. 26.

### 228 Conditions for relief: supplementary.

- (1) This section applies for the purposes of section 227.
- (2) The entitlement period is the period beginning with the disposal and ending on the expiry of 12 months beginning with the date of the disposal.
- (3) The acquisition period is the period beginning with the disposal and ending on the expiry of 6 months beginning with—
  - (a) the date of the disposal, or
  - (b) if later, the date on which the third condition (set out in section 227(4)) first becomes fulfilled.
- (4) The proscribed period is the period beginning with the disposal, and ending on—
  - (a) the date of the acquisition, or
  - (b) if later, the date on which the third condition (set out in section 227(4)) first becomes fulfilled.
- (5) All arrangements are unauthorised unless—
  - (a) they arise wholly from a restriction authorised by paragraph 7(2) of Schedule 5 to the <sup>M47</sup>Finance Act 1989, or
  - (b) they only allow one or both of the following as regards shares, interests or rights, namely, acquisition by [<sup>F1556</sup>a beneficiary under the settlement] and appropriation under an approved profit sharing scheme.
- (6) An asset is a chargeable asset in relation to the claimant at a particular time if, were the asset to be disposed of at that time, any gain accruing to him on the disposal would be a chargeable gain, and either—
  - (a) at that time he is resident or ordinarily resident in the United Kingdom, or
  - (b) he would be chargeable to capital gains tax under section 10(1) in respect of the gain, or it would form part of his chargeable profits for corporation tax purposes by virtue of section [<sup>F1557</sup>10B],unless (were he to dispose of the asset at that time) the claimant would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gains accruing to him on the disposal.
- (7) The question [<sup>F1558</sup>whether a settlement is] at a particular time a qualifying employee share ownership trust shall be determined in accordance with Schedule 5 to the <sup>M48</sup>Finance Act 1989; and “chargeable event” in relation to trustees has the meaning given by section 69 of that Act.

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- (8) The expressions “holding company”, “trading company” and “trading group” have the <sup>F1559</sup>same meaning as in section 165 (see section 165A)]; and “group” (except in the expression “trading group”) shall be construed in accordance with section 170.
- (9) “Ordinary share capital” in relation to the founding 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.
- <sup>F1560</sup>(10) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of section 227(4) as if—
- (a) the trustees were a company, and
  - (b) references to section 151(4)(a) and (b) of that Act were references to section 227(4) above.]

#### Textual Amendments

**F1556** Words in s. 228(5)(b) substituted (with effect in accordance with Sch. 12 para. 22(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 22\(1\)](#)

**F1557** Word in s. 228(6)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)

**F1558** Words in s. 228(7) substituted (with effect in accordance with Sch. 12 para. 22(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 22\(2\)](#)

**F1559** Words in s. 228(8) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 36](#)

**F1560** S. 228(10) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 252](#) (with [Sch. 2](#))

#### Marginal Citations

**M47** 1989 c. 26.

**M48** 1989 c. 26.

## 229 The relief.

- (1) In a case where relief is available under this subsection the claimant shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—
- (a) as if the consideration for the disposal were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and
  - (b) as if the amount or value of the consideration for the acquisition were reduced by the excess of the amount or value of the actual consideration for the disposal over the amount of the consideration which the claimant is treated as receiving under paragraph (a) above.
- (2) Relief is available under subsection (3) below where—
- (a) relief would be available under subsection (1) above but for the fact that part only of the amount or value mentioned in section 227(5) is applied as there mentioned, and

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- (b) all the amount or value so mentioned except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal is so applied.
- (3) In a case where relief is available under this subsection the claimant shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—
  - (a) as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in subsection (2)(b) above, and
  - (b) as if the amount or value of the consideration for the acquisition were reduced by the amount by which the gain is reduced under paragraph (a) above.
- (4) Nothing in subsection (1) or (3) above shall affect the treatment for the purposes of this Act of the other party to the disposal or of the other party to the acquisition.
- (5) The provisions of this Act fixing the amount of the consideration deemed to be given for a disposal or acquisition shall be applied before the preceding provisions of this section are applied.

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

**C325** S. 229(1)(3) excluded (with effect in relation to a disposal of shares, or an interest in shares, made on or after 6.4.2001) by [Finance Act 2000 \(c. 17\), s. 54](#)

**230 Dwelling-houses: special provision.**

- (1) Subsection (2) below applies where—
  - (a) a claim is made under section 229,
  - (b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset is a dwelling-house or part of a dwelling-house or land, and
  - (d) there was a time in the period beginning with the acquisition and ending with the time when section 229(1) or (3) falls to be applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F1561</sup>or civil partner].
- (2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.
- (3) Subsection (4) below applies where—
  - (a) the provisions of section 229(1) or (3) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consists of a dwelling-house or part of a dwelling-house or land, and
  - (c) there is a time after section 229(1) or (3) has been applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F1562</sup>or civil partner].

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- (4) In such a case—
- (a) the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but
  - (b) any gain treated as accruing in consequence of the application of paragraph (a) above shall be treated as accruing at the time mentioned in subsection (3)(c) above or, if there is more than one such time, at the earliest of them.
- (5) Subsection (6) below applies where—
- (a) a claim is made under section 229,
  - (b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset was an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,
  - (d) the option has been exercised, and
  - (e) there was a time in the period beginning with the exercise of the option and ending with the time when section 229(1) or (3) falls to be applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F1563</sup>or civil partner].
- (6) In such a case the option shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.
- (7) Subsection (8) below applies where—
- (a) the provisions of section 229(1) or (3) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consisted of an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,
  - (c) the option has been exercised, and
  - (d) there is a time after section 229(1) or (3) has been applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F1564</sup>or civil partner].
- (8) In such a case—
- (a) the option shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but
  - (b) any gain treated as accruing in consequence of the application of paragraph (a) above shall be treated as accruing at the time mentioned in subsection (7)(d) above or, if there is more than one such time, at the earliest of them.
- (9) References in this section to an individual include references to a person entitled to occupy under the terms of a settlement.

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#### Textual Amendments

- F1561** Words in s. 230(1)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **119**
- F1562** Words in s. 230(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **119**
- F1563** Words in s. 230(5)(e) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **119**
- F1564** Words in s. 230(7)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **119**

### 231 Shares: special provision.

- (1) Subsection (2) below applies where—
- a claim is made under section 229,
  - immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,
  - the asset consists of shares, and
  - in the period beginning with the acquisition and ending when section 229(1) or (3) falls to be applied relief is claimed under Chapter III of Part VII of the Taxes Act [<sup>F1565</sup>or Part 5 of ITA 2007]<sup>F1566</sup>... in respect of the asset.
- (2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.
- (3) Subsection (4) below applies where—
- the provisions of section 229(1) or (3) have been applied,
  - any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consists of shares, and
  - after section 229(1) or (3) has been applied relief is claimed under Chapter III of Part VII of the Taxes Act [<sup>F1567</sup>or Part 5 of ITA 2007] in respect of the asset.
- (4) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly.
- (5) Subsection (4) above shall also apply where section 33(1) or (3) of the <sup>M49</sup>Finance Act 1990 has applied and the claimant acquired the replacement asset in a chargeable period beginning before 6th April 1992.

#### Textual Amendments

- F1565** Words in s. 231(1)(d) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 324** (with [Sch. 2](#))
- F1566** Words in s. 231(1)(d) repealed (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), Sch. 15 para. 34, **Sch. 26 Pt. V(17)**
- F1567** Words in s. 231(3)(c) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 324** (with [Sch. 2](#))

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### **Marginal Citations**

**M49** 1990 c. 29.

## **232 Chargeable event when replacement assets owned.**

- (1) Subsection (3) below applies where—
  - (a) the provisions of section 229(1) or (3) are applied,
  - (b) a chargeable event occurs in relation to the trustees on or after the date on which the disposal is made (and whether the event occurs before or after the provisions are applied),
  - (c) the claimant was neither an individual who died before the chargeable event occurs nor trustees of a settlement which ceased to exist before the chargeable event occurs, and
  - (d) the condition set out below is fulfilled.
- (2) The condition is that, at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the replacement assets.
- (3) In a case where this subsection applies, the claimant or connected person (as the case may be) shall be deemed for all purposes of this Act—
  - (a) to have disposed of all the replacement assets immediately before the time when the chargeable event occurs, and
  - (b) immediately to have reacquired them, at the relevant value.
- (4) The relevant value is such value as secures on the deemed disposal a chargeable gain equal to—
  - (a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
  - (b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).
- (5) In a case where subsection (3) above would apply if “all” read “any of” in subsection (2) above, subsection (3) shall nevertheless apply, but as if—
  - (a) in subsection (3)(a) “all the replacement assets” read “the replacement assets concerned”, and
  - (b) the relevant value were reduced to whatever value is just and reasonable.
- (6) Subsection (7) below applies where—
  - (a) subsection (3) above applies (whether or not by virtue of subsection (5) above), and
  - (b) before the time when the chargeable event occurs anything has happened as regards any of the replacement assets such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).
- (7) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—



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- (a) the relevant value were reduced (or further reduced) to whatever value is just and reasonable, or
  - (b) the relevant value were such value as secures that on the deemed disposal neither a gain nor a loss accrues (if that is just and reasonable);
- but paragraph (a) above shall not apply so as to reduce the relevant value below that mentioned in paragraph (b) above.
- (8) For the purposes of subsection (6)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (4)(a) or (b) above, as the case may be).
- (9) In this section “chargeable event” in relation to trustees has the meaning given by section 69 of the <sup>M50</sup>Finance Act 1989.

#### Marginal Citations

M50 1989 c. 26.

### 233 Chargeable event when replacement property owned.

- (1) Subsection (3) below applies where—
- (a) paragraphs (a) to (c) of section 232(1) are fulfilled, and
  - (b) the condition set out below is fulfilled.
- (2) The condition is that—
- (a) before the time when the chargeable event occurs, all the gain carried forward by virtue of section 229(1) or (3) was in turn carried forward from all the replacement assets to other property on a replacement of business assets, and
  - (b) at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the property.
- (3) In a case where this subsection applies, the claimant or connected person (as the case may be) shall be deemed for all purposes of this Act—
- (a) to have disposed of all the property immediately before the time when the chargeable event occurs, and
  - (b) immediately to have reacquired it,
- at the relevant value.
- (4) The relevant value is such value as secures on the deemed disposal a chargeable gain equal to—
- (a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
  - (b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).
- (5) In a case where subsection (3) above would apply if “all the” in subsection (2) above (in one or more places) read “any of the”, subsection (3) shall nevertheless apply, but as if—

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- (a) in subsection (3)(a) “all the property” read “ the property concerned ”, and
  - (b) the relevant value were reduced to whatever value is just and reasonable.
- (6) Subsection (7) below applies where—
- (a) subsection (3) above applies (whether or not by virtue of subsection (5) above), and
  - (b) before the time when the chargeable event occurs anything has happened as regards any of the replacement assets, or any other property, such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).
- (7) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
- (a) the relevant value were reduced (or further reduced) to whatever value is just and reasonable, or
  - (b) the relevant value were such value as secures that on the deemed disposal neither a gain nor a loss accrues (if that is just and reasonable);
- but paragraph (a) above shall not apply so as to reduce the relevant value below that mentioned in paragraph (b) above.
- (8) For the purposes of subsections (2) and (6)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (4)(a) or (b) above, as the case may be).
- (9) For the purposes of subsection (2) above a gain is carried forward from assets to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the assets is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.

### **234 Chargeable events when bonds owned.**

- (1) Subsection (3) below applies where—
- (a) paragraphs (a) to (c) of section 232(1) are fulfilled, and
  - (b) the condition set out below is fulfilled.
- (2) The condition is that—
- (a) all the replacement assets were shares (new shares) in a company or companies,
  - (b) there has been a transaction to which section 116(10) applies and as regards which all the new shares constitute the old asset and qualifying corporate bonds constitute the new asset, and
  - (c) at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the bonds.
- (3) In a case where this subsection applies, a chargeable gain shall be deemed to have accrued to the claimant or connected person (as the case may be); and the gain shall be deemed to have accrued immediately before the time when the chargeable event occurs and to be of an amount equal to the relevant amount.
- (4) The relevant amount is an amount equal to the lesser of—

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- (a) the first amount, and
  - (b) the second amount.
- (5) The first amount is—
- (a) the amount of the chargeable gain that would be deemed to accrue under 116(10)(b) if there were a disposal of all the bonds at the time the chargeable event occurs, or
  - (b) nil, if an allowable loss would be so deemed to accrue if there were such a disposal.
- (6) The second amount is an amount equal to—
- (a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
  - (b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).
- (7) In a case where subsection (3) above would apply if “all the” in subsection (2) above (in one or more places) read “any of the”, subsection (3) shall nevertheless apply, but as if—
- (a) in subsection (5) above “all the bonds” read “the bonds concerned”,
  - (b) the second amount were reduced to whatever amount is just and reasonable, and
  - (c) the relevant amount were reduced accordingly.
- (8) Subsection (9) below applies where—
- (a) subsection (3) above applies (whether or not by virtue of subsection (7) above), and
  - (b) before the time when the chargeable event occurs anything has happened as regards any of the new shares, or any of the bonds, such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).
- (9) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
- (a) the second amount were reduced (or further reduced) to whatever amount is just and reasonable, and
  - (b) the relevant amount were reduced (or further reduced) accordingly (if the second amount is less than the first amount),
- but nothing in this subsection shall have the effect of reducing the second amount below nil.
- (10) For the purposes of subsection (8)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (6)(a) or (b) above, as the case may be).

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#### Textual Amendments

**F1568**S. 235 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 32**

### 236 Prevention of double charge.

- (1) Where a charge can be said to accrue by virtue of section 232 or 233 in respect of any of the gain carried forward by virtue of section 229(1) or (3), so much of the gain charged shall not be capable of being carried forward (from assets to other property or from property to other property) under sections 152 to 158 on a replacement of business assets.
- (2) For the purpose of construing subsection (1) above—
  - (a) what of the gain has been charged shall be found in accordance with what is just and reasonable;
  - (b) section 233(8) and (9) shall apply.
- (3) In a case where—
  - (a) section 234 applies in the case of bonds,
  - (b) subsequently a disposal of the bonds occurs as mentioned in section 116(10)(b), and
  - (c) a chargeable gain is deemed to accrue under section 116(10)(b),
 the chargeable gain shall be reduced by the relevant amount found under section 234 or (if the amount exceeds the gain) shall be reduced to nil.
- (4) The relevant amount shall be apportioned where the subsequent disposal is of some of the bonds mentioned in subsection (3)(a) above; and subsection (3) shall apply accordingly.

*[<sup>F1569</sup>[<sup>F1570</sup>Share incentive] plans*

#### Textual Amendments

**F1569**S. 236A and cross-heading inserted (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), s. 48(1)

**F1570**Words in s. 236A cross-heading substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 214** (with [Sch. 7](#))

### 236A Relief for transfers to [<sup>F1571</sup>share incentive] plans

Schedule 7C (which makes provision for roll-over relief where shares are transferred to [<sup>F1572</sup>a Schedule 2][<sup>F1571</sup>share incentive] plan) shall have effect.]

#### Textual Amendments

**F1571**Words in s. 236A substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 214** (with [Sch. 7](#))

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**F1572** Words in s. 236A substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 34, 89** (with [Sch. 8 paras. 90-96](#))

### *[<sup>F1573</sup>Employee shareholders*

#### **Textual Amendments**

**F1573** Ss. 236B-236G and cross-heading inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), **Sch. 23 paras. 20, 38**; [S.I. 2013/1755](#), art. 2

### <sup>F1574</sup>**236B Exemption for employee shareholder shares**

.....

#### **Textual Amendments**

**F1574** Ss. 236B-236F omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of [Finance Act 2017 \(c. 10\)](#), **s. 13(4)**

### <sup>F1574</sup>**236C Only first £50,000 of shares under associated agreements to be exempt**

.....

#### **Textual Amendments**

**F1574** Ss. 236B-236F omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of [Finance Act 2017 \(c. 10\)](#), **s. 13(4)**

### <sup>F1574</sup>**236D Shares not exempt if shareholder or connected person has material interest in company**

.....

#### **Textual Amendments**

**F1574** Ss. 236B-236F omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of [Finance Act 2017 \(c. 10\)](#), **s. 13(4)**

### <sup>F1574</sup>**236E Identification of exempt employee shareholder shares**

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#### **Textual Amendments**

**F1574** Ss. 236B-236F omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of [Finance Act 2017 \(c. 10\)](#), **s. 13(4)**

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## <sup>F1574</sup>**236F Reorganisation of share capital involving employee shareholder shares**

### **Textual Amendments**

**F1574**Ss. 236B-236F omitted (with effect in accordance with s. 13(6)-(8) of the amending Act) by virtue of Finance Act 2017 (c. 10), s. 13(4)

## **236G Relinquishment of employment rights is not disposal of an asset**

- (1) This section applies where an individual has acquired shares in consideration of entering into an [<sup>F1575</sup>agreement by virtue of which the individual is an employee shareholder (see section 205A(1)(a) to (d) of the Employment Rights Act 1996)].
- (2) The individual is not to be regarded as disposing of an asset by reason of the individual ceasing to have, or not acquiring, the rights mentioned in section 205A of the Employment Rights Act 1996 (rights which an employee shareholder does not have) in consequence of entering into the agreement.]

### **Textual Amendments**

**F1575**Words in s. 236G(1) substituted (with effect in accordance with s. 13(6)-(8) of the amending Act) by Finance Act 2017 (c. 10), s. 13(5)

## *[<sup>F1576</sup>Employee-ownership trusts*

### **Textual Amendments**

**F1576**Ss. 236H-236U and cross-heading inserted (with effect in accordance with Sch. 37 para. 2 of the amending Act) by Finance Act 2014 (c. 26), Sch. 37 para. 1 (with Sch. 37 paras. 3, 4)

## **236H Disposals to employee-ownership trusts**

- (1) This section applies where—
  - (a) a person other than a company (“P”) disposes of any ordinary share capital of a company (“C”) to the trustees of a settlement,
  - (b) the relief requirements are met, and
  - (c) P makes a claim under this section.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) does not apply to the disposal.
- (3) The disposal, and the acquisition by the trustees, are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) “The relief requirements” are—

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- (a) that C meets the trading requirement (see section 236I) at the time of the disposal and continues to meet that requirement for the remainder of the tax year in which that time falls,
  - (b) that the settlement meets the all-employee benefit requirement at the time of the disposal and continues to meet that requirement for the remainder of the tax year in which that time falls (see sections 236J to 236L and subsection (5) of this section),
  - (c) that the settlement does not meet the controlling interest requirement (see section 236M) immediately before the beginning of the tax year in which the disposal occurs, but—
    - (i) it meets that requirement at the end of that tax year, and
    - (ii) if it met the requirement at an earlier time in that tax year (whether before or after the time of the disposal) it continued to meet it throughout the remainder of that tax year,
  - (d) that the limited participation requirement is met (see section 236N), and
  - (e) that this section does not apply in relation to any related disposal by P or a person connected with P which occurs in an earlier tax year.
- (5) For the purposes of subsection (4)(b)—
- (a) unless the settlement met the all-employee benefit requirement by virtue of section 236L (cases in which all-employee benefit requirement treated as met) at the time of the disposal, that section does not apply for the purposes of determining whether the settlement continues to meet that requirement after the disposal, and
  - (b) if, at the time of the disposal, the settlement met that requirement by virtue of section 236L and later continues to meet it otherwise than by virtue of that section, it may not again meet the requirement by virtue of that section.
- (6) A disposal in an earlier tax year is “related” to the disposal in question if—
- (a) both disposals are of ordinary share capital of the same company, or
  - (b) the disposal in the earlier tax year is of ordinary share capital of a company which is, or at the time of that disposal was, a member of the same group as the company whose ordinary share capital is the subject of the disposal in question.
- (7) A claim under this section must include—
- (a) information to identify the settlement,
  - (b) C’s name and the address of its registered office, and
  - (c) the date of the disposal and the number of shares disposed of.
- (8) Section 236O makes provision about events which prevent a claim being made under this section and circumstances in which a claim is revoked.

## **236I Trading requirement**

- (1) C meets the trading requirement if C is—
- (a) a trading company which is not a member of a group, or
  - (b) the principal company of a trading group.
- (2) “Trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

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- (3) “Trading group” means a group—
- (a) one or more of whose members carry on trading group activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.
- (4) In this section—
- “trading activities” means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;
- “trading group activities” means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.
- (5) For the purposes of determining whether C is a trading company or the principal company of a trading group—
- (a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and
  - (b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity or a trading group activity.

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

- C326** S. 236I applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 75A(3) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 14\(1\)\(2\)](#))
- C327** S. 236I applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 86(3A)(a) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 15\(3\)\(4\)](#))
- C328** S. 236I applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 13A(2) (as inserted (with effect in accordance with Sch. 37 para. 10(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 10\(1\)](#))
- C329** S. 236I applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 28A(2) (as inserted (with effect in accordance with Sch. 37 para. 11(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 11\(1\)](#))

**236J All-employee benefit requirement**

- (1) A settlement meets the all-employee benefit requirement if the trusts of the settlement—
- (a) do not permit any of the settled property to be applied, at any time, otherwise than for the benefit of all the eligible employees on the same terms,
  - (b) do not permit the trustees at any time to apply any of the settled property—
    - (i) by creating a trust, or
    - (ii) by transferring property to the trustees of any settlement other than by an authorised transfer,
  - (c) do not permit the trustees at any time to make loans to beneficiaries of the trusts, and
  - (d) do not permit the trustees or any other person at any time to amend the trusts in a way such that the amended trusts would not comply with one or more of paragraphs (a) to (c).



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- (2) Section 236K makes provision about the requirement in subsection (1)(a).
- (3) “Eligible employee” means—
- (a) if C meets the trading requirement by virtue of section 236I(1)(a), any individual who is employed by, or is an office-holder of, C, and
  - (b) if C meets the trading requirement by virtue of section 236I(1)(b), any individual who is employed by, or is an office-holder of, a relevant group company,
- but does not include an excluded participator.
- (4) But where—
- (a) C has ceased to meet the trading requirement or the trustees have ceased to hold any shares in C (or both), and
  - (b) a person was an eligible employee at any time during the period of two years ending immediately before that event (or, where both have occurred, the earlier of them),
- that person continues to be an “eligible employee”.
- (5) “Excluded participator” means—
- (a) a person who is a participator in C, or, where C meets the trading requirement by virtue of section 236I(1)(b), in any relevant group company,
  - (b) any other person who is a participator in any close company that has made a disposition whereby property became comprised in the same settlement, being a disposition which but for section 13 or 13A of the Inheritance Tax Act 1984 (dispositions by close companies for benefit of employees or to employee-ownership trusts) would have been a transfer of value for the purposes of inheritance tax,
  - (c) any other person who has been a participator in any company mentioned in paragraph (a) or (b) at any time on or after the look-back date, or
  - (d) any person who is connected with any person within paragraph (a), (b) or (c).
- (6) The participators in a company who are referred to in subsection (5) do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, the company’s share capital, and
  - (b) on a winding-up of the company would not be entitled to 5% or more of its assets.
- (7) In this section—
- “authorised transfer” means a transfer of property consisting of or including any ordinary share capital of a company (“the transferred company”) where—
- (a) the transferred company meets the trading requirement, and
  - (b) the transfer is made to the trustees of a settlement which—
    - (i) meets the controlling interest requirement with respect to the transferred company immediately after the transfer, and
    - (ii) meets the all-employee benefit requirement with respect to the transferred company (ignoring section 236L),
- and for this purpose references to “C” in sections 236I, 236M and 236T and this section are to be read as references to the transferred company,

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“close company” and “participator” have the same meaning as in Part 4 of the Inheritance Tax Act 1984 (see section 102 of that Act), and references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company,

“the look-back date” means the first day of the period of 10 years ending with whichever is later of—

- (a) 10 December 2013, and
- (b) the day on which any property first became comprised in the settlement, and

“relevant group company” means C or any other company which is a member of the group of which C is the principal company.

- (8) In this section references to the settled property include references to any income arising from it.
- (9) See section 236L for cases where the all-employee benefit requirement is treated as met.

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

- C330** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 75A(3) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 14\(1\)\(2\)](#))
- C331** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 86(3A)(b) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 15\(3\)\(4\)](#))
- C332** Ss. 236J, 236K applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 312E(2)(b) (as inserted (with effect in accordance with Sch. 37 para. 8 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 5](#))
- C333** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 28A(2) (as inserted (with effect in accordance with Sch. 37 para. 11(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 11\(1\)](#))
- C334** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 13A(2) (as inserted (with effect in accordance with Sch. 37 para. 10(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 10\(1\)](#))

**236K Further provision about the equality requirement**

- (1) The requirement in section 236J(1)(a) (“the equality requirement”) is not infringed by the trusts by reason only that they—
  - (a) permit the settled property to be applied, where an eligible employee has died, as if a surviving spouse, civil partner or dependant of the deceased person were the eligible employee (and continued to be employed) for a period of 12 months, or such shorter period as the trusts may provide, starting with the time of death,
  - (b) prevent the settled property being applied for the benefit of persons who have not been eligible employees for a continuous period of 12 months or such shorter period as the trusts may provide,
  - (c) permit the trustees to comply with a written request from a person that the trustees do not apply any of the settled property for the benefit of that person, or

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- (d) prevent the settled property being applied for the benefit of all persons who are eligible employees by reason only that they are office-holders.
- (2) The equality requirement is not infringed by the trusts by reason only that, in addition to requiring the settled property to be applied for the benefit of all the eligible employees on the same terms, they also permit the settled property to be applied for charitable purposes.
- (3) Subject to subsections (1) and (2), the equality requirement is infringed by the trusts if they permit the settled property to be applied by reference to factors other than those mentioned in subsection (4).
- (4) The equality requirement is not infringed by the trusts by reason only that they permit the settled property to be applied for the benefit of all the eligible employees by reference to—
- (a) an eligible employee’s remuneration,
  - (b) an eligible employee’s length of service, or
  - (c) hours worked by an eligible employee;
- but this is subject to subsections (5) and (6).
- (5) The equality requirement is infringed by the trusts if they permit any of the settled property to be applied on terms such that some (but not all) eligible employees receive no benefits (other than by virtue of subsection (1)(b), (c) and (d)).
- (6) If any of the settled property is applied by reference to more than one of the factors mentioned in subsection (4), the equality requirement is infringed unless—
- (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.
- (7) “Eligible employee” has the same meaning as in section 236J.
- (8) In this section, references to the settled property include references to any income arising from it.

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

- C332** Ss. 236J, 236K applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 312E(2)(b) (as inserted (with effect in accordance with Sch. 37 para. 8 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 5](#))
- C335** S. 236K applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 75A(3) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 14\(1\)\(2\)](#))
- C336** S. 236K applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 86(3A)(b) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 15\(3\)\(4\)](#))
- C337** S. 236K applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 28A(2) (as inserted (with effect in accordance with Sch. 37 para. 11(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 11\(1\)](#))
- C338** S. 236K applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 13A(2) (as inserted (with effect in accordance with Sch. 37 para. 10(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 10\(1\)](#))

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## **236L Cases in which all-employee benefit requirement treated as met**

- (1) A settlement which would not otherwise meet the all-employee benefit requirement at any time is treated as meeting that requirement at that time if—
- (a) the settlement was created before 10 December 2013,
  - (b) on that date—
    - (i) section 86 of the Inheritance Tax Act 1984 (trusts for the benefit of employees) applied to the settled property,
    - (ii) the trustees held a significant interest in C, and
    - (iii) the settlement did not meet the all-employee benefit requirement (ignoring this section), and
  - (c) the trustees of the settlement do not, during the period of 12 months ending with the time in question, do any of the following—
    - (i) apply any of the settled property otherwise than for the benefit of all eligible employees on the same terms,
    - (ii) apply any of the settled property by creating a trust,
    - (iii) apply any of the settled property by transferring property to the trustees of any settlement other than by an authorised transfer, or
    - (iv) make loans to beneficiaries of the trusts of the settlement.
- (2) The trustees held a significant interest in C on 10 December 2013 if on that date—
- (a) they—
    - (i) held 10% or more of the ordinary share capital of C, and
    - (ii) had powers of voting on all questions affecting C as a whole which, if exercised, would have yielded 10% or more of the votes capable of being exercised on them,
  - (b) they were entitled to 10% or more of the profits available for distribution to the equity holders of C,
  - (c) they would have been entitled, on a winding up of C, to 10% or more of the assets of C available for distribution to equity holders, and
  - (d) there were no provisions in any agreement or instrument affecting C's constitution or management or its shares or securities whereby the condition in paragraph (a), (b) or (c) could cease to be satisfied without the consent of the trustees.

See section 236T for further provision relating to the holding of a significant interest.

- (3) Subsections (3) to (8) of section 236J apply for the purposes of this section.
- (4) The requirement in subsection (1)(c)(i) (“the behaviour requirement”) is not infringed by reason only that the trustees of the settlement—
- (a) apply any of the settled property, where an eligible employee has died, as if a surviving spouse, civil partner or dependant of the deceased person were the eligible employee (and continued to be employed) for a period of 12 months, or such shorter period as the trustees may determine, starting with the time of death,
  - (b) only apply the settled property for the benefit of persons who have been eligible employees for a continuous period of 12 months or such shorter period as the trustees may determine,
  - (c) comply with a written request from a person that the trustees do not apply any of the settled property for the benefit of that person, or

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- (d) have complied with the terms of the trusts of the settlement which prevent the settled property being applied for the benefit of some or all of the persons who are eligible employees by reason only that they are office-holders.
- (5) The behaviour requirement is not infringed by reason only that, in addition to applying any of the settled property for the benefit of all the eligible employees on the same terms, the trustees also apply any of it for charitable purposes.
- (6) Subject to subsections (4) and (5), the behaviour requirement is infringed by the trustees if they apply the settled property by reference to factors other than those mentioned in subsection (7).
- (7) The behaviour requirement is not infringed by the trustees applying the settled property for the benefit of all the eligible employees by reference to—
  - (a) an eligible employee's remuneration,
  - (b) an eligible employee's length of service, or
  - (c) hours worked by an eligible employee;but this is subject to subsections (8) and (9).
- (8) The behaviour requirement is infringed if any of the settled property is applied by the trustees on terms such that some (but not all) eligible employees receive no benefits (other than as mentioned in subsection (4)(b), (c) and (d)).
- (9) If the trustees apply any of the settled property by reference to more than one of the factors mentioned in subsection (7), the behaviour requirement is infringed unless—
  - (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.

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

**C339** S. 236L applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 312E(3) (as inserted (with effect in accordance with Sch. 37 para. 8 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 5](#))

**236M Controlling interest requirement**

- (1) A settlement meets the controlling interest requirement if—
  - (a) the trustees—
    - (i) hold more than 50% of the ordinary share capital of C, and
    - (ii) have powers of voting on all questions affecting C as a whole which, if exercised, would yield a majority of the votes capable of being exercised on them,
  - (b) the trustees are entitled to more than 50% of the profits available for distribution to the equity holders of C,
  - (c) the trustees would be entitled, on a winding up of C, to more than 50% of the assets of C available for distribution to equity holders, and
  - (d) there are no provisions in any agreement or instrument affecting C's constitution or management or its shares or securities whereby the condition in paragraph (a), (b) or (c) can cease to be satisfied without the consent of the trustees.

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(2) See section 236T for further provision relating to the controlling interest requirement.

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

- C340** S. 236M applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 75A(3) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 14\(1\)\(2\)](#))
- C341** S. 236M applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 86(3A)(b) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 15\(3\)\(4\)](#))
- C342** S. 236M applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 13A(2) (as inserted (with effect in accordance with Sch. 37 para. 10(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 10\(1\)](#))
- C343** S. 236M applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 28A(2) (as inserted (with effect in accordance with Sch. 37 para. 11(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 11\(1\)](#))
- C344** S. 236M applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 312E(2)(a) (as inserted (with effect in accordance with Sch. 37 para. 8 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 5](#))

**236N Limited participation requirement**

- (1) The limited participation requirement is met if Conditions A and B are met.
- (2) Condition A is that there was no time in the period of 12 months ending immediately after the disposal mentioned in section 236H(1) when—
- (a) P was a participator in C, and
  - (b) the participator fraction exceeded  $\frac{2}{5}$ .
- (3) Condition B is that the participator fraction does not exceed  $\frac{2}{5}$  at any time in the period beginning with that disposal and ending at the end of the tax year in which it occurs.
- (4) But a time which falls in a period during which the participator fraction exceeded  $\frac{2}{5}$  is to be disregarded for the purposes of subsection (2)(b) and (3) if—
- (a) that period lasts no more than 6 months, and
  - (b) the fraction exceeded  $\frac{2}{5}$  during that period by reason of events outside the reasonable control of the trustees.

(5) “The participator fraction” means—

NPNE

where—

NP is the sum of—

- (a) the number of persons who at the time in question are both—
  - (i) participators in C, and
  - (ii) employees of, or office-holders in, C, and
- (b) the number of other persons who at that time are both—
  - (i) employees of, or office-holders in, C or, if C is the principal company of a trading group, any member of the group, and
  - (ii) connected with persons within paragraph (a);

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NE is the number of persons who at that time are employees of C or, if C is the principal company of a trading group, any member of the group.

- (6) The participators in C who are referred to in subsections (2) and (5) do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, C's share capital, and
  - (b) on a winding-up of C would not be entitled to 5% or more of its assets.
- (7) In this section—
- (a) “participator” has the meaning given by section 454 of CTA 2010, and
  - (b) references to a participator in a company are, in the case of a company which is not a close company (within the meaning of Chapter 2 of Part 10 of that Act), to be construed as references to a person who would be a participator in the company if it were a close company.

### **236O No section 236H relief if disqualifying event in next tax year**

- (1) This section applies where—
- (a) a disposal is made in circumstances where paragraphs (a) and (b) of section 236H(1) are satisfied, and
  - (b) one or more disqualifying events occur in relation to the disposal in the tax year following the tax year in which the disposal occurs.
- (2) A “disqualifying event” occurs in relation to the disposal if and when—
- (a) C ceases to meet the trading requirement,
  - (b) the settlement ceases to meet the all-employee benefit requirement,
  - (c) the settlement ceases to meet the controlling interest requirement,
  - (d) the participator fraction exceeds  $\frac{2}{5}$ , or
  - (e) the trustees act in a way which the trusts, as required by the all-employee benefit requirement, do not permit.
- (3) No claim for relief under section 236H may be made in respect of the disposal on or after the day on which the disqualifying event (or, if more than one, the first of them) occurs.
- (4) Any claim for relief under section 236H made in respect of the disposal before that day is revoked, and the chargeable gains and allowable losses of any person for any chargeable period are to be calculated as if that claim had never been made.
- (5) Such adjustments must be made in relation to any person, whether by the making of assessments or otherwise, as are required to give effect to subsection (4) (regardless of any limitation on the time within which any adjustment may be made).
- (6) Section 236H(5) (restrictions on application of section 236L) applies for the purposes of subsection (2)(b).
- (7) Section 236N(4) applies for the purposes of subsection (2)(d) as it applies in relation to section 236N(2)(b) and (3).

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### **236P Events which trigger deemed disposal and reacquisition by trustees**

- (1) Where the trustees of a settlement acquire any ordinary share capital in a tax year in circumstances where section 236H applies, subsection (3) applies on the first occasion, after the end of the tax year following the tax year in which the acquisition occurs, when a disqualifying event occurs in relation to the acquisition.
- (2) A “disqualifying event” occurs in relation to the acquisition if and when—
  - (a) C ceases to meet the trading requirement,
  - (b) the settlement ceases to meet the all-employee benefit requirement,
  - (c) the settlement ceases to meet the controlling interest requirement,
  - (d) the participator fraction exceeds 2/5, or
  - (e) the trustees act in a way which the trusts, as required by the all-employee benefit requirement, do not permit.
- (3) The trustees are treated as having, immediately before the disqualifying event—
  - (a) disposed of any ordinary share capital of C held by the trustees which comprises shares acquired in circumstances where section 236H applied (and not subsequently disposed of and reacquired), and
  - (b) immediately reacquired that ordinary share capital, at its market value at that time.
- (4) For the purposes of subsection (2)(b)—
  - (a) unless the settlement met the all-employee benefit requirement at the time of the acquisition by virtue of section 236L, that section does not apply for the purposes of determining whether the settlement continues to meet that requirement after the acquisition, and
  - (b) if, at the time of the acquisition, the settlement met that requirement by virtue of section 236L and later continues to meet it otherwise than by virtue of that section, it may not again meet the requirement by virtue of that section.
- (5) Section 236N(4) applies for the purposes of subsection (2)(d) as it applies in relation to section 236N(2)(b) and (3).

### **236Q Relief for deemed disposals under section 71**

- (1) This section applies where—
  - (a) a deemed disposal arises under section 71(1) by reason of the trustees of a settlement (“the acquiring settlement”) becoming absolutely entitled to settled property as against the trustee of that settled property (“the transferring trustee”),
  - (b) that settled property consists of ordinary share capital of a company,
  - (c) the relief requirements in section 236H(4)(a) to (d) are met, and
  - (d) the transferring trustee makes a claim under this section.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) does not apply to the disposal.
- (3) The deemed disposal and acquisition by the transferring trustee under section 71(1) are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.



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- (4) For the purposes of section 236P the trustees of the acquiring settlement are treated as acquiring the ordinary share capital from the transferring trustee, at the time of the deemed disposal, in circumstances where section 236H applies.
- (5) In applying sections 236H(4), 236I to 236P and 236T for the purposes of this section—
  - (a) references in those provisions to the settlement are to be read as references to the acquiring settlement, and
  - (b) references in those provisions to C are to be read as references to the company mentioned in subsection (1)(b).
- (6) A claim under this section must include—
  - (a) information to identify the acquiring settlement,
  - (b) the name of the company mentioned in subsection (1)(b) and the address of its registered office, and
  - (c) the date of the deemed disposal and the number of shares deemed to have been disposed of.
- (7) Section 236R makes provision about events which prevent a claim being made under this section and circumstances in which a claim is revoked.

### **236R No section 236Q relief if disqualifying event in next tax year**

- (1) This section applies where—
  - (a) a deemed disposal arises in circumstances where paragraphs (a) to (c) of section 236Q(1) are satisfied, and
  - (b) one or more disqualifying events occur in relation to the disposal in the tax year following the tax year in which the deemed disposal arises.
- (2) No claim for relief under section 236Q may be made in respect of the deemed disposal on or after the day on which the disqualifying event (or, if more than one, the first of them) occurs.
- (3) Any claim for relief under section 236Q made in respect of the deemed disposal before that day is revoked, and the chargeable gains and allowable losses of any person for any chargeable period are to be calculated as if that claim had never been made.
- (4) Such adjustments must be made in relation to any person, whether by the making of assessments or otherwise, as are required to give effect to subsection (3) (regardless of any limitation on the time within which any adjustment may be made).
- (5) “Disqualifying event” is to be construed in accordance with subsections (2), (6) and (7) of section 236O except that—
  - (a) references in those subsections to the disposal are to be read as references to the deemed disposal, and
  - (b) in applying sections 236I to 236P and 236T for this purpose—
    - (i) references in those provisions to the settlement are to be read as references to the acquiring settlement (within the meaning of section 236Q(1)), and
    - (ii) references in those provisions to C are to be read as references to the company mentioned in section 236Q(1)(b).

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### **236S Identification of shares where section 236H or 236Q applies**

- (1) This section applies where the trustees of a settlement hold—
  - (a) shares which were—
    - (i) acquired in circumstances where section 236H applied, or
    - (ii) the subject of a deemed acquisition under section 71(1) in circumstances where section 236Q applied,
 and not subsequently disposed of and reacquired (“EOT exempt shares”), and
  - (b) other shares which, but for section 104(4A), would be shares of the same class as those shares.
- (2) If the trustees dispose of some, but not all, of the shares so held, they may determine what proportion of the shares disposed of are EOT exempt shares (up to the number of such shares held).
- (3) For the purposes of this section shares in a company are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.
- (4) Nothing in subsection (2) applies in relation to a disposal by virtue of section 236P(3).

### **236T Further provision about significant and controlling interests**

- (1) This section applies for the purposes of—
  - (a) section 236L(2) (trustees hold a significant interest in C), and
  - (b) section 236M (controlling interest requirement).
- (2) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies as it applies for the purposes of the provisions mentioned in section 157(1) of that Act.
- (3) The trustees are to be treated, for the purposes of section 236L(2)(b) or 236M(1)(b), as entitled to dividends on shares even if the trustees are required, or permitted, by the trusts of the settlement to waive their entitlement to those dividends.
- (4) In determining whether section 236L(2)(d) or 236M(1)(d) applies, ignore any provision of—
  - (a) a mortgage or charge (or, in Scotland, a charge or security) granted by the trustees to a third party to secure any debt, or
  - (b) an agreement in respect of a loan made to the trustees by a third party, which confers any entitlement on the third party in the event of a default by the trustees in performing their obligations in relation to that debt or loan.
- (5) In this section—
 

“third party” means a person other than—

  - (a) C or a member of a group of which C is the principal company,
  - (b) a person who is, or has at any time in the preceding 12 months been, a participator in C or in a member of such a group, or
  - (c) a person connected with a person within paragraph (b);

“close company” and “participator” have the same meaning as in Part 4 of the Inheritance Tax Act 1984 (see section 102 of that Act), and a reference to a participator in a company is, in the case of a company which is not a

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close company, to be construed as a reference to a person who would be a participator in the company if it were a close company.

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

- C345** S. 236T applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 75A(3) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 14\(1\)\(2\)](#))
- C346** S. 236T applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 86(3A)(b) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 15\(3\)\(4\)](#))
- C347** S. 236T applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 13A(2) (as inserted (with effect in accordance with Sch. 37 para. 10(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 10\(1\)](#))
- C348** S. 236T applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 28A(2) (as inserted (with effect in accordance with Sch. 37 para. 11(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 11\(1\)](#))

**236U Interpretation of sections 236H to 236U**

- (1) In sections 236H to 236T and this section—
  - “company” has the meaning given by section 170(9);
  - “ordinary share capital” has the meaning given by section 1119 of CTA 2010;
  - “trade” means any trade which is conducted on a commercial basis and with a view to the realisation of profits.
- (2) In those sections—
  - (a) references to a group, to membership of a group or to the principal company of a group, are to be construed in accordance with section 170, and
  - (b) references to a group are to be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.
- (3) In determining whether a person is connected with another for the purposes of those sections, section 286 applies as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece.]

*Superannuation funds, profit sharing schemes, employee trusts etc.*

**237 Superannuation funds, annuities and annual payments.**

No chargeable gain shall accrue to any person on the disposal of a right to, or to any part of—

- (a) any allowance, annuity or capital sum payable out of any superannuation fund, or under any superannuation scheme, established solely or mainly for persons employed in a profession, trade, undertaking or employment, and their dependants, [<sup>F1577</sup>or]
- <sup>F1578</sup>(b) .....
- (c) annual payments which are due under a covenant made by any person and which are not secured on any property.

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#### **Textual Amendments**

**F1577** Word in s. 237(a) inserted (with effect in accordance with s. 73(4) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 73\(3\)\(a\)](#)

**F1578** S. 237(b) repealed (with effect in accordance with s. 73(4) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 73\(3\)\(b\), Sch. 26 Pt. 3\(10\)](#)

### **[<sup>F1579</sup>237] Share option schemes: release and replacement of options.**

- (1) This section applies in any case where a right to acquire shares in a body corporate (“the old right”) which was obtained by an individual by reason of his office or employment as a director or employee of that or any other body corporate is released in whole or in part for a consideration which consists of or includes the grant to that individual of another right (“the new right”) to acquire shares in that or any other body corporate.
- (2) As respects the person to whom the new right is granted—
  - (a) without prejudice to subsection (1) above, the new right shall not be regarded for the purposes of capital gains tax as consideration for the release of the old right;
  - (b) the amount or value of the consideration given by him or on his behalf for the acquisition of the new right shall be taken for the purposes of section 38(1) to be the amount or value of the consideration given by him or on his behalf for the old right; and
  - (c) any consideration paid for the acquisition of the new right shall be taken to be expenditure falling within section 38(1)(b).
- (3) As respects the grantor of the new right, in determining for the purposes of this Act the amount or value of the consideration received for the new right, the release of the old right shall be disregarded.]

#### **Textual Amendments**

**F1579** S. 237A inserted (with effect in accordance with s. 112(3) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 112\(1\)](#)

### **238 Approved profit sharing and share option schemes.**

- (1) Notwithstanding anything in a profit sharing scheme approved under Schedule 9 of the Taxes Act or in paragraph 2(2) of that Schedule or in the trust instrument relating to that scheme, for the purposes of capital gains tax a person who is a participant in relation to that scheme shall be treated as absolutely entitled to his shares as against the trustees of the scheme.
- (2) For the purposes of capital gains tax—
  - (a) no deduction shall be made from the consideration for the disposal of any shares by reason only that an amount determined under section 186 or 187 of or Schedule 9 or 10 to the Taxes Act [<sup>F1580</sup>counts as employment income (or was chargeable to income tax for the year 2002-03 or an earlier year of assessment)] under section 186(3) or (4) of that Act;

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- (b) any charge to income tax by virtue of section 186(3) of that Act shall be disregarded in determining whether a distribution is a capital distribution within the meaning of section 122(5)(b);
- (c) nothing in any provision of section 186 or 187 of or Schedule 9 or 10 to that Act with respect to—
  - (i) the order in which any of a participant’s shares are to be treated as disposed of for the purposes of those provisions as they have effect in relation to profit sharing schemes, or
  - (ii) the shares in relation to which an event is to be treated as occurring for any such purpose,shall affect the rules applicable to the computation of a gain accruing on a part disposal of a holding of shares or other securities which were acquired at different times; and
- (d) a gain accruing on an appropriation of shares to which section 186(11) of that Act applies shall not be a chargeable gain.

(3) In this section “participant” and “the trust instrument” have the meanings given by section 187 of the Taxes Act.

<sup>F1581</sup>(4) .....

#### Textual Amendments

**F1580** Words in s. 238(2)(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 215](#) (with Sch. 7)

**F1581** S. 238(4) repealed (with effect in accordance with s. 112(2)(3) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 112\(2\), Sch. 41 Pt. V\(5\)](#)

### <sup>F1583</sup>**238A** <sup>F1582</sup>... Share schemes and share incentives

- (1) Schedule 7D ( <sup>F1584</sup>... share schemes and share incentives) shall have effect.
  - (2) Schedule 7D relates—
    - (a) in Part 1, to <sup>F1585</sup>[Schedule 2] share incentive plans (SIPs) (see section 488 of ITEPA 2003),
    - (b) in Part 2, to <sup>F1586</sup>[Schedule 3] SAYE option schemes (see section 516 of that Act),
    - (c) in Part 3, to <sup>F1587</sup>[Schedule 4] CSOP schemes (CSOPs) (see section 521 of that Act), <sup>F1588</sup> ...
- <sup>F1588</sup>(d) .....

#### Textual Amendments

**F1582** Word in s. 238A heading omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), Sch. 8 paras. 35\(2\), 89](#) (with Sch. 8 paras. 90-96)

**F1583** S. 238A inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 216](#) (with Sch. 7)

**F1584** Word in s. 238A(1) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), Sch. 8 paras. 35\(3\), 89](#) (with Sch. 8 paras. 90-96)

**F1585** Words in s. 238A(2)(a) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 35\(4\), 89](#) (with Sch. 8 paras. 90-96)

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- F1586** Words in s. 238A(2)(b) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 124, 146](#) (with [Sch. 8 paras. 147-157](#))
- F1587** Words in s. 238A(2)(c) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 184, 204](#) (with [Sch. 8 paras. 205-215](#))
- F1588** S. 238A(2)(d) and preceding word omitted (with effect in accordance with Sch. 3 para. 9(4) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 3 para. 9\(1\)](#)

## 239 <sup>F1589</sup> [Disposals to trustees of employee trusts]

(1) Where—

- (a) a close company disposes of an asset to trustees in circumstances such that the disposal is a disposition which by virtue of section 13 of the <sup>M51</sup>Inheritance Tax Act 1984 (employee trusts) is not a transfer of value for the purposes of inheritance tax, or
- (b) an individual disposes of an asset to trustees in circumstances such that the disposal is an exempt transfer by virtue of section 28 of that Act (employee trusts: inheritance tax),

this Act shall have effect in relation to the disposal in accordance with subsections (2) and (3) below.

(2) Section 17(1) shall not apply to the disposal; and if the disposal is by way of gift or is for a consideration not exceeding the sums allowable as a deduction under section 38—

- (a) the disposal, and the acquisition by the trustees, shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
- (b) where the trustees dispose of the asset, its acquisition by the company or individual shall be treated as its acquisition by the trustees.

Paragraph (b) above also applies where section 149(1) of the 1979 Act applied on the disposal of an asset to trustees who have not disposed of it before the coming into force of this section.

(3) Where the disposal is by a close company, section 125(1) shall apply to the disposal as if for the reference to market value there were substituted a reference to market value or the sums allowable as a deduction under section 38, whichever is the less.

(4) Subject to subsection (5) below, this Act shall also have effect in accordance with subsection (2) above in relation to any disposal made by a company other than a close company if—

- (a) the disposal is made to trustees otherwise than under a bargain made at arm's length, and
- (b) the property disposed of is to be held by them on trusts of the description specified in section 86(1) of the <sup>M52</sup>Inheritance Tax Act 1984 (that is to say, those in relation to which the said section 13 of that Act has effect) and the persons for whose benefit the trusts permit the property to be applied include all or most of either—
  - (i) the persons employed by or holding office with the company, or
  - (ii) the persons employed by or holding office with the company or any one or more subsidiaries of the company.

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- (5) Subsection (4) above does not apply if the trusts permit any of the property to be applied at any time (whether during any such period as is referred to in the said section 86(1) or later) for the benefit of—
- (a) a person who is a participator in the company (“the donor company”), or
  - (b) any other person who is a participator in any other company that has made a disposal of property to be held on the same trusts as the property disposed of by the donor company, being a disposal in relation to which this Act has had effect in accordance with subsection (2) above, or
  - (c) any other person who has been a participator in the donor company or any such company as is mentioned in paragraph (b) above at any time after, or during the 10 years before, the disposal made by that company, or
  - (d) any person who is connected with a person within paragraph (a), (b) or (c) above.
- (6) The participators in a company who are referred to in subsection (5) above do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling him to acquire, 5 per cent. or more of, or of any class of the shares comprised in, its issued share capital, and
  - (b) on a winding-up of the company would not be entitled to 5 per cent. or more of its assets;
- and in determining whether the trusts permit property to be applied as mentioned in that subsection, no account shall be taken—
- (i) of any power to make a payment which is the income of any person for any of the purposes of income tax, or would be the income for any of those purposes of a person not resident in the United Kingdom if he were so resident, or
  - (ii) if the trusts are those of a profit sharing scheme approved under Schedule 9 to the Taxes Act of any power to appropriate shares in pursuance of the scheme.
- (7) In subsection (4) above “subsidiary” has the meaning given by section [F1590]1159 of and Schedule 6 to [F1590]the Companies Act [F1590]2006] and in subsections (5) and (6) above “participator” has the meaning given [F1591]by section 454 of CTA 2010], except that it does not include a loan creditor.
- (8) In this section “close company” includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288.

#### Textual Amendments

- F1589**S. 239 heading substituted (with effect in accordance with art. 11(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **11(2)**
- F1590**Words in s. 239(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **4(1)(i)**
- F1591**Words in s. 239(7) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 253** (with Sch. 2)

#### Marginal Citations

- M51** 1984 c. 51.  
**M52** 1984 c. 51.

*Status: Point in time view as at 16/11/2017.*

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## **[<sup>F1592</sup>239] Relief for disposals by trustees of employee trusts**

- (1) Any gain accruing to trustees on the disposal of an asset comprised in the settled property of an employee trust shall not be a chargeable gain where the disposal is—
  - (a) a disposal to a beneficiary, or
  - (b) a deemed disposal under section 71(1),
 if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) an amount that is equal to or exceeds the market value of the asset is chargeable to income tax as employment income within the meaning of section 7 of ITEPA 2003 (meaning of “employment income” etc);
  - (b) neither the beneficiary nor (if different) the person who is liable for the income tax is an excluded person;
  - (c) no actual consideration (as opposed to consideration deemed to be given by any enactment relating to the taxation of chargeable gains) is given directly or indirectly to the trustees for the asset; and
  - (d) Schedule 7D does not to any extent prevent the gain being a chargeable gain.
- (3) The following are excluded persons—
  - (a) a participator in a company, shares in or securities of which are comprised in the settled property;
  - (b) a participator in a close company that has provided any property that has become comprised in the settled property;
  - (c) a person who was a participator in a company within paragraph (a) or (b) at any time during the 10 years before the shares, securities or other property concerned became comprised in the settled property;
  - (d) a person connected with a person within any of paragraphs (a) to (c).
- (4) For the purposes of subsection (3)—
  - (a) “participator” has the same meaning as in section 239 and shall, in the case of a company which is not a close company, be construed as a person who would be a participator in the company if it were a close company, but
  - (b) a person is not a participator unless either—
    - (i) that person is entitled to, or entitled to rights enabling the acquisition of, 5% or more of the share capital of the company or any class of shares in the company, or
    - (ii) that person would be entitled to 5% or more of the company’s assets on winding-up.
- (5) In determining whether a person is connected with another for the purposes of this section, section 286 shall apply as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece.
- (6) In this section—
 

“beneficiary” means a person within paragraph (a) or (b) of section 86(1) of the Inheritance Tax Act 1984 (trusts for benefit of employees);

“close company” includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288;

“employee trust” means a settlement of property to which section 86 of the Inheritance Tax Act 1984 applies or would apply but for subsection (3) of that section;



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“market value” means the market value for the purposes of capital gains tax (as to which see section 272).]

#### Textual Amendments

**F1592S.** 239ZA inserted (with effect in accordance with art. 11(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **11(3)**

#### *[<sup>F1593</sup>Registered pension schemes*

#### Textual Amendments

**F1593S.** 239A and cross-heading substituted for ss. 239A, 239B (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), **Sch. 35 para. 40** (with [Sch. 36](#))

### **239A De-registration of registered pension schemes**

- (1) This section applies where tax is charged in accordance with section 242 of the Finance Act 2004 (de-registration charge) where the registration of a registered pension scheme is withdrawn.
- (2) For the purposes of this Act the assets which at the relevant time are held for the purposes of the pension scheme—
  - (a) are treated as having been acquired at the relevant time for a consideration equal to the amount on which tax is charged by virtue of section 242 of the Finance Act 2004 by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at the relevant time, and
  - (b) are not to be treated as having been disposed of by any person at the relevant time.
- (3) In subsection (2) “the relevant time” means the time immediately before the date of withdrawal of registration of the pension scheme.]

#### *Leases*

### **240 Leases of land and other assets.**

Schedule 8 shall have effect as respects leases of land and, to the extent specified in paragraph 9 of that Schedule, as respects leases of property other than land.

### **241 [<sup>F1594</sup>UK furnished] holiday lettings.**

- (1) The following provisions of this section shall have effect with respect to the treatment for the purposes of tax on chargeable gains of the commercial letting of furnished holiday accommodation in the United Kingdom.

<sup>F1595</sup>(2) For the purposes of this section as it applies to capital gains tax the “commercial letting of furnished holiday accommodation” has the same meaning as it has for the purposes of Chapter 6 of Part 3 of ITTOIA 2005.

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For the purposes of this section as it applies to corporation tax in respect of chargeable gains the “commercial letting of furnished holiday accommodation” <sup>F1596</sup> has the same meaning as it has for the purposes of Chapter 6 of Part 4 of CTA 2009.]

(3) <sup>F1597</sup> Subject to subsections (4) to (8) below, for the purposes of the provisions mentioned in subsection (3A) below—

<sup>F1598</sup>(a) any <sup>F1599</sup>UK property business <sup>F1600</sup> ... which consists of, or so far as it consists of, the commercial letting of furnished holiday accommodation] shall be treated as a trade, and]

(b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.

<sup>F1601</sup>(3A) The provisions referred to in subsection (3) above are—

sections 152 to 157 (roll-over relief on replacement of business asset),

section 165 (gifts relief),

<sup>F1602</sup>section 169S(1) (entrepreneurs’ relief),]

Section 253 (relief for loans to traders),

<sup>F1603</sup>

.....

<sup>F1604</sup>

....., and

Schedule 7AC (exemptions for disposals by companies with substantial shareholding).]

(4) Subject to subsection (5) below, for the purposes of the <sup>F1605</sup>provisions mentioned in subsection (3A)] above as they apply by virtue of this section, where in any chargeable period a person makes a commercial letting of furnished holiday accommodation <sup>F1606</sup>in the United Kingdom]—

(a) the accommodation shall be taken to be used in that period only for the purposes of the trade of making such lettings; and

(b) that trade shall be taken to be carried on throughout that period.

(5) Subsection (4) above does not apply to any part of a chargeable period during which the accommodation is neither let commercially nor available to be so let unless it is prevented from being so let or available by any works of construction or repair.

(6) Where—

(a) a gain to which section 222 applies accrues to any individual on the disposal of an asset; and

(b) by virtue of subsection (3) above the amount or value of the consideration for the acquisition of the asset is treated as reduced under section 152 or 153,

the gain to which section 222 applies shall be reduced by the amount of the reduction mentioned in paragraph (b) above.

(7) Where there is a letting of accommodation only part of which is holiday accommodation such apportionments shall be made for the purposes of this section as <sup>F1607</sup>are] just and reasonable.

(8) Where a person has been charged to tax in respect of chargeable gains otherwise than in accordance with the provisions of this section, such assessment, reduction or discharge of an assessment or, where a claim for repayment is made, such repayment, shall be made as may be necessary to give effect to those provisions.

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### Textual Amendments

- F1594** Words in s. 241 heading substituted (with effect in accordance with Sch. 14 para. 15 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 14(2)(a)**
- F1595** S. 241(2) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 441(2)** (with Sch. 2)
- F1596** Words in s. 241(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 380(2)** (with Sch. 2 Pts. 1, 2)
- F1597** Words in s. 241(3) substituted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 8 para. 3(2)**
- F1598** S. 241(3)(a) substituted (with effect in accordance with s. 38 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 5 para. 62** (with Sch. 5 para. 73)
- F1599** Words in s. 241(3)(a) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 441(3)** (with Sch. 2)
- F1600** Words in s. 241(3)(a) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 380(3), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F1601** S. 241(3A) inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 8 para. 3(3)**
- F1602** Words in s. 241(3A) inserted (with effect in accordance with Sch. 3 para. 5 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 3 para. 3**
- F1603** Words in s. 241(3A) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 37**
- F1604** Words in s. 241(3A) omitted (with effect in accordance with Sch. 14 para. 15 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 14(2)(b)**
- F1605** Words in s. 241(4) substituted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 8 para. 3(4)**
- F1606** Words in s. 241(4) inserted (with effect in accordance with Sch. 14 para. 15 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 14(2)(c)**
- F1607** Word in s. 241(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 20 para. 62**

### Modifications etc. (not altering text)

- C349** S. 241(3) modified (with effect in accordance with s. 39(4)(a)(5) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 39(3), **Sch. 6 para. 36**

### [<sup>F1608</sup>241A] EEA furnished holiday lettings

- (1) The following provisions of this section shall have effect with respect to the treatment for the purposes of tax on chargeable gains of the commercial letting of furnished holiday accommodation in EEA states other than the United Kingdom.
- (2) For the purposes of this section as it applies to capital gains tax, the “commercial letting of furnished holiday accommodation” has the same meaning as it has for the purposes of Chapter 6 of Part 3 of ITTOIA 2005.
- (3) For the purposes of this section as it applies to corporation tax in respect of chargeable gains, the “commercial letting of furnished holiday accommodation” has the same meaning as it has for the purposes of Chapter 6 of Part 4 of CTA 2009.
- (4) Subject to subsections (6) to (10) below, for the purposes of the provisions mentioned in subsection (5) below—
  - (a) any overseas property business which consists of, or so far as it consists of, the commercial letting of furnished holiday accommodation in one or more EEA states shall be treated as a trade, and

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- (b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.
- (5) The provisions referred to in subsection (4) above are—  
 sections 152 to 157 (roll-over relief on replacement of business assets),  
 section 165 (gifts relief),  
 section 169S(1) (entrepreneurs' relief),  
 section 253 (relief for loans to traders), and  
 Schedule 7AC (exemptions for disposals by companies with substantial shareholdings).
- (6) Subject to subsection (7) below, for the purposes of the provisions mentioned in subsection (5) above as they apply by virtue of this section, where in any chargeable period a person makes a commercial letting of furnished holiday accommodation in an EEA state other than the United Kingdom—
- (a) the accommodation shall be taken to be used in that period only for the purposes of the trade of making such lettings, and
- (b) that trade shall be taken to be carried on throughout that period.
- (7) Subsection (6) does not apply to any part of a chargeable period during which the accommodation is neither let commercially nor available to be so let unless it is prevented from being so let or available by any works of construction or repair.
- (8) Where—
- (a) a gain to which section 222 applies accrues to any individual on the disposal of an asset, and
- (b) by virtue of subsection (4) above the amount or value of the consideration for the acquisition of the asset is treated as reduced under section 152 or 153,
- the gain to which section 222 applies shall be reduced by the amount of the reduction mentioned in paragraph (b) above.
- (9) Where there is a letting of accommodation only part of which is holiday accommodation such apportionments shall be made for the purposes of this section as are just and reasonable.
- (10) Where a person has been charged to tax in respect of chargeable gains otherwise than in accordance with the provisions of this section, such assessment, reduction or discharge of an assessment, or, where a claim for repayment is made, such repayment, shall be made as may be necessary to give effect to those provisions.
- (11) In this section “overseas property business” means—
- (a) an overseas property business within the meaning of the Income Tax Acts (see section 989 of ITA 2007), or
- (b) a overseas property business within the meaning of the Corporation Tax Acts (see section 1119 of CTA 2010).]

#### **Textual Amendments**

**F1608S.** 241A inserted (with effect in accordance with Sch. 14 paras. 15-17 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 14\(3\)](#)

*Status: Point in time view as at 16/11/2017.*

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## *Part disposals*

### **242 Small part disposals.**

- (1) This section applies to a transfer of land forming part only of a holding of land, where—
    - (a) the amount or value of the consideration for the transfer does not exceed one-fifth of the market value of the holding as it subsisted immediately before the transfer, and
    - (b) the transfer is not one which, by virtue of section 58 or 171(1), is treated as giving rise to neither a gain nor a loss.
  - (2) Subject to subsection (3) below, if the transferor so claims, the transfer shall not be treated for the purposes of this Act as a disposal, but all sums which, if it had been so treated, would have been brought into account as consideration for that disposal in the computation of the gain shall be deducted from any expenditure allowable under Chapter III of Part II as a deduction in computing a gain on any subsequent disposal of the holding.
- [<sup>F1609</sup>(2A) A claim under subsection (2) above shall be made—
- (a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the transfer is made;
  - (b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the transfer is made.]
- (3) This section shall not apply—
    - (a) if the amount or value of the consideration for the transfer exceeds £20,000, or
    - (b) where in the year of assessment in which the transfer is made, the transferor made any other disposal of land, if the total amount or value of the consideration for all disposals of land made by the transferor in that year exceeds £20,000.
  - (4) No account shall be taken under subsection (3) above of any transfer of land to which section 243 applies.
  - (5) In relation to a transfer which is not for full consideration in money or money's worth “the amount or value of the consideration” in this section shall mean the market value of the land transferred.
  - (6) For the purposes of this section the holding of land shall comprise only the land in respect of which the expenditure allowable under paragraphs (a) and (b) of section 38(1) would be apportioned under section 42 if the transfer had been treated as a disposal (that is, as a part disposal of the holding).
  - (7) In this section references to a holding of land include references to any estate or interest in a holding of land, not being an estate or interest which is a wasting asset, and references to part of a holding shall be construed accordingly.

#### **Textual Amendments**

**F1609S.** 242(2A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 21 para. 37](#)

*Status: Point in time view as at 16/11/2017.*

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### 243 Part disposal to authority with compulsory powers.

- (1) This section applies to a transfer of land forming part only of a holding of land to an authority exercising or having compulsory powers where—
  - (a) the amount or value of the consideration for the transfer, or if the transfer is not for full consideration in money or money's worth, the market value of the land transferred, is small, as compared with the market value of the holding as it subsisted immediately before the transfer, and
  - (b) the transferor had not taken any steps by advertising or otherwise to dispose of any part of the holding or to make his willingness to dispose of it known to the authority or others.
- (2) If the transferor so claims, the transfer shall not be treated for the purposes of this Act as a disposal, but all sums which, if it had been so treated, would have been brought into account as consideration for that disposal in the computation of the gain shall be deducted from any expenditure allowable under Chapter III of Part II as a deduction in computing a gain on any subsequent disposal of the holding.
- [<sup>F1610</sup>(2A) A claim under subsection (2) above shall be made—
  - (a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the transfer is made;
  - (b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the transfer is made.]
- (3) For the purposes of this section the holding of land shall comprise only the land in respect of which the expenditure allowable under paragraphs (a) and (b) of section 38(1) would be apportioned under section 42 if the transfer had been treated as a disposal (that is, as a part disposal of the holding).
- (4) In this section references to a holding of land include references to an estate or interest in a holding of land, not being an estate or interest which is a wasting asset, and references to part of a holding shall be construed accordingly.
- (5) In this section “authority exercising or having compulsory powers” means, in relation to the land transferred, a person or body of persons acquiring it compulsorily or who has or have been, or could be, authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another person or body of persons has or have been, or could be, authorised so to acquire it.

#### Textual Amendments

**F1610S.** 243(2A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 21 para. 38](#)

### 244 Part disposal: consideration exceeding allowable expenditure.

- (1) The provisions of sections 242(2) and 243(2) shall have effect subject to this section.
- (2) Where the allowable expenditure is less than the consideration for the part disposal (or is nil)—
  - (a) the said provisions shall not apply, and
  - (b) if the recipient so elects (and there is any allowable expenditure)—

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- (i) the consideration for the part disposal shall be reduced by the amount of the allowable expenditure, and,
- (ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the part disposal or on any subsequent occasion.

In this subsection “allowable expenditure” means expenditure which, immediately before the part disposal, was attributable to the holding of land under paragraphs (a) and (b) of section 38(1).

[<sup>F1611</sup>(3) An election under subsection (2)(b) above shall be made—

- (a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the part disposal is made;
- (b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the part disposal is made.]

#### Textual Amendments

**F1611** S. 244(3) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 39](#)

### *Compulsory acquisition*

#### **245 Compensation paid on compulsory acquisition.**

- (1) Where land or an interest in or right over land is acquired and the acquisition is, or could have been, made under compulsory powers, then in considering whether, under section 52(4), the purchase price or compensation or other consideration for the acquisition should be apportioned and treated in part as a capital sum within section 22(1)(a), whether as compensation for loss of goodwill or for disturbance or otherwise, or should be apportioned in any other way, the fact that the acquisition is or could have been made compulsorily, and any statutory provision treating the purchase price or compensation or other consideration as exclusively paid in respect of the land itself, shall be disregarded.
- (2) In any case where land or an interest in land is acquired as mentioned in subsection (1) above from any person and the compensation or purchase price includes an amount in respect of severance of the land comprised in the acquisition or sale from other land in which that person is entitled in the same capacity to an interest, or in respect of that other land as being injuriously affected, there shall be deemed for the purposes of this Act to be a part disposal of that other land.

#### **246 Time of disposal and acquisition.**

Where an interest in land is acquired, otherwise than under a contract, by an authority possessing compulsory purchase powers, the time at which the disposal and acquisition is made is the time at which the compensation for the acquisition is agreed or otherwise determined (variations on appeal being disregarded for this purpose)

<sup>F1612</sup>  
... .

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### **Textual Amendments**

**F1612** Words in s. 246 repealed (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(4\), Sch. 41 Pt. V\(6\)](#)

## **247 Roll-over relief on compulsory acquisition.**

- (1) This section applies where—
  - (a) land (“the old land”) is disposed of by any person (“the landowner”) to an authority exercising or having compulsory powers; and
  - (b) the landowner did not take any steps, by advertising or otherwise, to dispose of the old land or to make his willingness to dispose of it known to the authority or others; and
  - (c) the consideration for the disposal is applied by the landowner in acquiring other land (“the new land”) not being land excluded from this paragraph by section 248.
- (2) Subject to section 248, in a case where the whole of the consideration for the disposal was applied as mentioned in subsection (1)(c) above, the landowner, on making a claim as respects the consideration so applied, shall be treated for the purposes of this Act—
  - (a) as if the consideration for the disposal of the old land were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him; and
  - (b) as if the amount or value of the consideration for the acquisition of the new land were reduced by the excess of the amount or value of the actual consideration for the disposal of the old land over the amount of the consideration which he is treated as receiving under paragraph (a) above.
- (3) If part only of the consideration for the disposal of the old land was applied as mentioned in subsection (1)(c) above, then, subject to section 248, if the part of the consideration which was not so applied (“the unexpended consideration”) is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old land, the landowner, on making a claim as respects the consideration which was so applied, shall be treated for the purposes of this Act—
  - (a) as if the amount of the gain so accruing were reduced to the amount of the unexpended consideration (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain); and
  - (b) as if the amount or value of the consideration for the acquisition of the new land were reduced by the amount by which the gain is reduced (or, as the case may be, the amount by which the chargeable gain is proportionately reduced) under paragraph (a) above.
- (4) Nothing in subsection (2) or subsection (3) above affects the treatment for the purposes of this Act of the authority by whom the old land was acquired or of the other party to the transaction involving the acquisition of the new land.
- (5) For the purposes of this section—
  - (a) subsection (2) of section 152 shall apply in relation to subsection (2)(a) and subsection (2)(b) above as it applies in relation to subsection (1)(a) and subsection (1)(b) of that section; and



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- (b) [<sup>F1613</sup>subsections (3) and (4)] of that section shall apply as if any reference to the new assets were a reference to the new land, any reference to the old assets were a reference to the old land and any reference to that section were a reference to this.

[<sup>F1614</sup>(5A) Subsections (2A) and (2C) of section 175 shall apply in relation to this section as they apply in relation to section 152 (but as if the reference in subsection (2C) to the new assets were a reference to the new land).]

- (6) Where this section applies, any such amount as is referred to in subsection (2) of section 245 shall be treated as forming part of the consideration for the disposal of the old land and, accordingly, so much of that subsection as provides for a deemed disposal of other land shall not apply.
- (7) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.
- (8) In this section—  
“land” includes any interest in or right over land; and  
“authority exercising or having compulsory powers” shall be construed in accordance with section 243(5).

#### Textual Amendments

**F1613** Words in s. 247(5)(b) substituted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(5\)](#)

**F1614** S. 247(5A) inserted (with application in accordance with s. 48(6) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 48\(2\)](#)

#### [<sup>F1615</sup>**247** ~~R~~rovisional application of section 247.

- (1) This section applies where a person who disposes of land (“the old land”) to an authority exercising or having compulsory powers declares, in his return for the chargeable period in which the disposal takes place—
- that the whole or any specified part of the consideration for the disposal will be applied in the acquisition of other land (“the new land”);
  - that the acquisition will take place as mentioned in subsection (3) of section 152; and
  - that the new land will not be land excluded from section 247(1)(c) by section 248.
- (2) Until the declaration ceases to have effect, section 247 shall apply as if the acquisition had taken place and the person had made a claim under that section.
- (3) For the purposes of this section, subsections (3) to (5) of section 153A shall apply as if the reference to section 152 or 153 were a reference to section 247 and the reference to the old assets were a reference to the old land.
- (4) In this section “land” and “authority exercising or having compulsory powers” have the same meaning as in section 247.]

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### Textual Amendments

**F1615S.** 247A inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(6\)](#)

## 248 Provisions supplementary to section 247.

- (1) Land is excluded from paragraph (c) of subsection (1) of section 247 if—
- (a) it is a dwelling-house or part of a dwelling-house (or an interest in or right over a dwelling-house), and
  - (b) by virtue of, or of any claim under, any provision of sections 222 to 226 the whole or any part of a gain accruing on a disposal of it by the landowner at a material time would not be a chargeable gain;

and for the purposes of this subsection “a material time” means any time during the period of 6 years beginning on the date of the acquisition referred to in the said paragraph (c).

- (2) If, at any time during the period of 6 years referred to in subsection (1) above, land which at the beginning of that period was not excluded from section 247(1)(c) by virtue of that subsection becomes so excluded, the amount of any chargeable gain accruing on the disposal of the old land shall be redetermined without regard to any relief previously given under section 247 by reference to the amount or value of the consideration for the acquisition of that land; and all such adjustments of capital gains tax, whether by way of assessment or otherwise, may be made at any time, notwithstanding anything in section 34 of the Management Act (time limit for assessments).

This subsection also applies where the period of 6 years referred to above began before the commencement of this section (and accordingly the references to section 247 include references to section 111A of the 1979 Act).

- (3) Where the new land is a depreciating asset, within the meaning of section 154, that section has effect as if—
- (a) any reference in subsection (1) or subsection (4) to section 152 or 153 were a reference to subsection (2) or subsection (3) respectively of section 247; and
  - (b) paragraph (b) of subsection (2) were omitted; and
  - (c) the reference in subsection (5) to section 152(3) were a reference to that provision as applied by section 247(5).
- (4) No claim may be made under section 243 in relation to a transfer which constitutes a disposal in respect of which a claim is made under section 247.
- (5) Expressions used in this section have the same meaning as in section 247.

*[<sup>F1616</sup>Joint interests in land*

### Textual Amendments

**F1616Ss.** 248A-248E and cross-heading inserted (with effect in accordance with art. 8(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **8(1)**

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## **248A Roll-over relief on disposal of joint interests in land: conditions**

- (1) Section 248B applies where conditions A to E are met.
- (2) Condition A is that a person (“the landowner”) and one or more other persons jointly hold—
  - (a) a holding of land, or
  - (b) two or more separate holdings of land.
- (3) Condition B is that the landowner disposes of an interest (“the relinquished interest”) in—
  - (a) the holding, or
  - (b) one or more of the holdings,to the co-owner or to one or more of the co-owners.
- (4) Condition C is that the consideration for the disposal is or includes an interest (“the acquired interest”) in a holding of land held jointly by the landowner and one or more of the co-owners.
- (5) Condition D is that as a consequence of the disposal (taken together with any related disposals) the landowner and each of the co-owners become—
  - (a) in a case falling within subsection (2)(a), the sole owner of part of the holding, or
  - (b) in a case falling within subsection (2)(b), the sole owner of one or more of the holdings.
- (6) Condition E is that the acquired interest is not an interest in excluded land (see section 248C).
- (7) For the purposes of this section—
  - (a) references to a holding of land include references to an estate or interest in a holding of land, and are to be read in accordance with section 243(3);
  - (b) references to holding land jointly are to holding land—
    - (i) in England and Wales, as joint tenants or tenants in common,
    - (ii) in Scotland, as joint owners or owners in common, or
    - (iii) in Northern Ireland, as joint tenants, tenants in common or coparceners;
  - (c) “co-owner” means any person who holds a holding of land jointly with the landowner;
  - (d) a related disposal (in relation to a disposal mentioned in condition B) is a disposal of an interest in the holding, or in one or more of the holdings, which is made—
    - (i) by the landowner to a co-owner, or
    - (ii) by a co-owner to the landowner or another co-owner,at the same time as the disposal mentioned in that condition;
  - (e) spouses who are living together, or civil partners who are living together, are together treated as a landowner or a co-owner.

## **248B Calculation of relief**

- <sup>F1617</sup>(1) If the amount or value of the consideration for the disposal of the relinquished interest is equal to or less than the amount or value of the consideration for the acquired

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interest, the landowner, on making a claim, is to be treated for the purposes of this Act—

- (a) as if the consideration for the disposal of the relinquished interest were of such amount as would secure that on the disposal neither a gain nor a loss accrues to the landowner, and
  - (b) as if the amount or value of the consideration for the acquired interest were reduced by the excess of the amount or value of the consideration for the disposal of the relinquished interest over the amount of the consideration which the landowner is treated as receiving under paragraph (a).
- (2) Where the amount or value of the consideration for the disposal of the relinquished interest exceeds the amount or value of the consideration for the acquired interest, then if the excess (“the unexpended consideration”) is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the relinquished interest, the landowner on making a claim is to be treated for the purposes of this Act—
- (a) as if the amount of the gain so accruing were reduced to the amount of the unexpended consideration (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
  - (b) as if the amount or value of the consideration for the acquired interest were reduced by the amount by which the gain is reduced (or, as the case may be, the amount by which the chargeable gain is proportionately reduced) under paragraph (a).]
- (3) Subsections (1) and (2) are subject to section 248C(3).
- (4) Nothing in subsection (1) or (2) affects the treatment for the purposes of this Act of a co-owner (within the meaning given by section 248A(7)).
- (5) Where subsection (1)(a) applies to exclude a gain which, in consequence of Schedule 2 (assets held on 6th April 1965) is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) shall be the amount of the chargeable gain, and not the whole amount of the gain.

#### **Textual Amendments**

**F1617S.** 248B(1)(2) substituted (with effect in accordance with art. 2(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2013 \(S.I. 2013/234\)](#), arts. 1, **2(1)**

### **248C Excluded land**

- (1) Land is excluded land to the extent that—
  - (a) it is a dwelling-house or part of a dwelling-house (or an interest in or right over a dwelling-house), and
  - (b) by virtue of, or of any claim under, any provision of sections 222 to 226 (private residences) the whole or any part of a gain accruing on a disposal of it by the landowner at a material time would not be a chargeable gain.
- (2) In subsection (1)(b), “a material time” means any time during the period of 6 years beginning on the date of the acquisition of the acquired interest.
- (3) If land was not excluded land at the date of the acquisition of the acquired interest but becomes excluded land within 6 years of the acquisition, the amount of any chargeable gain accruing on the disposal of the relinquished interest shall be re-determined

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without regard to any relief previously given under section 248B by reference to the amount or value of the consideration for the acquisition of the interest in that land.

- (4) Any adjustments of capital gains tax in accordance with subsection (3), whether by way of assessment or otherwise, may be made at any time, despite anything in section 34 of the Management Act (time limit for assessments).
- (5) Expressions used in this section have the same meaning as in section 248A.

#### **248D Milk quotas**

- (1) This section applies where—
  - (a) section 248B applies to a holding (or holdings) of land, and
  - (b) milk quota is associated with the holding in which the relinquished interest is held and with the holding in which the acquired interest is held.
- (2) Section 248B(1), (2) and (4) apply—
  - (a) to the disposal of quota associated with the holding in which the relinquished interest is held as they apply to the disposal of that interest, and
  - (b) to the acquisition of quota associated with the holding in which the acquired interest is held as they apply to the acquisition of that interest.

#### **248E Relief on disposal of joint interests in private residence**

- (1) This section applies where conditions A to E are met.
- (2) Condition A is that a person (“the landowner”) and one or more other persons jointly hold an interest in two or more dwelling-houses.
- (3) Condition B is that the landowner disposes of an interest (“the relinquished interest”) in one or more of the dwelling-houses to the co-owner or to one or more of the co-owners.
- (4) Condition C is that the consideration for the disposal is or includes an interest (“the acquired interest”) in one of the other dwelling-houses.
- (5) Condition D is that as a consequence of the disposal (taken together with any related disposals)—
  - (a) the dwelling-house in which the landowner acquires an interest becomes the only or main residence of the landowner, and
  - (b) each of the other dwelling-houses becomes the only or main residence of one (and only one) of the co-owners.
- (6) Condition E is that if each dwelling-house were disposed of immediately after the disposal (or disposals) mentioned in subsection (5) then by virtue of sections 222 and 223 (private residences) no part of the gain accruing on each of those disposals would be a chargeable gain.
- (7) The landowner, on making a claim jointly with the co-owner or co-owners, shall be treated for the purposes of this Act—
  - (a) as if the consideration for the disposal of the relinquished interest were of such amount as would secure that on the disposal neither a gain nor a loss accrues, and
  - (b) as if the acquired interest were acquired by the landowner—

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- (i) at the time it was acquired jointly by the landowner and the co-owner or co-owners, and
  - (ii) for a consideration equal to the amount of the sums that would have been allowable under section 38(1)(a) and (b) (acquisition and disposal costs etc) as a deduction in the computation of any gain on a disposal of the acquired interest by the co-owner or co-owners.
- (8) For the purposes of this section—
- (a) “co-owner” means any person who holds an interest in a dwelling-house jointly with the landowner;
  - (b) references to holding land jointly are to holding land—
    - (i) in England and Wales, as joint tenants or tenants in common,
    - (ii) in Scotland, as joint owners or owners in common, or
    - (iii) in Northern Ireland, as joint tenants, tenants in common or coparceners;
  - (c) a related disposal (in relation to a disposal mentioned in condition B) is a disposal of an interest in a dwelling-house which is made—
    - (i) by the landowner to a co-owner, or
    - (ii) by a co-owner to the landowner or another co-owner,
 at the same time as the disposal mentioned in that condition;
  - (d) spouses who are living together, or civil partners who are living together, are together treated as a landowner or a co-owner.]

*[<sup>F1618</sup>Woodlands]*

**Textual Amendments**  
**F1618S.** 249 cross-heading substituted (with effect in accordance with Sch. 39 para. 49(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 49\(2\)](#)

<sup>F1619</sup>**249 Grants for giving up agricultural land.**

**Textual Amendments**  
**F1619S.** 249 repealed (with effect in accordance with Sch. 39 para. 49(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 49\(1\)](#)

**250 Woodlands.**

- (1) Consideration for the disposal of trees standing or felled or cut on woodlands managed by the occupier on a commercial basis and with a view to the realisation of profits shall be excluded from the computation of the gain if the person making the disposal is the occupier.
- (2) Capital sums received under a policy of insurance in respect of the destruction of or damage or injury to trees by fire or other hazard on such woodlands shall be excluded from the computation of the gain if the person making the disposal is the occupier.

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- (3) Subsection (2) above has effect notwithstanding section 22(1).
- (4) In the computation of the gain so much of the cost of woodland in the United Kingdom shall be disregarded as is attributable to trees growing on the land.
- (5) In the computation of the gain accruing on a disposal of woodland in the United Kingdom so much of the consideration for the disposal as is attributable to trees growing on the land shall be excluded.
- (6) References in this section to trees include references to saleable underwood.

### *Debts*

## **251 General provisions.**

- (1) Where a person incurs a debt to another, whether in sterling or in some other currency, no chargeable gain shall accrue to that (that is the original) creditor or his personal representative or legatee on a disposal of the debt, except in the case of the debt on a security (as defined in section 132).
  - (2) Subject to the provisions of sections [F1620]132, 135 and 136] and subject to subsection (1) above, the satisfaction of a debt or part of it (including a debt on a security as defined in section 132) shall be treated as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.
  - (3) Where property is acquired by a creditor in satisfaction of his debt or part of it, then subject to the provisions of sections [F1621]132, 135 and 136] the property shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but if under subsection (1) above (and in a case not falling within [F1622]section 132, 135 or 136]) no chargeable gain is to accrue on a disposal of the debt by the creditor (that is the original creditor), and a chargeable gain accrues to him on a disposal by him of the property, the amount of the chargeable gain shall (where necessary) be reduced so as not to exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part of it.
  - (4) A loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or his personal representative or legatee at a time when the creditor or his personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more purchases through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.
  - (5) [F1623]Where the trustees of a settlement are the original creditor], subsections (1) and (4) above shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled, [F1624]as against the trustees], to the debt on its ceasing to be settled property, and to that person's personal representative or legatee.
- [F1625](5A) References in this section to the disposal of a debt include the disposal of an interest in a debt (and, in the case of an interest in a debt, the reference in subsection (3) to the amount of the debt is to the amount of the person's interest in the debt).]

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<sup>F1626</sup>(6) For the purposes of this section a debenture issued by any company on or after 16th March 1993 shall be deemed to be a security (as defined in section 132) if—

- (a) it is issued on a reorganisation (as defined in section 126(1)) or in pursuance of its allotment on any such reorganisation;
- (b) it is issued in exchange for shares in or debentures of another company and in a case <sup>F1627</sup>to which section 135 applies and which is unaffected by section 137(1)];
- (c) it is issued under any such arrangements as are mentioned in subsection (1) (a) of section 136 and in a case unaffected by section 137 where section 136 requires shares or debentures in another company to be treated as exchanged for, or for anything that includes, that debenture; or
- (d) it is issued in pursuance of rights attached to any debenture issued on or after 16th March 1993 and falling within paragraph (a), (b) or (c) above

<sup>F1628</sup>and any debenture which results from a conversion of securities within the meaning of section 132, or is issued in pursuance of rights attached to such a debenture, shall be deemed for the purposes of this section to be a security (as defined in that section).]]

<sup>F1629</sup>(7) Where any instrument specified in subsection (8) below is not a security (as defined in section 132), that instrument shall be deemed to be such a security for the purposes of this section, other than the purposes of determining what is or is not an allowable loss in any case.

(8) The instruments mentioned in subsection (7) above are—

- <sup>F1630</sup>(a) .....
- (b) any instrument which <sup>F1631</sup>... is not a loan relationship of a company but which would be a <sup>F1632</sup>deeply discounted security for the purposes of Chapter 8 of Part 4 of ITTOIA 2005 if section 432(2) of that Act] (excluded indexed securities) were omitted.]

#### Textual Amendments

- F1620** Words in s. 251(2) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 9 para. 5(12)(a)**
- F1621** Words in s. 251(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 9 para. 5(12)(b)(i)**
- F1622** Words in s. 251(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 9 para. 5(12)(b)(ii)**
- F1623** Words in s. 251(5) substituted (with effect in accordance with Sch. 12 para. 23(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 23(1)(a)**
- F1624** Words in s. 251(5) substituted (with effect in accordance with Sch. 12 para. 23(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 23(1)(b)**
- F1625S.** 251(5A) inserted (with effect in accordance with s. 34(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **s. 35(3)**
- F1626S.** 251(6) inserted (27.7.1993 with effect as mentioned in s. 84(3)) by [1993 c. 34](#), **s. 84(2)(3)**
- F1627** Words in s. 251(6)(b) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 9 para. 5(12)(c)**
- F1628** Words in s. 251(6) inserted (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **s. 88(5)**
- F1629S.** 251(7)(8) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 14 para. 64** (with Sch. 15)



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**F1630S.** 251(8)(a) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 381(a), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F1631** Words in s. 251(8)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 381(b), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F1632** Words in s. 251(8)(b) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 442** (with Sch. 2)

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

**C350** S. 251(8) modified (27.7.1999) by [Finance Act 1999 \(c. 16\)](#), s. 65(11)

**[<sup>F1633</sup>252 Foreign currency bank accounts.**

- (1) Section 251(1) does not apply in relation to a gain accruing to a person on a disposal of a foreign currency debt (or an interest in such a debt) unless that person is—
  - (a) an individual,
  - (b) the trustees of a settlement, or
  - (c) the personal representatives of a deceased person.
- (2) A “foreign currency debt” is a debt—
  - (a) owed by a bank in a currency other than sterling, and
  - (b) represented by a sum standing to the credit of an account-holder in an account in that bank.]

**Textual Amendments**

**F1633S.** 252 substituted (with effect in accordance with s. 34(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), s. 35(4)

**[<sup>F1634</sup>252A Foreign currency bank accounts and the remittance basis**

**Textual Amendments**

**F1634S.** 252A omitted (with effect in accordance with s. 34(6) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), s. 35(5)

**253 Relief for loans to traders.**

- (1) In this section “a qualifying loan” means a loan in the case of which—
  - (a) the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money, and
  - (b) the borrower is resident in the United Kingdom, and
  - (c) the borrower’s debt is not a debt on a security as defined in section 132;and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.

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(2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.

(3) [<sup>F1635</sup>Where a person who has made a qualifying loan makes a claim and at that time]—

- (a) any outstanding amount of the principal of the loan has become irrecoverable, and
- (b) the claimant has not assigned his right to recover that amount, and
- (c) the claimant and the borrower were not each other's spouses [<sup>F1636</sup>or civil partners], or companies in the same group, when the loan was made or at any subsequent time,

[<sup>F1637</sup>then, to the extent that that amount is not an amount which, in the case of the claimant, falls to be brought into account as a debit given for the purposes of [<sup>F1638</sup>Part 5 of CTA 2009] (loan relationships),] this Act shall have effect as if an allowable loss equal to that amount had accrued to the claimant [<sup>F1639</sup>at the time of the claim or (subject to subsection (3A) below) any earlier time specified in the claim].

[<sup>F1640</sup>(3A) For the purposes of subsection (3) above, an earlier time may be specified in the claim if:

- (a) the amount to which that subsection applies was also irrecoverable at the earlier time; and either
- (b) for capital gains tax purposes the earlier time falls not more than two years before the beginning of the year of assessment in which the claim is made; or
- (c) for corporation tax purposes the earlier time falls on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.]

(4) [<sup>F1641</sup>Where a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan makes a claim and at that time]—

- (a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower, and
- (b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount, and
- (c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment, and
- (d) the lender and the borrower were not each other's spouses [<sup>F1642</sup>or civil partners], or companies in the same group, when the loan was made or at any subsequent time and the claimant and the borrower were not each other's spouses [<sup>F1642</sup>or civil partners], and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,

this Act shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.

[<sup>F1643</sup>(4A) A claim under subsection (4) above shall be made—

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- (a) for the purposes of capital gains tax, [<sup>F1644</sup>not more than 4 years after the end of] the year of assessment in which the payment was made;
  - (b) for the purposes of corporation tax, within [<sup>F1645</sup>4 years] after the end of the accounting period in which the payment was made.]
- (5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (6) Where—
  - (a) an allowable loss has been treated under subsection (4) above as accruing to any person, and
  - (b) the whole or any part of the amount of the payment mentioned in subsection (4)(b) is at any time recovered by him,this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (7) Where—
  - (a) an allowable loss has been treated under subsection (3) above as accruing to a company (“the first company”), and
  - (b) the whole or any part of the outstanding amount mentioned in subsection (3) (a) is at any time recovered by a company (“the second company”) in the same group as the first company,this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (8) Where—
  - (a) an allowable loss has been treated under subsection (4) above as accruing to a company (“the first company”), and
  - (b) the whole or any part of the outstanding amount mentioned in subsection (4) (a), or the whole or any part of the amount of the payment mentioned in subsection (4)(b), is at any time recovered by a company (“the second company”) in the same group as the first company,this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (9) For the purposes of subsections (5) to (8) above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money’s worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm’s length he shall be treated as receiving money or money’s worth equal to the market value of the right at the time of the assignment.
- (10) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.
- (11) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—

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- (a) no chargeable gain shall accrue to him otherwise than under subsection (5) above, and
  - (b) no allowable loss shall accrue to him under this Act, on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.
- (12) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.
- (13) For the purposes of subsections (7) and (8) above, 2 companies are in the same group if they were in the same group when the loan was made or have been in the same group at any subsequent time.
- (14) In this section—
- (a) “spouses” means spouses who are living together (construed in accordance with section 288(3)),
  - <sup>F1646</sup>(aa) “civil partners” means civil partners who are living together (construed in accordance with section 288(3)),]
  - (b) “trading company” has the <sup>F1647</sup>same meaning as in section 165 (see section 165A)], and
  - (c) “group” shall be construed in accordance with section 170.
- (15) Subsection (3) above does not apply where the loan was made before 12th April 1978 and subsection (4) above does not apply where the guarantee was given before that date.

#### Textual Amendments

- F1635** Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(2\)\(a\)](#)
- F1636** Words in s. 253(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [120\(2\)](#)
- F1637** Words in s. 253(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 65](#) (with [Sch. 15](#))
- F1638** Words in s. 253(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 382](#) (with [Sch. 2 Pts. 1, 2](#))
- F1639** Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(2\)\(b\)](#)
- F1640** S. 253(3A) inserted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(3\)](#)
- F1641** Words in s. 253(4) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(4\)](#)
- F1642** Words in s. 253(4)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [120\(3\)](#)
- F1643** S. 253(4A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 40](#)
- F1644** Words in s. 253(4A)(a) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 30\(a\)](#); [S.I. 2009/403](#), art. 2(2) (with art. 10)
- F1645** Words in s. 253(4A)(b) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 30\(b\)](#); [S.I. 2009/403](#), art. 2(2) (with art. 10)

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**F1646S.** 253(14)(aa) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **120(4)**

**F1647**Words in s. 253(14)(b) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 38**

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

**C351** Ss. 253, 254 modified (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), Sch. 24 para. 9(3)(4)

**C352** Ss. 253, 254 restricted (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 9(5)**

**C353** Ss. 253, 254 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), Sch. 4 para. 9(2)(3) (with [Sch. 4 para. 9\(3\)\(5\), 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

**C354** S. 253(4) modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), Sch. 24 para. 9(2)(5)

**C355** S. 253(4) modified (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), **Sch. 3 para. 6(2)**

**C356** S. 253(7)(8) excluded (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 9(9)**

**C357** S. 253(9) modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(5)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

**C358** S. 253(10) modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(6)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

**C359** S. 253(13) applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(7)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

**F1648 254 Relief for debts on qualifying corporate bonds.**

.....

**Textual Amendments**

**F1648**Ss. 254, 255 repealed (with effect in accordance with s. 141(2)(b) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 141(1)(b), **Sch. 27 Pt. III(32)**

**F1648 255 Provisions supplementary to section 254.**

.....

**Textual Amendments**

**F1648**Ss. 254, 255 repealed (with effect in accordance with s. 141(2)(b) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 141(1)(b), **Sch. 27 Pt. III(32)**

*<sup>F1649</sup>Investments in social enterprises*

**Textual Amendments**

**F1649**Ss. 255A-255E and cross-heading inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 12 para. 2**

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### **255A Hold-over relief for gains re-invested in social enterprises**

Schedule 8B to this Act (which provides relief in respect of gains re-invested in social enterprises) has effect.

### **255B Gains and losses on investments in social enterprises**

- (1) For the purpose of determining the gain or loss on any disposal of an asset by an individual where—
  - (a) an amount of SI relief is attributable to the asset, and
  - (b) apart from this subsection there would be a loss,
 treat the consideration given by the individual for the acquisition of the asset as reduced by the amount of the SI relief.
- (2) If—
  - (a) an individual disposes of an asset,
  - (b) an amount of SI relief is attributable to the asset,
  - (c) the disposal takes place after the end of the 3 years beginning with the day when the individual acquired the asset, and
  - (d) apart from this subsection, there would be a gain on the disposal,
 the gain is not a chargeable gain, subject to section 255C.
- (3) Despite section 16(2), subsection (2) above does not apply to a disposal on which a loss accrues.
- (4) Any question as to—
  - (a) which of any assets acquired by an individual at different times a disposal relates to, being assets to which SI relief is attributable, or
  - (b) whether a disposal relates to assets to which SI relief is attributable or to other assets,
 is to be determined for the purposes of capital gains tax as provided by section 257TA of ITA 2007.
- (5) Chapter 1 of this Part has effect subject to subsection (4).
- (6) Sections 104, 105 and 106A do not apply to assets to which SI relief is attributable.
- (7) There are to be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of SI relief being given or withdrawn.
- (8) In this section and sections 255C to 255E “SI relief” means relief under Part 5B of ITA 2007 (income tax relief for investments in social enterprises).
- (9) That Part applies for the purposes of this section and sections 255C to 255E to determine whether SI relief is attributable to any asset and, if so, the amount of SI relief so attributable.

### **255C Application of section 255B(2) where maximum SI relief not obtained**

- (1) Subsection (2) applies if—
  - (a) an individual's liability to income tax has been reduced (or treated by virtue of section 257T of ITA 2007 (spouses or civil partners) as reduced) for any tax

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year under section 257JA of ITA 2007 (SI relief) in respect of the acquisition of an asset,

- (b) the amount of the reduction (“D”) is less than the amount given by—

$$I \times R$$

where—

I is the amount on which the individual has SI relief in the case of the asset, and

R is the SI rate for the tax year for which the SI relief was obtained, and

- (c) D is not within paragraph (b) solely by virtue of section 29(2) and (3) of ITA 2007.

- (2) If the individual disposes of the asset and there is a gain on the disposal, section 255B(2) has effect in relation to the gain as if it were reduced by multiplying it by—

$$D I \times R$$

- (3) In this section “SI rate” has the meaning given by section 257JA(5) of ITA 2007.

#### **255D Application of section 255B(2) where SI relief has been reduced**

- (1) Subsection (2) applies if before a disposal of an asset—

- (a) value is received in circumstances where SI relief attributable to the asset is reduced by an amount under section 257Q(1)(a) of ITA 2007, or  
(b) there is a repayment, redemption, repurchase or payment in circumstances where SI relief attributable to the asset is reduced by an amount under section 257QJ(2)(a) of ITA 2007, or  
(c) paragraphs (a) and (b) both apply.

- (2) If section 255B(2) applies on the disposal but section 255C does not, section 255B(2) applies only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—

$$A B$$

where—

A is equal to the amount by which the SI relief given in respect of the asset is reduced as mentioned in subsection (1) above, and

B is equal to the amount of the SI relief given in respect of the asset.

- (3) If sections 255B(2) and 255C apply on the disposal, section 255B(2) applies only to so much of the gain as is found by—

- (a) taking the part of the gain found under section 255C, and  
(b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2).

- (4) If the SI relief given in respect of the asset is reduced as mentioned in subsection (1) by more than one amount, the amount referred to as A in subsection (2) is to be taken to be equal to the aggregate of those amounts.

- (5) The amount referred to in subsection (2) as B is to be found without regard to any reduction mentioned in subsection (1).

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## **255E Reorganisations involving shares to which SI relief is attributable**

- (1) Subsection (2) applies if an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds—
  - (a) shares to which SI relief is attributable and to which subsection (3) applies,
  - (b) shares to which SI relief is attributable and to which subsection (3) does not apply, and
  - (c) shares to which SI relief is not attributable and to which subsection (3) does not apply.
- (2) If there is a reorganisation within the meaning of section 126 affecting the shares listed in subsection (1), section 127 applies separately to those shares so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding.
- (3) This subsection applies to any shares if—
  - (a) expenditure on the shares has been set under Schedule 8B to this Act against the whole or part of any gain, and
  - (b) in relation to the shares there has been no chargeable event for the purposes of that Schedule.
- (4) If—
  - (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
  - (c) immediately following the reorganisation, SI relief is attributable to the existing holding or the allotted shares,
 sections 127 to 130 do not apply in relation to the existing holding.
- (5) Subject to subsection (6), sections 135 and 136 do not apply in respect of shares to which SI relief is attributable.
- (6) Subsection (5) does not have effect to disapply section 135 or 136 in a case where the original shares are shares to which SI relief is attributable if—
  - (a) the new holding consists of new ordinary shares which meet conditions A and B of section 257L of ITA 2007,
  - (b) the new shares are issued after the end of three years beginning with the day on which the original shares were acquired,
  - (c) before issuing the new shares, the company had issued shares which met conditions A and B of section 257L of ITA 2007, and
  - (d) the company issued a compliance certificate in relation to those earlier shares for the purposes of section 257PA(1) of ITA 2007 and in accordance with sections 257PB and 257PC of ITA 2007.
- (7) In subsection (6) “new holding” is to be construed in accordance with sections 126, 127, 135 and 136.
- (8) In this section—
 

“ordinary share capital” has the meaning given in section 989 of ITA 2007;  
 “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital.]



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*Charities and gifts of non-business assets etc.*

**256 Charities.**

- (1) Subject to <sup>F1650</sup>... [<sup>F1651</sup>the following provisions of this section], a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.
- (2) If property held on charitable trusts ceases to be subject to charitable trusts—
- (a) the trustees shall be treated as if they had disposed of, and immediately reacquired, the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to a charity, and
  - (b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to a charity,
- and an assessment to capital gains tax chargeable by virtue of paragraph (b) above may be made at any time not more than 3 years after the end of the year of assessment in which the property ceases to be subject to charitable trusts.
- <sup>F1652</sup>(3) Subsection (4) below applies if a charitable trust has a non-exempt amount under section 540 of ITA 2007 for a year of assessment.
- [ Subsection (4) below also applies if a charitable company has a non-exempt amount <sup>F1653</sup>(3A) under section 493 of CTA 2010 for an accounting period.]
- <sup>F1654</sup>(4) Gains accruing—
- (a) to the charitable trust in the year of assessment, or
  - (b) to the charitable company in the accounting period,
- are treated as being, and always having been, chargeable gains so far as they are attributed to the non-exempt amount under section 256A (in the case of a charitable trust) or section 256C (in the case of a charitable company).]
- (5) For restrictions on exemptions under Part 10 of ITA 2007 (special rules about charitable trusts etc) see section 539 of that Act.]
- <sup>F1655</sup>(6) .....
- <sup>F1656</sup>(7) For restrictions on exemptions under Part 11 of CTA 2010 (charitable companies etc) see section 492 of that Act.
- <sup>F1657</sup>(8) ..... ]

**Textual Amendments**

- F1650** Words in s. 256(1) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 254\(2\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F1651** Words in s. 256(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 326\(2\)](#) (with Sch. 2)
- F1652** S. 256(3)-(5) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 326\(3\)](#) (with Sch. 2)
- F1653** S. 256(3A) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 254\(3\)](#) (with Sch. 2)
- F1654** S. 256(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 254\(4\)](#) (with Sch. 2)

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**F1655S.** 256(6) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 13\(3\)](#), 34(2); S.I. 2012/736, art. 9

**F1656S.** 256(7)(8) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 254\(5\)](#) (with [Sch. 2](#))

**F1657S.** 256(8) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 13\(3\)](#), 34(2); S.I. 2012/736, art. 9

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

**C360** S. 256(4) excluded (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 515\(7\)](#), 1184(1) (with [Sch. 2](#))

**[<sup>F1658</sup>256A <sup>F1659</sup>Attributing gains to the non-exempt amount]<sup>F1659</sup>: charitable trusts]**

- (1) This section applies if a charitable trust has a non-exempt amount under section 540 of ITA 2007 for a year of assessment.
- (2) Attributable gains of the charitable trust for the year of assessment may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.
- (3) The non-exempt amount can be used up (in whole or in part) by—
  - (a) attributable gains being attributed to it under this section, or
  - (b) attributable income being attributed to it under section 541 of ITA 2007.
- (4) The whole of the non-exempt amount must be used up by—
  - (a) attributable gains being attributed to the whole of it under this section,
  - (b) attributable income being attributed to the whole of it under section 541 of ITA 2007, or
  - (c) a combination of attributable gains being attributed to some of it under this section and attributable income being attributed to the rest of it under section 541 of ITA 2007.
- (5) See section 256B for the way in which gains are to be attributed to the non-exempt amount under this section.
- (6) In this section and section 256B a charitable trust's “attributable income”, and “attributable gains”, for a tax year have the same meaning as in Part 10 of ITA 2007 (see section 540 of that Act).

**Textual Amendments**

**F1658Ss.** 256A, 256B inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 327](#) (with [Sch. 2](#))

**F1659** Words in s. 256A heading inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 255](#) (with [Sch. 2](#))

**256B How gains are attributed to the non-exempt amount]<sup>F1660</sup>: charitable trusts]**

- (1) This section is about the ways in which attributable gains can be attributed to a non-exempt amount under section 256A.

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The trustees of the charitable trust may specify the attributable gains that are to be attributed to the non-exempt amount.
- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.
- (4) Subsection (6) applies if—
  - (a) an officer of Revenue and Customs requires the trustees of a charitable trust to make a specification under this section, and
  - (b) the trustees have not given notice under subsection (3) of the specification before the end of the required period.
- (5) The required period is 30 days beginning with the day on which the officer made the requirement.
- (6) An officer of Revenue and Customs may determine the attributable gains that are to be attributed to the non-exempt amount.]

#### Textual Amendments

**F1658**Ss. 256A, 256B inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 327](#) (with [Sch. 2](#))

**F1660**Words in s. 256B title inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 256](#) (with [Sch. 2](#))

#### [<sup>F1661</sup>256] **Attributing gains to the non-exempt amount: charitable companies**

- (1) This section applies if a charitable company has a non-exempt amount under section 493 of CTA 2010 for an accounting period.
- (2) Attributable gains of the charitable company for the period may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.
- (3) The non-exempt amount can be used up (in whole or in part) by—
  - (a) attributable gains being attributed to it under this section, or
  - (b) attributable income being attributed to it under section 494 of CTA 2010.
- (4) The whole of the non-exempt amount must be used up by—
  - (a) attributable gains being attributed to the whole of it under this section,
  - (b) attributable income being attributed to the whole of it under section 494 of CTA 2010, or
  - (c) a combination of attributable gains being attributed to some of it under this section and attributable income being attributed to the rest of it under section 494 of CTA 2010.
- (5) In this section and section 256D a charitable company's “attributable income” and “attributable gains” for an accounting period have the same meaning as in Part 11 of CTA 2010 (see section 493 of that Act).

<sup>F1662</sup>(6) .....

*Status: Point in time view as at 16/11/2017.*

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#### **Textual Amendments**

**F1661**Ss. 256C, 256D inserted (with effect in accordance with s. 1184(1) of the amending Act) by  
 Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 257** (with **Sch. 2**)

**F1662**S. 256C(6) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of **Finance Act 2010**  
 (c. 13), **Sch. 6 paras. 13(4)**, 34(2); S.I. 2012/736, art. 9

### **256D How gains are attributed to the non-exempt amount: charitable companies**

- (1) This section is about the ways in which attributable gains can be attributed to a non-exempt amount under section 256C.
- (2) The charitable company may specify the attributable gains that are to be attributed to the non-exempt amount.
- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.
- (4) Subsection (6) applies if—
  - (a) an officer of Revenue and Customs requires a charitable company to make a specification under this section, and
  - (b) the charitable company has not given notice under subsection (3) of the specification before the end of the required period.
- (5) The required period is 30 days beginning with the day on which the officer made the requirement.
- (6) An officer of Revenue and Customs may determine the attributable gains that are to be attributed to the non-exempt amount.

<sup>F1663</sup>(7) . . . . . ]

#### **Textual Amendments**

**F1661**Ss. 256C, 256D inserted (with effect in accordance with s. 1184(1) of the amending Act) by  
 Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 257** (with **Sch. 2**)

**F1663**S. 256D(7) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of **Finance Act 2010**  
 (c. 13), **Sch. 6 paras. 13(5)**, 34(2); S.I. 2012/736, art. 9

### **257 Gifts to charities etc.**

- (1) Subsection (2) below shall apply where a disposal of an asset is made otherwise than under a bargain at arm's length—
  - (a) to a charity [<sup>F1664</sup>or a registered club], or
  - (b) to any bodies mentioned in Schedule 3 to the <sup>M53</sup>Inheritance Tax Act 1984 (gifts for national purposes, etc)

[<sup>F1665</sup>and the disposal is not one in relation to which section 151A(1) has effect.]
- (2) Sections 17(1) and 258(3) shall not apply; but if the disposal is by way of gift (including a gift in settlement) or for a consideration not exceeding the sums allowable as a deduction under section 38, then—

*Status: Point in time view as at 16/11/2017.*

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- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
  - (b) where, after the disposal, the asset is disposed of by the person who acquired it under the disposal, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the person making the later disposal.
- <sup>F1666</sup>(2A) Subsection (2B) applies if relief is available under Chapter 3 of Part 8 of ITA 2007 or <sup>F1667</sup>as a result of Chapter 3 of Part 6 of CTA 2010] (gifts of shares, securities and real property to charities) in relation to the disposal of a qualifying investment to a charity (whether or not a claim for relief is actually made).
- (2B) The consideration for which the charity's acquisition of the qualifying investment is treated by virtue of subsection (2) above as having been made—
- <sup>F1668</sup>(a) is reduced by the relievable amount within the meaning of Chapter 3 of Part 8 of ITA 2007 if relief in relation to the disposal is available only under that Chapter,
  - (b) is reduced by the relievable amount within the meaning of Chapter 3 of Part 6 of CTA 2010 if relief in relation to the disposal is available only as a result of that Chapter,
  - (c) is reduced by the relievable amount within the meaning of Chapter 3 of Part 8 of ITA 2007 if relief in relation to the disposal is available both under that Chapter and as a result of Chapter 3 of Part 6 of CTA 2010 because of section 442 of ITA 2007 and section 214 of CTA 2010, or]
  - (d) is reduced to nil if that consideration is less than the amount referred to in paragraph (a), (b) or (c) (as the case may be).
- (2C) In subsections (2A) and (2B)—
- “qualifying investment” has the same meaning as in Chapter 3 of Part 8 of ITA 2007 (see section 432 of that Act),
- <sup>F1669</sup>.....
- <sup>F1669</sup>..... ]
- (3) Where—
- (a) otherwise than on the termination of a life interest (within the meaning of section 72) by the death of the person entitled thereto, any assets or parts of any assets forming part of settled property are, under section 71, deemed to be disposed of and reacquired by the trustee, and
  - (b) the person becoming entitled as mentioned in section 71(1) is a charity, <sup>F1670</sup>a registered club] or a body mentioned in Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes, etc),
- then, if no consideration is received by any person for or in connection with any transaction by virtue of which the charity<sup>F1671</sup>, registered club] or other body becomes so entitled, the disposal and reacquisition of the assets to which the charity<sup>F1671</sup>, registered club] or other body becomes so entitled shall, notwithstanding section 71, be treated for the purposes of this Act as made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146(2) of the 1979 Act applied where the person who acquired the asset on that disposal disposes of the asset after the coming into force of this section.

*Status: Point in time view as at 16/11/2017.*

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[<sup>F1672</sup>(5) For the purposes of this section “registered club” has the same meaning as in Chapter 9 of Part 13 of CTA 2010.]

#### Textual Amendments

- F1664** Words in s. 257(1)(a) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(2)** (with [Sch. 2](#))
- F1665** Words in s. 257(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 72(5)
- F1666** S. 257(2A)-(2C) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 328** (with [Sch. 2](#))
- F1667** Words in s. 257(2A) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(3)** (with [Sch. 2](#))
- F1668** S. 257(2B)(a)-(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(4)** (with [Sch. 2](#))
- F1669** Words in s. 257(2C) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(5)**, **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F1670** Words in s. 257(3) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(6)(a)** (with [Sch. 2](#))
- F1671** Words in s. 257(3) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(6)(b)** (with [Sch. 2](#))
- F1672** S. 257(5) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 258(7)** (with [Sch. 2](#))

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

- C361** S. 257 applied (with modifications) (with effect in accordance with s. 58(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 18 para. 9(3)(b)**

#### Marginal Citations

- M53** 1984 c. 51.

[<sup>F1673</sup>~~257A~~ **Tainted charity donations**

- (1) Section 257 does not apply in relation to—
  - (a) a tainted donation made by a person, or
  - (b) any associated donation.
- (2) For the purposes of this section—
  - (a) “tainted donation” means a tainted donation within the meaning of Chapter 8 of Part 13 of ITA 2007 (tainted charity donations: removal of income tax reliefs etc) or Part 21C of CTA 2010 (tainted charity donations: removal of corporation tax relief), and
  - (b) “associated donation” means an associated donation within the meaning of section 809ZM of ITA 2010 or section 939F of CTA 2010.]

#### Textual Amendments

- F1673** S. 257A inserted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 3 para. 3**

*Status: Point in time view as at 16/11/2017.*

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## 258 Works of art etc.

<sup>F1674</sup>(1) .....

[<sup>F1675</sup>(1A) A gain is not a chargeable gain if it accrues on a disposal made in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation).]

(2) A gain shall not be a chargeable gain if it accrues on the disposal of an asset [<sup>F1676</sup>which is property which has been or could be designated under section 31 of the Inheritance Tax Act 1984 (“the 1984 Act”) (designation and undertakings)] and—

- (a) the disposal is by way of sale by private treaty to a body mentioned in Schedule 3 to [<sup>F1677</sup>the 1984 Act] (museums, etc.), or is to such a body otherwise than by sale, or
- (b) the disposal is to the Board in pursuance of section 230 of the 1984 Act <sup>F1678</sup>... (acceptance of property in satisfaction of tax).

(3) Subsection (4) below shall have effect in respect of the disposal of any asset which is property which has been or could be designated under section 31 of the 1984 Act, being—

- (a) a disposal by way of gift, including a gift in settlement, or
- (b) a disposal of settled property by the trustee on an occasion when, under section 71(1), the trustee is deemed to dispose of and immediately reacquire settled property (other than any disposal on which by virtue of section 73 no chargeable gain or allowable loss accrues to the trustee),

if the requisite undertaking described in section 31 of the 1984 Act (maintenance, preservation and access) is given by such person as the Board think appropriate in the circumstances of the case.

(4) The person making a disposal to which subsection (3) above applies and the person acquiring the asset on the disposal shall be treated for all the purposes of this Act as if the asset was acquired from the one making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(5) If—

- (a) there is a sale of the asset and inheritance tax is chargeable under section 32 of the 1984 Act (or would be chargeable if an inheritance tax undertaking as well as an undertaking under this section had been given), or
- (b) the Board are satisfied that at any time during the period for which any such undertaking was given it has not been observed in a material respect,

the person selling that asset or, as the case may be, the owner of the asset shall be treated for the purposes of this Act as having sold the asset for a consideration equal to its market value, and, in the case of a failure to comply with the undertaking, having immediately reacquired it for a consideration equal to its market value.

(6) The period for which an undertaking under this section is given shall be until the person beneficially entitled to the asset dies or it is disposed of, whether by sale or gift or otherwise; and if the asset subject to the undertaking is disposed of—

- (a) otherwise than on sale, and
- (b) without a further undertaking being given under this section,

subsection (5) above shall apply as if the asset had been sold to an individual.

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References in this subsection to a disposal shall be construed without regard to any provision of this Act under which an asset is deemed to be disposed of.

- (7) Where under subsection (5) above a person is treated as having sold for a consideration equal to its market value any asset within section 31(1)(c), (d) or (e) of the 1984 Act, he shall also be treated as having sold and immediately reacquired for a consideration equal to its market value any asset associated with it; but the Board may direct that the preceding provisions of this subsection shall not have effect in any case in which it appears to them that the entity consisting of the asset and any assets associated with it has not been materially affected.

For the purposes of this subsection 2 or more assets are associated with each other if one of them is a building falling within section 31(1)(c) of the 1984 Act and the other or others such land or objects as, in relation to that building, fall within section 31(1)(d) or (e) of the 1984 Act.

- (8) If in pursuance of subsection (5) above a person is treated as having on any occasion sold an asset and inheritance tax becomes chargeable on the same occasion, then, in determining the value of the asset for the purposes of that tax, an allowance shall be made for the capital gains tax chargeable on any chargeable gain accruing on that occasion.

[<sup>F1679</sup>(8A) Section 35A of the 1984 Act (variation of undertakings) shall have effect in relation to an undertaking given under this section as it has effect in relation to an undertaking given under section 30 of that Act.]

- (9) In this section “inheritance tax undertaking” means an undertaking under Chapter II of Part II or section 78 of, or Schedule 5 to, the 1984 Act.

#### **Textual Amendments**

**F1674S.** 258(1) repealed (with effect in accordance with Sch. 27 Pt. IV of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. IV](#)

**F1675S.** 258(1A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 14 para. 34](#)

**F1676** Words in s. 258(2) substituted (with effect in accordance with art. 12(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), [12\(1\)\(a\)](#)

**F1677** Words in s. 258(2)(a) substituted (with effect in accordance with art. 12(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), [12\(1\)\(b\)](#)

**F1678** Words in s. 258(2)(b) omitted (with effect in accordance with art. 12(2) of the amending S.I.) by virtue of [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), [12\(1\)\(c\)](#)

**F1679S.** 258(8A) inserted (with effect in accordance with Sch. 25 para. 9(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 25 para. 9\(1\)](#)

## **259 Gifts to housing associations.**

(1) Subsection (2) below shall apply where—

- (a) a disposal of an estate or interest in land in the United Kingdom is made to a [<sup>F1680</sup>relevant housing provider] otherwise than under a bargain at arm’s length, and
- (b) a claim for relief under this section is made by the transferor and the [<sup>F1681</sup>relevant housing provider].



*Status: Point in time view as at 16/11/2017.*

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(2) Section 17(1) shall not apply; but if the disposal is by way of gift or for a consideration not exceeding the sums allowable as a deduction under section 38, then—

- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
- (b) where, after the disposal, the estate or interest is disposed of by the [<sup>F1682</sup>relevant housing provider], its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the [<sup>F1682</sup>relevant housing provider].

[<sup>F1683</sup>(3) In this section “relevant housing provider” means—

- (a) a non-profit registered provider of social housing,
- (b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996,
- (c) a body registered in the register maintained under [<sup>F1684</sup>section 20(1) of the Housing (Scotland) Act 2010], or
- (d) a registered housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992.]

(4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146A(2) of the 1979 Act applied where the association which acquired the estate or interest in land on that disposal disposes of it after the coming into force of this section.

#### Textual Amendments

**F1680** Words in s. 259(1)(a) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(2\)](#); S.I. 2010/862, art. 2 (with Sch.)

**F1681** Words in s. 259(1)(b) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(3\)](#); S.I. 2010/862, art. 2 (with Sch.)

**F1682** Words in s. 259(2)(b) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(3\)](#); S.I. 2010/862, art. 2 (with Sch.)

**F1683** S. 259(3) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(4\)](#); S.I. 2010/862, art. 2 (with Sch.)

**F1684** Words in s. 259(3)(c) substituted (1.4.2012) by [The Housing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2012 \(S.I. 2012/700\), art. 1\(3\), Sch. para. 4\(4\)](#)

## 260 Gifts on which inheritance tax is chargeable etc.

(1) If—

- (a) an individual or the trustees of a settlement (“the transferor”) make a disposal within subsection (2) below of an asset,
- (b) the asset is acquired by an individual or the trustees of a settlement (“the transferee”), and
- (c) a claim for relief under this section is made by the transferor and the transferee or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (6) below and [<sup>F1685</sup>sections 169[<sup>F1686</sup>, 169B, 169C][<sup>F1687</sup>, 261 and 261ZA]], subsection (3) below shall apply in relation to the disposal.

*Status: Point in time view as at 16/11/2017.*

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- (2) A disposal is within this subsection if it is made otherwise than under a bargain at arm's length and—
- (a) is a chargeable transfer within the meaning of the <sup>M54</sup>Inheritance Tax Act 1984 (or would be but for section 19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act),
  - (b) is an exempt transfer by virtue of—
    - (i) section 24 of that Act (transfers to political parties),
    - <sup>F1688</sup>(ii) . . . . .
    - (iii) section 27 of that Act (transfers to maintenance funds for historic buildings etc.), or
    - (iv) section 30 of that Act (transfers of designated property),
  - (c) is a disposition to which section 57A of that Act applies and by which the property disposed of becomes held on trusts of the kind referred to in subsection (1)(b) of that section (maintenance funds for historic buildings etc.),
  - (d) by virtue of subsection (4) of section 71 of that Act (accumulation and maintenance trusts) does not constitute an occasion on which inheritance tax is chargeable under that section,
  - <sup>F1689</sup>(da) by virtue of subsection (2) of section 71B of that Act (trusts for bereaved minors) does not constitute an occasion on which inheritance tax is chargeable under that section,
  - (db) by virtue of subsection (2) of section 71E of that Act (age 18-to-25 trusts) does not constitute an occasion on which inheritance tax is charged under that section,]
  - (e) by virtue of section 78(1) of that Act (transfers of works of art etc.) does not constitute an occasion on which tax is chargeable under Chapter III of Part III of that Act, or
  - (f) is a disposal of an asset comprised in a settlement where, as a result of the asset or part of it becoming comprised in another settlement, there is no charge, or a reduced charge, to inheritance tax by virtue of paragraph 9, 16 or 17 of Schedule 4 to that Act (transfers to maintenance funds for historic buildings etc.).
- (3) Where this subsection applies in relation to a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
  - (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset in question,
- shall each be reduced by an amount equal to the held-over gain on the disposal.
- (4) Subject to subsection (5) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from this section.
- (5) In any case where—
- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of any provision of this Act) for a disposal in respect of which a claim for relief is made under this section, and

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- (b) that actual consideration exceeds the sums allowable as a deduction under section 38,  
the held-over gain on the disposal shall be reduced by the excess referred to in paragraph (b) above <sup>F1690</sup> ... .
- (6) Subsection (3) above does not apply in relation to a disposal of assets within section 115(1) on which a gain is deemed to accrue by virtue of section 116(10)(b).
- [<sup>F1691</sup>(6ZA) Subsections (6ZB) and (6ZC) apply in any case where—
  - (a) the disposal is a non-resident CGT disposal, and
  - (b) the transferee is resident in the United Kingdom.
- (6ZB) Subsections (3) and (4) have effect in relation to the disposal as if the reference to “chargeable gain” were a reference to “chargeable NRCGT gain”.
- (6ZC) Subsection (5) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to “the chargeable NRCGT gain which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”.]
- <sup>F1692</sup>(6A) .....
- <sup>F1693</sup>(6B) .....
- (7) In the case of a disposal within subsection (2)(a) above [<sup>F1694</sup>(whether or not subsection (3) above applies in relation to it)] there shall be allowed as a deduction in computing the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—
  - (a) the inheritance tax attributable to the value of the asset; and
  - (b) the amount of the chargeable gain as computed apart from this subsection.
- (8) Where an amount of inheritance tax is varied after it has been taken into account under subsection (7) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.
- (9) Where subsection (3) above applies in relation to a disposal which is deemed to occur by virtue of section 71(1) or 72(1), subsection (5) above shall not apply.
- (10) Where a disposal is partly within subsection (2) above, or is a disposal within paragraph (f) of that subsection on which there is a reduced charge such as is mentioned in that paragraph, the preceding provisions of this section shall have effect in relation to an appropriate part of the disposal.

#### Textual Amendments

- F1685** Words in s. 260(1) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 90\(2\)](#)
- F1686** Words in s. 260(1) inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 5\(2\)](#)
- F1687** Words in s. 260(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 7 para. 31\(2\)](#)
- F1688** S. 260(2)(b)(ii) repealed (with effect in accordance with Sch. 27 Pt. IV of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. IV](#)
- F1689** S. 260(2)(da)(db) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\), Sch. 20 paras. 29\(2\), 32](#)

*Status: Point in time view as at 16/11/2017.*

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- F1690** Words in s. 260(5) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. III\(31\)](#)
- F1691** S. 260(6ZA)-(6ZC) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 31\(3\)](#)
- F1692** S. 260(6A) repealed (with effect in accordance with Sch. 21 para. 10(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 5\(3\)](#), [Sch. 42 Pt. 2\(14\)](#)
- F1693** S. 260(6B) repealed (with effect in accordance with Sch. 21 para. 10(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 5\(4\)](#), [Sch. 42 Pt. 2\(14\)](#)
- F1694** Words in s. 260(7) inserted (with effect in accordance with Sch. 21 para. 10(9) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 5\(5\)](#)

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

- C362** S. 260 modified by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))

#### Marginal Citations

- M54** 1984 c. 51.

## 261 Section 260 relief: gifts to non-residents.

- (1) [<sup>F1695</sup>Subject to section 261ZA, section 260(3)] shall not apply where the transferee is [<sup>F1696</sup>not resident] in the United Kingdom.
- (2) Section 260(3) shall not apply where the transferee is an individual who—
- (a) though resident <sup>F1697</sup>... in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

#### Textual Amendments

- F1695** Words in s. 261(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 32](#)
- F1696** Words in s. 261(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 104\(2\)](#)
- F1697** Words in s. 261(2)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 104\(3\)](#)

## [<sup>F1698</sup>261ZA] Gifts of UK residential property interests to non-residents

- (1) This section applies where the disposal in relation to which a claim could be made under section 260 is a disposal of a UK residential property interest to a transferee who is not resident in the United Kingdom and, ignoring section 260—
- (a) a gain would accrue to the transferor on the disposal, and
  - (b) on the assumption that the disposal is a non-resident CGT disposal (whether or not that is the case), that gain would be a chargeable NRCGT gain (see section 57B and Schedule 4ZZB).

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- (2) Section 260(3) has effect in relation to the disposal as if it read—
- “(3) Where this subsection applies in relation to a disposal, the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, shall be reduced by an amount equal to the held-over gain on the disposal.”
- (3) Where the disposal is a non-resident CGT disposal—
- (a) section 260(3), as modified by subsection (2) of this section, and section 260(4) have effect in relation to the disposal as if the references to “chargeable gain” were references to “chargeable NRCGT gain”, and
- (b) section 260(5) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to “the chargeable NRCGT gain which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”.
- (4) Where a claim for relief is made under section 260 in relation to the disposal mentioned in subsection (1), on a subsequent disposal by the transferee of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1), the whole or a corresponding part of the held-over gain (see section 260(4))—
- (a) is deemed to accrue to the transferee (in addition to any gain or loss that actually accrues on that subsequent disposal), and
- (b) (if that would not otherwise be the case) is to be treated as a chargeable NRCGT gain accruing on a non-resident CGT disposal.
- (5) Where the subsequent disposal mentioned in subsection (4) is a disposal within section 260(2)(a), subsection (7) of that section has effect in relation to the disposal as if—
- (a) the reference to “the chargeable gain accruing to the transferee on the disposal of the asset” were a reference to the chargeable gain accruing on the disposal as computed apart from subsection (4), and
- (b) the reference in section 260(7)(b) to “the chargeable gain” were a reference to—
- (i) the chargeable gain (or, where the disposal is a non-resident CGT disposal, the chargeable NRCGT gain) accruing on the disposal, and
- (ii) the held-over gain deemed to accrue under subsection (4).
- (6) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

#### Textual Amendments

**F1698S.** 261ZA inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 33](#)

*Status: Point in time view as at 16/11/2017.*

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### *[<sup>F1699</sup>Know-how*

#### **Textual Amendments**

**F1699S.** 261A and cross-heading inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 444](#) (with [Sch. 2](#))

#### **261A Disposal of know-how as part of disposal of all or part of a trade**

- (1) This section applies if—
- (a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade, and
  - (b) the know-how is disposed of as part of the disposal of all or part of the trade.
- (2) If, as a result of section 194 of ITTOIA 2005, the consideration is treated for income tax purposes as—
- (a) a capital receipt for goodwill (in relation to the person disposing of the know-how), or
  - (b) a capital payment for goodwill (in relation to the person acquiring the know-how),
- the consideration is treated for capital gains tax purposes in the same way.
- (3) This section has effect as if it were contained in Chapter 14 of Part 2 of ITTOIA 2005.]

### *[<sup>F1700</sup>Deduction of trading losses or post-cessation expenditure etc*

#### **Textual Amendments**

**F1700Ss.** 261B-261E and cross-heading inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 329](#) (with [Sch. 2](#))

#### **261B Treating trade loss etc as CGT loss**

- (1) A person may make a claim under this section if—
- (a) relief is available to the person under section 64 or 128 of ITA 2007 (trade or employment loss relief against general income) for a tax year in relation to an amount of loss, and
  - (b) the person makes a claim under that section for the amount to be deducted in calculating the person's net income for the tax year.
- (2) A person may also make a claim under this section if—
- (a) relief is available to the person as mentioned in subsection (1)(a) for a tax year in relation to an amount of loss, but
  - (b) the person's total income for the tax year is nil or does not include any income from which the amount can be deducted.
- (3) A claim under this section is for determining so much of the amount of the loss (“the relevant amount”) as—
- (a) is not deducted in calculating the person's net income for the tax year, and

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- (b) has not already been taken into account for the purposes of any relief for any other tax year or any year of assessment (whether under ITA 2007, this section or otherwise).
- (4) When the relevant amount can no longer be varied—
  - (a) by the [<sup>F1701</sup>tribunal] on appeal, or
  - (b) on the order of a court,it is treated for the purposes of capital gains tax as an allowable loss accruing to the person in the year of assessment corresponding to the tax year.
- (5) But so much of the relevant amount as exceeds the maximum amount (see section 261C) is not to be treated for the purposes of capital gains tax as an allowable loss.
- (6) The excess may, however, be used in giving effect to any other loss relief under Part 4 of ITA 2007 (depending on the terms of the relief).
- (7) The amount treated as an allowable loss under this section—
  - (a) is no longer to be regarded as an amount available for income tax relief, and
  - (b) is not to be deductible from chargeable gains accruing to a person in any year of assessment that begins after the person has permanently ceased to carry on the trade, profession, vocation, employment or office in which the loss was made.
- (8) A claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the loss was made in the trade, profession, vocation, employment or office.
- (9) In this section “normal self-assessment filing date”, “tax year” and “total income” have the same meaning as in the Income Tax Acts (see section 989 of ITA 2007).

#### Textual Amendments

**F1701** Word in s. 261B(4)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 182**

### 261C Meaning of “the maximum amount” for purposes of section 261B

- (1) For the purposes of section 261B “the maximum amount” is the amount on which the person would be chargeable to capital gains tax for the year of assessment if—
  - (a) the provisions mentioned below were ignored, and
  - (b) no account were taken of the event mentioned below.
- (2) The provisions are—
  - <sup>F1702</sup>(a) .....
  - (b) section 3(1) (annual exempt amount), and
  - (c) section 261B.
- (3) The event is any event—
  - (a) which occurs after the date on which the relevant amount (see section 261B(3)) can no longer be varied by the [<sup>F1703</sup>tribunal] on appeal or on the order of a court, and

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- (b) in consequence of which the amount chargeable to capital gains tax is reduced as a result of an enactment relating to capital gains tax.

#### **Textual Amendments**

**F1702S.** 261C(2)(a) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 39](#)

**F1703** Word in s. 261C(3)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 183](#)

### **261D Treating excess post-cessation trade or property relief as CGT loss**

- (1) A person may make a claim under this section if—
- (a) relief is available to the person under section 96 or 125 of ITA 2007 (post-cessation trade or property relief) for a tax year in relation to an amount, and
  - (b) the person makes a claim under that section to deduct the amount in calculating the person's net income for the tax year.
- (2) A person may also make a claim under this section if—
- (a) relief is available to the person as mentioned in subsection (1)(a) for a tax year in relation to an amount, but
  - (b) the person's total income for the tax year is nil.
- (3) A claim under this section is for treating for the purposes of capital gains tax so much of the amount as is not deducted in calculating the person's net income for the tax year (“the relevant amount”) as an allowable loss accruing to the person in the year of assessment corresponding to the tax year.
- (4) But so much of the relevant amount as exceeds the maximum amount (see section 261E) is not to be treated for the purposes of capital gains tax as an allowable loss.
- (5) The relevant amount is no longer to be regarded as an amount available for income tax relief.
- (6) A claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year mentioned in subsection (1) or (2) (as the case may be).
- (7) In this section “normal self-assessment filing date”, “tax year” and “total income” have the same meaning as in the Income Tax Acts (see section 989 of ITA 2007).

### **261E Meaning of “the maximum amount” for purposes of section 261D**

- (1) For the purposes of section 261D “the maximum amount” is the amount on which the person would be chargeable to capital gains tax for the year of assessment if the following were ignored.
- (2) The matters to be ignored are—
- (a) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2),
  - (b) section 3(1) (annual exempt amount), and
  - (c) any relief under section 261B or 261D.]



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## <sup>F1704</sup>Repurchase price under repos

### Textual Amendments

**F1704S.** 261F and cross-heading inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 330](#) (with [Sch. 2](#))

### **261F Deemed manufactured payments: effect on repurchase price**

- (1) This section applies if —
  - (a) the repurchase price of UK shares, UK securities or overseas securities is treated by section 604(2), (4) or (5) of ITA 2007 (deemed increase in repurchase price: repos and options) as increased for the purposes of section 607 of that Act (treatment of price differences under repos),
  - (b) condition A or B is met, and
  - (c) section 263A does not apply.
- (2) Condition A is that, as a result of the increase, there is no difference for the purposes of section 607 of that Act between the sale price and the repurchase price.
- (3) Condition B is that, as a result of an exception in section 608 of that Act, section 607 of that Act does not apply.
- (4) The deemed increase of the repurchase price also has effect for capital gains tax purposes.
- (5) Expressions used in this section and in section 605 of ITA 2007 (deemed increase in repurchase price: other income tax purposes) have the same meanings in this section as in that section.]

### <sup>F1705</sup>**Price differences under repos: effect on repurchase price**

- (1) Subsections (2) and (3) apply if—
  - (a) section 607 of ITA 2007 (treatment of price differences under repos) applies,
  - (b) an amount is treated under that section as a payment of interest, and
  - (c) section 263A does not apply.
- (2) If the repurchase price is more than the sale price, the repurchase price is treated for capital gains tax purposes as reduced by the amount of the payment of interest.
- (3) If the sale price is more than the repurchase price, the repurchase price is treated for capital gains tax purposes as increased by the amount of the payment of interest.
- (4) Expressions used in this section and in section 609 of ITA 2007 (additional income tax consequences of price differences under repos) have the same meanings in this section as in that section.]

### Textual Amendments

**F1705S.** 261G inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 331](#) (with [Sch. 2](#))

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**[<sup>F1706</sup>261H] Power to modify section 261G in non-arm's length case**

- (1) The Treasury may by regulations provide for section 261G to apply with modifications if the exception in section 608(2) of ITA 2007 (agreement not at arm's length) would otherwise prevent it from applying.
- (2) Regulations under this section may make different provision for different cases.
- (3) Regulations under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) The incidental, supplemental, and consequential provision may include modifications of section 261F (deemed manufactured payments: effect on repurchase price).
- (5) In this section “modifications” includes exceptions and omissions.
- (6) Accordingly, the power in subsection (1) includes power to provide for any provision of section 261G not to apply in relation to the case mentioned in that subsection.]

**Textual Amendments**

**F1706S.** 261H inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 332](#) (with [Sch. 2](#))

*Miscellaneous reliefs and exemptions*

**262 Chattel exemption.**

- (1) Subject to this section a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the amount or value of the consideration for the disposal does not exceed £6,000.
- (2) Where the amount or value of the consideration for the disposal of an asset which is tangible movable property exceeds £6,000, there shall be excluded from any chargeable gain accruing on the disposal so much of it as exceeds five-thirds of the difference between—
  - (a) the amount or value of the consideration, and
  - (b) £6,000.
- (3) Subsections (1) and (2) above shall not affect the amount of an allowable loss accruing on the disposal of an asset, but for the purposes of computing under this Act the amount of a loss accruing on the disposal of tangible movable property the consideration for the disposal shall, if less than £6,000, be deemed to be £6,000 and the losses which are allowable losses shall be restricted accordingly.
- (4) If 2 or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, and—
  - (a) to the same person, or
  - (b) to persons who are acting in concert or who are connected persons,
 whether on the same or different occasions, the 2 or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in chargeable gains, and in allowable losses, under subsections (2) and (3) above.
- (5) If the disposal is of a right or interest in or over tangible movable property—

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- (a) in the first instance subsections (1), (2) and (3) above shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration,
  - (b) where the sum of the actual consideration and that market value exceeds £6,000, the part of any chargeable gain that is excluded from it under subsection (2) above shall be so much of the gain as exceeds five-thirds of the difference between that sum and £6,000 multiplied by the fraction equal to the actual consideration divided by the said sum, and
  - (c) where that sum is less than £6,000 any loss shall be restricted under subsection (3) above by deeming the consideration to be the actual consideration plus the said fraction of the difference between the said sum and £6,000.
- (6) This section shall not apply—
- (a) in relation to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market, or
  - (b) in relation to a disposal of currency of any description.

## 263 Passenger vehicles.

A mechanically propelled road vehicle constructed or adapted for the carriage of passengers, except for a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used, shall not be a chargeable asset; and accordingly no chargeable gain or allowable loss shall accrue on its disposal.

## [<sup>F1707</sup>263 ~~263~~ Renewables obligation certificates for domestic microgeneration

- (1) A gain accruing to an individual on a disposal of a renewables obligation certificate is not a chargeable gain if—
- (a) the individual acquired the certificate in connection with the generation of electricity by a microgeneration system,
  - (b) the system is installed at or near domestic premises occupied by the individual, and
  - (c) the individual intends that the amount of electricity generated by it will not significantly exceed the amount of electricity consumed in those premises.
- (2) In subsection (1)—
- “domestic premises” means premises used wholly or mainly as a separate private dwelling,
- [<sup>F1708</sup>“microgeneration system” means any plant (including any equipment, apparatus or appliance) or system of plant for generating electricity or producing heat—
- (a) which, in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in subsection (7) of section 82 of the Energy Act 2004, and
  - (b) whose capacity to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in subsection (8) of that section,]

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“renewables obligation certificate” means a certificate issued under section 32B of the Electricity Act 1989 or Article 54 of the Energy (Northern Ireland) Order 2003.]

#### Textual Amendments

**F1707S.** 263AZA inserted (with effect in accordance with s. 21(4) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 21\(2\)](#)

**F1708** Words in [s. 263AZA\(2\)](#) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), [ss. 57\(3\)\(a\)](#), [115\(3\)\(e\)](#)

### <sup>F1709</sup>**263ZA** ~~Farmer employees: employment-related liabilities~~

- (1) This section applies if—
- (a) a deduction of the amount of one or more deductible payments may be made under section 555 of ITEPA 2003 (former employee entitled to deduction [<sup>F1710</sup>in calculating net income] in respect of liabilities related to the former employment) [<sup>F1711</sup>in calculating a former employee's net income] for a tax year, and
  - (b) the total amount which may be deducted exceeds [<sup>F1712</sup>the remaining total income] for that year.

- (2) In this section “excess relief” means the amount of the difference between—
- (a) the total amount which may be deducted, and
  - (b) [<sup>F1713</sup>the remaining total income].

[ In this section “the remaining total income”, in relation to a tax year, means the former <sup>F1714</sup>(2A) employee's total income for the tax year less reliefs already deducted for the tax year at Step 2 of the calculation in section 23 of ITA 2007 for the purpose of calculating the former employee's income tax liability.]

- (3) The amount of the excess relief may be treated as an allowable loss accruing to the former employee for that tax year.

This subsection applies only if the former employee makes a claim for the purpose.

- (4) But no relief is available under subsection (3) in respect of any amount of the excess relief that exceeds the maximum amount.
- (5) For the purposes of this section the “maximum amount”, in relation to the excess relief for a tax year, means the amount on which the former employee would be chargeable to capital gains tax for that year if the following were disregarded—
- (a) any relief available under this section,
  - (b) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2),
  - (c) section 3(1) (the annual exempt amount),
  - (d) any relief [<sup>F1715</sup>under section 261B] (deduction of trading losses), and
  - (e) any relief [<sup>F1716</sup>under section 261D] (relief for post-cessation expenditure).
- (6) A former employee may make a claim under subsection (3) and a claim under section 555(3) of ITEPA 2003 in the same notice.]

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### Textual Amendments

- F1709S.** 263ZA inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 217](#) (with Sch. 7)
- F1710** Words in s. 263ZA(1)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(2\)\(a\)](#) (with Sch. 2)
- F1711** Words in s. 263ZA(1)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(2\)\(b\)](#) (with Sch. 2)
- F1712** Words in s. 263ZA(1)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(3\)](#) (with Sch. 2)
- F1713** Words in s. 263ZA(2)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(4\)](#) (with Sch. 2)
- F1714S.** 263ZA(2A) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(5\)](#) (with Sch. 2)
- F1715** Words in s. 263ZA(5)(d) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(6\)\(a\)](#) (with Sch. 2)
- F1716** Words in s. 263ZA(5)(e) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 333\(6\)\(b\)](#) (with Sch. 2)

### [<sup>F1717</sup>263A<sup>F1718</sup> Agreements for sale and repurchase of securities: capital gains tax]

[ For the purposes of this section there is a repo in respect of securities if—

- <sup>F1719</sup>(A1) (a) a person (“the original owner”) has agreed to sell the securities to another person (“the interim holder”), and
- (b) the original owner or a person connected with the original owner—
- (i) is required to buy back the securities by the agreement or a related agreement,
  - (ii) is required to buy back the securities as a result of the exercise of an option acquired under the agreement or a related agreement, or
  - (iii) exercises an option to buy back the securities which was acquired under the agreement or a related agreement.]

(1) [<sup>F1720</sup>Subject to subsections (3) and (4) below, in any case [<sup>F1721</sup>where under a repo in respect of securities the original owner has transferred the securities to the interim holder]]—

- (a) the acquisition of the securities in question by the interim holder and the disposal of those securities by him to the repurchaser, and
- (b) except where the repurchaser is or may be different from the original owner, the disposal of those securities by the original owner and any acquisition of those securities by the original owner as the repurchaser,

shall be disregarded for the purposes of capital gains tax.

[ If, at any time after the acquisition mentioned in subsection (1)(a) above, it becomes <sup>F1722</sup>(1A) apparent that the interim holder will not dispose of the securities to the repurchaser, the interim holder shall be treated for the purposes of capital gains tax as acquiring them at that time for a consideration equal to their market value at that time.

(1B) If, at any time after the disposal mentioned in subsection (1)(b) above, it becomes apparent that the original owner will not acquire the securities as the repurchaser, the original owner shall be treated for the purposes of capital gains tax as disposing of them at that time for a consideration equal to their market value at that time.]

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F1723(2) .....

(3) Subsection (1) above does not apply if—

- (a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or
- (b) any of the benefits or risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrues to, or falls on, the interim holder.

(4) Subsection (1) above does not apply in relation to any disposal or acquisition of qualifying corporate bonds in a case where the securities disposed of by the original owner or those acquired by him, or by any other person, as the repurchaser are not such bonds.

F1724[F1725(5) .....

(6) This section does not apply for the purposes of corporation tax in respect of chargeable gains.]]

#### **Textual Amendments**

- F1717S.** 263A inserted (with effect in accordance with s. 80(5) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 80\(4\)](#)
- F1718S.** 263A heading substituted (with effect in relation to an arrangement that comes into force on or after 1.10.2007) by [Finance Act 2007 \(c. 11\), s. 47\(4\)](#), [Sch. 14 para. 12\(6\)](#); S.I. 2007/2483, art. 3
- F1719S.** 263A(A1) inserted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 12 para. 9\(2\)](#)
- F1720** Words in s. 263A(1) substituted (with effect in relation to an arrangement that comes into force on or after 1.10.2007) by [Finance Act 2007 \(c. 11\), s. 47\(4\)](#), [Sch. 14 para. 12\(2\)](#); S.I. 2007/2483, art. 3
- F1721** Words in s. 263A(1) substituted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 12 para. 9\(3\)](#)
- F1722S.** 263A(1A)(1B) inserted (with effect in relation to an arrangement that comes into force on or after 1.10.2007) by [Finance Act 2007 \(c. 11\), s. 47\(4\)](#), [Sch. 14 para. 12\(3\)](#); S.I. 2007/2483, art. 3
- F1723S.** 263A(2) repealed (with effect in relation to an arrangement that comes into force on or after 1.10.2007) by [Finance Act 2007 \(c. 11\), s. 47\(4\)](#), [Sch. 14 para. 12\(4\)](#), [Sch. 27 Pt. 2\(14\)](#); S.I. 2007/2483, art. 3
- F1724S.** 263A(5) omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 12 para. 9\(4\)](#)
- F1725S.** 263A(5)(6) substituted (with effect in relation to an arrangement that comes into force on or after 1.10.2007) by [Finance Act 2007 \(c. 11\), s. 47\(4\)](#), [Sch. 14 para. 12\(5\)](#); S.I. 2007/2483, art. 3

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

- C363** S. 263A applied (with modifications) (2.1.1996) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 1995 \(S.I. 1995/3220\)](#), regs. 1, [5](#)
- C364** S. 263A applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), [2\(2\)](#), 4
- C365** S. 263A(1) applied (with modifications) (2.1.1996) by [The Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 1995 \(S.I. 1995/3220\)](#), regs. 1, [4](#)
- C366** S. 263A(1) modified (1.1.1999) by [The European Single Currency \(Taxes\) Regulations 1998 \(S.I. 1998/3177\)](#), regs. 1, [14-18](#)

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## [<sup>F1726</sup> **Section 263A: interpretation**

- (1) Subsections (2) to (7) apply for the purposes of section 263A.
- (2) References to buying back securities include references to—
  - (a) buying similar securities, and
  - (b) in the case of a person connected with the person who is the original owner under the repo, buying the securities sold by the original owner or similar securities.
- (3) Subsection (2) applies even if the person buying the securities has not held them before.
- (4) References to repurchase or a repurchaser are to be read accordingly.
- (5) For the purposes of subsection (2) securities are similar if they give their holders—
  - (a) the same rights against the same persons as to capital and distributions, interest and dividends, and
  - (b) the same remedies to enforce those rights.
- (6) Subsection (5) applies even if there is a difference in—
  - (a) the total nominal amounts of the securities,
  - (b) the form in which they are held, or
  - (c) the manner in which they can be transferred.
- (7) Agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (8) In section 263A and this section “securities” means—
  - (a) shares in a company wherever resident,
  - (b) loan stock or other securities of—
    - (i) the government of the United Kingdom,
    - (ii) a local authority in the United Kingdom,
    - (iii) another public authority in the United Kingdom,
    - (iv) a company resident in the United Kingdom or other body resident in the United Kingdom, or
  - (c) shares, loan stock, stock or other securities issued by—
    - (i) a government, local authority or other public authority of a territory outside the United Kingdom, or
    - (ii) another body of persons not resident in the United Kingdom.]

### **Textual Amendments**

**F1726S.** 263AA inserted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by  
[Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 10](#)

## [<sup>F1727</sup> **263B Stock lending arrangements.**

- (1) In this section “stock lending arrangement” means so much of any arrangements between two persons (“the borrower” and “the lender”) as are arrangements under which—

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- (a) the lender transfers securities to the borrower otherwise than by way of sale; and
  - (b) a requirement is imposed on the borrower to transfer those securities back to the lender otherwise than by way of sale.
- (2) Subject to the following provisions of this section and [<sup>F1728</sup>sections 263C(2) and 263CA(3) and (5)], the disposals and acquisitions made in pursuance of any stock lending arrangement shall be disregarded for the purposes of capital gains tax.
- (3) Where—
- (a) the borrower under any stock lending arrangement disposes of any securities transferred to him under the arrangement,
  - (b) that disposal is made otherwise than in the discharge of the requirement for the transfer of securities back to the lender, and
  - (c) that requirement, so far as it relates to the securities disposed of, has been or will be discharged by the transfer of securities other than those transferred to the borrower,
- any question relating to the acquisition of the securities disposed of shall be determined (without prejudice to the provisions of Chapter I of Part IV) as if the securities disposed of were the securities with which that requirement (so far as relating to the securities disposed of) has been or will be discharged.
- (4) Where, in the case of any stock lending arrangement, it becomes apparent, at any time after the making of the transfer by the lender, that the requirement for the borrower to make a transfer back to the lender will not be complied with—
- (a) the lender shall be deemed for the purposes of this Act to have made a disposal at that time of the securities transferred to the borrower [<sup>F1729</sup>for a consideration equal to their market value at that time];
  - (b) the borrower shall be deemed to have acquired them at that time [<sup>F1730</sup>for that consideration]; and
  - (c) subsection (3) above shall have effect in relation to any disposal before that time by the borrower of securities transferred to him by the lender as if the securities deemed to have been acquired by the borrower in accordance with paragraph (b) above were to be used for discharging a requirement to transfer securities back to the lender.
- [<sup>F1731</sup>This subsection does not apply where section 263CA (insolvency of borrower) applies.]
- (5) References in this section, in relation to a person to whom securities are transferred, to the transfer of those securities back to another person shall be construed as if the cases where those securities are taken to be transferred back to that other person included any case where securities of the same description as those securities are transferred to that other person either—
- (a) in accordance with a requirement to transfer securities of the same description; or
  - (b) in exercise of a power to substitute securities of the same description for the securities that are required to be transferred back.
- (6) For the purposes of this section securities shall not be taken to be of the same description as other securities unless they are in the same quantities, give the same rights against the same persons and are of the same type and nominal value as the other securities.



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[<sup>F1732</sup>(7) In this section “securities” has the meaning given by section 263AA.]

#### Textual Amendments

- F1727**Ss. 263B, 263C inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **Sch. 10 para. 5(1)**; S.I. 1997/991, art. 2
- F1728**Words in s. 263B(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 13 para. 2(2)** (with [Sch. 13 para. 4\(1\)\(2\)](#))
- F1729**Words in s. 263B(4)(a) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 13 para. 2(3)(a)**
- F1730**Words in s. 263B(4)(b) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 13 para. 2(3)(b)**
- F1731**Words in s. 263B(4) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 13 para. 2(3)(c)** (with [Sch. 13 para. 4\(1\)\(2\)](#))
- F1732**S. 263B(7) substituted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), **Sch. 29 paras. 5, 52**

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

- C367** S. 263B modified (1.1.1999) by [The European Single Currency \(Taxes\) Regulations 1998 \(S.I. 1998/3177\)](#), regs. 1, **22(2)**

### 263C Stock lending involving redemption.

- (1) In section 263B references to the transfer back to a person of securities transferred by him shall be taken to include references to the payment to him, in pursuance of an obligation arising on any person’s becoming entitled to receive an amount in respect of the redemption of those securities, of an amount equal to the amount of the entitlement.
- (2) Where, in pursuance of any such obligation, the lender under any stock lending arrangement is paid any amount in respect of the redemption of any securities to which the arrangement relates—
- (a) that lender shall be deemed for the purposes of this Act to have disposed, for that amount, of the securities in respect of whose redemption it is paid (“the relevant lent securities”);
  - (b) the borrower shall not, in respect of the redemption, be taken for the purposes of this Act to have made any disposal of the relevant lent securities; and
  - (c) section 263B(3) shall have effect in relation to disposals of any of the relevant lent securities made by the borrower before the redemption as if—
    - (i) the amount paid to the lender were an amount paid for the acquisition of securities, and
    - (ii) the securities acquired were to be used by the borrower for discharging a requirement under the arrangement to transfer the relevant lent securities back to the lender.
- (3) Expressions used in this section and section 263B have the same meanings in this section as in that section.]

#### Textual Amendments

- F1727**Ss. 263B, 263C inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **Sch. 10 para. 5(1)**; S.I. 1997/991, art. 2

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## <sup>F1733</sup> 263B Stock lending: insolvency etc of borrower

- (1) This section applies where, in the case of any stock lending arrangement—
  - (a) the borrower (B) becomes insolvent after the lender (L) has transferred the securities,
  - (b) as a result of the insolvency, the requirement for B to make a transfer back to L will not be complied with as regards some or all of the securities,
  - (c) collateral is used (whether directly or indirectly) to enable L to acquire securities (“replacement securities”) of the same description as the securities which will not be transferred back, and
  - (d) the replacement securities are acquired before the end of the period of 30 days beginning with the day on which B becomes insolvent (“the insolvency date”).
- (2) In accordance with section 263B(2), the transfer of the securities under the arrangement is not to be regarded as a disposal by L for the purposes of this Act (but this is subject to subsection (5)).
- (3) B is to be treated for the purposes of this Act as having acquired the securities which will not be transferred back to L; and that acquisition is to be treated—
  - (a) as being made on the insolvency date, and
  - (b) as being for a consideration equal to their market value on that date.
- (4) The acquisition of the replacement securities is to be treated, as regards L, as if it were a transfer back of securities in accordance with the arrangement (so that, in accordance with section 263B(2), that acquisition is not regarded as an acquisition by L for the purposes of this Act).
- (5) If the number of replacement securities is less than the number of securities which B is treated as having acquired, L is to be treated for the purposes of this Act as having made a disposal, at the insolvency date, of the difference (“the deemed disposal”).
- (6) The consideration for the deemed disposal is—
  - (a) where all the collateral is used to enable L to acquire replacement securities, nil, and
  - (b) where not all the collateral is so used, the difference between—
    - (i) the market value (at the insolvency date) of the number of securities which could have been acquired using the collateral, and
    - (ii) the market value (at that date) of the number of securities which were in fact so acquired.
- (7) But if L at any time receives any amount (whether arising out of B's insolvency or otherwise) in respect of B's liability to L in respect of the securities which are treated under subsection (5) as having been disposed of by L that amount is to be treated as a chargeable gain accruing at that time to L.
- (8) The liability mentioned in subsection (7) is not to be treated as giving rise to a relevant non-lending relationship for the purposes of Part 6 of CTA 2009 (relationships treated as loan relationships etc).
- (9) For the purposes of this section, B becomes insolvent—
  - (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,

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- (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
  - (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
  - (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
  - (e) on [<sup>F1734</sup>bankruptcy application made or] the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
  - (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
  - (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,
  - (h) if a bank administration order takes effect under Part 3 of that Act, or
  - (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.
- (10) In this section—
- (a) “collateral” means an amount of money or other property which—
    - (i) is provided under the arrangement (or under arrangements of which the arrangement forms part), and
    - (ii) is payable to or made available for the benefit of L for the purpose of securing the discharge of the requirement to transfer any or all of the securities back to L, and
  - (b) any expression used in this section and in section 263B has the same meaning as in that section.]

#### Textual Amendments

**F1733S.** 263CA inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 13 para. 3](#) (with [Sch. 13 para. 4\(1\)\(2\)\(3\)](#))

**F1734**Words in [s. 263CA\(9\)\(e\)](#) inserted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), reg. 1, [Sch. 1 para. 10](#)

### <sup>F1735</sup>**263B** Gains accruing to persons paying manufactured dividends

#### Textual Amendments

**F1735S.** 263D omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 6, 52](#)

### <sup>F1736</sup>**263B** Structured finance arrangements

- (1) This section applies if—
- (a) [<sup>F1737</sup>section 809BZB or 809BZC of ITA 2007][<sup>F1738</sup>or section 759 or 760 of CTA 2010] (disregard of intended effects of arrangement involving disposals of assets) applies in relation to a structured finance arrangement,

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- (b) the borrower or a person connected with the borrower makes a disposal of any security at any time under the arrangement to or for the benefit of the lender or a person connected with the lender, and
  - (c) condition A or B is met.
- (2) Condition A is that the person making the disposal [<sup>F1739</sup>(and no-one else) has the right or obligation under the arrangement to acquire the asset disposed of by that disposal at any subsequent time (whether or not the right or obligation is subject to any conditions).]
- (3) Condition B is that—
- (a) the asset disposed of by that disposal [<sup>F1740</sup>will subsequently cease] to exist at any time, and
  - (b) [<sup>F1741</sup>it is intended that that asset will be held] by the lender, or a person connected with the lender, from the time of the disposal until that time.
- (4) The disposal of the security by the borrower or a person connected with the borrower is to be disregarded for the purposes of this Act.
- [ If, at any time after that disposal, it becomes apparent that—
- <sup>F1742</sup>(4A) (a) the person making the disposal will not subsequently acquire under the arrangement the asset disposed of by that disposal, or
- (b) that asset will not be held as mentioned in subsection (3)(b),
- that person is to be treated for the purposes of this Act as disposing of that asset at that time for a consideration equal to its market value at that time.]
- (5) [<sup>F1743</sup>Except in a case falling within subsection (4A), any] subsequent acquisition by the person making the disposal of the asset disposed of by that disposal is to be disregarded for the purposes of this Act.
- (6) In this section—
- “the borrower”, in relation to a structured finance arrangement, means the person who is the borrower under the arrangement for the purposes of [<sup>F1744</sup>the defining section],
  - [<sup>F1745</sup>“the defining section” in relation to a structured finance arrangement—
    - (a) means section 809BZA of ITA 2007 if it is section 809BZB or 809BZC of ITA 2007 that applies in relation to the arrangement, and
    - (b) means section 758 of CTA 2010 if it is section 759 or 760 of CTA 2010 that applies in relation to the arrangement,]  - “the lender”, in relation to a structured finance arrangement, means the person who is the lender under the arrangement for the purposes of [<sup>F1746</sup>the defining section],
  - “security” means any such asset as is mentioned in [<sup>F1747</sup>subsection (2)(b) and (c) of the defining section].
- (7) For the purposes of this section—
- (a) references to a person connected with the borrower do not include the lender, and
  - (b) references to a person connected with the lender do not include the borrower.]

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### Textual Amendments

- F1736**S. 263E inserted (with effect in accordance with Sch. 6 para. 9(2)(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 9\(1\)](#)
- F1737**Words in s. 263E(1)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 268\(2\)](#) (with Sch. 9 paras. 1-9, 22)
- F1738**Words in s. 263E(1)(a) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 260](#) (with Sch. 2)
- F1739**Words in s. 263E(2) substituted (with effect in accordance with Sch. 5 para. 8(6)(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 8\(2\)](#)
- F1740**Words in s. 263E(3)(a) substituted (with effect in accordance with Sch. 5 para. 8(6)(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 8\(3\)\(a\)](#)
- F1741**Words in s. 263E(3)(b) substituted (with effect in accordance with Sch. 5 para. 8(6)(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 8\(3\)\(b\)](#)
- F1742**S. 263E(4A) inserted (with effect in accordance with Sch. 5 para. 8(6)(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 8\(4\)](#)
- F1743**Words in s. 263E(5) substituted (with effect in accordance with Sch. 5 para. 8(6)(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 8\(5\)](#)
- F1744**Words in s. 263E(6) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 268\(3\)](#) (with Sch. 9 paras. 1-9, 22)
- F1745**Words in s. 263E(6) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 268\(4\)](#) (with Sch. 9 paras. 1-9, 22)
- F1746**Words in s. 263E(6) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 268\(5\)](#) (with Sch. 9 paras. 1-9, 22)
- F1747**Words in s. 263E(6) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 268\(6\)](#) (with Sch. 9 paras. 1-9, 22)

### [<sup>F1748</sup>**263**Power to modify repo provisions: non-standard repo cases

- (1) The Treasury may by regulations provide for—
- (a) section 261F (deemed manufactured payments: effect on repurchase price),
  - (b) section 261G (price differences under repos: effect on repurchase price),
  - (c) section 263A (agreements for sale and repurchase of securities), [<sup>F1749</sup>or]
  - <sup>F1750</sup>(d) .....
  - (e) any of those sections,
- to apply with modifications in relation to non-standard repo cases.
- (2) The power in subsection (1) to make provision for section 263A <sup>F1751</sup>... to apply with modifications is exercisable only so far as the section applies to [<sup>F1752</sup>any case mentioned in section 263A(1).]
- (3) A case is a non-standard repo case if—
- (a) there is a repo in respect of securities,
  - (b) under the repo there has been a sale (“the original sale”) of the securities by the original owner to the interim holder, and
  - (c) any of conditions A to E is met in relation to the repo.

*Status: Point in time view as at 16/11/2017.*

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- (4) Condition A is that—
- (a) the obligation to buy back the securities is not performed, or
  - (b) the option to buy them back is not exercised.
- (5) Condition B is that provision is made by or under an agreement for different or additional UK shares, UK securities or overseas securities to be treated as (or as included with) representative securities.
- (6) Condition C is that provision is made by or under an agreement for any UK shares, UK securities or overseas securities to be treated as not included with representative securities.
- (7) Condition D is that provision is made by or under an agreement for the sale price or repurchase price to be decided or varied wholly or partly by reference to post-agreement fluctuations.
- (8) Condition E is that provision is made by or under an agreement for a person to be required, in a case where there are post-agreement fluctuations, to make a payment in the period—
- (a) beginning immediately after the making of the agreement for the original sale, and
  - (b) ending when the repurchase price becomes due.
- [<sup>F1753</sup>(9) “Post-agreement fluctuations” are fluctuations in the value of—
- (a) securities transferred in pursuance of the original sale, or
  - (b) representative securities,
- which occur in the period after the making of the agreement for the original sale.
- (10) “Representative securities” are securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale.]]

#### Textual Amendments

**F1748S.** 263F inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 336](#) (with [Sch. 2](#))

**F1749**Word in s. 263F(1)(c) inserted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 7\(a\)\(i\)](#), 52

**F1750S.** 263F(1)(d) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 7\(a\)\(ii\)](#), 52

**F1751**Words in s. 263F(2) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 7\(b\)](#), 52

**F1752**Words in s. 263F(2) substituted (with effect in accordance with [Sch. 12 para. 18\(1\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 11\(2\)](#)

**F1753S.** 263F(9)(10) substituted for s. 263F(9) (with effect in accordance with [Sch. 12 para. 18\(1\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 11\(3\)](#)

#### [<sup>F1754</sup>**263G** Power to modify repo provisions: redemption arrangements

- (1) The Treasury may by regulations provide for—
- (a) section 261F (deemed manufactured payments: effect on repurchase price),
  - (b) section 261G (price differences under repos: effect on repurchase price),
  - (c) section 263A (agreements for sale and repurchase of securities),
  - [<sup>F1755</sup>(d) . . . . . or
  - (e) any of those sections,
- to apply with modifications in relation to cases involving redemption arrangements.

*Status: Point in time view as at 16/11/2017.*

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- (2) The power in subsection (1) to make provision for section 263A <sup>F1756</sup>... to apply with modifications is exercisable only so far as the section applies to [<sup>F1757</sup> any case mentioned in section 263A(1).]
- (3) A case involves redemption arrangements if—
- (a) arrangements, corresponding to those made in cases where there is a repo, are made by an agreement, or one or more related agreements, in relation to securities that are to be redeemed in the period after their sale,
  - (b) the securities are UK shares, UK securities or overseas securities, and
  - (c) the arrangements are such that the seller or a person connected with the seller (instead of being required to repurchase the securities or acquiring an option to do so) is granted rights in respect of the benefits that will result from the redemption.

<sup>F1758</sup>(4) . . . . . ]

**Textual Amendments**

- F1754S.** 263G inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 337](#) (with [Sch. 2](#))
- F1755S.** 263G(1)(d) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 8\(a\)](#), 52
- F1756** Words in s. 263G(2) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 8\(b\)](#), 52
- F1757** Words in s. 263G(2) substituted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 12\(a\)](#)
- F1758S.** 263G(4) omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 12\(b\)](#)

[<sup>F1759</sup>**Sections 263F and 263G: supplementary provisions**

- (1) Regulations under section 263F or 263G may make different provision for different cases.
- (2) Regulations under either section may contain incidental, supplemental, consequential and transitional provision and savings.
- (3) The incidental, supplemental and consequential provision may include—
- (a) in the case of regulations about section 261G, modifications of section 261F, and
  - (b) in the case of regulations about section 263A <sup>F1760</sup>..., modifications of the operation of this Act in relation to cases where, by virtue of the regulations, any acquisition or disposal is excluded from those which are to be ignored for the purposes of capital gains tax.
- (4) In this section and sections 263F and 263G “modifications” includes exceptions and omissions.
- (5) Accordingly, a power in sections 263F and 263G to provide for a provision to apply with modifications in relation to a particular case includes power to provide for the provision not to apply in relation to that case.]

**Textual Amendments**

- F1759S.** 263H inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 338](#) (with [Sch. 2](#))

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**F1760** Words in s. 263H(3)(b) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 9](#), 52

## **[<sup>F1761</sup>263 Powers about manufactured overseas dividends**

(1) The Treasury may by regulations make provision as mentioned in subsection (2) about prescribed cases where a person—

[<sup>F1762</sup>(a) pays or receives an amount (a “manufactured overseas dividend”) which is representative of an overseas dividend on overseas securities where the payment or receipt is required to be made under an arrangement for the transfer of the securities, or

(b) is treated as doing so for any purposes of the Tax Acts.]

(2) The regulations may provide for adjusting a relevant amount by reference to a provision which has effect under the law of a territory outside the United Kingdom.

(3) A “relevant amount” is an amount which is treated for prescribed capital gains tax purposes as the amount paid or payable to a person in respect of a relevant transaction.

(4) A “relevant transaction” is a sale, repurchase or other transfer of the overseas securities to which the manufactured overseas dividend relates.

(5) In this section “prescribed” means prescribed in regulations under this section.

[<sup>F1763</sup>(6) In this section—

(a) “overseas securities” means shares, stock or other securities issued by—

(i) a government, local authority or other public authority of a territory outside the United Kingdom, or

(ii) another body of persons not resident in the United Kingdom,

(b) “overseas securities” includes shares in a company which is not resident in the United Kingdom,

(c) “overseas dividend” means any interest, dividend or other annual payment payable in respect of overseas securities, and

(d) “securities” includes loan stock or any similar security.]]

### **Textual Amendments**

**F1761**S. 263I inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 339](#) (with [Sch. 2](#))

**F1762**S. 263I(1)(a)(b) substituted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 10\(2\)](#), 52

**F1763**S. 263I(6) substituted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), [Sch. 29 paras. 10\(3\)](#), 52

## **264 Relief for local constituency associations of political parties on reorganisation of constituencies.**

(1) In this section “relevant date” means the date of coming into operation of an Order in Council under the <sup>M55</sup>Parliamentary Constituencies Act 1986 (orders specifying new parliamentary constituencies) and, in relation to any relevant date—

(a) “former parliamentary constituency” means an area which, for the purposes of parliamentary elections, was a constituency immediately before that date but is no longer such a constituency after that date; and



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- (b) “new parliamentary constituency” means an area which, for the purposes of parliamentary elections, is a constituency immediately after that date but was not such a constituency before that date.
- (2) In this section “local constituency association” means an unincorporated association (whether described as an association, a branch or otherwise) whose primary purpose is to further the aims of a political party in an area which at any time is or was the same or substantially the same as the area of a parliamentary constituency or 2 or more parliamentary constituencies and, in relation to any relevant date—
- (a) “existing association” means a local constituency association whose area was the same, or substantially the same, as the area of a former parliamentary constituency or 2 or more such constituencies; and
- (b) “new association” means a local constituency association whose area is the same, or substantially the same, as the area of a new parliamentary constituency or 2 or more such constituencies.
- (3) For the purposes of this section, a new association is a successor to an existing association if any part of the existing association’s area is comprised in the new association’s area.
- (4) In any case where, before, on or after a relevant date—
- (a) an existing association disposes of land to a new association which is a successor to the existing association, or
- (b) an existing association disposes of land to a body (whether corporate or unincorporated) which is an organ of the political party concerned and, as soon as practicable thereafter, that body disposes of the land to a new association which is a successor to the existing association,
- the parties to the disposal or, where paragraph (b) above applies, to each of the disposals, shall be treated for the purposes of tax on chargeable gains as if the land disposed of were acquired from the existing association or the body making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that association or body.
- (5) In a case falling within subsection (4) above, the new association shall be treated for the purposes of Schedule 2 as if the acquisition by the existing association of the land disposed of as mentioned in that subsection had been the new association’s acquisition of it.
- (6) In any case where—
- (a) before, on or after a relevant date, an existing association disposes of any land which was used and occupied by it for the purposes of its functions, and
- (b) the existing association transfers the whole or part of the proceeds of the disposal to a new association which is a successor to the existing association,
- then, subject to subsection (7) below, this Act (and, in particular, the provisions of sections 152 to 158) shall have effect as if, since the time it was acquired by the existing association, the land disposed of had been the property of the new association and, accordingly, as if the disposal of it had been by the new association.
- (7) If, in a case falling within subsection (6) above, only part of the proceeds of the disposal is transferred to the new association, that subsection shall apply—
- (a) as if there existed in the land disposed of as mentioned in paragraph (a) of that subsection a separate asset in the form of a corresponding undivided share in

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that land, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, that land; and

- (b) as if the references in that subsection (other than paragraph (a) thereof) to the land disposed of and the disposal of it were references respectively to the corresponding undivided share referred to in paragraph (a) above and the disposal of that share;

and for this purpose a corresponding undivided share in the land disposed of is a share which bears to the whole of that land the same proportion as the part of the proceeds transferred bears to the whole of those proceeds.

- (8) In this section “political party” means a political party which qualifies for exemption under section 24 of the <sup>M56</sup>Inheritance Tax Act 1984 (gifts to political parties).

#### Marginal Citations

M55 1986 c. 56.

M56 1984 c. 51.

## 265 Designated international organisations.

- (1) Where—

- (a) the United Kingdom or any of the Communities is a member of an international organisation; and
- (b) the agreement under which it became a member provides for exemption from tax, in relation to the organisation, of the kind for which provision is made by this section;

the Treasury may by order designate that organisation for the purposes of this section.

- (2) The Treasury may by order designate any of the Communities or the European Investment Bank for the purposes of this section.
- (3) Where an organisation has been designated for the purposes of this section, then any security issued by the organisation shall be taken, for the purposes of [<sup>F1764</sup>this Act], to be situated outside the United Kingdom.

#### Textual Amendments

**F1764** Words in s. 265(3) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 3\(2\)](#)

## 266 Inter-American Development Bank.

A security issued by the Inter-American Development Bank shall be taken for the purposes of this Act to be situated outside the United Kingdom.

## 267 Sharing of transmission facilities.

- (1) This section applies to any agreement relating to the sharing of transmission facilities—
- (a) to which the parties are national broadcasting companies,

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- (b) which is entered into on or after 25th July 1991 (the day on which the <sup>M57</sup>Finance Act 1991 was passed) and before 1st January 1992 or such later date as may be specified for the purposes of this paragraph by the Secretary of State, and
  - (c) in relation to which the Secretary of State has certified that it is expedient that this section should apply.
- (2) Where under an agreement to which this section applies one party to the agreement disposes of an asset to another party to the agreement, both parties shall be treated for the purposes of corporation tax on chargeable gains as if the asset acquired by the party to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other.
- (3) Where under an agreement to which this section applies one party to the agreement disposes of an asset to another party to the agreement and the asset is one which the party making the disposal acquired on a part disposal by the party to whom the disposal under the agreement is made, then in applying subsection (2) above—
- (a) section 42 shall be deemed to have had effect in relation to the part disposal with the omission of subsection (4),
  - (b) the amount or value of the consideration for the part disposal shall be taken to have been nil, and
  - (c) if the disposal under the agreement is one to which section 35(2) applies, the market value of the asset on 31st March 1982 shall be taken to have been nil.
- (4) In this section “national broadcasting company” means a body corporate engaged in the broadcasting for general reception by means of wireless telegraphy of radio or television services or both on a national basis.

#### Marginal Citations

M57 1991 c. 31.

## 268 Decorations for valour or gallant conduct.

A gain shall not be a chargeable gain if accruing on the disposal by any person of a decoration awarded for valour or gallant conduct which he acquired otherwise than for consideration in money or money's worth.

### <sup>F1765</sup>268A Victims of National-Socialist persecution

- (1) A gain accruing on a disposal is not a chargeable gain if it accrues on—
  - (a) a disposal of the right to receive the whole or any part of a qualifying payment in respect of National-Socialist persecution, or
  - (b) a disposal of an interest in any such right.
- (2) A payment is a qualifying payment in respect of National-Socialist persecution if it is payable as mentioned in paragraphs (a) to (c) of section 756A(1) of ITTOIA 2005 (income tax exemption for payments to or in respect of victims of National-Socialist persecution).

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- (3) In this section “interest”, in relation to any right, means an interest as a co-owner of the right.
- (4) It does not matter—
- (a) whether the right is owned jointly or in common, or
  - (b) whether or not the interests of the co-owners are equal.]

#### **Textual Amendments**

**F1765S.** 268A inserted (with effect in accordance with s. 64(8) of the amending Act) by [Finance Act 2006](#) (c. 25), [s. 64\(4\)](#) (with [s. 64\(10\)-\(12\)](#))

### **[<sup>F1766</sup>268E Compensation for deprivation of foreign assets**

- (1) A gain is not a chargeable gain if—
- (a) it accrues to a person on receipt of a capital sum paid by way of compensation for the deprivation of a foreign asset,
  - (b) no legal redress was available when the deprivation occurred, and
  - (c) the sum is paid as the result of a relevant compensation award.
- (2) A relevant compensation award is an award or distribution made—
- (a) under—
    - (i) an Order in Council made under the Foreign Compensation Act 1950, or
    - (ii) arrangements established by the government of a territory outside the United Kingdom that are equivalent in effect to such an Order,
  - (b) as a result of a recommendation of—
    - (i) the Spoliation Advisory Panel, or
    - (ii) a body outside the United Kingdom whose purposes and functions are equivalent to those of the Panel, or
  - (c) in settlement of a legal claim to the effect that the deprivation was unlawful or in accordance with an order to that effect made by a court, tribunal or other competent authority with jurisdiction to decide such a claim.
- (3) Reference in this section to the payment of a capital sum by way of compensation for the deprivation of a foreign asset includes—
- (a) payment as a result of the abandonment or extinguishment of rights in respect of the deprivation;
  - (b) return of the asset itself.
- (4) In the case of a gain accruing to a person other than the original owner—
- (a) subsection (1) does not apply if consideration had been given at any time (whether by that person or someone else) for the right to receive the compensation, but
  - (b) consideration given on an acquisition falling within section 58(1) or 171(1) is to be ignored for these purposes.
- (5) If the capital sum is paid (or the foreign asset returned) to a person to whom an allowable loss has accrued as a result of—
- (a) the deprivation of the foreign asset, or

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- (b) the abandonment or extinguishment of rights in respect of the deprivation, subsection (1) applies only to so much of any gain as exceeds that loss.
- (6) For a person to obtain relief under this section, the person must make a claim.
- (7) If the capital sum is paid by means of the transfer of an asset (or the foreign asset is returned), that asset is to be treated for the purposes of computing a gain or a loss on its subsequent disposal as if it were acquired for a consideration equal to its market value at the time of the transfer.
- (8) In this section—
- “capital sum” means money or money’s worth;
  - “deprivation”, in relation to a foreign asset, includes deprivation resulting from—
    - (a) the seizure, confiscation, forfeiture, destruction or expropriation of the asset,
    - (b) the disposal of the asset by a sale under duress for less than market value;
  - “foreign asset” means an asset which was situated outside the United Kingdom at the time of the deprivation;
  - “legal redress”, in relation to the deprivation of a foreign asset, means a right to recover the asset or to receive compensation for the deprivation;
  - “original owner” means the person who owned the foreign asset at the time of the deprivation;
  - “Spoliation Advisory Panel” includes any successor to that Panel.
- (9) This section does not apply in relation to a gain to which section 268A applies.]

#### Textual Amendments

F1766S. 268B inserted (with effect in accordance with art. 9(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **9(1)**

#### 269 Foreign currency for personal expenditure.

A gain shall not be a chargeable gain if accruing on the disposal by an individual of currency of any description acquired by him for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

#### 270 Chevening Estate.

The enactments relating to capital gains tax (apart from this section) shall not apply in respect of property held on the trusts of the trust instrument set out in the Schedule to the <sup>M58</sup>Chevening Estate Act 1959.

#### Marginal Citations

M58 1959 c. 49.

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## 271 Other miscellaneous exemptions.

(1) The following gains shall not be chargeable gains—

- (a) gains accruing on the disposal of stock—
  - [<sup>F1767</sup>(i) transferred, in pursuance of any Act of Parliament, to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners;
  - (ia) transferred, in pursuance of any Act of Parliament, to the Treasury or the National Debt Commissioners and in respect of which the Treasury or those Commissioners are entered as holder in the registers kept by the Registrar of Government Stock; or]
  - (ii) belonging to the Crown, in whatever name it may stand in the books of the Bank of England [<sup>F1768</sup>or in the registers kept by the Registrar of Government Stock];
- (b) any gain accruing to a person from his acquisition and disposal of assets held by him as part of [<sup>F1769</sup>the Fund mentioned in section 613(4) of the Taxes Act (House of Commons Members' Fund);]
- [<sup>F1770</sup>(c) any gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund—
  - (i) mentioned in section 614(2) of the Taxes Act,
  - (ii) to which section 615(3) of the Taxes Act applies, or
  - (iii) mentioned in section 648, 649, 650, 651 or 653 of ITEPA 2003;]
- <sup>F1771</sup>(d) .....
- (e) any gain accruing on the disposal by the trustees of any settled property held on trusts in accordance with directions which are valid and effective under section 9 of the <sup>M59</sup>Superannuation and Trust Funds (Validation) Act 1927 (trust funds for the reduction of the National Debt);
- [<sup>F1772</sup>(ea) any gain accruing on the disposal by the trustees of an asbestos compensation settlement of any property comprised in the settlement;]
- (f) any gain accruing to a consular officer or employee, within the meaning of [<sup>F1773</sup>section 771 of ITTOIA 2005], of any foreign state to which that section applies on the disposal of assets which at the time of the disposal were situated outside the United Kingdom;
- <sup>F1774</sup>(g) .....
- <sup>F1775</sup>(h) .....
- <sup>F1776</sup>(j) .....
- <sup>F1777</sup> .....

[<sup>F1778</sup>(1ZA) In subsection (1)(ea) above “asbestos compensation settlement” means a settlement—

- (a) the sole or main purpose of which is making compensation payments to or in respect of individuals who have, or had before their death, an asbestos-related condition, and
- (b) which is made before 24 March 2010 in pursuance of an arrangement within subsection (1ZB) below.

(1ZB) An arrangement is within this subsection if it is—

- (a) a voluntary arrangement that has taken effect under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989,

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- (b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985, Article 418 of the Companies (Northern Ireland) Order 1986 or Part 26 of the Companies Act 2006, or
- (c) an arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) above that has taken effect under, or as a result of, the law of a country or territory outside the United Kingdom.]

[<sup>F1779</sup>(1A) A gain accruing to a person on a disposal of investments held for the purposes of a registered pension scheme [<sup>F1780</sup>or an overseas pension scheme] is not a chargeable gain.]

[<sup>F1781</sup>(1B) But subsection (1A) does not prevent such a gain from being treated as a chargeable gain for the purposes of sections 185F to 185I of the Finance Act 2004 (scheme chargeable payments: gains from taxable property).]

<sup>F1782</sup>(2) .....

(3) A local authority, a local authority association and a health service body shall be exempt from capital gains tax.

[<sup>F1783</sup>In this subsection—

“health service body” has the meaning given by [<sup>F1784</sup>section 986 of CTA 2010],  
and

“local authority association” has the meaning given by section 1000 of ITA 2007.]

(4) Any [<sup>F1785</sup>interest] to which [<sup>F1786</sup>section 702 of ITTOIA 2005 (certified SAYE savings arrangements)] applies shall be disregarded for all purposes of the enactments relating to capital gains tax.

In any case where there is a transfer to which section 216 applies, this subsection shall have effect in relation to any [<sup>F1785</sup>interest] payable after the transfer under a [<sup>F1787</sup>savings arrangement] which immediately before the transfer was a [<sup>F1788</sup>certified SAYE savings arrangement] notwithstanding that it ceased to be such a [<sup>F1789</sup>arrangement] by reason of the transfer.

[<sup>F1790</sup>In this subsection “certified SAYE savings arrangement” has the meaning given by section 703 of ITTOIA 2005.]

(5) A signatory to the Operating Agreement made pursuant to the Convention on the International Maritime Satellite Organisation which came into force on 16th July 1979, other than a signatory designated for the purposes of the Agreement by the United Kingdom in accordance with the Convention, shall be exempt from capital gains tax in respect of any payment received by that signatory from the Organisation in accordance with the Agreement.

(6) The following shall, on a claim made in that behalf to the Board, be exempt from tax in respect of all chargeable gains—

(a) the Trustees of the British Museum and the Trustees of the [<sup>F1791</sup>Natural History Museum]; and

(b) an [<sup>F1792</sup>association (in the sense that word has in section 469(1)(a) of CTA 2010) which meets conditions A and B in that section (conditions for qualifying as a scientific research association)].

*Status: Point in time view as at 16/11/2017.*

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- (7) The Historic Buildings and Monuments Commission for England [<sup>F1793</sup>and], the Trustees of the National Heritage [<sup>F1794</sup>Memorial Fund]<sup>F1795</sup> ... <sup>F1796</sup> ... <sup>F1797</sup> ... shall be exempt from tax in respect of chargeable gains <sup>F1798</sup> ...
- <sup>F1799</sup>(7A) Chargeable gains are exempt from tax if they accrue to a bank, or issue department of a bank, to which this subsection applies for the time being.
- (7B) Her Majesty may by Order in Council direct that subsection (7A) applies to a bank or its issue department if it appears to Her Majesty that the bank—
- (a) is not resident in the United Kingdom, and
  - (b) is entrusted by the government of a territory outside the United Kingdom with the custody of the territory's principal foreign exchange reserves.
- (7C) No recommendation may be made to Her Majesty in Council to make an order under subsection (7B) unless a draft of the order has been laid before and approved by a resolution of the House of Commons.]
- (8) There shall be exempt from tax any chargeable gains accruing to the issue department of the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or to the issue department of the State Bank of Pakistan constituted under certain orders made under section 9 of the <sup>M60</sup>Indian Independence Act 1947.
- <sup>F1800</sup>(9) .....
- (10) In [<sup>F1801</sup>subsection (1A)] above<sup>F1802</sup>—
- “investments” includes futures contracts and options contracts;
- “overseas pension scheme” has the same meaning as in Part 4 of the Finance Act 2004 (see section 150(7) of that Act).]
- (11) For the purposes of subsection (10) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.
- <sup>F1803</sup>(12) [<sup>F1804</sup>Subsections (1)(b) and (c) and (1A)] above do not apply to gains accruing to a person from the acquisition and disposal by him of assets held as a member of a property investment LLP.]

#### Textual Amendments

- F1767S.** 271(1)(a)(i)(ia) substituted for s. 271(1)(a)(i) (15.11.2004) by [The Government Stock \(Consequential and Transitional Provision\) \(No.3\) Order 2004 \(S.I. 2004/2744\)](#), art. 1, **Sch. para. 3(2)(a)** (with art. 3)
- F1768**Words in s. 271(1)(a)(ii) inserted (15.11.2004) by [The Government Stock \(Consequential and Transitional Provision\) \(No.3\) Order 2004 \(S.I. 2004/2744\)](#), art. 1, **Sch. para. 3(2)(b)** (with art. 3)
- F1769**Words in s. 271(1)(b) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 187(2)**, 284(1) (with Sch. 36)
- F1770S.** 271(1)(c) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 218** (with Sch. 7)
- F1771S.** 271(1)(d) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 187(3)(a)**, 284(1), **Sch. 42 Pt. 3** (with Sch. 36)



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- F1772S.** 271(1)(ea) inserted (retrospective to 6.4.2006) by Finance (No. 3) Act 2010 (c. 33), **Sch. 14 para. 2(2)(4)**
- F1773** Words in s. 271(1)(f) substituted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(2)** (with Sch. 2)
- F1774S.** 271(1)(g) repealed (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(3)(b), 284(1), **Sch. 42 Pt. 3** (with Sch. 36)
- F1775S.** 271(1)(h) repealed (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(3)(c), 284(1), **Sch. 42 Pt. 3** (with Sch. 36)
- F1776S.** 271(1)(j) repealed (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(3)(d), 284(1), **Sch. 42 Pt. 3** (with Sch. 36)
- F1777** Words in s. 271(1) repealed (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(3), 284(1), **Sch. 42 Pt. 3** (with Sch. 36)
- F1778S.** 271(1ZA)(1ZB) inserted (retrospective to 6.4.2006) by Finance (No. 3) Act 2010 (c. 33), **Sch. 14 para. 2(3)(4)**
- F1779S.** 271(1A) inserted (6.4.2006) by Finance Act 2004 (c. 12), **ss. 187(4), 284(1)** (with Sch. 36)
- F1780** Words in s. 271(1A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by **Finance Act 2013 (c. 29), Sch. 25 para. 14(a)**
- F1781S.** 271(1B) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 158(2), **Sch. 21 para. 1**
- F1782S.** 271(2) repealed (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(5), 284(1), **Sch. 42 Pt. 3** (with Sch. 36)
- F1783** Words in s. 271(3) substituted (6.4.2007) by **Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 340(2)** (with Sch. 2)
- F1784** Words in s. 271(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by **Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 261(2)** (with Sch. 2)
- F1785** Word in s. 271(4) substituted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(3)(a)** (with Sch. 2)
- F1786** Words in s. 271(4) substituted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(3)(b)** (with Sch. 2)
- F1787** Words in s. 271(4) substituted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(3)(c)** (with Sch. 2)
- F1788** Words in s. 271(4) substituted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(3)(d)** (with Sch. 2)
- F1789** Word in s. 271(4) substituted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(3)(e)** (with Sch. 2)
- F1790** Words in s. 271(4) inserted (with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 445(3)(f)** (with Sch. 2)
- F1791** Words in s. 271(6)(a) substituted (1.9.1992) by 1992 c. 44, s. 11(2), **Sch. 8 Pt. 1 para. 1(1)(2)(9)**; S.I. 1992/1874, **art.2**
- F1792** Words in s. 271(6)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by **Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 261(3)** (with Sch. 2)
- F1793** Word in s. 271(7) inserted (1.4.2012) by **The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), Sch.**
- F1794** Words in s. 271(7) substituted (with effect in accordance with s. 46(5)(a) of the amending Act) by **Finance (No. 2) Act 2005 (c. 22), s. 46(3)(a)** (with s. 46(7))
- F1795** Words in s. 271(7) omitted (1.4.2012) by virtue of **The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), Sch.**
- F1796** Words in s. 271(7) repealed (with effect in accordance with s. 46(5)(a) of the amending Act) by **Finance (No. 2) Act 2005 (c. 22), s. 46(3)(b), Sch. 11 Pt. 2(12)** (with s. 46(7))

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- F1797** Words in s. 271(7) repealed (with effect in accordance with s. 46(5)(a) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 46(3)(c), Sch. 11 Pt. 2(12) (with s. 46(7))
- F1798** Words in s. 271(7) repealed: (with effect in accordance with s. 46(5)(b) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 46(3)(d), Sch. 11 Pt. 2(12) (with s. 46(7)); (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3 (with Sch. 36)
- F1799** S. 271(7A)-(7C) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 340(3) (with Sch. 2)
- F1800** S. 271(9) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), Sch. 10 para. 5(2), Sch. 18 Pt. VI(10); S.I. 1997/991, art. 2
- F1801** Words in s. 271(10) substituted (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(6)(a), 284(1) (with Sch. 36)
- F1802** Words in s. 271(10) substituted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by Finance Act 2013 (c. 29), Sch. 25 para. 14(b)
- F1803** S. 271(12) inserted (with effect in accordance with s. 76(1) of the amending Act) by Finance Act 2001 (c. 9), s. 76(2), Sch. 25 para. 4 (with Sch. 3)
- F1804** Words in s. 271(12) substituted (6.4.2006) by Finance Act 2004 (c. 12), ss. 187(7), 284(1) (with Sch. 36)

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

- C368** S. 271 extended (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 419(1)(2)(b), 425(2); S.I. 1999/3434, art. 2
- C369** S. 271 modified by Greater London Authority Act 1999 (c. 29), s. 34A(3) (as inserted (15.1.2012) by Localism Act 2011 (c. 20), s. 224(2); S.I. 2012/57, art. 4(1)(cc))

#### Marginal Citations

- M59** 1927 c. 41.  
**M60** 1947 c. 30.

## [<sup>F1805</sup>PART 7A

### UK REPRESENTATIVES OF NON-UK RESIDENTS

#### Textual Amendments

- F1805** Pt. 7A inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 6 Pt. 2 (with Sch. 9 paras. 1-9, 22)

## CHAPTER 1

### TREATMENT OF BRANCH OR AGENCY AS UK REPRESENTATIVE OF NON-UK RESIDENT

#### *Introduction*

#### **271A Overview of Chapter**

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to capital gains tax.

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- (2) For obligations and liabilities in relation to capital gains tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2.

### *Branches and agencies*

#### **271B Branch or agency treated as UK representative**

- (1) This section applies if—
- (a) a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom, and
  - (b) the branch or agency is to be treated under Chapter 2B of Part 14 of ITA 2007 as the UK representative of the non-UK resident in relation to amounts within section 835E(2) of that Act.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to amounts which, by reference to the branch or agency, are chargeable to capital gains tax under section 10 above.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2 in relation to an amount within that subsection.
- Rule 1* The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.
- Rule 2* The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).
- Rule 3* If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.
- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 271C.

#### **271C Trade or profession carried on in partnership**

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 271B and Chapter 2, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—
- (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
  - (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 271B and Chapter 2, to be treated as being a trade carried on in the United Kingdom through the partnership as such.

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- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.

## **271D Interpretation of Chapter**

In this Chapter—

“branch or agency” means any factorship, agency, receivership, branch or management, and

“non-UK resident” means a person who is not resident in the United Kingdom.

## **CHAPTER 2**

### CAPITAL GAINS TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

## **271E Introduction to Chapter**

- (1) This Chapter applies to the enactments contained in—
- (a) this Act,
  - (b) the Tax Acts, and
  - (c) subordinate legislation made under this Act or the Tax Acts,
- so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 271F in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 1.
- (3) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

## **271F Obligations and liabilities of UK representative**

- (1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.
- (2) Subsection (3) applies if—
- (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
  - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident's UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability—
- (a) of the non-UK resident (in a case within subsection (2)(a)), or
  - (b) of the UK representative (in a case within subsection (2)(b)),
- is discharged.

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- (4) A non-UK resident is bound, as if they were the non-UK resident's own, by acts or omissions of the non-UK resident's UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 271G and 271H.

### **271G Exceptions: notices and information**

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 271F unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 271F unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 271F in a case where the representative is X's independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative's knowledge and belief after taking all reasonable steps to obtain the necessary information.
- (6) An obligation of X to provide information is not discharged by virtue of section 271F in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 271F by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 271F unless—
  - (a) the mistake is the result of an act or omission of X, or
  - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs.

### **271H Exceptions: criminal offences and penalties etc**

- (1) A person is not by virtue of section 271F liable to be proceeded against for a criminal offence unless the person—
  - (a) committed the offence, or
  - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 271F liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not—

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- (a) an act or omission of the independent agent, or
  - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 271I(3) (after being indemnified for any other liabilities under section 271I).

## **271I Indemnities**

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 271F.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 271F the agent has discharged or to which the agent is subject.
- (3) The sums are those which—
  - (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
  - (b) are received by the independent agent on behalf of the non-UK resident.

## **271J Meaning of “non-UK resident” and “independent agent”**

- (1) In this Chapter “non-UK resident” means a person who is not resident in the United Kingdom.
- (2) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (3) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.]

## **PART VIII**

### SUPPLEMENTAL

## **272 Valuation: general.**

- (1) In this Act “market value” in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market.
- (2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.
- [<sup>F1806</sup>(3) The Treasury may make regulations as to the manner for determining for the purposes of this Act—

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- (a) the market value at any time of shares or securities which are included in the official UK list, and
  - (b) the market value at any time of shares or securities which are listed on a recognised stock exchange outside the United Kingdom.
- (4) The regulations may—
- (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.]
- (5) In this Act “market value” in relation to any rights of unit holders in any unit trust scheme the buying and selling prices of which are published regularly by the managers of the scheme shall mean an amount equal to the buying price (that is the lower price) so published on the relevant date, or if none were published on that date, on the latest date before.
- [<sup>F1807</sup>(5AA)) In this Act “market value” in relation to shares of a given class in an open-ended investment company the prices of which are published regularly by the authorised corporate director of that company (whether or not those shares are also quoted in The Stock Exchange Daily Official List) shall mean an amount equal to the price so published on the relevant date, or if no price was published on that date, on the latest date before that date.
- (5AB) In subsection (5AA) “authorised corporate director” has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (16) and (17) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly the reference in subsection (16) of that section to “the Tax Acts” shall be construed as if it included a reference to this Act.]
- (6) The provisions of this section, with sections 273 and 274, have effect subject to [<sup>F1808</sup>sections 25A and 41A and] Part I of Schedule 11.

#### Textual Amendments

**F1806S.** 272(3)(4) substituted (with effect in accordance with Sch. 26 para. 4(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 26 para. 4(1)**; S.I. 2015/635, art. 2

**F1807S.** 272(5AA)(5AB) inserted (28.4.1997) by [The Open-ended Investment Companies \(Tax\) Regulations 1997 \(S.I. 1997/1154\)](#), regs. 1(1), **22(b)**

**F1808**Words in s. 272(6) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 9 para. 6(2)**

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

**C370** S. 272 applied (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 18(5)**

**C371** S. 272 applied by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), **ss. 591C-591D** (as inserted (with effect in accordance with **s. 61(3)** of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 61(1))

**C372** S. 272 applied (E.W.S.) (8.11.1995) by [Gas Act 1995 \(c. 45\)](#), ss. 17(1), 18(2), **Sch. 5 para. 10(2)**

**C373** S. 272 applied by [Building Societies Act 1986 \(c. 53\)](#), s. 102C(3) (as inserted (with effect in accordance with s. 2(2) of the amending Act) by [Building Societies \(Distributions\) Act 1997 \(c. 41\)](#), s. 1(1))

**C374** S. 272 applied (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), **s. 278(1)** (with Sch. 36)

**C375** Ss. 272-274 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 210(1), 1184(1)** (with Sch. 2)

**C376** S. 272(2)-(4) applied (27.7.1993) by [1993 c. 37](#), s. 12, **Sch. 2 Pt. I para. 24(5)**

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**C377** S. 272(5) applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the affecting S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **10(2)**

### 273 Unquoted shares and securities.

- (1) The provisions of subsection (3) below shall have effect in any case where, in relation to an asset to which this section applies, there falls to be determined by virtue of section 272(1) the price which the asset might reasonably be expected to fetch on a sale in the open market.
- (2) The assets to which this section applies are shares and securities which are not [<sup>F1809</sup>listed] on a recognised stock exchange at the time as at which their market value for the purposes of tax on chargeable gains falls to be determined.
- (3) For the purposes of a determination falling within subsection (1) above, it shall be assumed that, in the open market which is postulated for the purposes of that determination, there is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length.

#### Textual Amendments

**F1809** Word in s. 273(2) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 26 para. 8(5)**

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

**C375** Ss. 272-274 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 210(1), 1184(1)** (with Sch. 2)

**C378** S. 273(3) applied (27.7.1993) by [1993 c. 37, s. 12](#), **Sch. 2 Pt. I para. 24(6)**

### 274 Value determined for inheritance tax.

Where on the death of any person inheritance tax is chargeable on the value of his estate immediately before his death and the value of an asset forming part of that estate has been ascertained (whether in any proceedings or otherwise) for the purposes of [<sup>F1810</sup>the application of that tax to the estate], the value so ascertained shall be taken for the purposes of this Act to be the market value of that asset at the date of the death.

#### Textual Amendments

**F1810** Words in s. 274 substituted (with effect in accordance with Sch. 4 para. 9(4) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 4 para. 8**

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

**C375** Ss. 272-274 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 210(1), 1184(1)** (with Sch. 2)

### 275 Location of assets.

[<sup>F1811</sup>(1)] For the purposes of this Act—



*Status: Point in time view as at 16/11/2017.*

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- (a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property,
  - (b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property,
  - (c) subject to the following provisions of this subsection, a debt, secured or unsecured, is situated in the United Kingdom if and only if the creditor is resident in the United Kingdom,
  - (d) shares or [<sup>F1812</sup>debentures] issued by any municipal or governmental authority, or by any body created by such an authority, are situated in the country of that authority,
  - [<sup>F1813</sup>(da) subject to paragraph (d) above, shares in or debentures of a company incorporated in any part of the United Kingdom are situated in the United Kingdom,]
  - (e) [<sup>F1814</sup>subject to paragraphs (d) and (da)] above, registered shares or [<sup>F1815</sup>debentures] are situated where they are registered and, if registered in more than one register, where the principal register is situated,
  - (f) a ship or aircraft is situated in the United Kingdom if and only if the owner is then resident in the United Kingdom, and an interest or right in or over a ship or aircraft is situated in the United Kingdom if and only if the person entitled to the interest or right is resident in the United Kingdom,
  - (g) the situation of good-will as a trade, business or professional asset is at the place where the trade, business or profession is carried on,
  - [<sup>F1816</sup>(h) patents, trade marks, registered designs and corresponding rights are situated where they are registered, and if registered in more than one register, where each register is situated, and licences or other rights in respect of any such rights are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom,]
  - [<sup>F1817</sup>(j) copyright, design right, franchises and corresponding rights, and licences or other rights in respect of any such rights, are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom,]
  - (k) a judgment debt is situated where the judgment is recorded,
  - (l) a debt which—
    - (i) is owed by a bank, and
    - (ii) is not in sterling, and
    - (iii) is represented by a sum standing to the credit of an account in the bank of an individual who is not domiciled in the United Kingdom,is situated in the United Kingdom if and only if that individual is resident in the United Kingdom and the branch or other place of business of the bank at which the account is maintained is itself situated in the United Kingdom.
- [<sup>F1818</sup>(2) In subsection (1) above—
- (a) in paragraphs (d), (da) and (e), the references to shares or debentures, in relation to a company that has no share capital, include any interests in the company possessed by members of the company, and
  - (b) in paragraphs (d) and (e), the references to debentures, in relation to a person other than a company, include securities.

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(3) In subsection (1) above, in each of paragraphs (h) and (j), “corresponding rights” means any rights under the law of a country or territory outside the United Kingdom that correspond or are similar to those within that paragraph.

<sup>F1819</sup> [ Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of (3A) subsection (1)(l)(iii).]

(4) Subsection (1) above is subject to—  
 section 265(3) (securities issued by designated international organisations to be taken to be situated outside UK),  
 section 266 (securities issued by Inter-American Development Bank to be taken to be situated outside UK), and  
 section 275C (location of assets: interests of co-owners).]

#### Textual Amendments

**F1811** S. 275 renumbered as s. 275(1) (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(2\)](#)

**F1812** Word in s. 275(1)(d) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(3\)](#)

**F1813** S. 275(1)(da) inserted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(4\)](#)

**F1814** Words in s. 275(1)(e) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(5\)\(a\)](#)

**F1815** Word in s. 275(1)(e) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(5\)\(b\)](#)

**F1816** S. 275(1)(h) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(6\)](#)

**F1817** S. 275(1)(j) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(7\)](#)

**F1818** S. 275(2)-(4) inserted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 4\(8\)](#)

**F1819** S. 275(3A) inserted (with effect in accordance with Sch. 8 para. 8(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 8\(1\)](#)

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

**C379** S. 275 applied (27.7.1993 with effect in relation to accounting periods beginning after 31.12.1992 as mentioned in Sch. 19AC) by [1988 c. 1](#), [Sch. 19AC](#) (as inserted by [1993 c. 34](#), s. 97, [Sch. 9 para. 1](#))

**C380** S. 275(h) modified (31.10.1994) by [Trade Marks Act 1994 \(c. 26\)](#), s. 109(1), [Sch. 4 para. 1\(1\)\(2\)](#); [S.I. 1994/2550](#), art. 2

#### <sup>F1820</sup> **275A Location of certain intangible assets**

(1) This section applies for the purpose of determining whether the situation of an intangible asset (“asset A”) is in the United Kingdom if the situation of asset A is not otherwise determined (see section 275B(1)).

(2) In this section “intangible asset” means—

(a) intangible or incorporeal property and includes a thing in action, or

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- (b) anything that under the law of a country or territory outside the United Kingdom corresponds or is similar to intangible or incorporeal property or a thing in action.
- (3) If asset A is subject to UK law (see section 275B(2)) at the time it is created, it shall be taken for the purposes of this Act to be situated in the United Kingdom at all times.
- (4) Subsections (5) to (9) below have effect if asset A—
  - (a) is a future or option (see section 275B(3)), and
  - (b) is not subject to UK law at the time it is created.
- (5) If, as a result of the application of the rule in subsection (6) below in relation to asset A or any other asset or assets, asset A falls to be treated as being subject to UK law at the time it is created, it shall be taken for the purposes of this Act to be situated in the United Kingdom at all times.
- (6) That rule is that where, in the case of any intangible asset,—
  - (a) the asset is a future or option,
  - (b) the underlying subject matter (see section 275B(4)) of the asset consists of or includes an asset which is an intangible asset, and
  - (c) either—
    - (i) that intangible asset is subject to UK law at the time it is created and, on the assumption that there were no rights or interests in or over that asset, the situation of that asset would not be otherwise determined, or
    - (ii) that intangible asset is treated by this subsection as being so subject at that time,the intangible asset mentioned in paragraph (a) above is to be treated for the purposes of subsection (5) above and this subsection as being so subject at the time it is created.
- (7) If—
  - (a) asset A is not taken to be situated in the United Kingdom by virtue of subsection (5) above, and
  - (b) as a result of the application of the rule in subsection (8) below in relation to asset A or any other asset or assets, asset A falls to be treated as being situated in the United Kingdom at any time,it shall be taken for the purposes of this Act to be situated in the United Kingdom at that time.
- (8) That rule is that where, in the case of any intangible asset,—
  - (a) the asset is a future or option, and
  - (b) the underlying subject matter of the asset consists of or includes an asset—
    - (i) which is, by virtue of subsection (9) below or of any provision of this Act apart from this section, situated in the United Kingdom at any time, or
    - (ii) which is treated by this subsection as being so situated at any time,the intangible asset mentioned in paragraph (a) above is to be treated for the purposes of subsection (7) above and this subsection as being so situated at that time.
- (9) Where—
  - (a) the underlying subject matter of a future or option consists of or includes shares or debentures issued by a company incorporated in any part of the United Kingdom, but

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(b) at the time the future or option is created, those shares or debentures have not been issued,

the underlying subject matter of the future or option, so far as consisting of or including those shares or debentures, is to be taken, for the purposes of subsection (8) above, to consist of or include an asset which is situated in the United Kingdom at all times.

#### Textual Amendments

**F1820**Ss. 275A, 275B inserted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 4 para. 5**

### 275B Section 275A: supplementary provisions

(1) For the purposes of section 275A, the situation of an asset is not otherwise determined if, apart from that section, this Act does not make any provision for determining—

- (a) the situation of the asset, or
- (b) whether the situation of the asset is in the United Kingdom.

(2) For the purposes of section 275A, an intangible asset is subject to UK law at a particular time if any right or interest which comprises or forms part of the asset is, at that time,—

- (a) governed by, or otherwise subject to, or
- (b) enforceable under,

the law of any part of the United Kingdom.

<sup>F1821</sup>(3) In section 275A—

“future” has the meaning given by section 581 of CTA 2009, and  
“option” has the meaning given by section 580 of that Act.]

(4) For the purposes of section 275A—

- (a) the underlying subject matter of a future is the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, and
- (b) the underlying subject matter of an option is the property which would fall to be delivered if the option were exercised.

(5) Section 275A is subject to section 275C (location of assets: interests of co-owners).

(6) This section is to be construed as one with section 275A.]

#### Textual Amendments

**F1820**Ss. 275A, 275B inserted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 4 para. 5**

**F1821**S. 275B(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 383** (with [Sch. 2 Pts. 1, 2](#))

### <sup>F1822</sup>275C Location of assets: interests of co-owners

(1) This section applies for determining for the purposes of this Act—

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- (a) the situation of an interest (see subsection (4)) in an asset, or
  - (b) whether the situation of an interest in an asset is in the United Kingdom.
- (2) The situation of the interest in the asset shall be taken to be the same as the situation of the asset, as determined in accordance with subsection (3) below.
- (3) The situation of the asset for the purposes of subsection (2) above shall be determined on the assumption that the asset is wholly-owned by the person holding the interest in the asset.
- (4) In this section “interest”, in relation to an asset, means an interest as a co-owner of the asset (whether the asset is owned jointly or in common and whether or not the interests of the co-owners are equal).]

#### Textual Amendments

**F1822S.** 275C inserted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 6](#)

## 276 The territorial sea and the continental shelf.

- (1) The territorial sea of the United Kingdom shall for all purposes of the taxation of chargeable gains (including the following provisions of this section) be deemed to be part of the United Kingdom.
- (2) In this section—
- (a) “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area; and
  - (b) “exploration or exploitation rights” means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets; and
  - (c) references to the disposal of exploration or exploitation rights include references to the disposal of shares deriving their value or the greater part of their value directly or indirectly from such rights, other than shares [<sup>F1823</sup>listed] on a recognised stock exchange; and
  - (d) “shares” includes stock and any security as defined in [<sup>F1824</sup>section 1117(1) of CTA 2010]; and
  - (e) “designated area” means an area designated by Order in Council under section 1(7) of the <sup>M61</sup>Continental Shelf Act 1964.
- (3) Any gains accruing on the disposal of exploration or exploitation rights shall be treated for the purposes of this Act as gains accruing on the disposal of assets situated in the United Kingdom.
- (4) Gains accruing on the disposal of—
- (a) exploration or exploitation assets which are situated in a designated area, or
  - (b) unquoted shares deriving their value or the greater part of their value directly or indirectly from exploration or exploitation assets situated in the United Kingdom or a designated area or from such assets and exploration or exploitation rights taken together,

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shall be treated for the purposes of this Act as gains accruing on the disposal of assets situated in the United Kingdom.

(5) For the purposes of this section, an asset disposed of is an exploration or exploitation asset if either—

- (a) it is not a mobile asset and it is being or has at some time been used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area; or
- (b) it is a mobile asset which has at some time been used in connection with exploration or exploitation activities so carried on and is dedicated to an oil field in which the person making the disposal, or a person connected with him, is or has been a participator;

and expressions used in paragraphs (a) and (b) above have the same meaning as if those paragraphs were included in Part I of the <sup>M62</sup>Oil Taxation Act 1975.

(6) In subsection (4)(b) above “unquoted shares” means shares other than those which are [<sup>F1825</sup>listed] on a recognised stock exchange; and references in subsections (7) and (8) below to exploration or exploitation assets include references to unquoted shares falling within subsection (4)(b).

(7) Gains accruing to a person not resident in the United Kingdom on the disposal of exploration or exploitation rights or of exploration or exploitation assets shall, for the purposes of capital gains tax or corporation tax on chargeable gains, be treated as gains accruing on the disposal of assets used for the purposes of a trade carried on by that person in the United Kingdom through a branch or agency.

[<sup>F1826</sup>(8) The provisions specified in subsection (9) below shall apply in relation to a disposal of exploration or exploitation rights or exploration or exploitation assets if (and only if) the disposal is—

- (a) by a company resident in a territory outside the United Kingdom to a company resident in the same territory,
- (b) by a company resident in the United Kingdom to another company which is so resident, or
- (c) by a company which is not resident in the United Kingdom to another company which is resident there.

(9) Those provisions are—

- (a) section 41(8),
- (b) section 171 (except subsections (1)(b) and (1A)),
- (c) section 173 (with the omission of the words “to which this section applies” in subsections (1)(a) and (2)(a) and “such” in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),
- (d) section 174(4) (with the substitution of “at a time when both were members of the group” for “in a transfer to which section 171(1) applied”),
- (e) section 179 (except subsections (1)(b) and (1A)), and
- (f) section 181.

(10) The provisions specified in subsection (9) above shall apply in accordance with subsection (8) above with the following modifications—

- (a) for the purposes of paragraph (a) of subsection (9) above, section 41(8) applies as if section 170 applied, for the purposes of section 171, with the omission of subsection (9), and

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- (b) for the purposes of paragraphs (b) to (f) of subsection (9) above, the provisions specified in those paragraphs apply as if in section 170 subsection (9) were omitted.]

#### Textual Amendments

- F1823** Word in s. 276(2)(c) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 38 para. 10(2)(d)**
- F1824** Words in s. 276(2)(d) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 262** (with [Sch. 2](#))
- F1825** Word in s. 276(6) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 38 para. 10(2)(d)**
- F1826S.** 276(8)-(10) substituted for s. 276(8) (with effect in accordance with Sch. 29 para. 35(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 35(1)** (with [Sch. 29 para. 46\(5\)](#))

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

- C381** S. 276(7) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. 153(2)(b)

#### Marginal Citations

- M61** 1964 c. 29.  
**M62** 1975 c. 22.

### [<sup>F1827</sup>**276A No gain/no loss: foreign permanent establishment exemption**

- (1) On a no gain/no loss disposal by a company in relation to which an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) has effect, the amount of the consideration which would secure that neither a gain nor a loss would accrue to the company on the disposal is to be arrived at after taking account of the operation of the provisions of Chapter 3A of Part 2 of that Act (with the result that that amount includes the amount which for the purposes of that Chapter would in the case of the company be the foreign permanent establishments amount attributable to the disposal for the accounting period in which it was made if the disposal were not a no gain/no loss disposal).
- (2) For the purposes of this section a no gain/no loss disposal is one on which by virtue of section 152 or any of the no gain/no loss provisions neither a gain nor a loss accrues to the company making the disposal.]

#### Textual Amendments

- F1827S.** 276A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), **Sch. 13 paras. 13, 31**

### <sup>F1828</sup>**277 Double taxation relief.**

.....

*Status: Point in time view as at 16/11/2017.*

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#### Textual Amendments

**F1828S.** 277 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 45, Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

#### <sup>F1829</sup>**278 Allowance for foreign tax.**

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#### Textual Amendments

**F1829S.** 278 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 46, Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

#### **279 Foreign assets: delayed remittances.**

- (1) Subsection (2) below applies where—
- (a) chargeable gains accrue from the disposal of assets situated outside the United Kingdom, and
  - <sup>F1830</sup>(b) the person charged or chargeable makes a claim, and
  - (c) the conditions set out in subsection (3) below are, so far as applicable, satisfied as respects those gains (“the qualifying gains”);]
- and subsection (2)(b) also applies where a claim has been made under section 13 of the 1979 Act.
- (2) For the purposes of capital gains tax—
- (a) the amount of the qualifying gains shall be deducted <sup>F1831</sup>... from the amounts on which the claimant is assessed to capital gains tax for the year in which the qualifying gains accrued to the claimant, but
  - (b) the amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the conditions set out in subsection (3) below cease to be satisfied.
- (3) The conditions are—
- (a) that the claimant was unable to transfer the qualifying gains to the United Kingdom, and
  - (b) that that inability was due to the laws of the territory where the assets were situated at the time of the disposal, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory, and
  - (c) that the inability was not due to any want of reasonable endeavours on the part of the claimant.
- (4) Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 1 of the <sup>M63</sup>Overseas Investment and Export Guarantees Act 1972 or section 11 of the <sup>M64</sup>Export Guarantees and Overseas Investment Act 1978 any payment is made by the Exports Credits Guarantee Department in respect of any gains which cannot be transferred to the United Kingdom, then, to the extent of



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the payment, the gains shall be treated as gains with respect to which the conditions mentioned in subsection (3) above are not satisfied (and accordingly cannot cease to be satisfied).

- [<sup>F1832</sup>(5) No claim under this section in respect of a chargeable gain shall be made—
- (a) in the case of a claim for the purposes of capital gains tax, [<sup>F1833</sup>more than 4 years after the end of] the year of assessment in which the gain accrues; or
  - (b) in the case of a claim for the purposes of corporation tax, more than [<sup>F1834</sup>4 years] after the end of the accounting period in which the gain accrues.]
- (6) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.
- (7) Where—
- (a) a claim under this section is made (or has been made under section 13 of the 1979 Act) by a man in respect of chargeable gains accruing to his wife before 6th April 1990, and
  - (b) by virtue of this section the amount of the gains falls to be assessed to capital gains tax as if it were an amount of gains accruing in the year 1992-93 or a subsequent year of assessment,
- it shall be assessed not on the claimant (or his personal representatives) but on the person to whom the gains accrued (or her personal representatives).
- (8) In relation to disposals before 19th March 1991 subsection (3)(b) above shall have effect with the substitution of the words “income arose” for the words “assets were situated at the time of the disposal”.

#### Textual Amendments

**F1830**S. 279(1)(b)(c) substituted for s. 279(1)(b) (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 20 para. 64](#)

**F1831**Words in s. 279(2)(a) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 40](#)

**F1832**S. 279(5) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 41](#)

**F1833**Words in s. 279(5)(a) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 31\(a\)](#); [S.I. 2009/403](#), art. 2(2) (with art. 10)

**F1834**Words in s. 279(5)(b) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 31\(b\)](#); [S.I. 2009/403](#), art. 2(2) (with art. 10)

#### Marginal Citations

**M63** 1972 c. 40.

**M64** 1978 c. 18.

### [<sup>F1835</sup>**279D** Deferred unascertainable consideration: election for treatment of loss

- (1) Where—
- (a) a person (“the taxpayer”) makes a disposal of a right to which this section applies (see subsection (2) below),
  - (b) on that disposal an allowable loss (“the relevant loss”) would, apart from section 279C, accrue to him in any year (“the year of the loss”), and

*Status: Point in time view as at 16/11/2017.*

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- (c) the year of the loss is a year in which the taxpayer is within the charge to capital gains tax (see section 279B(1)),
- the taxpayer may make an election under this section for the relevant loss to be treated as accruing in an earlier year in accordance with section 279C if condition 1 in subsection (3) below and condition 2 in subsection (5) below are satisfied.
- (2) This section applies to a right if each of the following conditions is satisfied—
- (a) the right was, in whole or in part, acquired by the taxpayer as the whole or part of the consideration for a disposal (the “original disposal”) by him of another asset (the “original asset”),
  - (b) the original disposal was made in a year (“the year of the original disposal”) earlier than the year in which the disposal mentioned in subsection (1)(a) above is made (“the year of the right’s disposal”),
  - (c) where the right was acquired by the taxpayer as the whole or part of the consideration for two or more disposals (each of which is accordingly an “original disposal”), the condition in paragraph (b) above is satisfied with respect to each of those disposals (the “original disposals”),
  - (d) on the taxpayer’s acquisition of the right, there was no corresponding disposal of it,
  - (e) the right is a right to unascertainable consideration (see section 279B(2) to (6)).
- (3) Condition 1 for making an election in relation to the relevant loss is that a chargeable gain accrued to the taxpayer on any one or more of the following events—
- (a) the original disposal,
  - (b) an earlier disposal of the original asset by the taxpayer in the year of the original disposal,
  - (c) a later disposal of the original asset by the taxpayer in a year earlier than the year of the right’s disposal,
- or would have so accrued but for paragraph 2(2)(a) of Schedule 5B or 5C (postponement of original gain). This subsection is subject to subsection (4) below.
- (4) If the right to which this section applies was acquired by the taxpayer as the whole or part of the consideration for two or more original disposals (including cases where there are two or more original assets (the “original assets”))—
- (a) any reference in subsection (3) above to the original disposal is a reference to any of the original disposals,
  - (b) any reference in that subsection to the original asset is a reference to the asset which is the original asset in relation to that original disposal, and
  - (c) any reference in that subsection to the year of the original disposal shall be construed accordingly.
- (5) Condition 2 for making an election in relation to the relevant loss is that there is a year (an “eligible year”)—
- (a) which is earlier than the year of the loss but not earlier than the year 1992-93,
  - (b) in which a chargeable gain falling within subsection (3) above or subsection (6) below accrued to the taxpayer, and
  - (c) for which, immediately before the election, there remains a relevant amount on which capital gains tax is chargeable (see subsection (7) below).
- (6) A chargeable gain falling within this subsection accrues to the taxpayer in a year if—

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- (a) in that year a chargeable gain (the “revived gain”) is treated as accruing to the taxpayer in accordance with paragraphs 4 and 5 of Schedule 5B or 5C (chargeable gain accruing to person on chargeable event), and
  - (b) the gain which, in determining the amount of the revived gain in accordance with those paragraphs, is the original gain consists of or represents the whole or some part of a gain that would have accrued as mentioned in subsection (3) above but for paragraph 2(2)(a) of Schedule 5B or 5C.
- (7) For the purposes of subsection (5)(c) above, a year is one for which, immediately before an election, there remains a relevant amount on which capital gains tax is chargeable if, immediately before the making of that election, there remains an amount in respect of which the taxpayer is chargeable to capital gains tax for the year—
- (a) after taking account of any previous elections made by the taxpayer under this section,
  - (b) after excluding [<sup>F1836</sup>the total amount of chargeable gains treated as accruing in that year by virtue of section 87 or 89(2) (read, where appropriate, with section 10A),] and
  - (c) on the assumption that no part of the relevant loss (or of any other loss in respect of which an election under this section may be, but has not been, made) falls to be deducted in consequence of an election under this section from the chargeable gains accruing to the taxpayer in that year.
- (8) In this section “year” means year of assessment.
- (9) This section and sections 279B to 279D are to be construed as one.

#### Textual Amendments

**F1835**Ss. 279A-279D inserted (with effect in accordance with s. 162(3) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 162\(1\)](#)

**F1836**Words in s. 279A(7)(b) substituted (with effect in accordance with Sch. 2 para. 56(2) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 2 para. 41](#)

### 279B Provisions supplementary to section 279A

- (1) For the purposes of section 279A(1)(c) a person is within the charge to capital gains tax in any year if—
- (a) he is chargeable to capital gains tax in respect of chargeable gains accruing to him in that year, or
  - [<sup>F1837</sup>(b) the person would be so chargeable if—
    - (i) chargeable gains accrued to the person in the year, and
    - (ii) the amount calculated under section 2(2) for the year in relation to the person exceeded the exempt amount for the year (within the meaning of section 3).]
- (2) Subsections (3) to (6) below have effect for the purposes of section 279A(2)(e) (right to unascertainable consideration).
- (3) A right is a right to unascertainable consideration if, and only if,—
- (a) it is a right to consideration the amount or value of which is unascertainable at the time when the right is conferred, and

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- (b) that amount or value is unascertainable at that time on account of its being referable, in whole or in part, to matters which are uncertain at that time because they have not yet occurred.

This subsection is subject to subsections (4) to (6) below.

- (4) The amount or value of any consideration is not to be regarded as being unascertainable by reason only—
- (a) that the right to receive the whole or any part of the consideration is postponed or contingent, if the consideration or, as the case may be, that part of it is, in accordance with section 48, brought into account in the computation of the gain accruing to the taxpayer on the disposal of an asset, or
  - (b) in a case where the right to receive the whole or any part of the consideration is postponed and is to be, or may be, to any extent satisfied by the receipt of property of one description or property of some other description, that some person has a right to select the property, or the description of property, that is to be received.
- (5) A right is not to be taken to be a right to unascertainable consideration by reason only that either the amount or the value of the consideration has not been fixed, if—
- (a) the amount will be fixed by reference to the value, and the value is ascertainable, or
  - (b) the value will be fixed by reference to the amount, and the amount is ascertainable.
- (6) A right which is by virtue of subsection (2) or (4) of section 138A (use of earn-out rights for exchange of securities) assumed in accordance with subsection (3)(a) of that section to be a security, within the definition in section 132, is not to be regarded as a right to unascertainable consideration.
- (7) For the purposes of section 279A, any question as to—
- (a) whether a chargeable gain or a loss is one that accrues (or would, apart from any particular provision, accrue) on a particular disposal or a disposal of any particular description, or
  - (b) the time at which, or year in which, any particular disposal takes place,
- is to be determined without regard to section 10A(2) (chargeable gains and losses accruing during temporary non-residence to be treated as accruing in [F1838] period of return]). This subsection is subject to subsection (8) below.
- (8) Subsection (7) above does not affect the determination of any question—
- (a) as to the [F1839] period] in which the chargeable gain or loss is, by virtue of section 10A(2), to be treated as accruing (apart from section 279C), or
  - (b) where (apart from section 279C) a loss is to be treated by virtue of section 10A(2) as accruing in a particular [F1839] period], whether the loss is an allowable loss.

#### Textual Amendments

**F1835**Ss. 279A-279D inserted (with effect in accordance with s. 162(3) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 162\(1\)](#)

**F1837**S. 279B(1)(b) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 42](#)

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**F1838** Words in s. 279B(7) substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 122\(2\)](#)

**F1839** Word in s. 279B(8)(a)(b) substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 122\(3\)](#)

## **279C Effect of election under section 279A**

(1) This section applies where an election is made under section 279A by the taxpayer for the relevant loss to be treated as accruing in an earlier year in accordance with this section.

(2) Where this section applies, the relevant loss shall be treated for the purposes of capital gains tax as if it were a loss accruing to the taxpayer in the earliest year which is an eligible year (the “first eligible year”), instead of in the year of the loss (but subject to, and in accordance with, the following provisions of this section).

<sup>F1840</sup>(3) The amount of the relevant loss that falls to be deducted (in accordance with section 2(2)(a)) from the chargeable gains of the first eligible year is limited to the first year limit.

(4) The first year limit is the amount calculated under section 2(2) (read, where appropriate, with section 2(4)(a)) for the first eligible year.

The amount so found is the first year limit in a case where section 2(5)(aa) applies in relation to the first eligible year.

(4A) For the purpose of making that calculation—

- (a) no account is to be taken of the relevant loss, but
- (b) the effect of any previous election under section 279A is to be taken into account.]

(5) As respects any later year before the year of the loss, the relevant loss (so far as not previously allowed as a deduction from chargeable gains accruing in any previous year) falls to be deducted in accordance with section 2(2)(b) only if that later year is an eligible year.

(6) The amount of the relevant loss that falls to be deducted from chargeable gains of that later eligible year in accordance with section 2(2)(b) is limited to the amount (the “later year limit”) in respect of which the taxpayer would be chargeable to capital gains tax for that later year—

- (a) on the assumption in subsection (7) below,
- (b) taking account of any previous elections under section 279A, and
- (c) apart from <sup>F1841</sup>amounts of chargeable gains treated as accruing in that later year by virtue of section 87 or 89(2) (read, where appropriate, with section 10A)].

(7) The assumption is that no part of—

- (a) the relevant loss, or
- (b) any loss in respect of which an election under section 279A may be, but has not been, made,

falls to be deducted, in consequence of an election under section 279A, from any chargeable gains accruing to the taxpayer in that later eligible year.

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The assumption falls to be made immediately after the making of the election in respect of the relevant loss.

<sup>F1842</sup>(8) .....

- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to the election under section 279A made by the taxpayer for the relevant loss to be treated as accruing in an earlier year in accordance with this section.

<sup>F1843</sup>(10) .....

#### Textual Amendments

**F1835**Ss. 279A-279D inserted (with effect in accordance with s. 162(3) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 162\(1\)](#)

**F1840**Ss. 279C(3)-(4A) substituted for s. 279C(3)(4) (with effect in accordance with Sch. 2 para. 56(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 43\(2\)](#)

**F1841**Words in s. 279C(6)(c) substituted (with effect in accordance with Sch. 2 para. 56(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 43\(3\)](#)

**F1842**S. 279C(8) omitted (with effect in accordance with Sch. 2 para. 56(2) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 43\(4\)](#)

**F1843**S. 279C(10) omitted (with effect in accordance with Sch. 2 para. 56(2) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 43\(5\)](#)

### 279D Elections under section 279A

- (1) An election under section 279A is irrevocable.
- (2) Any election under that section must be made by giving a notice in accordance with this section.
- (3) The notice must be given to an officer of the Board.
- (4) Subsections (5) to (8) below have effect in relation to the notice given by the taxpayer in respect of the relevant loss.
- (5) The notice must specify each of the following—
  - (a) the amount of the relevant loss;
  - (b) the right disposed of;
  - (c) the year of the right's disposal;
  - (d) the year of the loss (if different from the year of the right's disposal);
  - (e) the year in which the right was acquired;
  - (f) the original asset or assets.
- (6) The notice must also specify each of the following—
  - (a) the eligible year in which the relevant loss is to be treated in accordance with section 279C(2) as accruing to the taxpayer;
  - (b) the first year limit (see section 279C(3) and (4));
  - (c) how much of the relevant loss falls to be deducted in accordance with section 2(2)(a) from chargeable gains accruing to the taxpayer in that year.

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- (7) If, in accordance with section 279C, any part of the relevant loss falls to be deducted in accordance with section 2(2)(b) from chargeable gains accruing to the taxpayer in any later eligible year, the notice must also specify—
  - (a) each such year;
  - (b) in the case of each such year, the later year limit (see section 279C(6));
  - (c) how much of the relevant loss falls to be deducted in accordance with section 2(2)(b) in each such year from chargeable gains accruing to the taxpayer in that year.
- (8) The notice must be given on or before the first anniversary of the 31st January next following the year of the loss.
- (9) An election under section 279A is made on the date on which the notice of the election is given.
- (10) Different notices must be given in respect of different losses.
- (11) Where a person makes two or more elections under section 279A on the same day, the notices must specify the order in which the elections are made.
- (12) For the purposes of any provisions of sections 279A to 279C whose operation is affected by the order in which any elections under section 279A are made, elections made by a person on the same day shall be treated as made at different times and in the order specified in accordance with subsection (11) above.]

#### Textual Amendments

**F1835**Ss. 279A-279D inserted (with effect in accordance with s. 162(3) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 162\(1\)](#)

### 280 Consideration payable by instalments.

If the consideration, or part of the consideration, taken into account in the computation of the gain is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, then, [<sup>F1844</sup>at the option of the person making the disposal, the tax on a chargeable gain accruing on the disposal may] be paid by such instalments as the Board may allow over a period not exceeding 8 years and ending not later than the time at which the last of the first-mentioned instalments is payable.

#### Textual Amendments

**F1844**Words in s. 280 substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 65](#)

### 281 Payment by instalments of tax on gifts.

- (1) Subsection (2) below applies where—
  - (a) the whole or any part of any assets to which this section applies is disposed of by way of gift or is deemed to be disposed of under section 71(1) or 72(1), and
  - (b) the disposal is one—

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- (i) to which neither section 165(4) nor section 260(3) applies (or would apply if a claim were duly made), or
  - (ii) to which either of those sections does apply but on which the held-over gain (within the meaning of the section applying) is less than the chargeable gain which would have accrued on that disposal apart from that section.
- (2) Where this subsection applies, the capital gains tax chargeable on a gain accruing on the disposal may, if the person paying it by notice to [<sup>F1845</sup>an officer of the Board] so elects, be paid by 10 equal yearly instalments.
- (3) The assets to which this section applies are—
  - (a) land or an estate or interest in land,
  - (b) any shares or securities of a company which, immediately before the disposal, gave control of the company to the person by whom the disposal was made or deemed to be made, and
  - (c) any shares or securities of a company not falling under paragraph (b) above and not [<sup>F1846</sup>listed] on a recognised stock exchange <sup>F1847</sup>... .
- (4) Where tax is payable by instalments by virtue of this section, the first instalment shall be due on the day on which the tax would be payable apart from this section.
- (5) Subject to the following provisions of this section—
  - [<sup>F1848</sup>(a) tax payable by instalments by virtue of this section carries interest in accordance with Part IX of the Management Act as that Part applies where no election is made under subsection (2) above, and]
  - (b) the interest on the unpaid portion of the tax shall be added to each instalment and paid accordingly.
- (6) Tax payable by instalments by virtue of this section which is for the time being unpaid, with interest [<sup>F1849</sup>(determined in accordance with subsection (5)(a) above)] to the date of payment, may be paid at any time.
- (7) Tax which apart from this subsection would be payable by instalments by virtue of this section and which is for the time being unpaid, with interest [<sup>F1850</sup>(determined in accordance with subsection (5)(a) above as if the tax were tax payable by instalments by virtue of this section)] to the date of payment, shall become due and payable immediately if—
  - (a) the disposal was by way of gift to a person connected with the donor or was deemed to be made under section 71(1) or 72(1), and
  - (b) the assets are disposed of for valuable consideration under a subsequent disposal (whether or not the subsequent disposal is made by the person who acquired them under the first disposal).
- [<sup>F1851</sup>(8) Subsection (2) above applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a gain accruing to a person on a disposal if—
  - (a) the relevant disposal (within the meaning of section 169C) in question was a disposal of the whole or any part of any assets to which this section applies, and
  - (b) at the material time (within the meaning of that section), no part of the subject-matter of that relevant disposal has been disposed of for valuable



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consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person).

- (9) Where subsection (2) above so applies, subsections (4) to (7) above apply accordingly but as if for paragraphs (a) and (b) of subsection (7) there were substituted “any part of the subject-matter of the relevant disposal in question is disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person).”.]

#### Textual Amendments

- F1845** Words in s. 281(2) substituted (with effect in accordance with Sch. 21 para. 10(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 6\(2\)](#)
- F1846** Word in s. 281(3)(c) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 38 para. 10\(2\)\(e\)](#)
- F1847** Words in s. 281(3)(c) repealed (with effect in accordance with Sch. 42 Pt. 2(14) Note 2 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(14\)](#)
- F1848** S. 281(5)(a) substituted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 18 para. 15\(2\)](#)
- F1849** Words in s. 281(6) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 18 para. 15\(3\)](#)
- F1850** Words in s. 281(7) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 18 para. 15\(4\)](#)
- F1851** S. 281(8)(9) inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 6\(3\)](#)

## 282 Recovery of tax from donee.

- (1) If in any year of assessment a chargeable gain accrues to any person on the disposal of an asset by way of gift and any amount of capital gains tax assessed on that person for that year of assessment is not paid within 12 months from the date when the tax becomes payable, the donee may, by an assessment made not later than 2 years from the date when the tax became payable, be assessed and charged (in the name of the donor) to capital gains tax on an amount not exceeding the amount of the chargeable gain so accruing, and not exceeding the grossed up amount of that capital gains tax unpaid at the time when he is so assessed, grossing up at the marginal rate of tax, that is to say, taking capital gains tax on a chargeable gain at the amount which would not have been chargeable but for that chargeable gain.
- (2) A person paying any amount of tax in pursuance of this section shall be entitled to recover a sum of that amount from the donor.
- (3) References in this section to a donor include, in the case of an individual who has died, references to his personal representatives.
- (4) In this section references to a gift include references to any transaction otherwise than by way of a bargain made at arm’s length so far as money or money’s worth passes under the transaction without full consideration in money or money’s worth, and “donor” and “donee” shall be construed accordingly; and this section shall apply in relation to a gift made by 2 or more donors with the necessary modifications and subject to any necessary apportionments.

*Status: Point in time view as at 16/11/2017.*

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- <sup>F1852</sup>(5) This section applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a chargeable gain accruing to a person on the disposal of an asset by way of gift.
- (6) For the purposes of this section as applied by subsection (5) above—
- (a) the transferor shall be taken to be the donor, and
  - (b) the trustees to whom the relevant disposal (within the meaning of section 169C) in question was made shall be taken to be the donee.]

#### Textual Amendments

**F1852S.** 282(5)(6) inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 21 para. 7(2)**

### 283 Repayment supplements.

- (1) Subject to the provisions of this section, where in the case of capital gains tax paid by or on behalf of an individual for a year of assessment <sup>F1853</sup>a repayment of that tax is made by the Board or an officer of the Board], the repayment shall be increased under this section by an amount (“a repayment supplement”) equal to interest on the amount repaid at the rate applicable under section 178 of the <sup>M65</sup>Finance Act 1989 for the period (if any) between the relevant time and <sup>F1854</sup>the date on which] the order for the repayment is issued.
- <sup>F1855</sup>(2) For the purposes of subsection (1) above, <sup>F1856</sup>the relevant time is the date on which the tax was paid].]
- (3) A repayment supplement shall not be payable under this section in respect of a repayment or payment made in consequence of an order or judgment of a court having power to allow interest on the repayment or payment.
- (4) Subsections (1) to (3) above shall apply in relation to <sup>F1857</sup>the trustees of a settlement or] <sup>F1858</sup>the personal representatives of a deceased person ... as they apply in relation to an individual.
- <sup>F1859</sup>(5) .....

#### Textual Amendments

- F1853**Words in s. 283(1) substituted (with effect in accordance with s. 199(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), **Sch. 19 para. 46(1)(a)**
- F1854**Words in s. 283(1) substituted (with effect in accordance with s. 199(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), **Sch. 19 para. 46(1)(b)**
- F1855S.** 283(2) substituted (with effect in accordance with s. 199(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), **Sch. 19 para. 46(2)**
- F1856**Words in s. 283(2) substituted (with effect in accordance with s. 92(6) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **s. 92(5)**
- F1857**Words in s. 283(4) substituted (with effect in accordance with Sch. 12 para. 24(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 24(1)(a)**
- F1858**Words in s. 283(4) repealed (with effect in accordance with Sch. 12 para. 24(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 24(1)(b)**, **Sch. 26 Pt. 3(15)**

*Status: Point in time view as at 16/11/2017.*

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**F1859S.** 283(5) repealed (with effect in accordance with s. 199(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 19 para. 46\(4\)](#), [Sch. 26 Pt. V\(23\)](#)

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

**C382** S. 283 restricted (1.4.2011) by [The Finance Act 2009, Sections 101 to 103 \(Income Tax Self Assessment\) \(Appointed Days and Transitional and Consequential Provisions\) Order 2011 \(S.I. 2011/701\)](#), arts. 1(1), [4\(2\)](#), 5

**C383** S. 283(2) modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 109\(3\)\(6\)](#)

**Marginal Citations**

**M65** 1989 c. 26.

**284 Income tax decisions.**

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

**[<sup>F1860</sup>284] Concessions that defer a charge.**

- (1) This section applies where—
  - (a) a person (“the original taxpayer”) has at any time obtained for any chargeable period (“the first chargeable period”) the benefit of any capital gains relief to which he had no statutory entitlement;
  - (b) the benefit of the relief was obtained in reliance on any concession;
  - (c) the concession was first published by the Board before 9th March 1999 or (having been published on or after that date) replaced a concession satisfying the requirements of this paragraph with a concession to the same or substantially the same effect; and
  - (d) the concession involved the application (with or without modifications), to a case to which they would not otherwise have applied, of the provisions of any enactment (“the relevant statutory provisions”).
- (2) This section applies only if, at the time when the original taxpayer obtained the benefit of the relief, the concession was one available generally to any person falling within its terms.
- (3) If the benefit obtained for the first chargeable period by the original taxpayer is repudiated for any later chargeable period (whether by the original taxpayer or by another person), the enactments relating to the taxation of chargeable gains shall have effect as if a chargeable gain equal to the amount of that benefit accrued in the later chargeable period to the person repudiating the benefit.
- (4) For the purposes of this section—
  - (a) a capital gains relief for any chargeable period is a relief (of whatever description) the effect of which is that the amount of the chargeable gains taken to have accrued to that person in that period is less than it otherwise would have been; and
  - (b) the amount of the benefit of any such relief is the amount by which, as a consequence of that relief, those gains are less than they otherwise would have been.

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- (5) Where, without applying a specific enactment, any concession has the effect that—
- (a) any asset is treated as the same as another asset and as acquired as the other asset was acquired,
  - (b) any two or more assets are treated as a single asset, or
  - (c) any disposal is treated as having been a disposal on which neither a gain nor a loss accrued,
- that concession shall be assumed for the purposes of this section to have involved the application, to a case to which it would not otherwise have applied, of the provisions of an enactment to the corresponding effect.
- (6) For the purposes of this section the benefit of any relief obtained by the original taxpayer for the first chargeable period is repudiated by a person for a later chargeable period if—
- (a) circumstances arise such that, had the equivalent circumstances arisen in the case of the corresponding relief under the relevant statutory provisions, the whole or a part of the benefit of that relief would have fallen to be recouped from that person in the later chargeable period;
  - (b) apart from this section, the recoupment in the actual circumstances of the whole or a part of the benefit obtained by the original taxpayer is prevented by the fact that the original taxpayer relied on a concession (rather than on the relevant statutory provisions) to obtain that benefit; and
  - (c) the person from whom, in the equivalent circumstances, the amount of the benefit or any part of it would have fallen to be recouped is not precluded by subsection (8) below from relying on that fact in relation to that amount or part.
- (7) For the purposes of this section an amount of the benefit of a capital gains relief is recouped from any person in a chargeable period to the extent that an amount is so brought into account in his case for that period as to secure that—
- (a) the amount of his chargeable gains for that period is taken to be more than it otherwise would have been by an amount directly or indirectly representing the whole or a part of the amount of the benefit; or
  - (b) the amount of his allowable losses for that period is taken to be less than it otherwise would have been by an amount directly or indirectly representing the whole or a part of the amount of the benefit.
- (8) Where—
- (a) any such circumstances as are mentioned in subsection (6)(a) above have arisen in relation to the relief the benefit of which has been obtained by the original taxpayer,
  - (b) the person from whom, in the equivalent circumstances, the whole or any part of the amount of the benefit would have fallen to be recouped has accepted that, in the actual circumstances, the whole or a part of the benefit obtained by the original taxpayer may be recouped from him, and
  - (c) that acceptance is indicated in writing to the Board (whether by the making or amendment of a self-assessment or otherwise),
- that person's rights subsequently to amend, appeal against or otherwise challenge any assessment shall not be exercised in any manner inconsistent with his acceptance of that matter (which shall be irrevocable).

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- (9) In this section “concession” includes any practice, interpretation or other statement in the nature of a concession.

#### Textual Amendments

**F1860**Ss. 284A, 284B inserted (with effect in accordance with s. 76(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 76\(1\)](#)

### 284B Provisions supplementary to section 284A.

**F1861**(1) . . . . .

- (2) The total amount of chargeable gains that are treated as accruing to any person under subsection (3) of section 284A in respect of any such benefit as is referred to in that subsection shall not exceed the amount of that benefit.
- (3) Where, after any assessment to tax has been made on the basis that any chargeable gain is treated as having accrued to any person under section 284A(3)—
- (a) the person assessed, within any of the periods allowed by subsection (4) below, gives an indication for the purposes of section 284A(8), or
  - (b) a final determination of the original taxpayer’s liability to tax for the first chargeable period is made on the basis that the original taxpayer did not, or was not entitled to, rely on the concession in question,
- all such adjustments shall be made (whether by way of assessment, amendment of an assessment, repayment of tax or otherwise) as are necessary to secure that no person is subjected to any greater liability by virtue of section 284A(3) than he would have been had the indication been given, or the final determination made, before the making of the assessment.
- (4) The periods allowed by this subsection are—
- (a) the period of twelve months beginning with the making of the assessment;
  - (b) the period within which the person is entitled to amend his self-assessment or company tax return for the chargeable period in which the chargeable gain under section 284A(3) is treated as having accrued to him;
  - (c) where the person makes a claim for any further relief against the amount that may be recouped from him by virtue of his indication under section 284A(8), the period allowed for making that claim.
- (5) Subsection (3) above has effect notwithstanding any time limits relating to the making or amendment of an assessment for any chargeable period.]

#### Textual Amendments

**F1860**Ss. 284A, 284B inserted (with effect in accordance with s. 76(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 76\(1\)](#)

**F1861**S. 284B(1) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 44](#)

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**F1862 285 Recognised investment exchanges.**

.....

**Textual Amendments**

F1862S. 285 repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), Sch. 26 para. 8(6), [Sch. 27 Pt. 6\(5\)](#)

**[F1863 285A European Economic Interest Groupings**

- (1) The following rules about European Economic Interest Groupings apply for the purposes of charging tax in respect of chargeable gains—

*Rule 1*

A grouping is treated as acting as the agent of its members.

*Rule 2*

The activities of a grouping are treated as those of its members acting jointly.

*Rule 3*

Each member of a grouping is treated as having a share of the grouping's property, rights and liabilities.

*Rule 4*

Any trade or profession carried on by the grouping is treated as carried on in partnership by members of the grouping.

*Rule 5*

A person is to be regarded as acquiring or disposing of a share of the assets of the grouping not only where there is an acquisition or disposal of assets by the grouping while he is a member of it, but also where he becomes or ceases to be a member of a grouping or there is a change in his share of the property of the grouping.

- (2) For the purposes of Rule 3, a member's share of any property, rights or liabilities of a grouping is determined according to the contract under which the grouping is established.
- (3) If the contract does not provide for this, the member's share is determined by reference to the share of the profits of the grouping to which the member is entitled under the contract.
- (4) If the contract does not provide for this either, the members are treated as having equal shares of the property, rights and liabilities of the grouping.
- (5) “European Economic Interest Grouping” means a European Economic Interest Grouping formed under Council Regulation ([EEC](#)) No 2137/85 of 25th July 1985, whether registered in Great Britain, Northern Ireland or elsewhere.]

**Textual Amendments**

F1863S. 285A inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 341](#) (with [Sch. 2](#))

*Status: Point in time view as at 16/11/2017.*

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## 286 Connected persons: interpretation.

(1) Any question whether a person is connected with another shall for the purposes of this Act be determined in accordance with the following subsections 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 [<sup>F1864</sup>spouse or civil partner], or is a relative, or the [<sup>F1864</sup>spouse or civil partner] of a relative, of the individual or of the individual's [<sup>F1864</sup>spouse or civil partner].

[<sup>F1865</sup>(3) A person, in his capacity as trustee of a settlement, is connected with—

- (a) any individual who in relation to the settlement is a settlor,
- (b) any person who is connected with such an individual, <sup>F1866</sup> ...
- (c) any body corporate which is connected with that settlement,

[<sup>F1867</sup>(d) if the settlement is the principal settlement in relation to one or more sub-fund settlements, the trustees of the sub-fund settlements, and

(e) if the settlement is a sub-fund settlement in relation to a principal settlement, the trustees of any other sub-fund settlements in relation to the principal settlement.]

<sup>F1868</sup> .....

[<sup>F1869</sup>(3ZA) For the purpose of subsection (3) above—

- (a) “settlement” has the same meaning as in section 620 of ITTOIA 2005, and
- (b) “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this paragraph, means any person in whom the settled property or its management is for the time being vested.]

(3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if—

- (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement; or
- (b) it is controlled (within the meaning of [<sup>F1870</sup>section 1124 of CTA 2010]) by a company falling within paragraph (a) above.]

(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 [<sup>F1871</sup>spouse or civil partner] or a 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 2 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.

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- (7) Any 2 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 “relative” means brother, sister, ancestor or lineal descendant.

#### Textual Amendments

- F1864** Words in s. 286(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **121**
- F1865** S. 286(3)(3A) substituted for s. 286(3) (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 17 para. 31**
- F1866** Word in s. 286(3)(b) repealed (with effect in accordance with Sch. 12 para. 45 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 43(a)**, **Sch. 26 Pt. 3(15)**
- F1867** S. 286(3)(d)(e) inserted (with effect in accordance with Sch. 12 para. 45 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 43(b)**
- F1868** Words in s. 286(3) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 25(1)(3)**, **Sch. 26 Pt. 3(15)**
- F1869** S. 286(3ZA) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 25(2)(3)**
- F1870** Words in s. 286(3A)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 263** (with Sch. 2)
- F1871** Words in s. 286(4) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **121**

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

- C384** S. 286 applied by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 312G(6)(c) (as inserted (with effect in accordance with Sch. 37 para. 8 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 37 para. 5**)

### <sup>F1872</sup>**286 Residence of companies**

Chapter 3 of Part 2 of CTA 2009 (rules for determining residence of companies) applies for the purposes of—

- (a) this Act (so far as relating to capital gains tax), and
- (b) any other enactment relating to capital gains tax,

as it applies for the purposes of the Corporation Tax Acts.]

#### Textual Amendments

- F1872** S. 286A inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 384** (with Sch. 2 Pts. 1, 2)

### **287 Orders and regulations made by the Treasury or the Board.**

- (1) Subject to [<sup>F1873</sup>subsections (2) and (2A)] below, any power of the Treasury or the Board to make any order or regulations under this Act or any other enactment relating to the taxation of chargeable gains passed after this Act shall be exercisable by statutory instrument.



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- (2) Subsection (1) above shall not apply in relation to any power conferred by section 288(6).
- [<sup>F1874</sup>(2A) Subsection (1) above shall not apply in relation to any power conferred by TIOPA 2010 (see instead section [<sup>F1875</sup>499] of that Act).]
- (3) Subject to subsection (4) below and to any other provision to the contrary, any statutory instrument to which subsection (1) above applies shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Subsection (3) above shall not apply in relation to an order or regulations made under section 3(4) or 265 or paragraph 1 of Schedule 9, or—
- (a) if any other Parliamentary procedure is expressly provided; or
  - [<sup>F1876</sup>(b) if the order or regulations provide for any provision of an enactment relating to the taxation of chargeable gains to come into force or have effect in accordance with the order or regulations.]

#### Textual Amendments

**F1873** Words in s. 287(1) substituted (18.3.2010) by [Taxation \(International and Other Provisions\) Act 2010](#) (c. 8), s. 381(2)(c), **Sch. 8 para. 318(2)** (with Sch. 9 paras. 1-9, 22)

**F1874** S. 287(2A) inserted (18.3.2010) by [Taxation \(International and Other Provisions\) Act 2010](#) (c. 8), s. 381(2)(c), **Sch. 8 para. 318(3)** (with Sch. 9 paras. 1-9, 22)

**F1875** Word in s. 287(2A) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017](#) (c. 32), **Sch. 5 para. 10(4)(a)**

**F1876** S. 287(4)(b) substituted (with effect in accordance with s. 125(4) of the amending Act) by [Finance Act 2015](#) (c. 11), s. **125(1)**

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

**C385** S. 287(3) excluded (21.7.2009) by [Finance Act 2009](#) (c. 10), **Sch. 22 para. 14(2)**

## 288 Interpretation.

- (1) In this Act, unless the context otherwise requires—
- “the 1979 Act” means the <sup>M66</sup>Capital Gains Tax Act 1979;  
<sup>F1877</sup> .....
  - “allowable loss” shall be construed in accordance with sections 8(2)[<sup>F1878</sup>, 16][<sup>F1879</sup>, 16A][<sup>F1880</sup>, 261B, 261D] and 263ZA];
  - [<sup>F1881</sup>“ATED-related”, in relation to a gain or loss, is to be construed in accordance with section 57A and Schedule 4ZZA;]
  - “the Board” means the Commissioners of Inland Revenue;
  - “building society” has the same meaning as in the <sup>M67</sup>Building Societies Act 1986;
  - [<sup>F1882</sup>“the Capital Allowances Act” means the Capital Allowances Act 2001;]
  - “chargeable period” means a year of assessment or an accounting period of a company for purposes of corporation tax;
  - “class”, in relation to shares or securities, means a class of shares or securities of any one company;

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“close company” <sup>F1883</sup>shall be construed in accordance with Chapter 2 of Part 10 of CTA 2010 (see in particular section 439);

“collective investment scheme” has the <sup>F1884</sup>meaning given by section 235 of the Financial Services and Markets Act 2000<sup>F1885</sup>(subject to section 99A);

“company” includes any body corporate or unincorporated association but does not include a partnership, and shall be construed in accordance with <sup>F1886</sup>sections 99 and 103A;

“control” shall be construed in accordance with <sup>F1887</sup>sections 450 and 451 of CTA 2010;

<sup>F1888</sup>“CTA 2009” means the Corporation Tax Act 2009;

<sup>F1889</sup>“CTA 2010” means the Corporation Tax Act 2010;

<sup>F1890</sup>“disposal of a UK residential property interest” has the meaning given by Schedule B1;

<sup>F1891</sup>“double taxation relief arrangements”—

(a) in relation to a company means arrangements that have effect under section 2(1) of TIOPA 2010 except so far as they have effect in relation to petroleum revenue tax, and

(b) in relation to any other person means arrangements that have effect under section 2(1) of TIOPA 2010 but only so far as they have effect in relation to capital gains tax;

“dual resident investing company” has the meaning given by section 404 of the Taxes Act;

“inspector” means any inspector of taxes;

“investment trust” has the meaning given by <sup>F1892</sup>section 1158 of CTA 2010;

<sup>F1893</sup>“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;

<sup>F1894</sup>“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005;

<sup>F1895</sup>“ITA 2007” means the Income Tax Act 2007;

“land” includes messuages, tenements, and hereditaments, houses and buildings of any tenure;

“local authority” has the meaning given by <sup>F1896</sup>section 999 of ITA 2007;

“the Management Act” means the <sup>M68</sup>Taxes Management Act 1970;

<sup>F1897</sup>“net income” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007);

<sup>F1890</sup>“non-resident CGT disposal” has the meaning given by section 14B;

“notice” means notice in writing;

<sup>F1890</sup>“NRCGT gain” is to be interpreted in accordance with section 57B and Schedule 4ZZB;

<sup>F1890</sup>“NRCGT group” is to be interpreted in accordance with section 188B (read with sections 188F and 188G);

<sup>F1890</sup>“NRCGT loss” is to be interpreted in accordance with section 57B and Schedule 4ZZB;

<sup>F1890</sup>“NRCGT return” has the meaning given by section 12ZB(2) of the Management Act;

<sup>F1898</sup>“offshore fund” has the meaning given in section 355 of TIOPA 2010 (but where two or more offshore funds make up a collective investment

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scheme they are to be treated as a single offshore fund subject to section 99A of this Act));]

[<sup>F1899</sup>“participant”, in relation to a collective investment scheme, has the meaning given by section 103C(10);]

[<sup>F1900</sup>“period of account” has the meaning given by [<sup>F1901</sup>section 989 of ITA 2007];]

[<sup>F1902</sup>“permanent establishment”, in relation to a company, is to be read in accordance with Chapter 2 of Part 24 of CTA 2010;]

[<sup>F1903</sup>“personal representatives” has the same meaning as in [<sup>F1904</sup>the Corporation Tax Acts (see section 1119 of CTA 2010)];]

[<sup>F1905</sup>“property investment LLP” has the meaning given by [<sup>F1906</sup>section 1004 of ITA 2007];]

“recognised stock exchange” has the meaning given by [<sup>F1907</sup>section 1005 of ITA 2007];

[<sup>F1908</sup>“registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004;]

[<sup>F1909</sup>“Registrar of Government Stock” means the person or persons appointed in accordance with regulations under section 47(1)(b) of the Finance Act 1942 (see regulation 3 of the Government Stock Regulations 2004);]

[<sup>F1881</sup>“relevant high value disposal” has the meaning given by section 2C;]

[<sup>F1910</sup>“resident” means resident in accordance with the statutory residence test in Part 1 of Schedule 45 to the Finance Act 2013;]

“shares” includes stock;

[<sup>F1911</sup>“split year”, as respects an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 45 to the Finance Act 2013 (statutory residence test: split year treatment);]

[<sup>F1912</sup>“stepchild”, in relation to a civil partner, shall be construed in accordance with section 246 of the Civil Partnership Act 2004;]

“the Taxes Act” means the <sup>M69</sup>Income and Corporation Taxes Act 1988;

[<sup>F1913</sup>“TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;]

“trade” has the same meaning as in the Income Tax Acts;

“trading stock” has the meaning given by [<sup>F1914</sup>section 163 of CTA 2009];

[<sup>F1915</sup>“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;]

[<sup>F1916</sup>“UK property business” means—

(a) a UK property business within the meaning of the Income Tax Acts (see section 989 of ITA 2007), or

(b) a UK property business within the meaning of the [<sup>F1917</sup>Corporation Tax Acts (see section 1119 of CTA 2010)];]

[<sup>F1918</sup>“venture capital trust” has [<sup>F1919</sup>the same meaning as in Part 6 of ITA 2007];]

“wasting asset” has the meaning given by section 44 and paragraph 1 of Schedule 8;

[<sup>F1920</sup>“year of assessment” means tax year;]

and any reference to a particular section, Part or Schedule is a reference to that section or Part of, or that Schedule to, this Act.

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- [<sup>F1921</sup>(1ZA) In this Act and other enactments relating to capital gains tax “tax year” means a year beginning on 6 April and ending on the following 5 April; and “the tax year 2008-09” means the tax year beginning on 6 April 2008 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way).]
- [<sup>F1922</sup>(1ZB) A reference in this Act to “the overseas part” or “the UK part” of a split year is to be read in accordance with Part 3 of Schedule 45 to the Finance Act 2013 (statutory residence test: split year treatment).]
- [<sup>F1923</sup>(1A) If any employment-related securities option would not otherwise be regarded as an option for the purposes of this Act, it shall be so regarded; and the acquisition of securities by an associated person pursuant to an employment-related securities option is to be treated for the purposes of this Act as the exercise of the option.
- [<sup>F1924</sup>In this subsection “employment-related securities option” means a securities option within the meaning of Chapter 5 of Part 7 of ITEPA 2003 (see section 420(8) of that Act) to which that Chapter applies <sup>F1925</sup>... (see section 471 of that Act); and other expressions used in this subsection and that Chapter have the same meaning in this subsection as in that Chapter.]]
- (2) In this Act “retail prices index” has the same meaning as in the Income Tax Acts and, accordingly, any reference in this Act to the retail prices index shall be construed in accordance with [<sup>F1926</sup>section 989 of ITA 2007].
- [<sup>F1927</sup>(2A) In this Act “consumer prices index” means the all items consumer prices index published by the Statistics Board.]
- (3) References in this Act to [<sup>F1928</sup>an individual living with his spouse or civil partner] shall be construed in accordance with [<sup>F1929</sup>section 1011 of ITA 2007].
- [<sup>F1930</sup>(3A) For the purposes of this Act, the following are “the no gain/no loss provisions”—
- (a) sections 58, 73, 139, 140A, 140E, 171, 211, [<sup>F1931</sup>211B,] 215, 216, 217A, [<sup>F1932</sup>217D,] 218 to [<sup>F1933</sup>220], 257(3), 258(4), 264 and 267(2) of this Act;
  - (b) section 148 of the 1979 Act;
  - (c) section 148 of the Finance Act 1982;
  - (d) section 130(3) of the Transport Act 1985;
  - <sup>F1934</sup>(e) .....
  - (f) paragraph 2(1) of Schedule 7 to the Broadcasting Act 1996;
  - (g) paragraphs 3 and 9 of Schedule 26 to the Transport Act 2000;
  - (h) paragraphs 3, 18, 29 and 32 of Schedule 9 to the Energy Act 2004;
  - (i) paragraph 9 of Schedule 4 to the Consumers, Estate Agents and Redress Act 2007;
  - [<sup>F1935</sup>(j) Schedule 7 to the Housing and Regeneration Act 2008;]
  - [<sup>F1936</sup>(k) paragraph 4 of Schedule 4 to the Budget Responsibility and National Audit Act 2011;]
  - [<sup>F1937</sup>(l) paragraph 1(2) or 4 of Schedule 2 to the Postal Services Act 2011;]
  - [<sup>F1938</sup>(m) paragraph 6(1) of Schedule 24 to the Localism Act 2011.]]
- <sup>F1939</sup>(4) .....

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- (5) For the purposes of this Act, shares or debentures comprised in any letter of allotment or similar instrument shall be treated as issued unless the right to the shares or debentures thereby conferred remains provisional until accepted and there has been no acceptance.
- [<sup>F1940</sup>(5A) References in this Act to shares or securities which are listed on a recognised stock exchange shall be construed in accordance with subsections (3) and (4) of section 1005 of ITA 2007.
- (5B) References in this Act to shares or securities which are included in the official UK list shall be construed in accordance with subsection (5) of that section.]
- (6) In this Act “recognised futures exchange” means the London International Financial Futures Exchange and any other futures exchange which is for the time being designated for the purposes of this Act by order made by the Board.
- (7) An order made by the Board under subsection (6) above—
- (a) may designate a futures exchange by name or by reference to any class or description of futures exchanges, including, in the case of futures exchanges in a country outside the United Kingdom, a class or description framed by reference to any authority or approval given in that country; and
  - (b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient.
- [<sup>F1941</sup>(7A) In the application of this Act to Scotland “surrender” includes renunciation.]
- [<sup>F1942</sup>(7B) For the purposes of this Act, a person is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.]
- (8) The Table below indexes other general definitions in this Act.

<i>Expression defined</i>	<i>Reference</i>
“Absolutely entitled as against the trustee”	S.60(2)
[ <sup>F1943</sup> Authorised contractual scheme	s 103D(5)]
[ <sup>F1944</sup> “Authorised corporate director”	S.272(5AB) (as that provision is inserted by regulation 22(b) of the Open-ended Investment Companies (Tax) Regulations 1997)]
“Authorised unit trust”	S.99
“Branch or agency”	S.10(6)
“Chargeable gain”	S.15(2)
“Connected”, in references to persons being connected with one another	S.286
[ <sup>F1943</sup> Co-ownership scheme	s 103D(5)]
“Court investment fund”	S.100
“Gilt-edged securities”	Sch.9

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“Indexation allowance”	S.53
“Lease” and cognate expressions	Sch.8 para.10(1)
“Legatee”	S.64(2),(3)
“Market value”	S.272 to 274 and Sch.11
[ <sup>F1945</sup> “Open-ended investment company”	S.99 (as that section is modified by regulation 20 of the Open-ended Investment Companies (Tax) Regulations 1997)]
“Part disposal”	S.21(2)
[ <sup>F1946</sup> “Principal settlement”	Sch.4ZA para. 1]
“Qualifying corporate bond”	S.117
“Relevant allowable expenditure”	S.53
<sup>F1947</sup>	<sup>F1947</sup>
. . .	. . .
“Settled property”	S.68
[ <sup>F1946</sup> “Settlor”	S.68A]
[ <sup>F1946</sup> “Settlor of property”	S.68A]
[ <sup>F1946</sup> “Sub-fund”	Sch.4ZA para. 1]
[ <sup>F1946</sup> “Sub-fund election”	Sch.4ZA para. 2]
[ <sup>F1946</sup> “Sub-fund settlement”	Sch.4ZA para. 1]
“Unit trust scheme” [ <sup>F1948</sup> and “unit holder”]	[ <sup>F1949</sup> ss 99[ <sup>F1950</sup> , 99A and 151W(a)]]

### Textual Amendments

**F1877** Words in s. 288(1) repealed (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 80](#), [Sch. 4](#)

**F1878** Words in s. 288(1) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 6 para. 219\(2\)](#) (with [Sch. 7](#))

**F1879** Word in s. 288(1) inserted (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 27\(4\)](#)

**F1880** Words in s. 288(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 342\(2\)\(a\)](#) (with [Sch. 2](#))

**F1881** Words in s. 288(1) inserted (with effect in accordance with [Sch. 25 para. 20](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 15](#)

**F1882** Words in s. 288(1) inserted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 80](#)

**F1883** Words in s. 288(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 264\(2\)\(a\)](#) (with [Sch. 2](#))

**F1884** Words in s. 288(1) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\)](#), arts. 1(2)(a), [70](#)

**F1885** Words in s. 288(1) inserted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 118\(4\)\(a\)](#)

**F1886** Words in s. 288(1) substituted (with effect in accordance with [Sch. 22 para. 12](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 10](#); S.I. 2010/670, art. 2

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- F1887** Words in s. 288(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(2)(b)** (with Sch. 2)
- F1888** Words in s. 288(1) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 385(a)** (with Sch. 2 Pts. 1, 2)
- F1889** Words in s. 288(1) inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(2)(g)** (with Sch. 2)
- F1890** Words in s. 288(1) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 34**
- F1891** Words in s. 288(1) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 47** (with Sch. 9 paras. 1-9, 22)
- F1892** Words in s. 288(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(2)(c)** (with Sch. 2)
- F1893** Words in s. 288(1) inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 219(3)** (with Sch. 7)
- F1894** Words in s. 288(1) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 447(2)** (with Sch. 2)
- F1895** Words in s. 288(1) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(b)** (with Sch. 2)
- F1896** Words in s. 288(1) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(c)** (with Sch. 2)
- F1897** Words in s. 288(1) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(d)** (with Sch. 2)
- F1898** Words in s. 288(1) inserted (8.6.2013) by The Collective Investment Schemes (Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction) Regulations 2013 (S.I. 2013/1400), regs. 1(1), **12** (with reg. 1(2))
- F1899** Words in s. 288(1) inserted (8.6.2013) by The Collective Investment Schemes (Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction) Regulations 2013 (S.I. 2013/1400), regs. 1(1), **7(a)** (with reg. 1(2))
- F1900** Words in s. 288(1) inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 103(3)**
- F1901** Words in s. 288(1) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(e)** (with Sch. 2)
- F1902** Words in s. 288(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(2)(d)** (with Sch. 2)
- F1903** Words in s. 288(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 385(b)** (with Sch. 2 Pts. 1, 2)
- F1904** Words in s. 288(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(2)(e)** (with Sch. 2)
- F1905** Words in s. 288(1) inserted (with effect in accordance with s. 76(1) of the amending Act) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 1(3)** (with Sch. 3)
- F1906** Words in s. 288(1) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(f)** (with Sch. 2)
- F1907** Words in s. 288(1) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(g)** (with Sch. 2)
- F1908** Words in s. 288(1) inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 41** (with Sch. 36)
- F1909** Words in s. 288(1) inserted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No.3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 3(3)** (with art. 3)
- F1910** Words in s. 288(1) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 45 para. 148(3)(a)**
- F1911** Words in s. 288(1) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 104(2)**

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- F1912** Words in s. 288(1) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **122(a)**
- F1913** Words in s. 288(1) inserted (18.3.2010) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(2)(c), **Sch. 8 para. 319** (with Sch. 9 paras. 1-9, 22)
- F1914** Words in s. 288(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 385(c)** (with Sch. 2 Pts. 1, 2)
- F1915** Words in s. 288(1) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 184**
- F1916** Words in s. 288(1) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 385(d)** (with Sch. 2 Pts. 1, 2)
- F1917** Words in s. 288(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(2)(f)** (with Sch. 2)
- F1918** Words in s. 288(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), s. **72(7)**
- F1919** Words in s. 288(1) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(2)(h)** (with Sch. 2)
- F1920** Words in s. 288(1) substituted (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 2 para. 101(2)**
- F1921** S. 288(1ZA) inserted (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 2 para. 101(3)**
- F1922** S. 288(1ZB) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 104(3)**
- F1923** S. 288(1A) inserted (with effect in accordance with Sch. 22 para. 54(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 22 para. 54(1)**
- F1924** Words in s. 288(1A) substituted (with effect in accordance with Sch. 5 para. 6(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 5 para. 5(2)**
- F1925** Words in s. 288(1A) omitted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by virtue of Finance Act 2014 (c. 26), **Sch. 9 paras. 28, 47**
- F1926** Words in s. 288(2) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(3)** (with Sch. 2)
- F1927** S. 288(2A) inserted (with effect for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by Finance Act 2012 (c. 14), s. **34(4)**
- F1928** Words in s. 288(3) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **122(b)**
- F1929** Words in s. 288(3) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 342(4)** (with Sch. 2)
- F1930** S. 288(3A) inserted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 63**
- F1931** Word in s. 288(3A)(a) inserted (8.6.2013) by The Collective Investment Schemes (Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction) Regulations 2013 (S.I. 2013/1400), regs. 1(1), **7(b)** (with reg. 1(2))
- F1932** Words in s. 288(3A)(a) inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 264(3)(a)** (with Sch. 2)
- F1933** Word in s. 288(3A)(a) substituted (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 17(a)**
- F1934** S. 288(3A)(e) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 264(3)(b), **Sch. 3 Pt. 1** (with Sch. 2)
- F1935** S. 288(3A)(j) inserted (E.W.) (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), art. 1(2), **Sch. 1 para. 43** (with Sch. 2) (see S.I. 2008/3068, art. 2(1)(b))
- F1936** S. 288(3A)(k) inserted (1.4.2012) by Budget Responsibility and National Audit Act 2011 (c. 4), s. 29, **Sch. 5 para. 16**; S.I. 2011/2576, art. 5
- F1937** S. 288(3A)(l) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 145**; S.I. 2011/2329, art. 3



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- F1938S.** 288(3A)(m) inserted (15.11.2011 for specified purposes, 30.3.2012 for E.W.) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(o), [Sch. 24 para. 6\(3\)](#); S.I. 2012/628, art. 3(b)
- F1939S.** 288(4) repealed (with effect in accordance with Sch. 41 Pt. VIII(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. VIII\(3\)](#)
- F1940S.** 288(5A)(5B) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 3](#)
- F1941S.** 288(7A) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 447\(3\)](#) (with Sch. 2)
- F1942S.** 288(7B) inserted (with effect in accordance with s. 74(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 74(3)
- F1943** Words in s. 288(8) inserted (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), 7(c) (with reg. 1(2))
- F1944** Words in s. 288(8) inserted (28.4.1997) by [The Open-ended Investment Companies \(Tax\) Regulations 1997 \(S.I. 1997/1154\)](#), regs. 1(1), [23\(a\)](#)
- F1945** Words in s. 288(8) inserted (28.4.1997) by [The Open-ended Investment Companies \(Tax\) Regulations 1997 \(S.I. 1997/1154\)](#), regs. 1(1), [23\(b\)](#)
- F1946** Words in s. 288(8) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 26\(1\)\(2\)](#)
- F1947** Words in s. 288(8) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 148\(3\)\(b\)](#)
- F1948** Words in s. 288(8) inserted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), s. [118\(4\)\(b\)\(i\)](#)
- F1949** Words in s. 288(8) substituted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), s. [118\(4\)\(b\)\(ii\)](#)
- F1950** Words in s. 288(8) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 202](#) (with Sch. 9 paras. 1-9, 22)

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

- C386** S. 288(3A) extended (1.1.2010) by [The Northern Rock plc \(Tax Consequences\) Regulations 2009 \(S.I. 2009/3227\)](#), regs. 1, [3\(2\)](#)
- C387** S. 288(3A) extended (30.9.2013) by [The BRB \(Residuary\) Limited \(Tax Consequences\) Order 2013 \(S.I. 2013/2242\)](#), arts. 1, [3\(a\)\(ii\)](#)

#### Marginal Citations

- M66** 1979 c. 14.  
**M67** 1986 c. 53.  
**M68** 1970 c. 9.  
**M69** 1988 c. 1.

## 289 Commencement.

- (1) Except where the context otherwise requires, this Act has effect in relation to tax for the year 1992-93 and subsequent years of assessment, and tax for other chargeable periods beginning on or after 6th April 1992, and references to the coming into force of this Act or any provision in this Act shall be construed accordingly.
- (2) The following provisions of this Act, that is—
  - (a) so much of any provision of this Act as authorises the making of any order or other instrument, and
  - (b) except where the tax concerned is all tax for chargeable periods to which this Act does not apply, so much of any provision of this Act as confers any power

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or imposes any duty the exercise or performance of which operates or may operate in relation to tax for more than one chargeable period,  
shall come into force for all purposes on 6th April 1992 to the exclusion of the corresponding enactments repealed by this Act.

## **290 Savings, transitionals, consequential amendments and repeals.**

- (1) Schedules 10 (consequential amendments) and 11 (transitory provisions and savings) shall have effect.
- (2) No letters patent granted or to be granted by the Crown to any person, city, borough or town corporate of any liberty, privilege, or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any inhabitant of the same, from tax chargeable in pursuance of this Act.
- (3) Subject to Schedule 11, the enactments and instruments mentioned in Schedule 12 to this Act are hereby repealed to the extent specified in the third column of that Schedule (but Schedule 12 shall not have effect in relation to any enactment in so far as it has previously been repealed subject to a saving which still has effect on the coming into force of this section).
- (4) The provisions of this Part of this Act are without prejudice to the provisions of the <sup>M70</sup> Interpretation Act 1978 as respects the effect of repeals.

### **Marginal Citations**

**M70** 1978 c. 30.

## **291 Short title.**

This Act may be cited as the Taxation of Chargeable Gains Act 1992.

**Status:**

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**Changes to legislation:**

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