



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART V

TRANSFER OF BUSINESS ASSETS

[^{F1}CHAPTER 1A

ROLL-OVER RELIEF ON RE-INVESTMENT

Textual Amendments

- F1** Ss. 164A-164N (Pt. V, Ch. 1A) inserted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by [1993 c. 34, s. 87, Sch. 7 Pt. II para.3](#)

164A Relief on re-investment for individuals.

- (1) Subject to the following provisions of this Chapter, roll-over relief under this section shall be available where—
- (a) a chargeable gain would (apart from this section) accrue to any individual (“the re-investor”) [^{F2}on any disposal by him of any asset (“the asset disposed of”); and]
 - (b) that individual acquires a qualifying investment at any time in the qualifying period.
- (2) ^{F3}.... Where roll-over relief under this section is available, the re-investor shall, on making a claim as respects the qualifying investment, be treated—
- (a) as if the consideration for the disposal of the [^{F4}asset disposed of] were reduced by whichever is the smallest of the following, that is to say—
 - (i) the amount of the chargeable gain which apart from this subsection would accrue on the disposal of the [^{F4}asset disposed of], so far as that amount has not already been held over by way of reductions under this subsection,

Status: Point in time view as at 29/11/1994.

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- (ii) the actual amount or value of the consideration for the acquisition of the qualifying investment,
 - (iii) in the case of a qualifying investment acquired otherwise than by a transaction at arm’s length, the market value of that investment at the time of its acquisition, and
 - (iv) the amount specified for the purposes of this subsection in the claim;
- and
- (b) as if the amount or value of the consideration for the acquisition of the qualifying investment were reduced by the amount of the reduction made under paragraph (a) above,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the [^{F4}asset disposed of] or of the other party to the transaction involving the qualifying investment.

[Where the chargeable gain referred to in subsection (1)(a) above is one which (apart ^{F5}(2A) from this section) would be deemed to accrue by virtue of section 116(10)(b)—

- (a) any reduction falling to be made by virtue of subsection (2)(a) above shall be treated as one made in the consideration mentioned in section 116(10)(a), instead of in the consideration for the disposal of the asset disposed of; but
- (b) if the disposal on which that gain is deemed to accrue is a disposal of only part of the new asset, it shall be assumed, for the purpose only of making a reduction affecting the amount of that gain—
 - (i) that the disposal is a disposal of the whole of a new asset,
 - (ii) that the gain accruing on that disposal relates to an old asset consisting in the corresponding part of what was in fact the old asset, and
 - (iii) that the corresponding part of the consideration deemed to be given for what was in fact the old asset is taken to be the consideration by reference to which the amount of that gain is computed;

and in this subsection “new asset” and “old asset” have the same meanings as in section 116.

(2B) Where a chargeable gain accrues in accordance with subsection (12) of section 116, this Chapter shall have effect—

- (a) as if that gain were a gain accruing on the disposal of an asset; and
- (b) in relation to that deemed disposal, as if references in this Chapter to the consideration for the disposal were references to the sum of money falling, apart from this Chapter, to be used in computing the gain accruing under that subsection.]

^{F6}(3)

^{F6}(4)

^{F6}(5)

^{F6}(6)

^{F6}(7)

[^{F7}(8) For the purposes of this section, a person who acquires any eligible shares in a qualifying company shall be regarded as acquiring a qualifying investment unless, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—

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- (a) is the company in which the initial holding subsisted, or
 - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the acquisition of the qualifying investment, a member of the same group of companies as the company in which the initial holding subsisted.]
- (9) For the purposes of this section the acquisition of a qualifying investment shall be taken to be in the qualifying period if, and only if, it takes place—
- (a) at any time in the period beginning 12 months before and ending 3 years after the disposal of the [^{F8}asset disposed of], or
 - (b) at such time before the beginning of that period or after it ends as the Board may by notice allow.
- (10) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied; and, without prejudice to the generality of this subsection, section 42(5) shall apply in relation to an adjustment under this section of the consideration for the acquisition of any shares as it applies in relation to an adjustment under any enactment to secure that neither a gain nor a loss accrues on a disposal.

^{F9}(11)

[^{F10}(12) Without prejudice to section 52(4), where consideration is given for the acquisition of any assets some of which are shares to the acquisition of which a claim under this section relates and some of which are not, the consideration shall be apportioned in such manner as is just and reasonable.]

Textual Amendments

- F2** Words in s. 164A(1)(a) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 2\(a\)](#)
- F3** Words in s. 164A(2) repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 2\(b\)](#), [Sch. 26 Pt. V\(7\)](#)
- F4** Words in s. 164A(2) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 2\(b\)](#)
- F5** S. 164A(2A)(2B) inserted (retrospectively) by [Finance Act 1996 \(c. 8\)](#), [s. 177](#)
- F6** Ss. 164A(3)-(7) repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 2\(c\)](#), [Sch. 26 Pt. V\(7\)](#)
- F7** S. 164A(8) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 7](#)
- F8** Words in s. 164A(9) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 2\(d\)](#)
- F9** S. 164A(11) repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 8](#), [Sch. 26 Pt. V\(7\)](#)
- F10** S. 164A(12) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 2\(e\)](#)

[^{F11}164B Roll-over relief on re-investment by trustees.

- (1) Subject to the following provisions of this section, section 164A shall apply, as it applies in such a case as is mentioned in subsection (1) of that section, where there is—
- (a) a disposal by the trustees of a settlement of any asset comprised in any settled property to which this section applies, and

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- (b) such an acquisition by those trustees of eligible shares in a qualifying company as would for the purposes of that section be an acquisition of a qualifying investment at a time in the qualifying period.
- (2) This section applies—
- (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
 - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals,
- and references in this section to individuals include any charity.
- (3) If, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property comprising that asset is property to which this section applies by virtue of subsection (2)(b) above but not all the beneficiaries are individuals, then—
- (a) only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of section 164A(2)(a)(i), and
 - (b) no reduction under section 164A(2) shall be made in respect of the whole or any part of the balance of the gain.
- (4) Section 164A shall not apply by virtue of this section in a case where, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property which comprises that asset is property to which this section applies by virtue of subsection (2)(a) above unless, immediately after the acquisition of shares mentioned in subsection (1)(b) above, the settled property comprising the shares is also property to which this section applies by virtue of subsection (2)(a) above.
- (5) Section 164A shall not apply by virtue of this section in a case where, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property which comprises that asset is property to which this section applies by virtue of subsection (2)(b) above unless, immediately after the acquisition of shares mentioned in subsection (1)(b) above—
- (a) the settled property comprising the shares is also property to which this section applies by virtue of subsection (2)(b) above, and
 - (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the asset mentioned in subsection (1)(a) above.
- (6) If, at any time, in the case of settled property to which this section applies by virtue of subsection (2)(b) above, both individuals and others have interests in possession, the relevant proportion at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—
- (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
 - (b) the total amount of all the income of the settled property.
- (7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this section shall apply as if—
- (a) the interests of the relevant beneficiaries were a single interest in possession, and
 - (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.

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(8) In this section references to interests in possession do not include interests for a fixed term.]]

Textual Amendments

F11 S. 164B substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 3](#)

[^{F12}164B] Interaction with retirement relief

- (1) The provisions of section 164A for making any reduction shall apply before any provisions for calculating the amount of, or giving effect to, any relief under section 163 or 164; and references in that section and this to a chargeable gain (except the second reference in subsection (4)(a) below) shall be construed accordingly.
- (2) Subsection (3) below applies where—
 - (a) any claim for relief is made under section 164A in respect of any chargeable gain, and
 - (b) apart from this Chapter, the whole or any part of that gain would be relieved under section 163 or 164.
- (3) For the purpose of giving relief under section 163 or 164, any reduction under section 164A shall be treated as having been made first against the unrelieved part of the chargeable gain; and only the amount (if any) which is equal to the unrelieved part of the chargeable gain after that reduction shall be treated as exceeding the amount available for relief.
- (4) For the purposes of this section—
 - (a) the unrelieved part of a chargeable gain is so much of that gain as, apart from this Chapter, would constitute a chargeable gain after the application of the appropriate paragraph of Schedule 6,
 - (b) “amount available for relief” has the same meaning as in the appropriate paragraph of that Schedule, and
 - (c) the “appropriate paragraph” means, as the case may be, paragraph 6, 7(1)(b) or 8(1)(b).]

Textual Amendments

F12 S. 164BA inserted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 8](#)

[^{F13}164C] Restriction applying to retirement relief and roll-over relief on re-investment.

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Textual Amendments

F13 Ss. 164C-164E repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 4](#), [Sch. 26 Pt. V\(7\)](#)

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^{F13}164D Relief carried forward into replacement shares.

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Textual Amendments

F13 Ss. 164C-164E repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 4](#), [Sch. 26 Pt. V\(7\)](#)

^{F13}164E Application of Chapter in cases of an exchange of shares.

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Textual Amendments

F13 Ss. 164C-164E repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 4](#), [Sch. 26 Pt. V\(7\)](#)

^{F1}164F Failure of conditions of relief.

^{F14}(1) This section shall apply where a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced, under section 164A or this section, by any amount (“the held-over gain”).]

(2) Subject to the following provisions of this section, if at any time in the relevant period—

- (a) the shares comprised in the acquired holding cease to be eligible shares,
- (b) the company in which the acquired holding subsists ceases to be a qualifying company,
- (c) the person who acquired the acquired holding becomes neither resident nor ordinarily resident in the United Kingdom, or
- (d) any of the shares comprised in the acquired holding are included in the original shares (within the meaning of sections 127 to 130) in the case of any transaction with respect to which section 116 has effect,

a chargeable gain equal to the appropriate proportion of the held-over gain shall be treated as accruing to that person immediately before that time or, in a case falling within paragraph (d) above, immediately before the disposal assumed for the purposes of section 116(10)(a).

(3) For the purposes of this section the appropriate proportion of the held-over gain is so much, if any, of that gain as has not already been ^{F15}charged on any disposal or under this section] or, in a case to which subsection (2) above applies by virtue of paragraph (d) of that subsection or in accordance with subsection (7) below, such part of that proportion of that gain as is just and reasonable having regard to the extent to which the acquired holding comprises the original shares.

^{F16}(4) For the purposes of this section the whole or a part of any held-over gain on the acquisition of the acquired holding shall be treated—

- (a) in accordance with subsection (4A) below as charged on any disposal in relation to which the whole or any part of the held-over gain falls to be taken

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- into account in determining the chargeable gain or allowable loss accruing on the disposal, and
- (b) as charged under this section so far as it falls to be disregarded in accordance with subsection (11) below.
- (4A) In the case of any such disposal as is mentioned in subsection (4)(a) above, the amount of the held-over gain charged on that disposal—
- (a) shall, except in the case of a part disposal, be the amount taken into account as so mentioned, and
- (b) in the case of a part disposal, shall be calculated by multiplying the following, that is to say—
- (i) so much of the amount of the held-over gain as has not already been charged on a previous disposal, and
- (ii) the fraction used in accordance with section 42(2) for determining, subject to any deductions in pursuance of this Chapter, the amount allowable as a deduction in the computation of the gain accruing on the disposal in question.]
- (5) Where the acquired holding or any asset treated as comprised in a single asset with the whole or any part of that holding has been disposed of under section 58 by the individual who acquired that holding to another person (“the spouse”)—
- (a) the spouse shall not (subject to the following provisions of this subsection) be treated for the purposes of this section as a person who has acquired eligible shares for a consideration which is treated as reduced under section 164A
F17
... ;
- (b) the disposal shall not be included in the disposals on which the whole or any part of the held-over gain may be treated as charged for the purposes of this section;
- (c) disposals by the spouse, as well as disposals by that individual, shall be taken into account for the purposes of [F18 subsections (4) and (4A) above];
- (d) any charge under subsection (2) above (other than one by virtue paragraph (c) of that subsection) shall be apportioned between that individual and the spouse according to the extent to which the appropriate proportion of the held-over gain would be charged on the disposal by each of them of their respective holdings (if any);
- (e) paragraph (c) of that subsection shall have effect as if the reference in that paragraph to that individual included a reference to the spouse;
- (f) a charge by virtue of that paragraph shall be imposed only on a person who becomes neither resident nor ordinarily resident in the United Kingdom; and
- (g) the amount of the charge imposed on any person by virtue of that paragraph shall be that part of the charge on the appropriate proportion of the held-over gain which would be apportioned to that person in a case to which paragraph (d) above applies.
- (6) Subject to subsection (7) below, where the qualifying company in which the acquired holding subsists ceases to be an unquoted company this section shall have effect as if the relevant period ended immediately before it so ceased.
- (7) Where there is a transaction by virtue of which any shares in a company are to be regarded under section 127 as the same asset as the acquired holding or the whole or any part of an asset comprising that holding, this section shall not apply by virtue of subsection (2)(a) or (b) above except where—

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- (a) those shares are not, or cease to be, eligible shares in that company;
 - (b) neither that company nor (if different) the company in which the acquired holding subsisted —
 - (i) is or continues to be a qualifying company; or
 - (ii) would be or continue to be a qualifying company if it were an unquoted company;
 - (c) the transaction is one by virtue of which the shares comprised in the acquired holding cease to be eligible shares in pursuance of section 164L; or
 - (d) there is a transaction by virtue of which any shares at any time comprised in the acquired holding would have so ceased in pursuance of that section.
- (8) This section shall not apply by virtue of subsection (2)(a) or (b) above where the company in which the acquired holding subsists is wound up or dissolved without winding up and—
- (a) it is shown that the winding up or dissolution is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax; and
 - (b) the company's net assets (if any) are distributed to its members or dealt with as bona vacantia before the end of the period of 3 years from the commencement of the winding up or, as the case may be, from the dissolution.
- (9) This section shall not apply by virtue of subsection (2)(c) above in relation to any person if—
- (a) the reason for his becoming neither resident nor ordinarily resident in the United Kingdom is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and
 - (b) he again becomes resident or ordinarily resident in the United Kingdom within the period of 3 years from the time when he ceases to be so, without having meanwhile disposed of any eligible shares in the company in question;
- and, accordingly, no assessment shall be made by virtue of subsection (2)(c) above before the end of that period in any case where the condition in paragraph (a) above is satisfied and the condition in paragraph (b) above may be satisfied.
- (10) For the purposes of subsection (9) above a person shall be taken to have disposed of an asset if there has been such a disposal as would, if the person making the disposal had been resident in the United Kingdom, have been a disposal on which ^{F19}... the whole or any part of the held-over gain would have been charged.

[Where (apart from this subsection) a chargeable gain of any amount would by virtue ^{F20}(10A) of subsection (2) above accrue to the person who acquired the acquired holding but, within the period mentioned in subsection (10B) below, that person acquires a qualifying investment (within the meaning of section 164A), that person shall, on making a claim as respects the qualifying investment, be treated—

- (a) as if the amount of the gain were reduced by whichever is the smallest of the following—
 - (i) the actual amount or value of the consideration for the acquisition of the qualifying investment,
 - (ii) in the case of a qualifying investment acquired otherwise than by a transaction at arm's length, the market value of that investment at the time of its acquisition,
 - (iii) the amount specified for the purposes of this subsection in the claim, and

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- (b) as if the amount or value of the consideration for the acquisition of the qualifying investment were reduced by the amount of the reduction made under paragraph (a) above;
- but paragraph (b) above shall not affect the treatment for the purposes of this Act of the other party to the transaction involving the qualifying investment.
- (10B) The period referred to in subsection (10A) above is the period (not including any period before the acquisition of the acquired holding) which begins 12 months before and ends 3 years after the time when the chargeable gain accrues or would but for that subsection accrue, together with any such further period after the disposal as the Board may by notice allow.]
- (11) Gains on disposals made after a chargeable gain has under this section been deemed to accrue in respect of the acquired holding to any person shall be computed as if so much of the held-over gain as is equal to the amount of the chargeable gain were to be disregarded.
- (12) In this section “the relevant period” means (subject to subsection (6) above) the period of 3 years after the acquisition of the acquired holding.

Textual Amendments

- F14** S. 164F(1) substituted (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(a\)](#)
- F15** Words in s. 164F(3) substituted (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(b\)](#)
- F16** S. 164F(4)(4A) substituted for s. 164F(4) (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(c\)](#)
- F17** Words in s. 164F(5)(a) repealed (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(d\)\(i\), Sch. 26 Pt. V\(7\)](#)
- F18** Words in s. 164F(5)(c) substituted (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(d\)\(ii\)](#)
- F19** Words in s. 164F(10) repealed (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(e\), Sch. 26 Pt. V\(7\)](#)
- F20** S. 164F(10A)(10B) inserted (with effect in accordance with s. 91(2), Sch. 11 para. 9(2)(3) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 9\(1\)\(f\)](#)

164G Meaning of “qualifying company”.

- (1) Subject to section 164H, a company is a qualifying company for the purposes of this Chapter if it complies with this section.
- (2) Subject to the following provisions of this section, a company complies with this section if it is—
- an unquoted company which exists wholly for the purpose of carrying on one or more qualifying trades or which so exists apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities;
 - an unquoted company whose business consists entirely in the holding of shares in or other securities of, or the making of loans to, one or more qualifying subsidiaries of the company; or
 - an unquoted company whose business consists entirely in—

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- (i) the holding of such shares or securities, or the making of such loans;
and
 - (ii) the carrying on of one or more qualifying trades.
- (3) A company does not comply with this section if—
- (a) it controls (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary or, without controlling it, has a 51 per cent. subsidiary which is not a qualifying subsidiary;
 - (b) it is under the control of another company (or of another company and a person connected with the other company) or, without being controlled by it, is a 51 per cent. subsidiary of another company; or
 - (c) arrangements are in existence by virtue of which the company could fall within paragraph (a) or (b) above;
- and in this subsection “51 per cent. subsidiary” has the meaning given by section 838 of the Taxes Act.
- (4) In this section “qualifying subsidiary”, in relation to a company (“the holding company”), means any company which is a member of a group of companies of which the holding company is the principal company, and of which each of the members, or each of the members other than the holding company, is a company falling within subsection (5) below.
- (5) A company falls within this subsection if—
- (a) it is such a company as is mentioned in subsection (2)(a) above;
 - (b) it exists wholly for the purpose of holding and managing property used by the holding company or any of the holding company’s other subsidiaries for the purposes of—
 - (i) research and development from which it is intended that a qualifying trade to be carried on by the holding company or any of those other subsidiaries will be derived, or
 - (ii) one or more qualifying trades so carried on;
 - (c) it would exist wholly for such a purpose apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities; or
 - (d) it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments.
- (6) Without prejudice to the generality of subsection (2) above or to section 164F(8), a company ceases to comply with this section if—
- (a) a resolution is passed, or an order is made, for the winding up of the company;
 - (b) in the case of a winding up otherwise than under the ^{M1}Insolvency Act 1986 or the ^{M2}Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose; or
 - (c) the company is dissolved without winding up.

Marginal Citations

M1 1986 c. 45.

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

Status: Point in time view as at 29/11/1994.

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164H Property companies etc. not to be qualifying companies.

- (1) For the purposes of this Chapter a company is not a qualifying company at any time when the value of the interests in land held by the company [^{F21}exceeds] half the value of the company's chargeable assets ^{F22}... [^{F23}or half the value of the company's assets as a whole (whichever is the greater); and section 294(3) and (4) of the Taxes Act (meaning of value of company's assets as a whole) applies for the purposes of this subsection as it applies for the purposes of section 294 of that Act].
- (2) For the purposes of this section the value of the interests in land held by a company at any time shall be arrived at by first aggregating the market value at that time of each of those interests and then deducting—
 - (a) the amount of any debts of the company which are secured on any of those interests (including any debt secured by a floating charge on property which comprises any of those interests);
 - (b) the amount of any unsecured debts of the company which do not fall due for payment before the end of the period of 12 months beginning with that time; and
 - (c) the amount paid up in respect of those shares of the company (if any) which carry a present or future preferential right to the company's assets on its winding up.
- (3) In this section “interest in land” means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other's ability to grant the estate, interest or right in question, except that it does not include—
 - (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land; or
 - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.
- (4) For the purposes of this section, the value of an interest in any building or other land shall be adjusted by deducting the market value of any machinery or plant which is so installed or otherwise fixed in or to the building or other land as, in law, to become part of it.
- (5) In arriving at the value of any interest in land for the purposes of this section—
 - (a) it shall be assumed that there is no source of mineral deposits in the land of a kind which it would be practicable to exploit by extracting them from underground otherwise than by means of opencast mining or quarrying; and
 - (b) any borehole on the land shall be disregarded if it was made in the course of oil exploration.
- (6) Where a company is a member of a partnership which holds any interest in land—
 - (a) that interest shall, for the purposes of this section, be treated as an interest in land held by the company; but
 - (b) its value at any time shall, for those purposes, be taken to be such fraction of its value (apart from this subsection) as is equal to the fraction of the assets of the partnership to which the company would be entitled if the partnership were dissolved at that time.
- (7) Where a company is a member of a group of companies all the members of the group shall be treated as a single company for the purposes of this section; but any debt owed

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by, or liability of, one member of the group to another shall be disregarded for those purposes.

Textual Amendments

- F21** Word in s. 164H(1) substituted (with effect in accordance with s. 91(4) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 91\(3\)\(a\)](#)
- F22** Words in s. 164H(1) repealed (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\), Sch. 11 para. 5, Sch. 26 Pt. V\(7\)](#)
- F23** Words in s. 164H(1) added (with effect in accordance with s. 91(4) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 91\(3\)\(b\)](#)

164I Qualifying trades.

- (1) For the purposes of this Chapter—
- (a) a trade is a qualifying trade if it complies with the requirements of this section; and
 - (b) the carrying on of any activities of research and development from which it is intended that a trade complying with those requirements will be derived shall be treated as the carrying on of a qualifying trade.
- (2) Subject to the following provisions of this section, a trade complies with this section if neither that trade nor a substantial part of it consists in one or more of the following activities, that is to say—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;
 - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;
 - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;
 - (d) leasing (including letting ships on charter or other assets on hire) or receiving royalties or licence fees;
 - (e) providing legal or accountancy services;
 - (f) providing services or facilities for any such trade carried on by another person as—
 - (i) consists, to a substantial extent, in activities within any of paragraphs (a) to (e) above; and
 - (ii) is a trade in which a controlling interest is held by a person who also has a controlling interest in the trade carried on by the company providing the services or facilities;
 - (g) property development;
 - (h) farming;
- but this subsection shall have effect in relation to a qualifying trade carried on by a member of a group of companies, as if the reference in paragraph (f) above to another person did not include a reference to the principal company of the group.
- (3) For the purposes of subsection (2)(b) above—
- (a) a trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption;

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- (b) a trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption; and
 - (c) a trade is not an ordinary trade of wholesale or retail distribution if—
 - (i) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or of that activity and any other activity of a kind falling within subsection (2) above, taken together; and
 - (ii) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.
- (4) In determining for the purposes of this Chapter whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features, that is to say—
- (a) the goods are bought by that person in quantities larger than those in which he sells them;
 - (b) the goods are bought and sold by that person in different markets;
 - (c) that person employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;
 - (d) there are purchases or sales from or to persons who are connected with that person;
 - (e) purchases are matched with forward sales or vice versa;
 - (f) the goods are held by that person for longer than is normal for goods of the kind in question;
 - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;
 - (h) that person does not take physical possession of the goods;
- and for the purposes of this subsection the features specified in paragraphs (a) to (c) above shall be regarded as indications that the trade is such an ordinary trade and those in paragraphs (d) to (h) above shall be regarded as indications of the contrary.
- (5) A trade shall not be treated as failing to comply with this section by reason only of its consisting, to a substantial extent, in receiving royalties or licence fees if—
- (a) the company carrying on the trade is engaged in—
 - (i) the production of films; or
 - (ii) the production of films and the distribution of films produced by it within the period of 3 years before their distribution;and
 - (b) all royalties and licence fees received by it are in respect of films produced by it within the preceding 3 years or sound recordings in relation to such films or other products arising from such films.
- (6) A trade shall not be treated as failing to comply with this section by reason only of its consisting, to a substantial extent, in receiving royalties or licence fees if—
- (a) the company carrying on the trade is engaged in research and development; and
 - (b) all royalties and licence fees received by it are attributable to research and development which it has carried out.

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- (7) A trade shall not be treated as failing to comply with this section by reason only of its consisting in letting ships, other than oil rigs or pleasure craft, on charter if—
- (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;
 - (b) every ship beneficially owned by the company is registered in the United Kingdom;
 - (c) the company is solely responsible for arranging the marketing of the services of its ships; and
 - (d) the conditions mentioned in subsection (8) below are satisfied in relation to every letting of a ship on charter by the company;

but where any of the requirements mentioned in paragraphs (a) to (d) above are not satisfied in relation to any lettings, the trade shall not thereby be treated as failing to comply with this section if those lettings and any other activity of a kind falling within subsection (2) above do not, when taken together, amount to a substantial part of the trade.

- (8) The conditions are that—
- (a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;
 - (b) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;
 - (c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;
 - (d) under the terms of the charter the company is responsible as principal—
 - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and
 - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period;
- and
- (e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) above on behalf of the company;

but this subsection shall have effect, in relation to any letting between a company and another company which is a member of the same group of companies as that company, as if paragraph (c) were omitted.

- (9) A trade shall not comply with this section unless it is conducted on a commercial basis and with a view to the realisation of profits.

164J Provisions supplementary to section 164I.

- (1) For the purposes of section 164I, in the case of a trade carried on by a company, a person has a controlling interest in that trade if—

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- (a) he controls the company;
- (b) the company is a close company and he or an associate of his is a director of the company and either—
 - (i) the beneficial owner of, or
 - (ii) able, directly or through the medium of other companies or by any other indirect means, to control,more than 30 per cent. of the ordinary share capital of the company; or
- (c) not less than half of the trade could in accordance with section 344(2) of the Taxes Act be regarded as belonging to him;

and, in any other case, a person has a controlling interest in a trade if he is entitled to not less than half of the assets used for, or of the income arising from, the trade.

- (2) For the purposes of subsection (1) above, there shall be attributed to any person any rights or powers of any other person who is an associate of his.
- (3) References in section 164I(2)(f) or subsection (1) above to a trade carried on by a person other than the company in question shall be construed as including references to any business, profession or vocation.
- (4) In this section “director” shall be construed in accordance with section 417(5) of the Taxes Act.

164K Foreign residents.

- (1) This Chapter shall not apply in relation to any person in respect of his acquisition of any eligible shares in a qualifying company if at the time when he acquires them he is neither resident nor ordinarily resident in the United Kingdom.
- (2) This Chapter shall not apply in relation to any person in respect of his acquisition of any eligible shares in a qualifying company if—
 - (a) though resident or ordinarily resident in the United Kingdom at the time when he acquires them, he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and
 - (b) by virtue of the arrangements, he would not be liable in the United Kingdom to tax on a gain arising on a disposal of those shares immediately after their acquisition.

164L Anti-avoidance provisions.

- (1) For the purposes of this Chapter an acquisition of shares in a qualifying company shall not be treated as an acquisition of eligible shares if the arrangements for the acquisition of those shares, or any arrangements made before their acquisition in relation to or in connection with the acquisition, include—
 - (a) arrangements with a view to the subsequent re-acquisition, exchange or other disposal of the shares;
 - (b) arrangements for or with a view to the cessation of the company’s trade or the disposal of, or of a substantial amount of, its chargeable business assets; or
 - (c) arrangements for the return of the whole or any part of the value of his investment to the individual acquiring the shares.
- (2) If, after any eligible shares in a qualifying company have been acquired by any individual, the whole or any part of the value of that individual’s investment is returned

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to him, those shares shall be treated for the purposes of this Chapter as ceasing to be eligible shares.

- (3) For the purposes of this section there shall be treated as being a return of the whole or a part of the value of the investment of an individual who is to acquire or has acquired any shares in a company if the company—
- (a) repays, redeems or repurchases any of its share capital or other securities which belong to that individual or makes any payment to him for giving up his right to any of the company's share capital or any security on its cancellation or extinguishment;
 - (b) repays any debt owed to that individual, other than a debt which was incurred by the company—
 - (i) on or after the acquisition of the shares; and
 - (ii) otherwise than in consideration of the extinguishment of a debt incurred before the acquisition of the shares;
 - (c) makes to that individual any payment for giving up his right to any debt on its extinguishment;
 - (d) releases or waives any liability of that individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
 - (e) provides a benefit or facility for that individual;
 - (f) disposes of an asset to that individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
 - (g) acquires an asset from that individual for a consideration which is or the value of which is more than the market value of the asset; or
 - (h) makes any payment to that individual other than a qualifying payment.
- (4) For the purposes of this section there shall also be treated as being a return of the whole or a part of the value of the investment of an individual who is to acquire or has acquired any shares in a company if—
- (a) there is a loan made by any person to that individual; and
 - (b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not acquired those shares or had not been proposing to do so.
- (5) For the purposes of this section a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (6) References in this section to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment, and references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.
- (7) References in this section to the making by any person of a loan to an individual include references—
- (a) to the giving by that person of any credit to that individual; and
 - (b) to the assignment or assignation to that person of any debt due from that individual.

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- (8) In this section “qualifying payment” means—
- (a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;
 - (b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or employee of that company;
 - (c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;
 - (d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;
 - (e) any payment for the supply of goods which does not exceed their market value;
 - (f) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;
 - (g) any reasonable and necessary remuneration which—
 - (i) is paid by any company for services rendered to that company in the course of a trade or profession; and
 - (ii) is taken into account in computing the profits or gains of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits or gains are assessed under that Schedule;
 - (h) a payment in discharge of an ordinary trade debt.
- (9) In this section—
- (a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit; and
 - (b) any reference to an individual includes a reference to an associate of his and any reference to a company includes a reference to a person connected with the company.
- (10) This section shall have effect in relation to the acquisition of shares by the trustees of a settlement as if references to the individual acquiring the shares were references to those trustees or [^{F24}any individual or charity by virtue of whose interest, at the time of the acquisition, section 164B applies to the settled property].
- [For the purposes of this Chapter, where—
- ^{F25}(10A) (a) a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced under this Chapter by any amount (“the held-over gain”), and
- (b) after that acquisition, he acquires eligible shares in a relevant company, he shall not be regarded in relation to his acquisition of those shares in the relevant company as acquiring a qualifying investment for the purposes of section 164A.
- (10B) For the purposes of subsection (10A) above a company is a relevant company if—
- (a) where that person has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which

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was a member of the same group of companies as that company at any time since the acquisition of the acquired holding,

- (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Chapter such that, without that or an equivalent claim, there would have been no held-over gain in relation to the acquired holding, or
- (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.]

(11) In this section—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;

[^{F26}“chargeable business asset”, in relation to any company, means a chargeable asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by—

- (a) the individual acquiring the shares,
- (b) any personal company of that individual,
- (c) a member of a trading group of which the holding company is a personal company of that individual, or
- (d) a partnership of which that individual is a member]; and

“ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given does not exceed six months and is not longer than that normally given to customers of the person carrying on the trade or business.

Textual Amendments

- F24** Words in s. 164L(10) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 6](#)
- F25** S. 164L(10A)(10B) inserted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 10\(a\)](#)
- F26** Words in s. 164L(11) substituted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 10\(b\)](#)

164M Exclusion of double relief.

Where a person acquires any shares in a company those shares shall not be eligible shares or, as the case may be, shall cease to be eligible shares if that person or any person connected with him has made or makes a claim for relief in relation to those shares under Chapter III of Part VII of the Taxes Act (business expansion scheme) [^{F27}but the reference in this section to that Chapter is to that Chapter as it applies in relation to shares issued before 1st January 1994].]

Textual Amendments

- F27** Words in s. 164M inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 31](#)

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[^{F28}164MA] Exclusion of double relief

If a person makes a claim for relief under Chapter III of Part VII of the Taxes Act (enterprise investment scheme) in respect of any shares, those shares shall not be, or be treated as ever having been, eligible shares]

Textual Amendments

F28 S. 164MA inserted (with effect in accordance with Sch. 15 para. 32(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 32(1)**

[^{F1}164N] Interpretation of Chapter 1A.

(1) In this Chapter—

“associate” has the meaning given in subsections (3) and (4) of section 417 of the Taxes Act, except that in those subsections, as applied for the purposes of this Chapter, “relative” shall not include a brother or sister;

“eligible shares” means (subject to sections 164L [^{F29}164M and 164MA]) any ordinary shares in a company which do not carry—

(a) any present or future preferential rights to dividends or to that company’s assets on its winding up; or

(b) any present or future preferential right to be redeemed;

“farming” has the same meaning as in the Taxes Act;

“film” means an original master negative of a film, an original master film disc or an original master film tape;

“oil exploration” means searching for oil (within the meaning of Chapter V of Part XII of the Taxes Act);

“oil rig” means any ship which is an offshore installation for the purposes of the ^{M3}Mineral Workings (Offshore Installations) Act 1971;

“ordinary share capital” has the meaning given by section 832(1) of the Taxes Act;

“ordinary shares” means shares forming part of a company’s ordinary share capital;

“pleasure craft” means any ship of a kind primarily used for sport or recreation;

“property development” means the development of land, by a company which has, or at any time has had, an interest in the land (within the meaning of section 164H), with the sole or main object of realising a gain from disposing of the land when developed;

“research and development” means any activity which is intended to result in a patentable invention (within the meaning of the ^{M4}Patents Act 1977) or in a computer program;

“sound recording” in relation to a film, means its sound track, original master audio disc or original master audio tape; and

“unquoted company” means a company none of the shares in or other securities of which are quoted on any recognised stock exchange or are dealt in on the Unlisted Securities Market.

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- [Every asset of a company is for the purposes of this Chapter a chargeable asset of that ^{F30}(1A) company at any time, except one on the disposal of which by the company at that time no gain accruing to the company would be a chargeable gain.]
- (2) Section 170 shall apply for the interpretation of sections 164G and 164I as it applies for the interpretation of sections 171 to 181.
 - (3) Subject to subsection (2) above, paragraph 1 of Schedule 6 shall have effect for the purposes of this Chapter as it has effect for the purposes of sections 163 and 164 and that Schedule.
 - (4) References in this Chapter to the reduction of an amount include references to its reduction to nil.]

Textual Amendments

- F29** Words in s. 164N(1) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 33](#)
- F30** [S. 164N\(1A\)](#) inserted (with effect in accordance with s. 91(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 11 para. 11](#)
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Marginal Citations

- M3** 1971 c. 61.
- M4** 1977 c. 37.

Status:

Point in time view as at 29/11/1994.

Changes to legislation:

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