



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART IV **U.K.**

#### SHARES, SECURITIES, OPTIONS ETC.

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

C1 Pt. IV: power to modify conferred (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), s. **21(8)-(10)**

### CHAPTER I **U.K.**

#### GENERAL

##### *Share pooling, identification of securities, and indexation*

#### **104 Share pooling: general interpretative provisions. **U.K.****

- (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>F1</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>F2</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>F3</sup>... and 114—

*Status: Point in time view as at 21/07/2008.*

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[<sup>F4</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

“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>F5</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>F6</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.]

(5) Nothing in this section or sections 110 <sup>F7</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>F8</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

- F1** Words in s. 104(1) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 17\(1\)\(2\)](#)
- F2** 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\(2\)](#)
- F3** 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\(3\)](#)
- F4** 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\(3\)](#)
- F5** 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\(4\)](#)
- F6** S. 104(4) substituted (with effect in accordance with s. 123(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 123\(4\)](#)
- F7** 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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**F8** 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)**

- C2** S. 104 applied (with modifications) by [S.I. 1989/469, reg. 27\(2\)](#) (as inserted by [S.I. 1996/846, reg. 11\(b\)](#))
- C3** 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\)](#)
- C4** 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\(6\)](#)
- C5** 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\(2\)](#))
- C6** S. 104(1) restricted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 124\(8\)\(c\)](#)
- C7** 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. [U.K.](#)**

- (1) [<sup>F9</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—
- 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
  - 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>F10</sup>(2) Where the quantity of securities disposed of by any person exceeds the aggregate quantity of—

- the securities (if any) which are required by subsection (1) above to be identified with securities acquired on the day of the disposal,
- the securities (if any) which are required by [<sup>F11</sup>section] 106A(5) to be identified with securities acquired after the day of the disposal, and
- the securities (if any) which are required by any of the provisions of sections 104, <sup>F12</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>F13</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.]

**Textual Amendments**

- F9** 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\(2\)](#)
- F10** S. 105(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 124\(2\)](#)

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- F11** 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)
- F12** 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)
- F13** 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

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

- C3** 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)
- C4** 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)
- C5** 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))

**[<sup>F14</sup>105A Shares acquired on same day: election for alternative treatment U.K.]**

- (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 approved-scheme shares”) are shares acquired by him as a result of—
    - [<sup>F15</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
    - (ii) the exercise of an option to which Chapter 7 or 8 of Part 7 of that Act (approved 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 approved-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 approved-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>F16</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 approved-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

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- (b) section 299 of the Taxes Act [<sup>F17</sup>or section 246 of ITA 2007] has effect for the purposes of section 150A(4) below as if it required—
- (i) the approved-scheme shares falling within paragraph (a), (b), (c) or (d) of subsection (6A) of section 299 [<sup>F18</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 approved-scheme shares to which subsection (6B) of [<sup>F19</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 approved-scheme shares and to the remainder of the reorganisation shares (so that those approved-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>F20</sup>or relief under Part 5 of ITA 2007] is attributable and which were transferred to an individual as mentioned in section 304 of [<sup>F21</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>F22</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>F23</sup>(9) Part or provision that applies only in relation to shares issued after 5 April 2007.]

#### Textual Amendments

- F14** 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\(1\)](#)
- F15** 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\(2\)](#)
- F16** 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](#))

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- F17** 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](#))
- F18** 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](#))
- F19** 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](#))
- F20** 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](#))
- F21** 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](#))
- F22** 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](#))
- F23** 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)**

- C5** 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\(2\)](#))

### **105B Provision supplementary to section 105A U.K.**

- (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
  - (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 approved-scheme shares includes a reference to the securities (if any) directly or indirectly derived from the shares in question by virtue of one or

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more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains).

(8) In this section—

“the approved-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

**F14** 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\(1\)](#)

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

**C5** 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\(2\)](#))

### <sup>F24</sup>**106 Disposal of shares and securities by company within prescribed period of acquisition.** **U.K.**

#### Textual Amendments

**F24** 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>F25</sup>**106A Identification of securities:** <sup>F26</sup>... capital gains tax. **U.K.**

(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.

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- (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; and
  - (b) 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>F27</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>F28</sup>(5A) the person making the disposal acquires at a time when—
- (a) he is neither resident nor ordinarily resident in the United Kingdom, or
  - (b) he is resident or ordinarily resident in the United Kingdom but is Treaty non-resident.]
- (6) Subject to subsections (4) and (5) above, [<sup>F29</sup>relevant] securities disposed of shall be identified with [<sup>F29</sup>relevant] securities acquired at a later time, rather than with [<sup>F29</sup>relevant] securities acquired at an earlier time.
- <sup>F30</sup>(7) .....
- <sup>F31</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>F32</sup>(10) In this section—
- “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) securities which are, or have at any time been, material interests in a non-qualifying offshore fund, within the meaning of Chapter 5 of Part 17 of the Taxes Act.]
- (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

**F25** 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))

**F26** 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\(7\)](#)



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- F27** 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\(2\)](#)
- F28** S. 106A(5A) inserted (with effect in accordance with s. 74(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 74\(2\)](#)
- F29** 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\(3\)](#)
- F30** 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\(4\)](#)
- F31** 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\(5\)](#)
- F32** 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\(6\)](#)

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

- C3** 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](#))
- C5** 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\(2\)](#))
- C8** 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](#))
- C9** 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 [F33 for corporation tax]. U.K.**

[F34(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.]

(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 [F35 section 104 holding], and  
(b) the securities disposed of would decrease the size of, or extinguish, the same [F35 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 [F35 section 104 holding] or constituting a [F35 section 104 holding].

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- (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>F35</sup>section 104 holding] or, as the case may be, as constituting a [<sup>F35</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>F35</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>F35</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

- F33** 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](#)
- F34** 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\(3\)](#)
- F35** 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)

- C3** 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](#))
- C5** 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\(2\)](#))
- C10** S. 107 modified by [S.I. 1989/469](#), [reg. 27A\(2A\)](#) (as inserted (6.4.1996) by [S.I. 1996/846](#), [reg. 11\(b\)](#))
- C11** 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\(6\)](#)

## 108 Identification of relevant securities [<sup>F36</sup>for corporation tax]. **U.K.**

- [<sup>F37</sup>(A1) This section has effect for the purposes of corporation tax where any relevant securities are disposed of by a company.]

*Status: Point in time view as at 21/07/2008.*

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- (1) In this section “relevant securities” means—
- (a) securities, within the meaning of [<sup>F38</sup>Chapter 2 of Part 12 of ITA 2007 (accrued income profits)];
  - [<sup>F39</sup>(aa) qualifying corporate bonds;]
  - <sup>F40</sup>(b) ..... ; and
  - (c) securities which are, or have at any time been, material interests in a non-qualifying offshore fund, within the meaning of Chapter V of Part XVII of that Act;

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>F41</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>F42</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>F41</sup>company] disposes of securities in one capacity, they shall not be identified with securities which [<sup>F42</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
  - (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>F43</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

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- (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>F44</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

- F36** 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](#)
- F37** S. 108(A1) inserted (with effect in accordance with s. 124(7) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 124\(4\)](#)
- F38** 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](#))
- F39** 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](#))
- F40** 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](#))
- F41** 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\(5\)\(a\)](#)
- F42** 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\(5\)\(b\)](#)
- F43** 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\(5\)\(a\)](#)
- F44** 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)

- C3** 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](#))
- C5** 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\(2\)](#))

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## 109 [F45] Corporation tax: pre-April 1982 share pools. U.K.

- (1) [F46] 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>M1</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 [F47] (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 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

- F45** 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\(3\)](#)
- F46** 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\(2\)](#)
- F47** Words in s. 109(2)(a) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 18\(1\)\(2\)](#)

*Status: Point in time view as at 21/07/2008.*

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

- C3** 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**)
- C5** 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)**)

#### Marginal Citations

- M1** 1985 c. 54.

### 110 <sup>[F48]</sup> **Indexation for section 104 holdings for corporation tax]. **U.K.****

- (1) <sup>[F49]</sup>For the purposes of corporation tax this] section and section 114—
- (a) apply in place of section 54 in relation to a disposal of a <sup>[F50]</sup>section 104 holding] for the purpose of computing the indexation allowance;
  - (b) have effect subject to <sup>[F51]</sup>section 105].
- (2) On any disposal of a <sup>[F50]</sup>section 104 holding], other than a disposal of the whole of it—
- (a) 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
  - (b) 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>[F50]</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.
- (4) In relation to a <sup>[F50]</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>[F50]</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>M2</sup>Finance Act 1985 immediately before then.
- <sup>[F52]</sup>(6A) Where a disposal to a person acquiring or adding to a <sup>[F50]</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

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- (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 [F50section 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.
- (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.

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#### Textual Amendments

- F48** 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](#)
- F49** 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\(1\)](#)
- F50** 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\(5\)\(b\)](#)
- F51** 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\(2\)\(d\)](#)
- F52** 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)

- C3** 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](#))
- C5** 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\(2\)](#))

#### Marginal Citations

- M2** [1985 c. 54](#).

### <sup>F53</sup> **110A Indexation for section 104 holdings: capital gains tax.** **U.K.**

.....

#### Textual Amendments

- F53** 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>F54</sup> **111 Indexation: building society etc. shares.** **U.K.**

.....

#### Textual Amendments

- F54** 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>F55</sup>: **corporation tax.** **U.K.**

- (1) The <sup>M3</sup>Capital Gains Tax (Parallel Pooling) Regulations 1986 made by the Treasury under paragraph 21 of Schedule 19 to the <sup>M4</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>M5</sup>Interpretation Act 1978 that paragraph shall be deemed not to have been repealed.



*Status: Point in time view as at 21/07/2008.*

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- (2) An election under Schedule 6 to the <sup>M6</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

**F55** 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)

**C3** 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](#))

**C5** 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\(2\)](#))

#### Marginal Citations

**M3** [S.I.1986/387](#).

**M4** [1985 c. 54](#).

**M5** [1978 c. 30](#).

**M6** [1983 c. 28](#).

### 113 Calls on shares<sup>F56</sup>: corporation tax]. **U.K.**

[<sup>F57</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

**F56** 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\(3\)](#)

*Status: Point in time view as at 21/07/2008.*

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**F57** 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)**

**C3** 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](#))

**C5** 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\(2\)](#))

**114 Consideration for options<sup>F58</sup>: corporation tax]. [U.K.](#)**

[<sup>F59</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—

$$\frac{RO - RA}{RA}$$

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**

**F58** 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\(3\)](#)

**F59** 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)**

**C3** 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](#))

**C5** 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\(2\)](#))

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part IV is up to date with all changes known to be in force on or before 23 July 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)*

### *Gilt-edged securities and qualifying corporate bonds*

#### **115 Exemptions for gilt-edged securities and qualifying corporate bonds etc. U.K.**

- (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.

#### **116 Reorganisations, conversions and reconstructions. U.K.**

- (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 [F<sup>60</sup>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 <sup>M7</sup>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”.

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<sup>F61</sup>(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.

(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>F62</sup><sup>F63</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, Chapter II of Part IV of the Finance Act 1996 (loan relationships) shall have effect<sup>F64</sup>, subject to subsection (8B) below,] so as to require such debits and credits to be brought into account for the purposes of that Chapter 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>F65</sup>subsection (6) above].

<sup>F66</sup>This subsection does not apply in relation to a transaction to which paragraph 12G of Schedule 9 to the Finance Act 1996 (c. 8) (exchanges etc: treatment of loan relationships) applies.]]

<sup>F62</sup><sup>F67</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

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- 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 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, [F68 140A,][F69 140E,][F70 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>F71</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>F71</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.
- [F72(16) This section has effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act).]

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### Textual Amendments

- F60** 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)**
- F61** 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](#))
- F62** 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
- F63** 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](#))
- F64** 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)**
- F65** 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)**
- F66** 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**
- F67** 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)**
- F68** Words in s. 116(11) inserted (*retrosp.*) by [1992 c. 48](#), **s. 46(1)(3)**
- F69** 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)**
- F70** 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\(5\)](#))
- F71** 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)**
- F72** 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](#))

### Modifications etc. (not altering text)

- C12** 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)**
- C13** 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)**
- C14** 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\(1\)](#))
- C15** S. 116 modified (with effect in accordance with s. 66(1) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **s. 66(2)**
- C16** 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)**
- C17** 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**
- C18** 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))
- C19** 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)**
- C20** 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)**

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**C21** 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**

**M7** [1984 c. 43.](#)

**117 Meaning of “qualifying corporate bond”. U.K.**

[<sup>F73</sup>(A1) For the purposes of corporation tax “qualifying corporate bond” means <sup>F74</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 sub-paragraph (5) of paragraph 1 of Schedule 18 to the Taxes Act if for paragraph (a)(i) to (iii) of that sub-paragraph there were substituted the words “corporate bonds (within the meaning of section 117 of the 1992 Act) ”.

(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>F75</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>F76</sup>deeply discounted security for the purposes of Chapter 8 of Part 4 of ITTOIA 2005 (see section 430)].]

<sup>F77</sup>(2A) .....

<sup>F78</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.

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- (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>F79</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—
- (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>F80</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>F81</sup>Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 433).]
- <sup>F82</sup>(6D) Section 48B(4) of the Finance Act 2005 (alternative finance arrangements) provides for certain arrangements falling within section 48A 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>M8</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>F83</sup>(8A) A corporate bond falling within subsection (2AA) above is a qualifying corporate bond whatever its date of issue.]
- <sup>F84</sup>(9) .....
- <sup>F84</sup>(10) .....
- (11) For the purposes of this section—



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- (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>F85</sup>(b) “permanent interest bearing share” means a share which is a permanent interest bearing share <sup>F86</sup>for the purposes of] the <sup>F87</sup>General Prudential Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000] as that Sourcebook applies in relation to shares issued on the date that the share is issued,
- <sup>F88</sup>..... ].
- (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

- F73** 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](#))
- F74** 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\(10\)](#)
- F75** 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](#))
- F76** 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](#))
- F77** 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](#))
- F78** 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](#))
- F79** S. 117(6A) inserted (27.7.1993 with effect as mentioned in s. 84(3)) by [1993 c. 34, s. 84\(1\)\(3\)](#)
- F80** 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](#))
- F81** 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](#))
- F82** S. 117(6D) inserted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(10\)](#)
- F83** 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](#))
- F84** 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](#))
- F85** 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\(1\)](#)
- F86** 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\(1\)\(a\)](#)
- F87** 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\(1\)\(b\)](#)

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**F88** 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)**

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

**C22** 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**)

**C23** S. 117(2AA) modified (27.7.1999) by [Finance Act 1999 \(c. 16\)](#), **s. 65(11)**

**Marginal Citations**

**M8** 1984 c. 43.

**F89** **117A Assets that are not qualifying corporate bonds for corporation tax purposes.** **U.K.**

.....

**Textual Amendments**

**F89** 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)**

**F89** **117B Holdings in unit trusts and offshore funds excluded from treatment as qualifying corporate bonds.** **U.K.**

.....

**Textual Amendments**

**F89** 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.*

**F90** **118 Amount to be treated as consideration on disposal of deep discount securities etc.** **U.K.**

.....

**Textual Amendments**

**F90** 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)

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## 119 Transfers of securities subject to the accrued income scheme. **U.K.**

- [<sup>F91</sup>(1) Where there is a transfer of securities within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits)—
- (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.

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*Status: Point in time view as at 21/07/2008.*

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- (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);
  - (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 [<sup>F92</sup>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”.]
- [<sup>F93</sup>(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.

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- (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 [<sup>F94</sup>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 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>F95</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

- F91** 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](#))
- F92** 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](#))
- F93** 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](#))
- F94** 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](#))
- F95** 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>F96</sup>119A Increase in expenditure by reference to tax charged in relation to employment-related securities **U.K.**

- (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.

*Status: Point in time view as at 21/07/2008.*

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- (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>F97</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),
  - [<sup>F98</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>F99</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>F100</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>F101</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) or (b) 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 (unremitted foreign securities income).]
- <sup>F102</sup>(5A)
- (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.

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<sup>F103</sup>(8) . . . . . ]

#### Textual Amendments

- F96** 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)**
- F97** 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)**
- F98** 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)**
- F99** 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)**
- F100** 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)**
- F101** 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**
- F102** 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**
- F103** 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>F104</sup>119B] **Section 119A: unremitted foreign securities income** **U.K.**

- (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 unremitted foreign securities income.
- (2) In this section “unremitted foreign securities income” means income that—
  - (a) is foreign securities income for the purposes of section 41A of ITEPA 2003 (employment income from ERS charged on remittance basis), 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 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.]

#### Textual Amendments

- F104** 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**

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## 120 Increase in expenditure by reference to tax charged in relation to shares etc. **U.K.**

[<sup>F105</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.

(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>F106</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>F107</sup>so treated as earnings].

(4) If a gain [<sup>F108</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>F109</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>F110</sup>(5A) Where an amount [<sup>F111</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>F112</sup>so counting as employment income].

(5B) Where an amount [<sup>F113</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>F114</sup>so counting as employment income].]

[<sup>F115</sup>(6) . . . . .



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[<sup>F116</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
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>F117</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>F118</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>F119</sup>Chapter 2 of Part 7 of ITEPA 2003].]

[<sup>F120</sup>(9) References in this section to ITEPA 2003 are to that Act as originally enacted.]

#### Textual Amendments

**F105** 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](#))

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- F106** 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)
- F107** 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)
- F108** 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)
- F109** 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)
- F110** 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\(2\)](#)
- F111** 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)
- F112** 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)
- F113** 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)
- F114** 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)
- F115** 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)
- F116** 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)
- F117** 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)
- F118** S. 120(8) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 54\(4\)](#)
- F119** 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)
- F120** 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. **U.K.**

- (1) Savings certificates and non-marketable securities issued under the <sup>M9</sup>National Loans Act 1968 or the <sup>M10</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>M11</sup>National Loans Act 1968, or section 7 of the <sup>M12</sup>National Debt Act 1958, or section 59 of the <sup>M13</sup>Finance Act 1920, and any war savings certificates as defined in section 9(3) of the <sup>M14</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.

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#### Marginal Citations

- M9 1968 c. 13.
- M10 1939 c. 117.
- M11 1968 c. 13.
- M12 1958 (7 Eliz. 2) c.6.
- M13 1920 c.18.
- M14 1972 c. 65.

### *Capital distribution in respect of shares etc.*

#### 122 Distribution which is not a new holding within Chapter II. **U.K.**

- (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>F121</sup>(1A) Subsection (1) is subject to the provisions of section 140A(1D) and section 140E(7).]

- (2) If <sup>F122</sup>... the amount distributed is small, as compared with the value of the shares in respect of which it is distributed, <sup>F122</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>F123</sup>(3) .....

- (4) Where the allowable expenditure is less than the amount distributed (or is nil)—
  - (a) [<sup>F124</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.

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### Textual Amendments

- F121** 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))
- F122** 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)**
- F123** 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)**
- F124** 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)**

### Modifications etc. (not altering text)

- C24** S. 122 modified (27.7.1992) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 16(2)(b)**
- C25** 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)))
- C26** 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)))
- C27** 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)))
- C28** 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)))
- C29** 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. **U.K.**

- (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.

*Status: Point in time view as at 21/07/2008.*

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### *Close companies*

#### **124 Disposal of shares: relief in respect of income tax consequent on shortfall in distributions. U.K.**

- (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. U.K.**

- (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.
- (4) This section shall not apply where the transfer of the asset is a disposal to which section 171(1) applies.
- (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".

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## *f<sup>125</sup>Share loss relief*

### Textual Amendments

**F125** 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](#))

### 125A Effect of share loss relief **U.K.**

- (1) If loss relief under section 573 of the Taxes Act or Chapter 6 of Part 4 of ITA 2007 (“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.]

## CHAPTER II **U.K.**

### REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

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

**C30** Pt. IV Ch. II modified (1.1.1999) by [The European Single Currency \(Taxes\) Regulations 1998 \(S.I. 1998/3177\)](#), regs. 1, 39

**C31** 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. **U.K.**

- (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. **U.K.**

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)

- C32** 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\(1\)](#))
- C33** 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)
- C34** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, [34\(4\)](#)
- C35** 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\(1\)](#)
- C36** 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))
- C37** 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\(1\)](#)
- C38** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 14 para. 58](#)
- C39** 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\(7\)](#)
- C40** 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)))
- C41** 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](#))
- C42** 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](#))
- C43** 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\(1\)](#)

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## 128 Consideration given or received by holder. **U.K.**

- (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)

- C32** 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\(1\)](#))
- C33** 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)
- C34** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, [34\(4\)](#)
- C37** 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\(1\)](#)



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- C38** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 14 para. 58**
- C40** 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)))
- C41** 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)

## 129 Part disposal of new holding. **U.K.**

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)

- C32** 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\(1\)](#))
- C33** 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)
- C34** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, **34(4)**
- C37** 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)**
- C38** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 14 para. 58**
- C40** 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)))
- C41** 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)

## 130 Composite new holdings. **U.K.**

- (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 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>F126</sup>were listed] on a recognised stock exchange<sup>F127</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

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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

- F126** Words in s. 130(1)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 8\(2\)\(a\)](#)  
**F127** 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)

- C32** 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\(1\)](#))  
**C33** 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)  
**C34** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, [34\(4\)](#)  
**C37** 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\(1\)](#)  
**C38** Ss. 127-130 excluded (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 14 para. 58](#)  
**C40** 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)))  
**C41** 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](#))

## 131 Indexation allowance. **U.K.**

- (1) This section applies where—
- (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).

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

- C32** 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\(1\)](#))
- C33** 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)
- C34** Ss. 127-131 restricted (6.4.1999) by [The Individual Savings Account Regulations 1998 \(S.I. 1998/1870\)](#), regs. 1, [34\(4\)](#)

### Conversion of securities

#### 132 Equation of converted securities and new holding. **U.K.**

(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>F128</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>F129</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 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>F130</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.

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- (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

- F128** 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\(2\)\(a\)](#)
- F129** 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\(2\)\(b\)](#)
- F130** 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)

- C44** S. 132 applied (retrospective to 31.12.1995) by [Finance Act 1996 \(c. 8\), s. 203\(10\)](#)

### 133 Premiums on conversion of securities. **U.K.**

- (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>F131</sup>... the premium is small, as compared with the value of the converted securities, <sub>F131</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>F132</sup>(3) .....
- (4) Where the allowable expenditure is less than the premium (or is nil)—
- (a) [<sup>F133</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).

*Status: Point in time view as at 21/07/2008.*

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### Textual Amendments

- F131** 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\(10\)](#)
- F132** 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\(10\)](#)
- F133** 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. **U.K.**

- (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.
- (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.

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- (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.

*F134 Company reconstructions ...*

**Textual Amendments**

**F134** 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>F135</sup>135 Exchange of securities for those in another company U.K.]**

- (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—
- (a) made to members of company A or any class of them (with or without exceptions for persons connected with company B), and
- (b) 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.
- (4) In this section “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act 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).]

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### Textual Amendments

**F135** 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](#)

### Modifications etc. (not altering text)

**C45** 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)

**C46** 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\(5\)](#))

## <sup>F136</sup>136 Scheme of reconstruction involving issue of securities **U.K.**

- (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.
- (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—

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- (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

**F136** 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)

- C45** 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)
- C46** 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\(5\)](#))
- C47** S. 136 applied (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 84\(1\)](#)
- C48** 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\(7\)](#))

### 137 Restriction on application of sections 135 and 136. **U.K.**

- (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>F137</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.



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(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—

“(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>F138</sup>section 135(5), 136(5)] or 147.

#### Textual Amendments

**F137** 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\(5\)\(a\)](#)

**F138** 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\(5\)\(b\)](#)

#### 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. **U.K.**

(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>F139</sup>or scheme of reconstruction] will be effected for bona fide commercial

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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 Special Commissioners; and in that event any notification by the Special Commissioners 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 the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) above shall be void.

#### Textual Amendments

**F139** 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\(6\)](#)

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

- C49** S. 138(2) applied (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 247\(2\), 1034\(1\)](#) (with [Sch. 2](#))
- C50** 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\(1\)](#)))
- C51** 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\(1\)](#)))
- C52** 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\(1\)](#)))
- C53** 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\(1\)](#)))

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**[<sup>F140</sup>138A Use of earn-out rights for exchange of securities. U.K.]**

(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.

(2) Where—

- (a) there is an earn-out right, [<sup>F141</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>F142</sup>...

<sup>F142</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>F143</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>F144</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>F145</sup>...

<sup>F145</sup>(e) .....

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the assumptions specified in subsection (3) above shall have effect in relation to the new right, in the case of [<sup>F146</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>F147</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—
  - (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—

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- (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

- F140** S. 138A inserted (retrospectively) by [Finance Act 1997 \(c. 16\)](#), **s. 89(1)(2)** (with s. 89(3)-(8))
- F141** 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)**
- F142** 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)**
- F143** 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)**
- F144** 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)**
- F145** 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)**
- F146** 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)**
- F147** 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>F148</sup> ... involving transfer of business. **U.K.**

- (1) Subject to the provisions of this section, where—
- (a) any scheme of reconstruction <sup>F149</sup> ... involves the transfer of the whole or part of a company's business to another company, and
  - [<sup>F150</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>F151</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 in relation to that company immediately after that time, and

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- (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 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 [F152 10B] form part of its chargeable profits for corporation tax purposes.]

- (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>F153</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 [F154 or a venture capital trust].

- (5) This section does not apply unless the reconstruction <sup>F155</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>F155</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—

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- (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
- (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>F156</sup>(9) In this section “scheme of reconstruction” has the same meaning as in section 136.]

#### Textual Amendments

- F148** 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)**
- F149** 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)**
- F150** 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\(5\)](#))
- F151** 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\(5\)](#))
- F152** 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)**
- F153** 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)**
- F154** 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)**
- F155** 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)**
- F156** 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)

- C54** 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)**
- C55** 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. **U.K.**

- (1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a [<sup>F157</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>M15</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, the consideration received by it on the disposal shall be treated as increased by 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.

- (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 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.



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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>F158</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>F159</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>F160</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>F161</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>M16</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).

(8) If in the case of any such transfer as was mentioned in section 268A(1) of the <sup>M17</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

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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

- F157** 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\(1\)\(b\)](#)
- F158** 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\(5\)](#))
- F159** S. 140(6A) inserted (*retrosp.*) by [1992 c. 48, s. 46\(1\)\(4\)](#)
- F160** 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\(1\)](#))
- F161** 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

- M15** 1970 c. 10.  
**M16** 1970 c. 10.  
**M17** 1970 c. 10.

<sup>F162</sup>*[Transfers concerning companies of different member States]*

#### Textual Amendments

- F162** Cross heading inserted (*retrosp.*) by [1992 c. 48, s.44](#)

### <sup>F163</sup>**140A**<sup>F164</sup> **Transfer or division of UK business** U.K.

(1) This section applies where—

- (a) a [<sup>F165</sup>company] resident in one member State ([<sup>F166</sup>the transferor]) transfers the whole or part of a [<sup>F167</sup>business] carried on by it in the United Kingdom to a [<sup>F165</sup>company] resident in another member State ([<sup>F168</sup>the transferee]),
- (b) the transfer is wholly in exchange for [<sup>F169</sup>shares or debentures] issued by [<sup>F168</sup>the transferee] to [<sup>F166</sup>the transferor],
- (c) a claim is made under this section by [<sup>F166</sup>the transferor] and [<sup>F168</sup>the transferee],
- (d) section 140B does not prevent this section applying, and
- (e) the appropriate condition is met in relation to [<sup>F168</sup>the transferee] immediately after the time of the transfer.

<sup>F170</sup>[ This section also applies where a company transfers part of its business to one or more (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,

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- (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>F171</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>F172</sup>10B].
- (3) Where immediately after the time of the transfer [<sup>F171</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>F173</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>F171</sup>the transferee (or each of the transferees)] from [<sup>F174</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>F174</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>F175</sup>(5) .....

<sup>F176</sup>(6) .....

<sup>F177</sup>(7) ..... ]

#### Textual Amendments

**F163** S. 140A inserted (*retrosp.*) by 1992 c. 48, s.44

*Status: Point in time view as at 21/07/2008.*

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- F164** 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))
- F165** 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))
- F166** 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))
- F167** 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))
- F168** 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))
- F169** 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)**
- F170** 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))
- F171** 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))
- F172** 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)**
- F173** 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))
- F174** 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))
- F175** 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))
- F176** 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))
- F177** 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)**

- C56** 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)**
- C57** 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>F178</sup>140B] Section 140A: anti-avoidance. U.K.**

- (1) Section 140A shall not apply unless the transfer of the [<sup>F179</sup>business] or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements

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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>F180</sup>the transferor] and [<sup>F181</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

**F178** S. 140B inserted (*retrosp.*) by 1992 c. 48, s.44

**F179** 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))

**F180** 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))

**F181** 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>F182</sup>140Q<sup>F183</sup>Transfer or division of non-UK business] **U.K.**

(1) This section applies where—

- (a) a [<sup>F184</sup>company] resident in the United Kingdom ([<sup>F185</sup>the transferor]) transfers to a [<sup>F184</sup>company] resident in another member State ([<sup>F186</sup>the transferee]) the whole or part of a [<sup>F187</sup>business] which, immediately before the time of the transfer, [<sup>F185</sup>the transferor] carried on in a member State other than the United Kingdom through a [<sup>F188</sup>permanent establishment],
- (b) the transfer includes the whole of the assets of [<sup>F185</sup>the transferor] used for the purposes of the [<sup>F187</sup>business] or part (or the whole of those assets other than cash),
- (c) the transfer is wholly or partly in exchange for [<sup>F189</sup>shares or debentures] issued by [<sup>F186</sup>the transferee] to [<sup>F185</sup>the transferor],
- (d) the aggregate of the chargeable gains accruing to [<sup>F185</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>F185</sup>the transferor], and
- (f) section 140D does not prevent this section applying.

[ This section also applies where a company resident in the United Kingdom transfers <sup>F190</sup>(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,

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- (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 [<sup>F191</sup>the 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, section 815A of the Taxes Act shall also apply.
- <sup>F192</sup>(6) . . . . .
- <sup>F193</sup>(7) . . . . .
- (8) Section 442(3) of the Taxes Act (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to [<sup>F194</sup>the transferor] on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.
- <sup>F195</sup>(9) . . . . . ]

#### Textual Amendments

- F182** S. 140C inserted (*retrosp.*) by 1992 c. 48, s. 45
- F183** 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))
- F184** 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))
- F185** 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))
- F186** 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))
- F187** 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))

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- F188** 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)**
- F189** 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)**
- F190** 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))
- F191** 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))
- F192** 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))
- F193** 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))
- F194** Words in s. 140C(8) 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))
- F195** 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)

- C58** 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>F196</sup>140D] Section 140C: anti-avoidance. **U.K.**

- (1) Section 140C shall not apply unless the transfer of the [<sup>F197</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>F198</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.]

#### Textual Amendments

- F196** S. 140D inserted (*retrosp.*) by 1992 c. 48, s. **45**
- F197** 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))
- F198** 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))

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**[<sup>F199</sup>140DA Securities issued on division of business U.K.]**

- (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**

**F199** 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>F200</sup>Mergers within European Community*

**Textual Amendments**

**F200** 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 U.K.**

- (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 society registered under the Industrial and Provident Societies Act 1965, 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.



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- (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.
- (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—

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- (a) “cooperative society” means a society registered under the Industrial and Provident Societies Act 1965 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.

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

**C59** 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** **U.K.**

- (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 society registered under the Industrial and Provident Societies Act 1965, 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

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- 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>F201</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>F202</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, section 815A of the Taxes Act (transfer of a non-UK trade) 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.

#### Textual Amendments

**F201** 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\(a\)](#)

**F202** 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\(b\)](#)

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

**C60** 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 **U.K.**

- (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 society registered under the Industrial and Provident Societies Act 1965, 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.
- (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.]

**[<sup>F203</sup> 140D] Application of sections 24 and 122 where subsidiary merges with its parent U.K.**

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**

**F203** 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**

*Status: Point in time view as at 21/07/2008.*

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### <sup>F204</sup>Transparent entities: disapplication of reliefs related to Mergers Directive

#### Textual Amendments

**F204** 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 **U.K.**

- (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—
  - (a) “company” in section 135 shall be treated as meaning an entity listed in the Annex 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, Part 18 of the Taxes Act (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), 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.

## 140I. Division of business or transfer of assets **U.K.**

- (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 [<sup>F205</sup>mentioned 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.

*Status: Point in time view as at 21/07/2008.*

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- (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, Part 18 of the Taxes Act (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), shall apply as if that tax, calculated in accordance with subsection (5), had been chargeable.
- (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

**F205** 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](#)

#### 140J. Mergers **U.K.**

- (1) This section applies in relation to a merger if—
  - (a) the merger is of a kind [<sup>F206</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, Part 18 of the Taxes Act (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief) 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

**F206** 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](#)

## 140K. Transparent entities: taxation after merger, &c **U.K.**

- (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 **U.K.**

- (1) In sections 140A to 140K [<sup>F207</sup>and this section], unless the contrary intention appears—
- (a) “the Mergers Directive” means Council Directive [90/434/EEC](#) of 23rd July 1990 on mergers, transfers &c.,
  - (b) “company” means an entity listed as a company in the Annex 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 the Annex to the Mergers Directive, but—
    - (i) does not have an ordinary share capital (within the meaning given by section 832 of the Taxes Act), 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.

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- (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

**F207** 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](#)

### CHAPTER III **U.K.**

#### MISCELLANEOUS PROVISIONS RELATING TO COMMODITIES, FUTURES, OPTIONS AND OTHER SECURITIES

#### <sup>F208</sup>142 Capital gains on stock dividends. **U.K.**

- (1) This section applies where any share capital to which [<sup>F209</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>F210</sup>the cash equivalent of the share capital in accordance with section 412 of ITTOIA 2005].]

#### Textual Amendments

**F208** 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\(1\)](#)

**F209** 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](#))

**F210** 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](#))

#### 143 Commodity and financial futures and qualifying options. **U.K.**

- (1) If, apart from section 128 of the Taxes Act [<sup>F211</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>F212</sup>chargeable to tax—

  - (a) under Schedule D otherwise than as the profits of a trade, or
  - (b) under Chapter 8 of Part 5 of ITTOIA 2005,



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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).

(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>F213</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>F213</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>F214</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>F215</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>F216</sup>... is a party.

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- [<sup>F217</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.]

#### Textual Amendments

- F211** 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)**
- F212** 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)**
- F213** 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)**
- F214** 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)**
- F215** 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)**
- F216** 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)**
- F217** 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)

- C61** 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. **U.K.**

- (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

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- (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 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>F218</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>F219</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>F220</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>F221</sup>... as is referred to in sub-paragraph (i)

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above and concurrently and in association with an option falling within that sub-paragraph which is granted by that authorised person<sup>F221</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.

(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

**F218** Words in s. 144(8)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 26 para. 8\(3\)](#)

**F219** 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\(2\)\(a\)](#)

**F220** 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\(a\)](#)

**F221** 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)

**C62** S. 144 extended (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 26\(2\)](#)

**C63** 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.](#)

**C64** 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)

#### <sup>F222</sup>144ZA Application of market value rule in case of exercise of option **U.K.**

- (1) [<sup>F223</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—

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- (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;
  - (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>F224</sup>(subject to section 119A) the exercise price].

[ In subsection (4) above “exercise price”, in relation to an option, means the amount <sup>F225</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>F226</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

**F222** S. 144ZA inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [s. 158\(1\)](#) (with [s. 158\(2\)](#))

**F223** 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\(2\)](#)

**F224** 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\(3\)](#)

**F225** 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\(4\)](#)

**F226** 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>F227</sup>**144ZB** **Exception to rule in section 144ZA** **U.K.**

- (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 or would, apart from section 474 of that Act, apply (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—

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- (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;
- 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

**F227** 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](#)

### 144ZC Section 144ZB: non-commercial exercise of option **U.K.**

- (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.

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part IV is up to date with all changes known to be in force on or before 23 July 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)*

- (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—
- receivable (if the option binds the grantor to buy), or
  - 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—
- the person disposing of the underlying subject matter, or
  - 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.

#### Textual Amendments

**F227** 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 **U.K.**

- (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.

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part IV is up to date with all changes known to be in force on or before 23 July 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)*

- (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
  - (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

**F227** 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>F228</sup>144A Cash-settled options. **U.K.**

- (1) In any case where—
- (a) an option is exercised; and



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- (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—
- (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

**F228** 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)

**C65** 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)

*Status: Point in time view as at 21/07/2008.*

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## 145 Call options: indexation allowance. **U.K.**

- (1) This section applies <sup>F229</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”),
- but does not apply in any case where section 114 applies.

<sup>F230</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

**F229** 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\(2\)](#)

**F230** 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. **U.K.**

- (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—

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- (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>F231</sup>are listed] on a recognised stock exchange <sup>F232</sup> ... .

#### Textual Amendments

**F231** 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\(1\)](#)

**F232** 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. **U.K.**

- (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>F233</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>F234</sup> and “scheme of reconstruction” has the same meaning as in section 136].

#### Textual Amendments

**F233** 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\(8\)\(a\)](#)

**F234** 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. **U.K.**

- (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.

*Status: Point in time view as at 21/07/2008.*

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(4) In this section “traded option” has the meaning given by section 144(8).

<sup>F235</sup> **148A** **Futures and options involving guaranteed returns** **U.K.**

(1) Profits and gains that are chargeable under Chapter 12 of Part 4 of ITTOIA 2005 are not to be brought into account for the purposes of capital gains tax, except where section 148B applies.

(2) Where—

- (a) losses are sustained by a person from a disposal, and
- (b) had profits or gains arisen to the person from the disposal, they would be chargeable under that Chapter,

the losses are not to be brought into account for the purposes of capital gains tax, except where section 148C applies.

**Textual Amendments**

**F235** Ss. 148A-148C 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. 435](#) (with Sch. 2)

**148B** **Deemed disposals at a gain under section 564(4) of ITTOIA 2005** **U.K.**

(1) This section deals with how this Act applies where profits or gains arising to a person from such a disposal as is referred to in section 564(4) of ITTOIA 2005 (“the deemed disposal”) are chargeable to tax under Chapter 12 of Part 4 of that Act.

(2) Amounts taken into account or allowable as deductions in calculating the profits or gains are not to be excluded from any calculation made for the purposes of this Act as a result of section 37 or 39.

(3) For the purposes of this Act the amount of the consideration for the acquisition by the person of any asset the person disposes of by the future running to delivery or the exercise of the option is increased by the amount of the profits or gains chargeable under Chapter 12 of Part 4 of ITTOIA 2005.

(4) Any increase made as a result of subsection (3) is to be disregarded in calculating any indexation allowance.

(5) For the purposes of this Act the amount of the consideration for the acquisition of any asset acquired by the person by means of the future running to delivery or the exercise of the option is increased by the amount of the profits or gains chargeable under Chapter 12 of Part 4 of ITTOIA 2005.

(6) If the deemed disposal is a disposal of an option by the grantor, for the purposes of subsections (3) to (5) any determination—

- (a) whether profits or gains arose to the grantor from that disposal, and
- (b) of the amount of those profits or gains,

is to be made as if the deemed disposal and the disposal by which the option was granted were a single transaction.

(7) Section 565 of ITTOIA 2005 (interpretation of section 564 of that Act) applies for the purposes of this section as it applies for the purposes of section 564 of that Act.

*Status: Point in time view as at 21/07/2008.*

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### Textual Amendments

**F235** Ss. 148A-148C 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. 435](#) (with Sch. 2)

## 148C Deemed disposals at a loss under section 564(4) of ITTOIA 2005 **U.K.**

- (1) This section deals with how this Act applies where a loss sustained by a person from such a disposal as is referred to in section 564(4) of ITTOIA 2005 (“the deemed disposal”) is brought into account for the purposes of [<sup>F236</sup>section 152 of ITA 2007] (losses).
- (2) Amounts taken into account or allowable as deductions in calculating that loss are not to be excluded from any calculation made for the purposes of this Act as a result of section 37 or 39.
- (3) If the deemed disposal is a disposal of an option by the grantor, for the purposes of subsections (4) and (5) any determination—
  - (a) whether the grantor sustained a loss from that disposal, and
  - (b) of the amount of that loss,
 is to be made as if the deemed disposal and the disposal by which the option was granted were a single transaction.
- (4) If the loss from the deemed disposal equals or is less than—
  - (a) the amount of the consideration for the acquisition of any asset acquired by the person sustaining the loss by means of the future running to delivery or the exercise of the option, or
  - (b) the amount of the consideration for the acquisition by that person of any asset the person disposes of by the future running to delivery or the exercise of the option,
 for the purposes of this Act the amount of that consideration is reduced by the amount of the loss.
- (5) If the loss from the deemed disposal exceeds the amount of that consideration—
  - (a) that consideration is reduced to nil, and
  - (b) an amount equal to the excess is treated for the purposes of this Act as a chargeable gain accruing to the person sustaining the loss on the appropriate occasion.
- (6) In a case where the consideration mentioned in subsection (4)(a) is reduced under subsection (5)(a), the appropriate occasion is the first occasion after the acquisition mentioned in subsection (4)(a) when there is a disposal of the asset in question.
- (7) In a case where the consideration mentioned in subsection (4)(b) is so reduced, the appropriate occasion is the disposal the person sustaining the loss makes by the future running to delivery or the exercise of the option, as the case may be.
- (8) In subsection (6) the reference to a disposal of the asset in question includes a reference to anything that would be such a disposal but for section 116(10) or 127.
- (9) In subsections (6) and (7) the references to a disposal include references to a disposal which, in accordance with this Act, would (apart from subsection (5)(b)) be a disposal on which neither a gain nor a loss accrues.

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part IV is up to date with all changes known to be in force on or before 23 July 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)*

- (10) Section 565 of ITTOIA 2005 (interpretation of section 564) applies for the purposes of this section as it applies for the purposes of section 564.]

#### Textual Amendments

- F235** Ss. 148A-148C 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. 435](#) (with [Sch. 2](#))
- F236** Words in s. 148C(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 310](#) (with [Sch. 2](#))

### 149 Rights to acquire qualifying shares. **U.K.**

- (1) This section applies where on or after 25th July 1991 (the day on which the <sup>M18</sup>Finance Act 1991 was passed) a building society confers—
- on its members, or
  - 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

**M18** 1991 c. 31.

### [<sup>F237</sup>149A<sup>F238</sup> Employment-related securities options] **U.K.**

- (1) This section applies where—
- an option is granted on or after 16th March 1993,
  - <sup>F239</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 or would, apart from section 474 of that Act, apply (see section 471 of that Act), and]
  - section 17(1) [<sup>F240</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>F241</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.

*Status: Point in time view as at 21/07/2008.*

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F242(4) . . . . . ]

#### Textual Amendments

- F237** S. 149A inserted (27.7.1993) by [1993 c. 34, s.104](#)
- F238** 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\(4\)](#)
- F239** 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\(2\)](#)
- F240** 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\(3\)](#)
- F241** 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\(3\)](#)
- F242** 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>F243</sup> **149AA Restricted and convertible employment-related securities** **U.K.**

- (1) Where an individual has acquired an asset consisting of employment-related securities which are—
  - (a) restricted securities or a restricted interest in securities, or
  - (b) 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.
- (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 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).

[ In subsection (1) the reference to any amount that constituted earnings under Chapter  
<sup>F244</sup>(7) 1 of Part 3 of ITEPA 2003 does not include any amount of exempt income (within the meaning of section 8 of that Act). ]]

#### Textual Amendments

- F243** S. 149AA inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 52\(1\)](#)

*Status: Point in time view as at 21/07/2008.*

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**F244** S. 149AA(7) inserted (with effect in accordance with s. 49(9) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(1\)](#)

**[<sup>F245</sup>149AB Shares in research institution spin-out companies U.K.]**

- (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**

**F245** 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>F246</sup>149BE Employee incentive schemes: conditional interests in shares. U.K.]**

- (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>F247</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,
 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>F248</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>F249</sup>Chapter 2 of Part 7 of ITEPA 2003] have the same meanings in this section as in [<sup>F250</sup>that Chapter].
- [ This section does not apply to acquisitions on or after the day appointed under <sup>F251</sup>(5) 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.]]



*Status: Point in time view as at 21/07/2008.*

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### Textual Amendments

- F246** S. 149B inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 54\(5\)](#)
- F247** 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)
- F248** 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)
- F249** 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)
- F250** 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)
- F251** S. 149B(5)(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 53](#)

### [<sup>F252</sup>149C] Priority share allocations **U.K.**

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

- F252** 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. **U.K.**

- (1) In this section “relief” means relief under Chapter III of Part VII of the Taxes Act, Schedule 5 to the <sup>M19</sup>Finance Act 1983 (“the 1983 Act”) or Chapter II of Part IV of the <sup>M20</sup>Finance Act 1981 (“the 1981 Act”) and “eligible shares” has the meaning given by section 289(4) of the Taxes Act [<sup>F253</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].
- (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>F254</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>F255</sup>to], or

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- (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>M21</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>F256</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>F257</sup>shares in respect of which relief has been given and not withdrawn] disposed of by an individual to his or her spouse [<sup>F258</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>F259</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>F260</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>F261</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.
- (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>F262</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,

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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>F263</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>F264</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.]

#### Textual Amendments

**F253** Words in s. 150(1) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 29](#)

**F254** 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\(1\)\(a\)](#)

**F255** 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\(1\)\(b\)](#)

**F256** 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\(2\)](#)

**F257** 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\(3\)](#)

**F258** 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](#)

**F259** 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\(14\)](#)

**F260** S. 150(8A)-(8C) inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), s. [69](#)

**F261** 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\(14\)](#)

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- F262** 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)**
- F263** 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**
- F264** 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

- M19** 1983 c. 28.  
**M20** 1981 c. 35.  
**M21** 1981 c. 35.

#### [<sup>F265</sup>150A] Enterprise investment scheme. **U.K.**

- (1) For the purpose of determining the gain or loss on any disposal of <sup>F266</sup>... shares by an individual where—
- an amount of 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 relief.
- (2) Subject to subsection (3) below, if on any disposal of <sup>F267</sup>... shares by an individual after the end of the period referred to in section 312(1A)(a) of the Taxes Act [<sup>F268</sup>or section 159(2) of ITA 2007] where an amount of 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>F269</sup>(2A) disposal on which a loss accrues.]

- (3) Where—
- <sup>F270</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 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>F271</sup>basic 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—

$$\frac{AB}{AB}$$

- (4) Any question as to—
- (a) which of any shares [<sup>F272</sup>acquired by an individual at different times a disposal relates to], being shares to which relief is attributable, or
  - (b) whether a disposal relates to shares to which relief is attributable or to other shares,

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shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act [<sup>F273</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>F274</sup>Sections 104, 105 and 106A] shall not apply to shares to which relief is attributable.

[<sup>F275</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 relief is attributable and to which subsection (6A) below applies,
- (b) shares to which relief is attributable and to which that subsection does not apply, and
- (c) shares to which relief is not 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) 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,
- (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, 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 relief is attributable.

[ Subsection (8) above shall not have effect to disapply section 135 or 136 where—

- <sup>F276</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>F277</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>F278</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].

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(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>F279</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 relief is attributable are exchanged for other shares in  
<sup>F280</sup>(8D) circumstances such that section 304A of the Taxes Act [<sup>F281</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>F282</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 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>F283</sup> a way which is] just and reasonable, and
- (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 the relief being given or withdrawn.

[ In this section—

- <sup>F284</sup>(10A) “ordinary share capital” has [<sup>F285</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.]

(11) Chapter III of Part VII of the Taxes Act [<sup>F286</sup> or Part 5 of ITA 2007] (enterprise investment scheme) applies for the purposes of this section to determine whether relief is attributable to any shares and, if so, the amount of relief so attributable; and “eligible shares” has the same meaning as in that Chapter [<sup>F287</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.

**Status:** Point in time view as at 21/07/2008.

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[ References in this section to Part 5 of ITA 2007 or any provision of that Part are to a <sup>F288</sup>(13) Part or provision that applies only in relation to shares issued after 5 April 2007. ]

### Textual Amendments

- F265** S. 150A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 30](#)
- F266** 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\(14\)](#)
- F267** 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\(14\)](#)
- F268** 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)
- F269** 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\(2\)](#)
- F270** 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)
- F271** Words in s. 150A(3)(b) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 48](#)
- F272** 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\(2\)](#)
- F273** 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)
- F274** 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\(3\)](#)
- F275** 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\(4\)](#)
- F276** Ss. 150A(8A)-(8C) inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 2\(4\)](#)
- F277** 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\(14\)](#)
- F278** 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)
- F279** 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)
- F280** 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\(6\)](#)
- F281** 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)
- F282** 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)
- F283** 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](#)
- F284** 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\(7\)](#)
- F285** 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)
- F286** 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)
- F287** 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)
- F288** 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)

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**[<sup>F289</sup>150B Enterprise investment scheme: reduction of relief. U.K.]**

- (1) This section has effect where section 150A(2) applies on a disposal of <sup>F290</sup>... shares, and before the disposal but on or after 29th November 1994—
- (a) value is received in circumstances where relief attributable to the shares is reduced by an amount under section 300(1A)(a) of the Taxes Act [<sup>F291</sup>or section 213(2)(a) of ITA 2007],
  - (b) there is a repayment, redemption, repurchase or payment in circumstances where relief attributable to the shares is reduced by an amount under section 303(1A)(a) of [<sup>F292</sup>the 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 relief attributable to the shares is reduced as mentioned in subsection (1) above, and
  - (b) whose denominator is equal to the amount of the 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 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.
- (6) [<sup>F293</sup>Subsections (11) to (13)] of section 150A apply for the purposes of this section as they apply for the purposes of that section.]

**Textual Amendments**

**F289** S. 150B inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 3](#)

**F290** 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\(14\)](#)

**F291** 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](#))

**F292** 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](#))

**F293** 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](#))

**[<sup>F294</sup>150C Enterprise investment scheme: re-investment. U.K.]**

Schedule 5B to this Act (which provides relief in respect of re-investment under the enterprise investment scheme) shall have effect.]



*Status: Point in time view as at 21/07/2008.*

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### Textual Amendments

**F294** 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>F295</sup>150D Enterprise investment scheme: application of taper relief **U.K.**

### Textual Amendments

**F295** 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](#)

## 151 Personal equity plans. **U.K.**

- (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>F296</sup>(2) The provisions of Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans), except section 694(1) and (2), shall apply in relation to regulations made under subsection (1) as they apply to regulations made under section 694(1), but with the substitution for any reference to income tax of a reference to capital gains tax.]
- (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>F297</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
  - (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

**F296** 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](#))

**F297** S. 151(4) inserted (27.7.1993) by [1993 c. 34](#), [s.85](#)

### Modifications etc. (not altering text)

**C66** S. 151 extended (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 123\(7\)\(b\)](#)

## [<sup>F298</sup>151A Venture capital trusts: reliefs. **U.K.**

- (1) A gain or loss accruing to an individual on a qualifying disposal of any ordinary shares in a company which—
  - (a) was a venture capital trust at the time when he acquired the shares, and

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- (b) 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—
- (a) it is made by an individual who has attained the age of eighteen years;
  - (b) the shares disposed of were not acquired in excess of the permitted maximum for any year of assessment; and
  - (c) 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>F299</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)—
- (a) 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
  - (b) 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>F300</sup>as references 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>F301</sup>the meaning given in section 989 of ITA 2007]).

#### Textual Amendments

- F298** Ss. 151A, 151B inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 72\(3\)](#)
- F299** 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\(13\)](#)
- F300** 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 \(with Sch. 2\)](#)
- F301** Words in s. 151A(7) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 314 \(with Sch. 2\)](#)

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part IV is up to date with all changes known to be in force on or before 23 July 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)*

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

- C67** 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)**
- C68** 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. U.K.**

- (1) Sections 104, 105 and [<sup>F302</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>F303</sup>obtained] or is entitled to claim relief under [<sup>F303</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>F304</sup>obtained], or is entitled to claim, any relief under [<sup>F304</sup>that Chapter of that Part];
  - any shares in a venture capital trust by reference to which any person has [<sup>F305</sup>obtained], or is entitled to claim, any relief under [<sup>F305</sup>that Chapter of that Part] but which are not shares that are eligible for relief under section 151A(1); and
  - any shares in a venture capital trust that do not fall within any of paragraphs (a) to (c) above.
- (4) Where—
- an individual holds ordinary shares in a company (“the existing holding”),
  - 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
  - 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—
- the exchanged holding consists of shares falling within paragraph (a) or (b) of subsection (3) above; and
  - 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—

*Status: Point in time view as at 21/07/2008.*

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- (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>F306</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>F307</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>F308</sup>obtained] under [<sup>F308</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

- [<sup>F309</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

**F298** Ss. 151A, 151B inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 72\(3\)](#)

**F302** 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\(6\)](#)

**F303** 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](#))

**F304** 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](#))

**F305** 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](#))

**F306** 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](#))

**F307** 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\(6\)](#)

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**F308** 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](#))

**F309** 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)**

**C69** 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>F310</sup>**151B** **CITR: identification of securities or shares on a disposal** **U.K.**

- (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,
 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.

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- (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 Part 5 of Schedule 16 to the Finance Act 2002,
    - (ii) references to CITR being so attributable are to be read in accordance with paragraph 26 of that Schedule, and
    - (iii) references to securities, shares or debentures having been held by the investor continuously are to be read in accordance with paragraph 49 of that Schedule.]

#### Textual Amendments

**F310** S. 151BA inserted (6.4.2007) by *Income Tax Act 2007 (c. 3)*, s. 1034(1), **Sch. 1 para. 316** (with **Sch. 2**)

#### [<sup>F311</sup>151BB] CITR: rights issues etc **U.K.**

- (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

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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  
(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 paragraph 1(2) of Schedule 16 to the Finance Act 2002.]

#### Textual Amendments

**F311** S. 151BB inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 317](#) (with [Sch. 2](#))

### [<sup>F312</sup>151BCITR: company reconstructions etc U.K.]

- (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

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- (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  
(b) would be so treated but for section 137(1) (which restricts section 136 to genuine reconstructions).]

#### Textual Amendments

**F312** S. 151BC inserted (6.4.2007) by *Income Tax Act 2007 (c. 3)*, s. 1034(1), **Sch. 1 para. 318** (with **Sch. 2**)

#### [<sup>F313</sup>151C] Strips: manipulation of price: associated payment giving rise to loss **U.K.**

- (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



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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>F314</sup>section 840ZA] of the Taxes Act.

(6) This section applies to losses accruing on or after 17th March 2004.]

#### Textual Amendments

**F313** 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](#))

**F314** Words in s. 151C(5) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 319](#) (with [Sch. 2](#))

#### [<sup>F315</sup>**151D Corporate strips: manipulation of price: associated payment giving rise to loss** [U.K.](#)]

- (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 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>F316</sup>section 840ZA] of the Taxes Act.
- (6) This section applies to losses accruing on or after 6th April 2005.]

#### Textual Amendments

**F315** S. 151D inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 8](#)

**F316** Words in s. 151D(5) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 320](#) (with [Sch. 2](#))

**Status:**

Point in time view as at 21/07/2008.

**Changes to legislation:**

Taxation of Chargeable Gains Act 1992, Part IV is up to date with all changes known to be in force on or before 23 July 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.