# Taxation of Chargeable Gains Act 1992

**1992 CHAPTER 12**

## PART VI

COMPANIES, OIL, INSURANCE ETC.

## CHAPTER I

COMPANIES

*Groups of companies*

### 170 Interpretation of sections 171 to 181.

(1) This section has effect for the interpretation of sections 171 to 181 except in so far as the context otherwise requires, and in those sections—

(a) "profits" means income and chargeable gains, and

(b) "trade" includes "vocation", and includes also an office or employment.

Until 6th April 1993 paragraph (b) shall have effect with the addition at the end of the words "or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts".

(2) Except as otherwise provided—

(a) references to a company apply only to a company, as that expression is limited by subsection (9) below, which is resident in the United Kingdom;

(b) subsections (3) to (6) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;

(c) in applying the definition of "75 per cent. subsidiary" in section 838 of the Taxes Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and

(d) "group" and "subsidiary" shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.

(3) Subject to subsections (4) to (6) below—

(a) a company (referred to below and in sections 171 to 181 as the "principal company of the group") and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but

(b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.

(4) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.

(5) Where a company ("the subsidiary") is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (3)(b) above, the subsidiary may, where the requirements of subsection (3) above are satisfied, itself be the principal company of another group notwithstanding subsection (4) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.

(6) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of 2 or more groups (the principal company of each group being referred to below as the "head of a group"), it is a member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—

(a) it is a member of the group it would be a member of if, in applying subsection (3)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,

(b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,

(c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,

(d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act).

(7) For the purposes of this section and sections 171 to 181, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—

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

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

(8) Schedule 18 to the Taxes Act (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (6) and (7) above as if the references to subsection (7), or subsections (7) to (9), of section 413 of that Act were references to subsections (6) and (7) above and as if, in paragraph 1(4), the words from "but" to the end and paragraphs 5(3) **[**F1and 5B to 5E**]** and 7(1)(b) were omitted.

(9) For the purposes of this section and sections 171 to 181, references to a company apply only to—

(a) a company within the meaning of the M1Companies Act 1985 or the corresponding enactment in Northern Ireland, and

(b) a company which is constituted under any other Act or a Royal Charter or letters patent or (although resident in the United Kingdom) is formed under the law of a country or territory outside the United Kingdom, and

(c) a registered industrial and provident society within the meaning of section 486 of the Taxes Act; and

(d) a building society.

(10) For the purposes of this section and sections 171 to 181, a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a member of another group, the first group and the other group shall be regarded as the same, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

(11) For the purposes of this section and sections 171 to 181, the passing of a resolution or the making of an order, or any other act, for the winding-up of a member of a group of companies shall not be regarded as the occasion of that or any other company ceasing to be a member of the group.

(12) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the M2Transport Act 1962 and the new authorities within the meaning of the M3Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any 2 or more such bodies charged at different times with the same or related functions were members of a group.

(13) Subsection (12) shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter VI of Part XII of the Taxes Act.

(14) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within the meaning of section 9(1) of the M4Transport Act 1968 as if that Executive were a company within the meaning of those sections.

**Textual Amendments**

**F1** Words in s. 170(8) inserted (*retrosp.*) by 1992 c. 48, s. 24, Sch. 6 paras. 5, **10**

**Marginal Citations**

**M1** 1985 c. 6.
**M2** 1962 c. 46.
**M3** 1968 c. 73.
**M4** 1968 c. 73.

*Transactions within groups*

## 171 Transfers within a group: general provisions.

(1) Notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be treated, so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.

(2) Subsection (1) above shall not apply where the disposal is—

(a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or

(b) a disposal of redeemable shares in a company on the occasion of their redemption; or

(c) a disposal by or to an investment trust; or

(d) a disposal to a dual resident investing company; or

(e) a disposal to a company which, though resident in the United Kingdom—

(i) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition;

and the reference in subsection (1) above to a member of a group of companies disposing of an asset shall not apply to anything which under section 122 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in that section) from that company, whether or not involving a reduction of capital.

(3) Subsection (1) above shall not apply to a transaction treated by virtue of sections 127 and 135 as not involving a disposal by the company first mentioned in that subsection.

(4) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage

or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

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

**C1** S. 171 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

## 172 Transfer of United Kingdom branch or agency.

(1) Subject to subsections (3) and (4) below, subsection (2) below applies for the purposes of corporation tax on chargeable gains where—

(a) there is a scheme for the transfer by a company ("company A")—

(i) which is not resident in the United Kingdom, but

(ii) which carries on a trade in the United Kingdom through a branch or agency,

of the whole or part of the trade to a company resident in the United Kingdom ("company B"),

(b) company A disposes of an asset to company B in accordance with the scheme at a time when the 2 companies are members of the same group, and

(c) a claim in relation to the asset is made by the 2 companies within 2 years after the end of the accounting period of company B during which the disposal is made.

(2) Where this subsection applies—

(a) company A and company B shall be treated as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal, and

(b) section 25(3) shall not apply to the asset by reason of the transfer.

(3) Subsection (2) above does not apply where—

(a) company B, though resident in the United Kingdom,—

(i) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition, or

(b) company B is either a dual resident investing company or an investment trust.

(4) Subsection (2) above shall not apply unless any gain accruing to company A—

(a) on the disposal of the asset in accordance with the scheme, or

(b) where that disposal occurs after the transfer has taken place, on a disposal of the asset immediately before the transfer,

would be a chargeable gain and would, by virtue of section 10(3), form part of its profits for corporation tax purposes.

(5) In this section "company" and "group" have the meanings which would be given by section 170 if subsections (2)(a) and (9) of that section were omitted.

**Modifications etc. (not altering text)**
**C2** S. 172 excluded (27.7.1993) by 1993 c. 34, ss. 165(1), 169, **Sch. 17 para. 7(2)(b)**

## 173 Transfers within a group: trading stock.

(1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of section 161 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

## 174 Disposal or acquisition outside a group.

(1) Where there is a disposal of an asset acquired in relevant circumstances, section 41 shall apply in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in relevant circumstances.

(2) In subsection (1) above "relevant circumstances" means circumstances in which section **[**F2140A,**]**171 or 172 applied or in which section 171 would have applied but for subsection (2) of that section.

(3) Subsection (1) above shall not be taken as affecting the consideration for which an asset is deemed under section **[**F2140A,**]** 171 or 172 to be acquired.

(4) Schedule 2 shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

(5) Subsection (4) above does not apply where the asset was acquired on a disposal within section 171(2)(c).

**Textual Amendments**
**F2** Words in s. 174(2)(3) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(5)(a)(b)**

**Modifications etc. (not altering text)**
**C3** S. 174(1) modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras. 6(3)(6), **7**

## 175 Replacement of business assets by members of a group.

(1) Subject to subsection (2) below, for the purposes of sections 152 to 158 all the trades carried on by members of a group of companies shall, for the purposes of corporation tax on chargeable gains, be treated as a single trade (unless it is a case of one member of the group acquiring, or acquiring the interest in, the new assets from another or disposing of, or of the interest in, the old assets to another).

(2) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company or a company which, though resident in the United Kingdom—

(a) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of, or of the interest in, the new assets occurring immediately after the acquisition;

and in this subsection "the old assets" and "the new assets" have the same meanings as in section 152.

**[**[F3](2A) Section 152 shall apply where—

(a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies,

(b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and

(c) the claim is made by both companies,

as if both companies were the same person.

(2B) Section 152 shall apply where a company which is a member of a group of companies but is not carrying on a trade—

(a) disposes of assets (or an interest in assets) used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade, or

(b) acquires assets (or an interest in assets) taken into use, and used only, for those purposes,

as if the first company were carrying on that trade.

(2C) Section 152 shall not apply if the acquisition of, or of the interest in, the new assets—

(a) is made by a company which is a member of a group of companies, and

(b) is one to which any of the enactments specified in section 35(3)(d) applies.**]**

(3) Section 154(2) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).

(4) Subsection (2) above shall apply where the acquisition took place before 20th March 1990 and the disposal takes place within the period of 12 months beginning with the date of the acquisition or such longer period as the Board may by notice allow with the omission of the words from "or a company" to "the acquisition".

**Textual Amendments**

**F3** S. 175(2A)-(2C) inserted (retrospectively as respects s. 175(2A), with application in accordance with s. 48(5) of the amending Act as respects s. 175(2B)(2C)) by Finance Act 1995 (c. 4), **s. 48(1)**(3) (with s. 48(4)(5))

*Losses attributable to depreciatory transactions*

## 176 Depreciatory transactions within a group.

(1) This section has effect as respects a disposal of shares in, or securities of, a company ("the ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after 31st March 1982; and for this purpose "depreciatory transaction" means—

(a) any disposal of assets at other than market value by one member of a group of companies to another, or

(b) any other transaction satisfying the conditions of subsection (2) below,

except that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(2) The conditions referred to in subsection (1)(b) above are—

(a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and

(b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section 135 of the [M5]Companies Act 1985 shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.

(4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or, on appeal, the Commissioners concerned, to be just and reasonable having regard to the depreciatory transaction, but if the person making the ultimate disposal is not a member of that group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

(5) The inspector or the Commissioners shall make the decision under subsection (4) above on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after 31st March 1982 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 6 years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or, on appeal, the Commissioners concerned, to be just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal, but the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.

(7) For the purposes of this section—

(a) "securities" includes any loan stock or similar security whether secured or unsecured,

(b) references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group, and

(c) a "group of companies" may consist of companies some or all of which are not resident in the United Kingdom.

(8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 24(2) that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(9) In any case where the ultimate disposal is not one to which section 35(2) applies, the references above to 31st March 1982 shall be read as references to 6th April 1965.

**Modifications etc. (not altering text)**
**C4** S. 176 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 18(2)**

**Marginal Citations**
**M5** 1985 c. 6.

## 177 Dividend stripping.

(1) The provisions of this section apply where one company ("the first company") has a holding in another company ("the second company") and the following conditions are fulfilled—

(a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,

(b) that the first company is not a dealing company in relation to the holding,

(c) that a distribution is or has been made to the first company in respect of the holding, and

(d) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) Where this section applies in relation to a holding, section 176 shall apply, subject to subsection (3) below, in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section **[**F4140A,**]** 171 or 172 applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.

(3) The distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) This section shall be construed as one with section 176, and in any case where the ultimate disposal is not one to which section 35(2) applies, the reference in subsection (1)(c) above to a distribution does not include a distribution made before 30th April 1969.

(5) For the purposes of this section a company is "a dealing company" in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.

(6) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—

(a) a company's holdings of different classes in another company shall be treated as separate holdings, and

(b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(7) For the purposes of subsection (1) above—

(a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and

(b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,

and section 286 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words " or to acquire a holding in ".

**Textual Amendments**

**F4** Words in s. 177(2) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(6)**

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

**C5** S. 177: modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(1)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(3)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993, s. 169, Sch. 17 paras. 6(2); modified (27.7.1993 with applicaton as mentioned in s. 165(1)) by 1993 c. 34, **Sch. 17 paras. 6(3)**

VALID FROM 27/07/1993

**[177A [F5]Restriction on set-off of pre-entry losses.**

Schedule 7A to this Act (which makes provision in relation to losses accruing to a company before the time when it becomes a member of a group of companies and losses accruing on assets held by any company at such a time) shall have effect.**]**

**Textual Amendments**

**F5** S. 177A inserted (27.7.1993 with application as mentioned in s. 88(3)) by 1993 c. 34, **s. 88(1)**

*Companies leaving groups*

**178 Company ceasing to be member of group: pre-appointed day cases.**

(1) If a company ("the chargeable company") ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell within the period of 6 years ending with the time when the company ceases to be a member of the group; and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group **[**[F6]in consequence of another member of the group ceasing to exist**]**.

(2) Where 2 or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

(a) the asset, or

(b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the chargeable company shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Where, apart from subsection (5) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (5) and (6) below shall apply.

(5) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property

to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(6) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (4) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(7) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (5) above shall have effect as if the market value at that time had been that amount greater.

(8) For the purposes of this section—

(a) 2 or more companies are associated companies if, by themselves, they would form a group of companies,

(b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,

(c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(9) If any of the corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date when it becomes payable then—

(a) a company which on that date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and

(b) a company which owned the asset on that date, or when the chargeable company ceased to be a member of the group,

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 company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.

(10) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be

treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

**Textual Amendments**

**F6** Words in s. 178(1) substituted (*retrosp.*) by 1992 c. 48, **s. 25(1)**

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

**C6** S. 178 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I paras. 4(1)**
S. 178: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 5(2)**

## 179 Company ceasing to be member of group: post-appointed day cases.

(1) If a company ("the chargeable company") ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell within the period of 6 years ending with the time when the company ceases to be a member of the group; and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group **[**F7in consequence of another member of the group ceasing to exist**]**.

(2) Where 2 or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

(a) the asset, or

(b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

then, subject to subsection (4) below, the chargeable company shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the chargeable company on the sale referred to in subsection (3) above shall be treated as accruing to the chargeable company as follows—

(a) for the purposes for which the assumptions in section 409(2) of the Taxes Act (group relief) apply, it shall be assumed to accrue in the notional or actual accounting period which ends when the company ceases to be a member of the group; and

(b) subject to paragraph (a) above, it shall be treated as accruing immediately before the company ceases to be a member of the group.

(5) Where, apart from subsection (6) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member

of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (6) to (8) below shall apply.

(6) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(7) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (5) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(8) Any chargeable gain or allowable loss accruing to the company on that sale shall be treated as accruing at the relevant time.

(9) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (6) above shall have effect as if the market value at that time had been that amount greater.

(10) For the purposes of this section—

(a) 2 or more companies are associated companies if, by themselves, they would form a group of companies,

(b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,

(c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(11) If any corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date determined under subsection (12) below, then—

(a) a company which on that date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and

(b) a company which owned the asset on that date, or when the chargeable company ceased to be a member of the group,

may, at any time within 2 years from the date so determined, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover from the chargeable company a sum of that amount together with any interest paid by the company concerned under section 87A of the Management Act on that amount.

(12) The date referred to in subsection (11) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the chargeable company.

(13) Where under this section the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

**Textual Amendments**

**F7** Words in s. 179(1) substituted (*retrosp.*) by 1992 c. 48, **s. 25(1)**

**Commencement Information**

**I1** s. 179: 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

## 180 Transitional provisions.

(1) Subject to the following provisions of this section—

(a) section 178 has effect where the chargeable company referred to in section 178(4) ceases to be a member of the group in an accounting period beginning after 5th April 1992, but shall not apply where section 179 has effect, and

(b) section 179 has effect where the accounting period in which the chargeable company referred to in section 179(5) ceases to be a member of the group ends after such day as the Treasury by order appoint,

and in any case where section 178 or section 179 has effect in respect of tax for any accounting period, that section shall also have effect in respect of tax for earlier accounting periods, to the exclusion of the corresponding enactments repealed by this Act.

(2) Subject to subsection (1) above—

(a) section 178(5) to (7) apply where a company which apart from section 278(3C) of the [M6]Income and Corporation Taxes Act 1970 would by virtue of subsection (3) of that section have been treated as selling an asset (unless it has already been treated, by virtue of section 278(3C), as if it had sold the asset in question), and

(b) section 179(6) to (9) apply where a company which, apart from section 278(3C) of the [M7]Income and Corporation Taxes Act 1970 or section 178(4) of this Act, would by virtue of section 278(3) or section 178(3) have been treated as selling an asset (unless it has already been treated, by

virtue of section 278(3C) or section 178(4), as if it had sold the asset in question).

(3) Where by virtue of section 138(8) of the [M8]Finance Act 1989 a company which, by virtue of the substitution of the new definition for the old definition, ceased to be a member of a group at the beginning of 14th March 1989 was not treated as selling an asset at any time unless the conditions in section 138(9) became satisfied, then that company shall continue not to be treated as selling the asset at that time unless the conditions in subsection (4) below become satisfied, assuming for that purpose that the old definition applies.

(4) Those conditions are—

(a) that for the purposes of section 178 or 179 the company in question ceases at any time ("the relevant time") to be a member of the group referred to in subsection (3) above,

(b) that, at the relevant time, the company in question, or an associated company also leaving that group at that time, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets, and

(c) that the time of acquisition referred to in section 178(1) or 179(1) fell within the period of 6 years ending with the relevant time.

(5) Where, under any compromise or arrangement agreed to on any date before 14th March 1989 in pursuance of section 425 of the [M9]Companies Act 1985 and sanctioned by the court, one company acquires at any time, directly or indirectly, an interest in ordinary share capital of another company and immediately after that time—

(a) under the old definition the 2 companies are, by virtue of that acquisition, members of a group for the purposes of the group provisions, but

(b) the second company is not an effective 51 per cent. subsidiary of the first company,

subsection (6) below applies; and in that subsection those companies and any other members of the group are referred to as "relevant companies".

(6) In respect of the period beginning with the time of acquisition and ending with—

(a) the expiry of the 6 months beginning with the date of the agreement, or

(b) if earlier, the date when, under the old definition, the other company ceases for the purposes of the group provisions to be a member of the group referred to in subsection (5)(a) above,

the old definition shall apply in relation to the relevant companies for the purposes of the group provisions and, in relation to those companies, the reference in subsection (3) above to 14th March 1989 shall be read as a reference to the day following the end of that period.

(7) In subsections (3) to (6) above—

"arrangement" has the same meaning as in section 425 of the [M10]Companies Act 1985,

"effective 51 per cent. subsidiary" has the meaning given by section 170(7);

"group provisions" means sections 170 to 181 (excluding subsections (3) to (6) above);

"the new definition" means section 170; and

"the old definition" means section 272 of the [M11]Income and Corporation Taxes Act 1970 as it had effect on 13th March 1989,

and section 178(8) or 179(10) shall apply for the purposes of those subsections.

**Subordinate Legislation Made**

**P1** S. 180(1)(b): 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

**Marginal Citations**

**M6** 1970 c. 10.
**M7** 1970 c. 10.
**M8** 1989 c. 26.
**M9** 1985 c. 6.
**M10** 1985 c. 6.
**M11** 1970 c. 10.

## 181 Exemption from charge under 178 or 179 in the case of certain mergers.

(1) Subject to the following provisions of this section, neither section 178 nor section 179 shall apply in a case where—

(a) as part of a merger, a company ("company A") ceases to be a member of a group of companies ("the A group"); and

(b) it is shown that the merger was carried out for bona fide commercial reasons and that the avoidance of liability to tax was not the main or one of the main purposes of the merger.

(2) In this section "merger" means an arrangement (which in this section includes a series of arrangements)—

(a) whereby one or more companies ("the acquiring company" or, as the case may be, "the acquiring companies") none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A; and

(b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent. of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies; and

(c) in respect of which the conditions in subsection (4) below are fulfilled.

(3) For the purposes of subsection (2) above, a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in subsection (2)(c) above are—

(a) that not less than 25 per cent. by value of each of the interests acquired as mentioned in paragraphs (a) and (b) of subsection (2) above consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in subsection (2)(b), consists of a holding of share capital (of any description) or debentures or both; and

(b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(a) above is substantially the

same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(b) above; and

(c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (2)(a) above, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in subsection (2)(b) above;

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

(5) Notwithstanding the provisions of section 170(2)(a), references in this section to a company includes references to a company resident outside the United Kingdom.

*Restriction on indexation allowance for groups and associated companies*

**182 Disposals of debts.**

(1) Subject to subsection (3) below, where—

(a) there is a disposal by a company of a linked company debt on a security owed by another company, and

(b) the 2 companies are linked companies immediately before the disposal,

there shall be no indexation allowance on the disposal.

(2) Subject to subsection (3) below, where—

(a) there is a disposal by a company of a debt on a security owed by another company which is not a linked company debt on a security, and

(b) the 2 companies are linked companies immediately before the disposal,

then, in ascertaining any indexation allowance due on the disposal, RD as defined in section 54(1) shall be taken as the retail price index for the first month after the acquisition of the debt in which the 2 companies were linked companies (or, if later, March 1982).

(3) Where—

(a) there is a disposal by a company of a debt on a security owed by another company,

(b) the debt constituted or formed part of the new holding received by the company making the disposal on a reorganisation, and

(c) subsection (1) or (2) above would apply in relation to the disposal but for this subsection,

neither of those subsections shall apply in relation to the disposal, but any indexation allowance which, apart from this subsection, would be due on the disposal shall be reduced by such amount as appears to the inspector, or, on appeal, the Commissioners concerned, to be just and reasonable.

(4) For the purposes of this section a debt on a security owed by a company is a linked company debt on a security where immediately after its acquisition by the company making the disposal the 2 companies were linked companies.

(5) Where—

(a) there is a disposal by a company of a debt on a security owed by any person,

(b) the company and that person are not linked companies immediately before the disposal, and

(c) the debt was incurred by that person as part of arrangements involving another company being put in funds,

subsections (1) to (4) above shall have effect if and to the extent that they would if the debt were owed by that other company.

### 183 Disposals of shares.

(1) This section applies—

(a) where there is a disposal by a company of—

(i) a holding of redeemable preference shares of another company, or

(ii) a holding of shares, other than redeemable preference shares, of another company which has at all times consisted entirely of, or has at any time included, linked company shares, or

(b) where—

(i) there is a disposal by a company of a holding of shares of another company which is not a holding falling within paragraph (a) above,

(ii) the holding constituted or formed part of the new holding received by the company making the disposal on a reorganisation, and

(iii) but for section 127 that reorganisation (or in a case where the holding disposed of derives, in whole or in part, from assets which were original shares in relation to an earlier reorganisation, that reorganisation or any such earlier reorganisation) would have involved a disposal in relation to which section 182(1) would have applied or this section would have applied by virtue of paragraph (a) above,

if the 2 companies are linked companies immediately before the disposal.

(2) Where this section applies, any indexation allowance which, apart from this section, would be due on the disposal shall be reduced by such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.

(3) For the purposes of this section, shares of a company are linked company shares where—

(a) immediately after their acquisition by the company making the disposal the 2 companies were linked companies,

(b) their acquisition by the company making the disposal was wholly or substantially financed by one or more linked company loans or linked company funded subscriptions (or by a combination of such loans and subscriptions), and

(c) the sole or main benefit which might have been expected to accrue from that acquisition was the obtaining of an indexation allowance on a disposal of the shares.

(4) In subsection (3) above—

"linked company loan" means a loan made to the company making the disposal by another company where immediately after the acquisition of the shares by the company making the disposal the 2 companies were linked companies, and

"linked company funded subscription" means a subscription for shares in the company making the disposal by another company where—

(a) immediately after the acquisition of the shares by the company making the disposal those 2 companies were linked companies, and

(b) the subscription was wholly or substantially financed, either directly or indirectly, by one or more linked company subscription-financing loans.

(5) In subsection (4) above "linked company subscription-financing loan" means a loan made by a company to the subscribing company or any other company where immediately after the acquisition of the shares by the company making the disposal—

(a) the company making the loan, and

(b) the subscribing company, and

(c) where the company to which the loan was made was not the subscribing company, that company,

were linked companies.

### 184 Definitions and other provisions supplemental to sections 182 and 183.

(1) For the purposes of this section and sections 182 and 183 companies are linked companies if they are members of the same group or are associated with each other; and for the purposes of this section—

(a) "group" means a company which has one or more 51 per cent. subsidiaries together with that subsidiary or those subsidiaries (section 838 (meaning of 51 per cent. subsidiary) of the Taxes Act having effect for the purposes of this paragraph as for those of the Tax Acts), and

(b) 2 companies are associated with each other if one controls the other or both are under the control of the same person or persons (section 416(2) to (6) (meaning of control) of the Taxes Act having effect for the purposes of this paragraph as for those of Part XI of that Act).

(2) Where a disposal of a holding of shares follows one or more disposals of the same holding to which section **[**F8140A,**]** 171(1) or 172 applied, section 183(3) to (5) shall have effect as if the references to the company making the disposal were references to the company which last acquired the asset otherwise than on a disposal to which **[**F8one**]** of those sections applied.

(3) In section 183 "redeemable preference shares" means shares in a company which are described as such in the terms of their issue or which fulfil the condition in paragraph (a) below and either or both of the conditions in paragraphs (b) and (c) below—

(a) that, as against other shares in the company, they carry a preferential entitlement to a dividend or to any assets in a winding up or both;

(b) that, by virtue of the terms of their issue, the exercise of a right by any person or the existence of any arrangements, they are liable to be redeemed, cancelled or repaid, in whole or in part;

(c) that, by virtue of any arrangements—

(i) to which the company which issued the shares is a party, or

(ii) where that company and another company are linked companies at the time of the issue, to which that other company is a party,

the holder has a right to require another person to acquire the shares or is obliged in any circumstances to dispose of them or another person has a right or is in any circumstances obliged to acquire them;

and for the purposes of paragraph (a) above shares are to be treated as carrying a preferential entitlement to a dividend as against other shares if, by virtue of any arrangements, there are circumstances in which a minimum dividend will be payable on those shares but not on others.

(4) In sections 182 and 183 the expressions "reorganisation", "original shares" and "new holding" have the meanings given by section 126 except that, in a case where sections 127 and 128 apply in circumstances other than a reorganisation (within the meaning of section 126) by virtue of any other provision of Chapter II of Part IV those expressions shall be construed as they fall to be construed in sections 127 and 128 as they so apply.

(5) In this section and sections 182 and 183—

"holding", in relation to shares, means a number of shares which are to be regarded for the purposes of this Act as indistinguishab1e parts of a single asset,

"security" has the same meaning as in section 132.

**Textual Amendments**

**F8** Words in s. 184(2) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(7)(a)(b)**

*Non-resident and dual resident companies*

### 185 Deemed disposal of assets on company ceasing to be resident in U.K.

(1) This section and section 187 apply to a company if, at any time ("the relevant time"), the company ceases to be resident in the United Kingdom.

(2) The company shall be deemed for all purposes of this Act—

(a) to have disposed of all its assets, other than assets excepted from this subsection by subsection (4) below, immediately before the relevant time; and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Section 152 shall not apply where the company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and

(b) acquires the new assets, or its interest in those assets, after that time,

unless the new assets are excepted from this subsection by subsection (4) below.

(4) If at any time after the relevant time the company carries on a trade in the United Kingdom through a branch or agency—

(a) any assets which, immediately after the relevant time, are situated in the United Kingdom and are used in or for the purposes of the trade, or are used or held for the purposes of the branch or agency, shall be excepted from subsection (2) above; and

(b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (3) above;

and references in this subsection to assets situated in the United Kingdom include references to exploration or exploitation assets and to exploration or exploitation rights.

(5) In this section—

(a) "designated area", "exploration or exploitation activities" and "exploration or exploitation rights" have the same meanings as in section 276;

(b) "exploration or exploitation assets" means assets used or intended for use in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(c) "the old assets" and "the new assets" have the same meanings as in section 152;

and a company shall not be regarded for the purposes of this section as ceasing to be resident in the United Kingdom by reason only that it ceases to exist.

### 186 Deemed disposal of assets on company ceasing to be liable to U.K. taxation.

(1) This section and section 187 apply to a company if, at any time ("the relevant time"), the company, while continuing to be resident in the United Kingdom, becomes a company which falls to be regarded for the purposes of any double taxation relief arrangements—

(a) as resident in a territory outside the United Kingdom; and

(b) as not liable in the United Kingdom to tax on gains arising on disposals of assets of descriptions specified in the arrangements ("prescribed assets").

(2) The company shall be deemed for all purposes of this Act—

(a) to have disposed of all its prescribed assets immediately before the relevant time; and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Section 152 shall not apply where the new assets are prescribed assets and the company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and

(b) acquires the new assets, or its interest in those assets, after that time,

and in this section "the old assets" and "the new assets" have the same meanings as in section 152.

### 187 Postponement of charge on deemed disposal under section 185 or 186.

(1) If—

(a) immediately after the relevant time, a company to which this section applies by virtue of section 185 or 186 ("the company") is a 75 per cent. subsidiary of another company ("the principal company") which is resident in the United Kingdom; and

(b) the principal company and the company so elect, by notice given to the inspector within 2 years after that time,

this Act shall have effect in accordance with the following provisions.

(2) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(a) that disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses; and

(b) the whole of that gain shall be treated as not accruing to the company on that disposal but an equivalent amount ("the postponed gain") shall be brought into account in accordance with subsections (3) and (4) below.

(3) If at any time within 6 years after the relevant time the company disposes of any assets ("relevant assets") the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole or the appropriate proportion of the postponed gain so far as not already taken into account under this subsection or subsection (4) below.

In this subsection "the appropriate proportion" means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(4) If at any time after the relevant time—

(a) the company ceases to be a 75 per cent. subsidiary of the principal company on the disposal by the principal company of ordinary shares of the company;

(b) after the company has ceased to be such a subsidiary otherwise than on such a disposal, the principal company disposes of such shares; or

(c) the principal company ceases to be resident in the United Kingdom,

there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole of the postponed gain so far as not already taken into account under this subsection or subsection (3) above.

(5) If at any time—

(a) the company has allowable losses which have not been allowed as a deduction from chargeable gains; and

(b) a chargeable gain accrues to the principal company under subsection (3) or (4) above,

then, if and to the extent that the principal company and the company so elect by notice given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

(6) In this section—

"deemed disposal" means a disposal which, by virtue of section 185(2) or, as the case may be, section 186(2), is deemed to have been made;

"foreign assets" means any assets of the company which, immediately after the relevant time, are situated outside the United Kingdom and are used in or for the purposes of a trade carried on outside the United Kingdom;

"ordinary share" means a share in the ordinary share capital of the company;

"the relevant time" has the meaning given by section 185(1) or, as the case may be, section 186(1).

(7) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital is owned directly by that other company.

### 188 Dual resident companies: deemed disposal of certain assets.

(1) For the purposes of this section, a company is a dual resident company if it is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Where an asset of a dual resident company becomes a prescribed asset, the company shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time at which it became a prescribed asset, and

(b) immediately to have reacquired it,

at its market value at that time.

(3) Subsection (2) above does not apply where the asset becomes a prescribed asset on the company becoming a company which falls to be regarded as mentioned in subsection (1) above.

(4) In this section "prescribed asset", in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any 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.

*Recovery of tax otherwise than from tax-payer company*

### 189 Capital distribution of chargeable gains: recovery of tax from shareholder.

(1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or

(b) the distribution constitutes such a disposal of assets;

and that person is referred to below as "the shareholder".

(2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

(a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

(b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.

(3) The date referred to in subsection (2) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the company.

(4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.

(5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

(6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may be order appoint this section shall have effect—

(a) with the substitution for the words in subsection (3) after “above" of the words “ is the date when the tax becomes payable by the company ”; and

(b) with the omission of the words in subsection (4) from “together" to the end of the subsection.

(7) In this section “capital distribution” has the same meaning as in section 122.

**Commencement Information**

**I2** S. 189: 30.9.1993 appointed for the purposes of s. 189 by S.I. 1992/3066, **art. 2(2)(d)**

## 190 Tax on one member of group recoverable from another member.

(1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within 6 months from the date determined under subsection (2) below by the company, then, if the tax so assessed included any amount in respect of chargeable gains—

(a) a company which was at the time when the gain accrued the principal company of the group, and

(b) any other company which in any part of the period of 2 years ending with that time was a member of that group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset,

may at any time within 2 years from the date determined under subsection (2) below be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.

(2) The date referred to in subsection (1) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment is made on the company.

(3) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—

(a) from the company to which the chargeable gain accrued, or

(b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.

(4) Any reference in subsection (3) above to an amount of tax includes a reference to any interest paid under section 87A of the Management Act on that amount.

(5) Section 170 shall apply for the interpretation of this section as it applies for the interpretation of sections 171 to 181.

(6) In relation to any chargeable gains accruing in accounting periods ending on or before such day as the Treasury may by order appoint this section shall have effect—

(a) with the substitution for the words in subsection (2) after "above" of the words " is the date when the tax becomes payable by the company "; and

(b) with the omission of subsection (4).

**Commencement Information**

**I3** S. 190: 30.9.1993 appointed for the purposes of s. 190 by S.I. 1992/3066, **art. 2(2)(d)**

## 191 Tax on non-resident company recoverable from another member of group or from controlling director.

(1) This section applies where—

(a) a chargeable gain has accrued to a company not resident in the United Kingdom (the tax-payer company) on the disposal of an asset on or after 14th March 1989,

(b) the gain forms part of its chargeable profits for corporation tax purposes by virtue of section 10(3), and

(c) any of the corporation tax assessed on the company for the accounting period in which the gain accrued is not paid within 6 months from the time when it becomes payable.

(2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of corporation tax for the accounting period in which the chargeable gain accrued is finally determined, serve on any person to whom subsection (4) below applies a notice—

(a) stating the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued and the date when the tax became payable, and

(b) requiring that person to pay the relevant amount within 30 days of the service of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesser of—

(a) the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued, and

(b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(4) This subsection applies to the following persons—

(a) any company which is, or during the period of 12 months ending with the time when the gain accrued, was, a member of the same group as the tax-payer company, and

(b) any person who is, or during that period was, a controlling director of the tax-payer company or of a company which has, or within that period had, control over the tax-payer company.

This subsection shall have effect in any case where the gain accrued before 13th March 1990 with the substitution of " beginning with 14th March 1989 and " for "of 12 months".

(5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the tax-payer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(7) In this section—

"director", in relation to a company, has the meaning given by subsection (8) of section 168 of the Taxes Act (read with subsection (9) of that section) and includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act);

"group" has the meaning which would be given by section 170 if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.

*Demergers*

**192 Tax exempt distributions.**

(1) This section has effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by 2 or more companies not belonging to the same group or by 2 or more independent groups.

(2) Where a company makes an exempt distribution which falls within section 213(3)(a) of the Taxes Act—

(a) the distribution shall not be a capital distribution for the purposes of section 122; and

(b) sections 126 to 130 shall, with the necessary modifications, apply as if that company and the subsidiary whose shares are transferred were the same company and the distribution were a reorganisation of its share capital.

(3) Subject to subsection (4) below, neither section 178 nor 179 shall apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution.

(4) Subsection (3) does not apply if within 5 years after the making of the exempt distribution there is chargeable payment; and the time for making an assessment under section 178 or 179 by virtue of this subsection shall not expire before the end of 3 years after the making of the chargeable payment.

(5) In this section—

"chargeable payment" has the meaning given in section 214(2) of the Taxes Act;

"exempt distribution" means a distribution which is exempt by virtue of section 213(2) of that Act; and

"group" means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries.

(6) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—

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

(b) any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

## CHAPTER II

OIL AND MINING INDUSTRIES

*Oil exploration and exploitation*

### 193 Roll-over relief not available for gains on oil licences.

(1) A licence under the [M12]Petroleum (Production) Act 1934 or the [M13]Petroleum (Production) Act (Northern Ireland) 1964 is not and, subject to subsection (2) below, shall be assumed never to have been an asset falling within any of the classes in section 155.

(2) Nothing in subsection (1) above affects the determination of any Commissioners or the judgment of any court made or given before 14th May 1987.

**Marginal Citations**

**M12** 1934 c. 36.

**M13** 1964 c. 28 (N.I.).

### 194 Disposals of oil licences relating to undeveloped areas.

(1) In this section any reference to a disposal (including a part disposal) is a reference to a disposal made by way of a bargain at arm's length.

(2) If, at the time of the disposal, the licence relates to an undeveloped area, then, to the extent that the consideration for the disposal consists of—

(a) another licence which at that time relates to an undeveloped area or an interest in another such licence, or

(b) an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the licence disposed of,

the value of that consideration shall be treated as nil for the purposes of this Act.

(3) If the disposal of a licence which, at the time of the disposal, relates to an undeveloped area is part of a larger transaction under which one party makes to another disposals of 2 or more licences, each of which at the time of the disposal relates to an undeveloped area, the reference in subsection (2)(b) above to the licensed area in relation to the licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those 2 or more licences.

(4) In relation to a disposal of a licence which, at the time of the disposal, relates to an undeveloped area, being a disposal—

(a) which is a part disposal of the licence in question, and

(b) part but not the whole of the consideration for which falls within paragraph (a) or paragraph (b) of subsection (2) above,

section 42 shall not apply unless the amount or value of the part of the consideration which does not fall within one of those paragraphs is less than the aggregate of the amounts which, if the disposal were a disposal of the whole of the licence rather than a part disposal, would be—

(i) the relevant allowable expenditure, as defined in section 53; and

(ii) the indexation allowance on the disposal.

(5) Where section 42 has effect in relation to such a disposal as is referred to in subsection (4) above, it shall have effect as if, for subsection (2) thereof, there were substituted the following subsection—

"(2) The apportionment shall be made by reference to—

(a) the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

(b) the aggregate referred to in section 194(4) on the other hand (call that aggregate C),

and the fraction of the said sums allowable as a deduction in computing the amount of the gain (if any) accruing on the disposal shall be—

$$\frac{A}{C}$$

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

## 195 Allowance of certain drilling expenditure etc.

(1) On the disposal of a licence, relevant qualifying expenditure incurred by the person making the disposal—

(a) in searching for oil anywhere in the licensed area, or

(b) in ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the licensed area or what the reserves of oil of any such oil-bearing area are,

shall be treated as expenditure falling within section 38(1)(b).

(2) Expenditure incurred as mentioned in subsection (1) above is relevant expenditure if, and only if—

(a) it is expenditure of a capital nature on scientific research; and

(b) either it was allowed or allowable under section 137 of the 1990 Act (capital expenditure on scientific research) for a relevant chargeable period which, or the basis year for which, began before the date of the disposal or it would have been so allowable if the trading condition had been fulfilled; and

(c) the disposal is an occasion by virtue of which section 138 of the 1990 Act (termination of user of assets representing scientific research expenditure of a capital nature) applies in relation to the expenditure or would apply if the trading condition had been fulfilled and the expenditure had been allowed accordingly.

(3) In subsection (2) above and subsection (4) below, the expression "if the trading condition had been fulfilled" means, in relation to expenditure of a capital nature on scientific research, if, after the expenditure was incurred but before the disposal concerned was made, the person incurring the expenditure had set up and commenced a trade connected with that research; and in subsection (2)(b) above—

"relevant chargeable period" has the same meaning as in section 137 of the 1990 Act; and

"basis year" has the same meaning as in subsection (6)(c) of that section.

(4) Relevant expenditure is qualifying expenditure only to the extent that it does not exceed the trading receipt which, by reason of the disposal—

(a) is treated as accruing under section 138(2) of the 1990 Act; or

(b) would be treated as so accruing if the trading condition had been fulfilled and the expenditure had been allowed accordingly.

(5) On the disposal of a licence, sections 37 and 41 shall apply in relation to any such trading receipt as is mentioned in subsection (4)(a) above as if it were a balancing charge falling to be made by reference to the disposal.

(6) Where, on the disposal of a licence, subsection (1) above has effect in relation to any relevant qualifying expenditure which had not in fact been allowed or become allowable as mentioned in subsection (2)(b) above—

(a) no allowance shall be made in respect of that expenditure under section 137 of the 1990 Act; and

(b) no deduction shall be allowed in respect of it under section 138(3) of that Act.

(7) Where, on the disposal of a licence which is a part disposal, subsection (1) above has effect in relation to any relevant qualifying expenditure, then, for the purposes of section 42, that expenditure shall be treated as wholly attributable to what is disposed of (and, accordingly, shall not be apportioned as mentioned in that section).

### 196 Interpretation of sections 194 and 195.

(1) For the purposes of section 194, a licence relates to an undeveloped area at any time if—

(a) for no part of the licensed area has consent for development been granted to the licensee by the Secretary of State on or before that time; and

(b) for no part of the licensed area has a programme of development been served on the licensee or approved by the Secretary of State on or before that time.

(2) Subsections (4) and (5) of section 36 of the [M14]Finance Act 1983 (meaning of "development") shall have effect in relation to subsection (1) above as they have effect in relation to subsection (2) of that section.

(3) In relation to a licence under the [M15]Petroleum (Production) Act (Northern Ireland) 1964 any reference in subsection (1) above to the Secretary of State shall be construed as a reference to the Department of Economic Development.

(4) In relation to a disposal to which section 194 applies of a licence under which the buyer acquires an interest in the licence only so far as it relates to part of the licensed area, any reference in subsection (1) or subsection (3) of that section or subsection (1) above to the licensed area shall be construed as a reference only to that part of the licensed area to which the buyer's acquisition relates.

**[**[F9](5) In sections 194 and 195 and this section—

"foreign oil concession" means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;

"interest" in relation to a licence, includes, where there is an agreement which—

(a) relates to oil from the whole or any part of the licensed area, and

(b) was made before the extraction of the oil to which it relates,

any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;

"licence" means any UK licence or foreign oil concession;

"licensed area" (subject to subsection (4) above)—

(a) in relation to a UK licence, has the same meaning as in Part I of the [M16]Oil Taxation Act 1975; and

(b) in relation to a foreign oil concession, means the area to which the concession applies;

"licensee"—

(a) in relation to a UK licence, has the same meaning as in Part I of the Oil Taxation Act 1975; and

(b) in relation to a foreign oil concession, means the person with the concession or any person having an interest in it;

"oil"—

(a) except in relation to a UK licence, means any petroleum (within the meaning of the [M17]Petroleum (Production) Act 1934); and

(b) in relation to such a licence, has the same meaning as in Part I of the Oil Taxation Act 1975;

"overseas petroleum" means any oil that exists in its natural condition at a place to which neither the [M18]Petroleum (Production) Act 1934 nor the [M19]Petroleum (Production) Act (Northern Ireland) 1964 applies; and

"UK licence" means a licence within the meaning of Part I of the [M20]Oil Taxation Act 1975.

(5A) References in sections 194 and 195 to a part disposal of a licence shall include references to the disposal of any interest in a licence.**]**

(6) In section 194—

(a) "exploration work", in relation to any area, means work carried out for the purpose of searching for oil anywhere in that area;

(b) "appraisal work", in relation to any area, means work carried out for the purpose of ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the area concerned or what the reserves of oil of any such oil-bearing area are.

**Textual Amendments**

**F9** S. 196(5)(5A) substituted for s. 196(5) (retrospectively and with effect in accordance with s. 181(4)(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 181(3)**

**Marginal Citations**

**M14** 1983 c. 28.
**M15** 1964 c. 28 (N.I.).
**M16** 1975 c. 22.
**M17** 1934 c. 36.
**M18** 1934 c. 36.
**M19** 1964 c. 28 (N.I.).
**M20** 1975 c. 22.

## 197 Disposals of interests in oil fields etc: ring fence provisions.

(1) This section applies where in pursuance of a transfer by a participator in an oil field of the whole or part of his interest in the field, there is—

(a) a disposal of an interest in oil to be won from the oil field; or

(b) a disposal of an asset used in connection with the field;

and section 12 of the [M21]Oil Taxation Act 1975 (interpretation of Part I of that Act) applies for the interpretation of this subsection and the reference to the transfer by a participator in an oil field of the whole or part of his interest in the field shall be construed in accordance with paragraph 1 of Schedule 17 to the [M22]Finance Act 1980.

(2) In this section "material disposal" means—

(a) a disposal falling within paragraph (a) or paragraph (b) of subsection (1) above; or

(b) the sale of an asset referred to in section 178(3) or 179(3) where the asset was acquired by the chargeable company (within the meaning of that section) on a disposal falling within one of those paragraphs.

(3) For any chargeable period in which a chargeable gain or allowable loss accrues to any person ("the chargeable person") on a material disposal (whether taking place in that period or not), subject to subsection (6) below there shall be aggregated—

(a) the chargeable gains accruing to him in that period on such disposals, and

(b) the allowable losses accruing to him in that period on such disposals,

and the lesser of the 2 aggregates shall be deducted from the other to give an aggregate gain or, as the case may be, an aggregate loss for that chargeable period.

(4) For the purposes of tax in respect of chargeable gains—

(a) the several chargeable gains and allowable losses falling within paragraphs (a) and (b) of subsection (3) above shall be left out of account; and

(b) the aggregate gain or aggregate loss referred to in that subsection shall be treated as a single chargeable gain or allowable loss accruing to the chargeable person in the chargeable period concerned on the notional disposal of an asset; and

(c) if in any chargeable period there is an aggregate loss, then, except as provided by subsection (5) below, it shall not be allowable as a deduction against any chargeable gain arising in that or any later period, other than an aggregate gain treated as accruing in a later period by virtue of paragraph (b) above (so that the aggregate gain of that later period shall be reduced or extinguished accordingly); and

(d) if in any chargeable period there is an aggregate gain, no loss shall be deducted from it except in accordance with paragraph (c) above; and

(e) without prejudice to any indexation allowance which was taken into account in determining an aggregate gain or aggregate loss under subsection (3) above, no further indexation allowance shall be allowed on a notional disposal referred to in paragraph (b) above.

(5) In any case where—

(a) by virtue of subsection (4)(b) above, an aggregate loss is treated as accruing to the chargeable person in any chargeable period, and

(b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

the whole, or such portion as is specified in the claim, of the aggregate loss shall be treated for the purposes of this Act as an allowable loss arising in that chargeable period otherwise than on a material disposal.

(6) In any case where a loss accrues to the chargeable person on a material disposal made to a person who is connected with him—

(a) the loss shall be excluded from those referred to in paragraph (b) of subsection (3) above and, accordingly, shall not be aggregated under that subsection; and

(b) except as provided by subsection (7) below, section 18 shall apply in relation to the loss as if, in subsection (3) of that section, any reference to a disposal were a reference to a disposal which is a material disposal; and

(c) to the extent that the loss is set against a chargeable gain by virtue of paragraph (b) above, the gain shall be excluded from those referred to in paragraph (a) of subsection (3) above and, accordingly, shall not be aggregated under that subsection.

(7) In any case where—

(a) the losses accruing to the chargeable person in any chargeable period on material disposals to a connected person exceed the gains accruing to him in that chargeable period on material disposals made to that person at a time when they are connected persons, and

(b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

the whole, or such part as is specified in the claim, of the excess referred to in paragraph (a) above shall be treated for the purposes of section 18 as if it were a

loss accruing on a disposal in that chargeable period, being a disposal which is not a material disposal and which is made by the chargeable person to the connected person referred to in paragraph (a) above.

(8) Where a claim is made under subsection (5) or subsection (7) above, all such adjustments shall be made whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the operation of that subsection.

**Marginal Citations**

**M21** 1975 c. 22.

**M22** 1980 c. 48.

## 198 Replacement of business assets used in connection with oil fields.

(1) If the consideration which a person obtains on a material disposal is applied, in whole or in part, as mentioned in subsection (1) of section 152 or 153, that section shall not apply unless the new assets are taken into use, and used only, for the purposes of the ring fence trade.

(2) Subsection (1) above has effect notwithstanding subsection (8) of section 152.

(3) Where section 152 or 153 applies in relation to any of the consideration on a material disposal, the asset which constitutes the new assets for the purposes of that section shall be conclusively presumed to be a depreciating asset, and section 154 shall have effect accordingly, except that—

(a) the reference in subsection (2)(b) of that section to a trade carried on by the claimant shall be construed as a reference solely to his ring fence trade; and

(b) subsections (4) to (7) of that section shall be omitted.

(4) In any case where sections 152 to 154 have effect in accordance with subsections (1) to (3) above, the operation of section 175 shall be modified as follows—

(a) only those members of a group which actually carry on a ring fence trade shall be treated for the purposes of those sections as carrying on a single trade which is a ring fence trade; and

(b) only those activities which, in relation to each individual member of the group, constitute its ring fence trade shall be treated as forming part of that single trade.

(5) In this section—

(a) "material disposal" has the meaning assigned to it by section 197; and

(b) "ring fence trade" means a trade consisting of either or both of the activities mentioned in paragraphs (a) and (b) of subsection (1) of section 492 of the Taxes Act.

## 199 Exploration or exploitation assets: deemed disposals

(1) Where an exploration or exploitation asset which is a mobile asset ceases to be chargeable in relation to a person by virtue of ceasing to be dedicated to an oil field in which he, or a person connected with him, is or has been a participator, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when it ceased to be so dedicated, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Where a person who is not resident and not ordinarily resident in the United Kingdom ceases to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of this Act—

(a) to have disposed immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency of every asset to which subsection (3) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at that time.

(3) This subsection applies to any exploration or exploitation asset, other than a mobile asset, used in or for the purposes of the trade at or before the time of the deemed disposal.

(4) A person shall not be deemed by subsection (2) above to have disposed of an asset if, immediately after the time when he ceases to carry on the trade in the United Kingdom through a branch or agency, the asset is used in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area.

(5) Where in a case to which subsection (4) above applies the person ceases to use the asset in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when he ceased to use it in or for the purposes of such activities, and

(b) immediately to have reacquired it,

at its market value at that time.

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

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3).

(7) In this section—

(a) "exploration or exploitation asset" means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(b) "designated area" and "exploration or exploitation activities" have the same meanings as in section 276; and

(c) the expressions "dedicated to an oil field" and "participator" shall be construed as if this section were included in Part I of the [M23]Oil Taxation Act 1975.

**Marginal Citations**
**M23** 1975 c. 22.

## 200 Limitation of losses on disposal of oil industry assets held on 31st March 1982.

(1) This section applies to a disposal of an oil industry asset where the following conditions are fulfilled—

(a) the person making the disposal held the asset on 31st March 1982 or, by virtue of paragraph 1 of Schedule 3, is treated as having held the asset on that date for the purposes of section 35;

(b) disregarding the following provisions of this section, for the purposes of this Act, a loss would accrue on the disposal; and

(c) in the application of section 35 subsection (2) of that section does not apply because of the operation of subsection (3)(b) of that section.

(2) For the purposes of this section, the following are "oil industry assets"—

(a) a licence under the [M24]Petroleum (Production) Act 1934 or the [M25]Petroleum (Production) Act (Northern Ireland) 1964;

(b) shares falling within paragraph 7(2)(d) of Schedule 3;

(c) oil exploration or exploitation assets, which expression shall be construed, subject to subsection (3) below, in accordance with paragraph 7(5) and (6) of Schedule 3; and

(d) any interest in an asset falling within paragraphs (a) to (c) above.

(3) In the application of paragraph 7(5)(b) of Schedule 3 for the purposes of subsection (2)(c) above, for the words from "the company whose shares" to "that company" there shall be substituted " the person making the disposal or a person connected with him ".

(4) Where this section applies to a disposal, there shall be determined for the purposes of this section the loss or gain which would accrue on the disposal on the following assumptions—

(a) that section 35(2) continues not to apply on the disposal; and

(b) that, in calculating the indexation allowance on the disposal, section 55(1) does not apply;

and in the following provisions of this section the loss or gain (if any) on the disposal, determined on those assumptions, is referred to as the non-rebased loss or, as the case may be, the non-rebased gain.

(5) If there is a non-rebased loss on a disposal to which this section applies and that loss is less than the loss which accrues on the disposal as mentioned in subsection (1)(b) above, it shall be assumed for the purposes of this Act that the loss which accrues on the disposal is the non-rebased loss.

(6) If there is a non-rebased gain on a disposal to which this section applies, it shall be assumed for the purposes of this Act that the oil industry asset concerned was acquired by the person making the disposal for a consideration such that, on the disposal, neither a gain nor a loss accrues to him.

(7) If, on the determination referred to in subsection (4) above, there is neither a non-rebased loss nor a non-rebased gain on a disposal, subsection (6) above shall apply in relation to the disposal as if there were a non-rebased gain on the disposal.

**Marginal Citations**
**M24** 1934 c. 36.
**M25** 1964 c. 28 (N.I.).

*Mineral leases*

### 201 Royalties.

(1) A person resident or ordinarily resident in the United Kingdom who in any chargeable period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated for the purposes of this Act as if there accrued to him in that period a chargeable gain equal to one-half of the total of the mineral royalties receivable by him under that lease or agreement in that period.

(2) This section shall have effect notwithstanding any provision of section 119(1) of the Taxes Act making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D, but without prejudice to any provision of that section providing for any such royalties to be subject to deduction of income tax under section 348 or 349 of that Act.

(3) The amount of the chargeable gain treated as accruing to any person by virtue of subsection (1) above shall, notwithstanding any other provision of this Act, be the whole amount calculated in accordance with that subsection, and, accordingly, no reduction shall be made on account of expenditure incurred by that person or of any other matter whatsoever.

(4) In any case where, before the commencement of section 122 of the Taxes Act, for the purposes of the 1979 Act or corporation tax on chargeable gains a person was treated as if there had accrued to him in any chargeable period ending before 6th April 1988 a chargeable gain equal to the relevant fraction, determined in accordance with section 29(3)(b) of the [M26]Finance Act 1970, of the total of the mineral royalties receivable by him under that lease or agreement in that period, subsection (1) above shall have effect in relation to any mineral royalties receivable by him under that lease or agreement in any later chargeable period with the substitution for the reference to one-half of a reference to the relevant fraction as so determined.

**Marginal Citations**
**M26** 1970 c.24.

### 202 Capital losses.

(1) This section has effect in relation to capital losses which accrue during the currency of a mineral lease or agreement, and applies in any case where, at the time of the occurrence of a relevant event in relation to a mineral lease or agreement, the person who immediately before that event occurred was entitled to receive mineral royalties under the lease or agreement ("the taxpayer") has an interest in the land to which the mineral lease or agreement relates ("the relevant interest").

(2) For the purposes of this section, a relevant event occurs in relation to a mineral lease or agreement—

(a) on the expiry or termination of the mineral lease or agreement;

(b) if the relevant interest is disposed of, or is treated as having been disposed of by virtue of any provision of this Act.

(3) On the expiry or termination of a mineral lease or agreement the taxpayer shall, if he makes a claim in that behalf, be treated for purposes of tax in respect of chargeable gains as if he had disposed of and immediately reacquired the relevant interest for a consideration equal to its market value, but a claim may not be made under this subsection—

(a) if the expiry or termination of the mineral lease or agreement is also a relevant event falling within subsection (2)(b) above; nor

(b) unless, on the notional disposal referred to above, an allowable loss would accrue to the taxpayer.

(4) In this section "the terminal loss", in relation to a relevant event in respect of which a claim is made under subsection (3) above, means the allowable loss which accrues to the taxpayer by virtue of the notional disposal occurring on that relevant event by virtue of that subsection.

(5) On making a claim under subsection (3) above, the taxpayer shall specify whether he requires the terminal loss to be dealt with in accordance with subsection (6) or subsections (9) to (11) below.

(6) Where the taxpayer requires the loss to be dealt with in accordance with this subsection it shall be treated as an allowable loss accruing to him in the chargeable period in which the mineral lease or agreement expires.

(7) If on the occurrence of a relevant event falling within subsection (2)(b) above, an allowable loss accrues to the taxpayer on the disposal or notional disposal which constitutes that relevant event, the taxpayer may make a claim under this subsection requiring the loss to be dealt with in accordance with subsections (9) to (11) below and not in any other way.

(8) In subsections (9) to (11) below "the terminal loss" in relation to a relevant event in respect of which a claim is made under subsection (7) above means the allowable loss which accrues to the taxpayer as mentioned in that subsection.

(9) Where, as a result of a claim under subsection (3) or (7) above, the terminal loss is to be dealt with in accordance with this subsection, then, subject to subsection (10) below, it shall be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for chargeable periods preceding that in which the relevant event giving rise to the terminal loss occurred and falling wholly or partly within the period of 15 years ending with the date of that event.

(10) The amount of the terminal loss which, by virtue of subsection (9) above, is to be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for any chargeable period shall not exceed the amount of the gain which in that period was treated, by virtue of section 201(1), as accruing to the taxpayer in respect of mineral royalties under the mineral lease or agreement in question; and subject to this limit any relief given to the

taxpayer by virtue of subsection (9) above shall be given as far as possible for a later rather than an earlier chargeable period.

(11) If in any case where relief has been given to the taxpayer in accordance with subsections (9) and (10) above there remains an unexpended balance of the terminal loss which cannot be applied in accordance with those subsections, there shall be treated as accruing to the taxpayer in the chargeable period in which the relevant event occurs an allowable loss equal to that unexpended balance.

### 203 Provisions supplementary to sections 201 and 202.

(1) Subsections (5) to (7) of section 122 of the Taxes Act (meaning of "minerals" etc.) shall apply for the interpretation of this section and sections 201 and 202 as they apply for the interpretation of that section.

(2) No claim under section 202(3) or (7) shall be allowed unless it is made within 6 years from the date of the relevant event by virtue of which the taxpayer is entitled to make the claim.

(3) All such repayments of tax shall be made as may be necessary to give effect to any such claim.

## CHAPTER III

INSURANCE

### 204 Policies of insurance.

(1) The rights of the insurer under any policy of insurance shall not constitute an asset on the disposal of which a gain may accrue, whether the risks insured relate to property or not; and the rights of the insured under any policy of insurance of the risk of any kind of damage to, or the loss or depreciation of, assets shall constitute an asset on the disposal of which a gain may accrue only to the extent that those rights relate to assets on the disposal of which a gain may accrue or might have accrued.

(2) Notwithstanding subsection (1) above, sums received under a policy of insurance of the risk of any kind of damage to, or the loss or depreciation of, assets are for the purposes of this Act, and in particular for the purposes of section 22, sums derived from the assets.

(3) Where any investments or other assets are or have been, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder on or after 6th April 1967, the policy holder's acquisition of the assets and the disposal of them to him shall be deemed to be, for the purposes of this Act, for a consideration equal to the market value of the assets.

(4) In subsections (1) and (2) above "policy of insurance" does not include a policy of assurance on human life and in subsection (3) "life assurance business" and "insurance company" have the same meaning as in Chapter I of Part XII of the Taxes Act.

### 205 Disallowance of insurance premiums as expenses.

Without prejudice to the provisions of section 39, there shall be excluded from the sums allowable as a deduction in the computation of the gain accruing on the disposal of an asset any premiums or other payments made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

### 206 Underwriters.

(1) An underwriting member of Lloyd's shall, subject to the following provisions of this section, be treated for the purposes of this Act as absolutely entitled as against the trustees to the investments of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.

(2) The trustees of any premiums trust fund shall, subject to subsections (3) and (4) below, be assessed and charged to capital gains tax as if subsection (1) above had not been passed.

(3) Tax assessed by virtue of subsection (2) above for a year of assessment shall be assessed at a rate equivalent to the basic rate of income tax for the year; and if an assessment to tax at a higher rate is subsequently made on an underwriting member in respect of the same gains, an appropriate credit shall be given for the tax assessed on the trustees.

(4) The assessment to be made on the trustees of a fund by virtue of subsection (2) above for any year of assessment shall not take account of losses accruing in any previous year of assessment, and if for that or any other reason the tax paid on behalf of an underwriting member for any year of assessment by virtue of assessments so made exceeds the capital gains tax for which he is liable, the excess shall, on a claim by him, be repaid.

(5) For the purposes of subsections (2) to (4) above the underwriting agent may be treated as a trustee of the premiums trust fund.

### 207 Disposal of assets in premiums trust fund etc.

(1) Subject to subsection (6) below, the chargeable gains or allowable losses accruing on the disposal of assets forming part of a premiums trust fund shall be taken to be those allocated to the corresponding underwriting year.

(2) The amount of the gains or losses so allocated at the end of any accounting period shall be such proportion of the difference mentioned in subsection (3) below as is allocated to the underwriting year under the rules or practice of Lloyd's.

(3) That difference is the difference between the valuations at the beginning and at the end of the accounting period of the assets forming part of the fund, the value at the beginning of the period of assets acquired during the period being taken as the cost of acquisition and the value at the end of the period of assets disposed of during the period being taken as the consideration for the disposal.

(4) Subsection (5) below applies where the following state of affairs exists at the beginning of an accounting period or the end of an accounting period—

(a) securities have been transferred after 18th August 1989 by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2) of the Taxes Act (stock lending),

(b) the transfer was made to enable another person to fulfil a contract or to make a transfer,

(c) securities have not been transferred in return, and

(d) the transfer made by the trustees constitutes a disposal which by virtue of section 271(9) is to be disregarded as there mentioned.

(5) The securities transferred by the trustees shall be treated for the purposes of subsection (3) above as if they formed part of the premiums trust fund at the beginning concerned or the end concerned (as the case may be).

(6) Subsections (1) to (3) above do not apply to gilt-edged securities and qualifying corporate bonds.

### 208 Premiums trust funds: indexation.

Sections 53 to 57, 104, 108, 109, 110, 113, 114, 131 and 145 shall apply with any necessary modifications in relation to assets forming part of a premiums trust fund as they apply in relation to other assets, and for the purposes of the application of those sections in accordance with this section, it shall be assumed—

(a) that assets forming part of a fund are disposed of and immediately reacquired on the last day of each accounting period; and

(b) that the indexation allowance computed for that accounting period is allocated to the corresponding underwriting year in the same proportion as the gains or losses referred to in section 207(2).

### 209 Interpretation, regulations about underwriters etc.

(1) Expressions used in this section or sections 206 to 208 and in sections 450 to 456 of the Taxes Act (Lloyds underwriters) have the same meanings as they have for the purposes of sections 450 to 456.

(2) The Board may by regulations provide—

(a) for the assessment and collection of tax charged in accordance with section 207;

(b) for modifying the provisions of that section in relation to syndicates continuing for more than 2 years after the end of an underwriting year;

(c) for giving credit for foreign tax.

(3) Subsection (4) below applies in the case of any provision of the Tax Acts, the Management Act, this Act or any other enactment relating to capital gains tax, which imposes a time limit for making a claim or an election or an application.

(4) The Board may by regulations provide that where the claim or election or application falls to be made by an underwriting member of Lloyd's or his spouse (or both) the provision shall have effect as if it imposed such longer time limit as is specified in the regulations.

(5) Regulations under subsection (4) above may make different provision for different provisions or different purposes.

(6) Regulations under subsection (2) or (4) above may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year (including years earlier than 1992-93), but regulations under subsection (2) may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made.

### 210 Life assurance and deferred annuities.

(1) This section has effect as respects any policy of assurance or contract for a deferred annuity on the life of any person.

(2) No chargeable gain shall accrue on the disposal of, or of an interest in, the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interest for a consideration in money or money's worth.

(3) Subject to subsection (2) above, the occasion of—

(a) the payment of the sum or sums assured by a policy of assurance, or

(b) the transfer of investments or other assets to the owner of a policy of assurance in accordance with the policy,

and the occasion of the surrender of a policy of assurance, shall be the occasion of a disposal of the rights under the policy of assurance.

(4) Subject to subsection (2) above, the occasion of the payment of the first instalment of a deferred annuity, and the occasion of the surrender of the rights under a contract for a deferred annuity, shall be the occasion of a disposal of the rights under the contract for a deferred annuity and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to that and further instalments of the annuity.

### 211 Transfers of business.

(1) This section applies where there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under section 49 of the [M27]Insurance Companies Act 1982.

(2) Subject to subsection (3) below, where this section applies section 139 shall not be prevented from having effect in relation to any asset included in the transfer by reason that—

(a) the transfer is not part of a scheme of reconstruction or amalgamation,

(b) the condition in paragraph (c) of subsection (1) of that section is not satisfied, or

(c) the asset is within subsection (2) of that section;

and where section 139 applies by virtue of paragraph (a) above the references in subsection (5) of that section to the reconstruction or amalgamation shall be construed as references to the transfer.

(3) Section 139 shall not have effect in relation to an asset by virtue of subsection (2) above unless—

(a) any gain accruing to the transferor—

(i) on the disposal of the asset in accordance with the scheme, or

(ii) where that disposal occurs after the transfer of business has taken place, on a disposal of the asset immediately before that transfer, and

(b) any gain accruing to the transferee on a disposal of the asset immediately after its acquisition in accordance with the scheme,

would be a chargeable gain which would form part of its profits for corporation tax purposes (and would not be a gain on which, under any double taxation relief arrangements, it would not be liable to tax).

**Marginal Citations**

**M27** 1982 c. 50.

## 212 Annual deemed disposal of holdings of unit trusts etc.

(1) Where at the end of an accounting period the assets of an insurance company's long term business fund include—

(a) rights under an authorised unit trust, or

(b) relevant interests in an offshore fund,

then, subject to the following provisions of this section and to section 213, the company shall be deemed for the purposes of corporation tax on capital gains to have disposed of and immediately reacquired each of the assets concerned at its market value at that time.

(2) Subsection (1) above shall not apply to assets linked solely to pension business or to assets of the overseas life assurance fund, and in relation to other assets (apart from assets linked solely to basic life assurance and general annuity business) shall apply only to the relevant chargeable fraction of each class of asset.

(3) For the purposes of subsection (2) above "the relevant chargeable fraction" in relation to linked assets is the fraction of which—

(a) the denominator is the mean of such of the opening and closing long term business liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked assets, other than assets linked solely to basic life assurance and general annuity business or pension business and assets of the overseas life assurance fund; and

(b) the numerator is the mean of such of the opening and closing liabilities within paragraph (a) above as are liabilities of business the profits of which are not charged to tax under Case I or Case VI of Schedule D (disregarding section 85 of the [M28]Finance Act 1989).

(4) For the purposes of subsection (2) above "the relevant chargeable fraction" in relation to assets other than linked assets is the fraction of which—

(a) the denominator is the aggregate of—

(i) the mean of the opening and closing long term business liabilities, other than liabilities in respect of benefits to be determined by reference to the value of linked assets and liabilities of the overseas life assurance business, and

(ii) the mean of the opening and closing amounts of the investment reserve; and

(b) the numerator is the aggregate of—

(i) the mean of such of the opening and closing liabilities within paragraph (a) above as are liabilities of business the profits of which are not charged to tax under Case I or Case VI of Schedule D (disregarding section 85 of the [M29]Finance Act 1989), and

(ii) the mean of the appropriate parts of the opening and closing amounts of the investment reserve.

(5) For the purposes of this section an interest is a "relevant interest in an offshore fund" if—

(a) it is a material interest in an offshore fund for the purposes of Chapter V of Part XVII of the Taxes Act, or

(b) it would be such an interest if the shares and interests excluded by subsections (6) and (8) of section 759 of that Act were limited to shares or interests in trading companies.

(6) For the purposes of this section the amount of an investment reserve and the "appropriate part" of it shall be determined in accordance with section 432A(8) and (9) of the Taxes Act.

(7) In this section "trading company" means a company—

(a) whose business consists of the carrying on of insurance business, or the carrying on of any other trade which does not consist to any extent of dealing in commodities, currency, securities, debts or other assets of a financial nature, or

(b) whose business consists wholly or mainly of the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries;

and in this section and sections 213 and 214 other expressions have the same meanings as in Chapter I of Part XII of the Taxes Act.

(8) Subject to section 214, this section shall have effect in relation to accounting periods beginning on or after 1st January 1991 or, where the Treasury by order appoint a later day, in relation to accounting periods beginning on or after that day (and not in relation to any earlier accounting period, even if the order is made after 1st January 1991 and the period has ended before it is made).

**Modifications etc. (not altering text)**
**C7** S. 212 modified (31.7.1992) by S.I. 1992/1655, **arts. 1**,21

**Marginal Citations**
**M28** 1989 c. 26.
**M29** 1989 c. 26.

## 213 Spreading of gains and losses under section 212.

(1) Any chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of section 212 to have been made at the end of a company's accounting period shall be treated as not accruing to it, but instead—

(a) there shall be ascertained the difference ("the net amount") between the aggregate of those gains and the aggregate of those losses, and

(b) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company at the end of the accounting period, and

(c) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing at the end of each succeeding accounting period until the whole amount has been accounted for.

(2) For any accounting period of less than one year, the fraction of one-seventh referred to in subsection (1)(c) above shall be proportionately reduced; and where this subsection has had effect in relation to any accounting period before the last for which subsection (1)(c) above applies, the fraction treated as accruing at the end of that last accounting period shall also be adjusted appropriately.

(3) Where—

(a) the net amount for an accounting period of an insurance company represents an excess of gains over losses,

(b) the net amount for one of the next 6 accounting periods (after taking account of any reductions made by virtue of this subsection) represents an excess of losses over gains,

(c) there is (after taking account of any such reductions) no net amount for any intervening accounting period, and

(d) within 2 years after the end of the later accounting period the company makes a claim for the purpose in respect of the whole or part of the net amount for that period,

the net amounts for both the earlier and the later period shall be reduced by the amount in respect of which the claim is made.

(4) Subject to subsection (5) below, where a company ceases to carry on long term business before the end of the last of the accounting periods for which subsection (1)(c) above would apply in relation to a net amount, the fraction of that amount that is treated as accruing at the end of the accounting period ending with the cessation shall be such as to secure that the whole of the net amount has been accounted for.

(5) Where there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under section 49 of the [M30]Insurance Companies Act 1982, any chargeable gain or allowable loss which (assuming that the transferor had continued to carry on the business transferred) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.

(6) Where subsection (5) above has effect, the amount of the gain or loss accruing at the end of the first accounting period of the transferee ending after the day when the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.

(7) Where the transfer is of part only of the transferor's long term business, subsection (5) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.

(8) Any question arising as to the operation of subsection (7) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

(9) It is hereby declared that amounts to which section 47(1)(b) and (c) of the [M31]Finance Act 1990 applied immediately before the commencement of this section shall continue to be subject to the provisions of this section (with any necessary modifications).

**Marginal Citations**

**M30** 1982 c. 50.

**M31** 1990 c. 29.

## 214 Transitional provisions.

(1) In this section—

(a) "section 212 assets" means rights under authorised unit trusts and relevant interests in offshore funds which are assets of a company's long term business fund;

(b) "linked section 212 assets" means section 212 assets which are linked assets;

(c) "relevant linked liabilities", in relation to a company, means such of the liabilities of its basic life assurance and general annuity business as are liabilities in respect of benefits under pre-commencement policies or contracts, being benefits to be determined by reference to the value of linked assets;

(d) "pre-commencement policies or contracts" means—

(i) policies issued in respect of insurances made before 1st April 1990, and

(ii) annuity contracts made before that date,

but excluding policies or annuity contracts varied on or after that date so as to increase the benefits secured or to extend the term of the insurance or annuity (any exercise of rights conferred by a policy or annuity contract being regarded for this purpose as a variation);

(e) "basic life assurance and general annuity business" means life assurance business, other than pension business and overseas life assurance business.

(2) The assets which are to be regarded for the purposes of this section as linked solely to an insurance company's basic life assurance and general annuity business at any time before the first accounting period of the company which begins on or after 1st January 1992 are all the assets which at that time—

(a) are or were linked solely to the company's basic life assurance business or general annuity business, or

(b) although not falling within paragraph (a) above, would be, or would have been, regarded as linked solely to the company's basic life assurance business, were its general annuity business treated as forming, or having at all times formed, part of its basic life assurance business and as not being a separate category of business.

(3) Where within 2 years after the end of an accounting period an insurance company makes a claim for the purpose in relation to the period, section 212(1) shall not apply at the end of the period to so much of any class of linked assets as it would otherwise apply to and as represents relevant linked liabilities.

(4) For the purposes of subsection (3) above assets of any class shall be taken to represent relevant linked liabilities only to the extent that their value does not exceed the fraction set out in subsection (5) below of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of assets of that class.

(5) The fraction referred to in subsection (4) above is—

$$\frac{AyCy110}{ByDy100}$$

where—

A is the amount at the end of 1989 of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets;

B is the amount of the company's relevant linked liabilities at that time;

C is the amount of the company's relevant linked liabilities at the end of the accounting period for which the claim is made;

D is the amount at the end of that period of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets.

(6) Subject to subsection (7) below, subsection (9) below applies where—

(a) after the end of 1989 an insurance company exchanges section 212 assets ("the old assets") for other assets ("the new assets") to be held as assets of the long term business fund,

(b) the new assets are not section 212 assets but are assets on the disposal of which any gains accruing would be chargeable gains,

(c) both the old assets and the new assets are linked solely to basic life assurance and general annuity business, or both are neither linked solely to basic life assurance and general annuity business or pension business nor assets of the overseas life assurance fund, and

(d) the company makes a claim for the purpose within 2 years after the end of the accounting period in which the exchange occurs.

(7) Subsection (6) above shall have effect in relation to old assets only to the extent that their amount, when added to the amount of any assets to which subsection (9) below has already applied and which are assets of the same class, does not exceed the aggregate of—

(a) the amount of the assets of the same class included in the long term business fund at the beginning of 1990, other than assets linked solely to pension business and assets of the overseas life assurance fund, and

(b) 110 per cent. of the amount of the assets of that class which represents any subsequent increases in the company's relevant linked liabilities in respect of benefits to be determined by reference to the value of assets of that class.

(8) The reference in subsection (7)(b) above to a subsequent increase in liabilities is a reference to any amount by which the liabilities at the end of an accounting period ending after 31st December 1989 exceed those at the beginning of the period (or at

the end of 1989 if that is later); and for the purposes of that provision the amount of assets which represents an increase in liabilities is the excess of—

(a) the amount of assets whose value at the later time is equivalent to the liabilities at that time, over

(b) the amount of assets whose value at the earlier time is equivalent to the liabilities at that time.

(9) Where this subsection applies, the insurance company (but not any other party to the exchange) shall be treated for the purposes of corporation tax on capital gains as if the exchange had not involved a disposal of the old assets or an acquisition of the new, but as if the old and the new assets were the same assets acquired as the old assets were acquired.

(10) References in subsections (6) to (9) above to the exchange of assets include references to the case where the consideration obtained for the disposal of assets (otherwise than by way of an exchange within subsection (6)) is applied in acquiring other assets within 6 months after the disposal; and for the purposes of those subsections the time when an exchange occurs shall be taken to be the time when the old assets are disposed of.

(11) Where at any time after the end of 1989 there is a transfer of long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under section 49 of the [M32]Insurance Companies Act 1982—

(a) if the transfer is of the whole of the long term business of the transferor, subsections (1) to (10) above shall have effect in relation to the assets of the transferee as if that business had at all material times been carried on by him;

(b) if the transfer is of part of the long term business of the transferor, those subsections shall have effect in relation to assets of the transferor and the transferee to such extent as is appropriate;

and any question arising as to the operation of paragraph (b) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.

**Marginal Citations**

**M32** 1982 c. 50.

VALID FROM 27/07/1993

**[214A [F10]Further transitional provisions.**

(1) This section applies where within two years after the end of an accounting period beginning on or after 1st January 1993 ("the relevant period")—

(a) an insurance company makes a claim for the purposes of this section in relation to that period; and

(b) that period is one of the company's first eight accounting periods after the end of 1992.

(2) Where this section applies, section 213 shall have effect as if—

(a) the amount of the chargeable gains which—

(i) apart from that section and this section, would be treated as accruing on disposals deemed by virtue of section 212 to have been made at the end of the relevant period, and

(ii) satisfy the condition specified in paragraph (a) of section 213(1A),

were reduced by the protected proportion of that amount; and

(b) an amount equal to the appropriate part of that reduction were (subject to section 213) a chargeable gain satisfying that condition and accruing at the end of each of the accounting periods in which the reduction is to be taken into account.

(3) For the purposes of subsection (2) above the protected proportion, in relation to the relevant period, of the amount mentioned in paragraph (a) of that subsection shall be an amount equal to the amount calculated in accordance with the following formula—

$$\left(A + \frac{B \times C}{D)} \times \frac{E}{F} \times \frac{G}{8}\right.$$

(4) In subsection (3) above—

A is so much of the amount mentioned in subsection (2)(a) above as represents chargeable gains on section 212 assets which at the end of the relevant period were linked solely to the basic life assurance and general annuity business of the company in question;

B is so much of the amount so mentioned as represents chargeable gains on linked section 212 assets which at the end of that period were partially linked to that business;

C is the amount of such of the closing liabilities at the end of that period of the company's basic life assurance and general annuity business as were liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets which were then partially linked to that business;

D is the amount of all the closing liabilities of the company at the end of that period which were long term business liabilities in respect of benefits to be so determined;

E is the amount of such of the closing liabilities of the company on the relevant date as were relevant linked liabilities in respect of benefits determined by reference to linked section 212 assets;

F is the amount of all the closing liabilities on the relevant date of the company's basic life assurance and general annuity business which were liabilities in respect of such benefits; and

G is the number of accounting periods in the first nine accounting periods of the company after the end of 1992 which remain after the end of the relevant period or, as the case may be, which would so remain apart from any cessation of the carrying on of any business of the company;

and for the purposes of this subsection the relevant date is, subject to subsection (7) below, the time of the first disposal which is deemed to have been made by the company in question under section 212.

(5) For the purposes of this section and subject to subsection (6) below—

(a) a reduction made under subsection (2) above in relation to the accounting period of any company shall be taken into account in every succeeding

accounting period of that company which is included in the first nine accounting periods of that company after the end of 1992; and

(b) in relation to any accounting period in which a reduction is to be taken into account, the appropriate part of the reduction is—

(i) if that is the only accounting period in which it falls to be taken into account, the whole of the reduction; and

(ii) in any other case, the amount of the reduction divided by the number of the accounting periods after the period in which the reduction is made in which the reduction falls to be taken into account or, as the case may be, would so fall apart from any cessation of the carrying on of any business of the company.

(6) Subject to subsection (7) below, where a company ceases to carry on long term business before the end of the first nine accounting periods after the end of 1992, the appropriate part of any reduction in relation to the accounting period ending with the cessation shall be such as to secure that the whole of the reduction has been taken into account under subsection (2)(b) above.

(7) Where at any time on or after 1st January 1993 there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under section 49 of the [M33]Insurance Companies Act 1982, this section shall have effect so that—

(a) the relevant date for the purposes of subsection (4) above shall be determined in relation to any disposal deemed to have been made after the transfer—

(i) by the transferee, or

(ii) in a case where the transfer is of part of the transferor's long term business, by the transferee or the transferor,

as if there had been no deemed disposals under section 212 before the transfer; and

(b) any reduction which (on the assumption that the transferor had continued to carry on the transferred business) would have fallen to be taken into account under subsection (2)(b) above shall be taken into account instead in relation to the transferee.

(8) Where the transfer is of part only of the transferor's long term business, subsection (7)(b) above shall apply only to such part of any reduction to which it would otherwise apply as is appropriate.

(9) Any question arising as to the operation of subsection (8) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

(10) This section shall have effect in relation to any cases in which there is such a transfer as is mentioned in subsection (7) above as if the accounting periods to be taken into account in any calculation for the purposes of this section of the number of accounting periods of the transferee after the end of 1992, and the only accounting periods in relation to which any reduction is to be taken into account under paragraph (b) of that subsection, were—

(a) the accounting periods of the transferor which began on or after 1st January 1993 and ended on or before the day of the transfer (including any which, by reference to a transfer in relation to which the transferor is a transferee, are

taken into account in accordance with this subsection as accounting periods of the transferor); and

(b) the accounting periods of the transferee ending after the day of the transfer,

and this section shall have effect in relation to such a reduction as if the first accounting period of the transferee to end after the day of the transfer began with the day after the transfer.

(11) For the purposes of this section assets shall be taken to be partially linked to a company's basic life assurance and general annuity business if they are not linked solely to that business and are neither—

(a) linked solely to any pension business or long term business of that company other than life assurance business; nor

(b) assets of the company's overseas life assurance fund;

and subsection (1) of section 214 shall apply for the purposes of this section as it applies for the purposes of that section.

(12) Subject to subsection (10) above, the references in this section, in relation to any company, to the first eight accounting periods of a company after the end of 1992 are references to the first accounting period of that company to begin on or after 1st January 1993 and to the succeeding seven accounting periods of that company, and references to the first nine accounting periods of a company after the end of 1992 shall be construed accordingly.**]**

**Textual Amendments**

**F10** S. 214A inserted (27.7.1993) by 1993 c. 34, **s. 91(5)**

**Marginal Citations**

**M33** 1982 c. 50.

VALID FROM 27/07/1993

**[214B** [F11]**Modification of Act in relation to overseas life insurance companies.**

Schedule 7B (which makes modifications of this Act in relation to overseas life insurance companies) shall have effect.**]**

**Textual Amendments**

**F11** S. 214B inserted (27.7.1993) by 1993 c. 34, **s.102(1)**

## CHAPTER IV

MISCELLANEOUS CASES

*Building societies etc.*

### 215 Disposal of assets on amalgamation of building societies etc.

If, in the course of or as part of an amalgamation of 2 or more building societies or a transfer of engagements from one building society to another, there is a disposal of an asset by one society to another, both shall be treated for the purposes of corporation tax on chargeable gains as if the asset were acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

### 216 Assets transferred from society to company.

(1) This section and section 217 apply where there is a transfer of the whole of a building society's business to a company ("the successor company") in accordance with section 97 and the other applicable provisions of the [M34]Building Societies Act 1986.

(2) Where the society and the successor company are not members of the same group at the time of the transfer—

(a) they shall be treated for the purposes of corporation tax on capital gains as if any asset disposed of as part of the transfer were acquired by the successor company for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the society, and

(b) if because of the transfer any company ceases to be a member of the same group as the society, that event shall not cause section 178 or 179 to have effect as respects any asset acquired by the company from the society or any other member of the same group.

(3) Where the society and the successor company are members of the same group at the time of the transfer but later cease to be so, that later event shall not cause section 178 or 179 to have effect as respects—

(a) any asset acquired by the successor company on or before the transfer from the society or any other member of the same group, or

(b) any asset acquired from the society or any other member of the same group by any company other than the successor company which is a member of the same group at the time of the transfer.

(4) Subject to subsection (6) below, where a company which is a member of the same group as the society at the time of the transfer—

(a) ceases to be a member of that group and becomes a member of the same group as the successor company, and

(b) subsequently ceases to be a member of that group,

section 178 or 179 shall have effect on that later event as respects any relevant asset acquired by the company otherwise than from the successor company as if it had been acquired from the successor company.

(5) In subsection (4) above "relevant asset" means any asset acquired by the company—

(a) from the society, or

(b) from any other company which is a member of the same group at the time of the transfer,

when the company and the society, or the company, the society and the other company, were members of the same group.

(6) Subsection (4) above shall not apply if the company which acquired the asset and the company from which it was acquired (one being a 75 per cent. subsidiary of the other) cease simultaneously to be members of the same group as the successor company but continue to be members of the same group as one another.

(7) For the purposes of this section "group" shall be construed in accordance with section 170.

**Marginal Citations**
**M34** 1986 c. 53.

## 217 Shares, and rights to shares, in successor company.

(1) Where, in connection with the transfer, there are conferred on members of the society—

(a) any rights to acquire shares in the successor company in priority to other persons, or

(b) any rights to acquire shares in that company for consideration of an amount or value lower than the market value of the shares, or

(c) any rights to free shares in that company,

any such right so conferred on a member shall be regarded for the purposes of tax on chargeable gains as an option (within the meaning of section 144) granted to, and acquired by, him for no consideration and having no value at the time of that grant and acquisition.

(2) Where, in connection with the transfer, shares in the successor company are issued by that company, or disposed of by the society, to a member of the society, those shares shall be regarded for the purposes of tax on chargeable gains—

(a) as acquired by the member for a consideration of an amount or value equal to the amount or value of any new consideration given by him for the shares (or, if no new consideration is given, as acquired for no consideration); and

(b) as having, at the time of their acquisition by the member, a value equal to the amount or value of the new consideration so given (or, if no new consideration is given, as having no value);

but this subsection is without prejudice to the operation of subsection (1) above, where applicable.

(3) Subsection (4) below applies in any case where—

(a) in connection with the transfer, shares in the successor company are issued by that company, or disposed of by the society, to trustees on terms which provide for the transfer of those shares to members of the society for no new consideration; and

(b) the circumstances are such that in the hands of the trustees the shares constitute settled property.

(4) Where this subsection applies, then, for the purposes of tax on chargeable gains—

(a) the shares shall be regarded as acquired by the trustees for no consideration;

(b) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by him for no consideration and as having no value at the time of its acquisition;

(c) where a member becomes absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on his becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within section 60(1), for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees (and accordingly section 71 shall not apply in relation to that occasion); and

(d) on the disposal by a member of an interest in the settled property, other than the disposal treated as occurring for the purposes of paragraph (c) above, any gain accruing shall be a chargeable gain (and accordingly section 76(1) shall not apply in relation to the disposal).

(5) Where, in connection with the transfer, the society disposes of any shares in the successor company, then, for the purposes of this Act, any gains arising on the disposal shall not be chargeable gains.

(6) In this section—

"free shares", in relation to a member of the society, means any shares issued by the successor company, or disposed of by the society, to that member in connection with the transfer but for no new consideration;

"member", in relation to the society, means a person who is or has been a member of it, in that capacity, and any reference to a member includes a reference to a member of any particular class or description;

"new consideration" means consideration other than—

(a) consideration provided directly or indirectly out of the assets of the society; or

(b) consideration derived from a member's shares or other rights in the society.

(7) References in this section to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include references to the case where he would become so entitled but for being an infant or otherwise under disability.

***[F12 Friendly societies]***

**Textual Amendments**

**F12** Cross heading inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art. 2**

### [F13 217A Transfer of assets on incorporation of registered friendly society.

(1) This section and section 217B apply where a registered friendly society is incorporated under the Friendly Societies Act 1992 ("the 1992 Act").

(2) In this section and section 217B—

(a) "the registered society" means the society before the incorporation, and

(b) "the incorporated society" means the society after the incorporation.

(3) For the purposes of corporation tax on chargeable gains—

(a) any asset of the registered society that by virtue of section 6(2) or (3) of the 1992 Act is transferred to the incorporated society,

(b) any asset of a branch of the registered society that by virtue of section 6(4) of the 1992 Act is transferred to the incorporated society, and

(c) any asset of a branch of the registered society that is identified in a scheme under section 6(5) of the 1992 Act,

shall be taken to be disposed of by the registered society or branch and acquired by the incorporated society on the incorporation for a consideration of such amount as to secure that on the disposal neither a gain nor a loss accrues to the registered society or branch.**]**

**Textual Amendments**

**F13** S. 217A inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

### [F14 217B Rights of members in registered society equated with rights in incorporated society.

(1) In this section, "change of membership" means a change effected by Schedule 4 to the 1992 Act whereby a member of the registered society or of a branch of the registered society becomes a member of the incorporated society or of a branch of the incorporated society.

(2) For the purposes of this Act, a change of membership shall not be taken to involve any disposal or acquisition of an asset by the member concerned, but all the interests and rights in the incorporated society or a branch of the incorporated society that he has immediately after the change, taken together, shall be treated as a single asset which—

(a) was acquired by the first relevant acquisition, and

(b) was added to by any subsequent relevant acquisitions.

(3) In subsection (2) above, "relevant acquisition" means an acquisition by which the member acquired any interest or right in the registered society or a branch of the registered society that he had immediately before the change of membership.**]**

**Textual Amendments**

**F14** S. 217B inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

### [F15 217C Subsequent disposal of assets by incorporated society etc.

(1) Where any asset acquired on a disposal to which section 217A(3) applies is subsequently disposed of by the incorporated society, section 41 shall apply as if any capital allowance made to the registered society in respect of the asset had been made to the incorporated society.

(2) If the disposal by the incorporated society is in relevant circumstances for the purposes of section 174(1), the disposal to which section 217A(3) applies shall for those purposes be taken to have been a previous transfer of the asset in relevant circumstances.**]**

**Textual Amendments**

**F15** S. 217C inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

*The Housing Corporation, Housing for Wales and housing associations*

### 218 Disposals of land between the Housing Corporation, Housing for Wales or Scottish Homes and housing associations.

(1) Where—

(a) in accordance with a scheme approved under section 5 of the [M35]Housing Act 1964 or paragraph 5 of Schedule 7 to the [M36]Housing Associations Act 1985, the Housing Corporation acquires from a housing association the association's interest in all the land held by the association for carrying out its objects, or

(b) after the Housing Corporation has so acquired from a housing association all the land so held by it the Corporation disposes to a single housing association of the whole of that land (except any part previously disposed of or agreed to be disposed of otherwise than to a housing association), together with all related assets,

then both parties to the disposal of the land to or, as the case may be, by the Housing Corporation shall be treated for the purposes of corporation tax in respect of chargeable gains as if the land and any related assets disposed of therewith (and each part of that land and those assets) were acquired from the party making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that party.

(2) In subsection (1) above, "housing association" has the same meaning as in the [M37]Housing Associations Act 1985, and "related assets" means, in relation to an acquisition of land by the Housing Corporation, assets acquired by the Corporation in accordance with the same scheme as that land, and in relation to a disposal of land by the Housing Corporation, assets held by the Corporation for the purposes of the same scheme as that land.

(3) This section shall also have effect with the substitution of the words " Housing for Wales " for the words "the Housing Corporation" and "the Corporation" in each place where they occur.

(4) This section shall also have effect with the substitution of the words " Scottish Homes " for the words "the Housing Corporation" and "the Corporation" in each place where they occur.

**Marginal Citations**

**M35** 1964 c. 56.

**M36** 1985 c. 69.

**M37** 1985 c. 69.

### 219 Disposals by Housing Corporation, Housing for Wales, Scottish Homes and certain housing associations.

(1) In any case where—

(a) the Housing Corporation dispose of any land to a registered housing association, or

(b) a registered housing association disposes of any land to another registered housing association, or

(c) in pursuance of a direction of the Housing Corporation given under Part I of the [M38]Housing Associations Act 1985 requiring it to do so, a registered housing association disposes of any of its property, other than land, to another registered housing association, or

(d) a registered housing association or an unregistered self-build society disposes of any land to the Housing Corporation,

both parties to the disposal shall be treated for the purposes of tax on chargeable gains as if the land or property disposed of were acquired from the Housing Corporation, registered housing association or unregistered self-build society making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to the Corporation or, as the case may be, that association or society.

(2) Subsection (1) above shall also have effect with the substitution of the words " Housing for Wales " for the words "the Housing Corporation" and "the Corporation" in each place where they occur.

(3) Subsection (1) above shall also have effect with the substitution of the words " Scottish Homes " for the words "the Housing Corporation" and "the Corporation" in each place where they occur.

(4) In this section "registered housing association" and "unregistered self-build society" have the same meanings as in the [M39]Housing Associations Act 1985.

**Marginal Citations**
**M38** 1985 c. 69.
**M39** 1985 c. 69.

### 220 Disposals by Northern Ireland housing associations.

(1) In any case where—

(a) a registered Northern Ireland housing association disposes of any land to another such association, or

(b) in pursuance of a direction of the Department of the Environment for Northern Ireland given under Chapter II of Part VII of the [M40]Housing (Northern Ireland) Order 1981 requiring it to do so, a registered Northern Ireland housing association disposes of any of its property, other than land, to another such association,

both parties to the disposal shall be treated for the purposes of tax on chargeable gains as if the land or property disposed of were acquired from the association making the

disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that association.

(2) In subsection (1) above "registered Northern Ireland housing association" means a registered housing association within the meaning of Part VII of the Order referred to in paragraph (b) of that subsection.

**Marginal Citations**
**M40** S.I. 1981/156 (N.I.3).

*Other bodies*

## 221 Harbour authorities.

(1) For the purposes of this Act any asset transferred on the transfer of the trade shall be deemed to be for a consideration such that no gain or loss accrues to the transferor on its transfer; and for the purposes of Schedule 2 the transferee shall be treated as if the acquisition by the transferor of any asset so transferred had been the transferee's acquisition thereof.

(2) This section applies only where the trade transferred is transferred from any body corporate other than a limited liability company to a harbour authority by or under a certified harbour reorganisation scheme (within the meaning of section 518 of the Taxes Act) which provides also for the dissolution of the transferor.

**Status:**
Point in time view as at 19/02/1993. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**
Taxation of Chargeable Gains Act 1992, Part VI is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.