



# Capital Gains Tax Act 1979 (repealed 6.3.1992)

## 1979 CHAPTER 14

### PART VI

#### PROPERTY: FURTHER PROVISIONS

##### *Replacement of business assets*

#### **115 Roll-over relief.**

- (1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (in this section referred to as “the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (in this section referred to as “the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade, and the old assets and new assets are within the classes of assets listed in section 118 below, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Act—
- (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and
  - (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

*Status: Point in time view as at 25/07/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Capital Gains Tax Act 1979 (repealed 6.3.1992), Part VI. (See end of Document for details)*

- (2) Where subsection (1)(a) above applies to exclude a gain which, in consequence of Schedule 5 to this Act, is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) above shall be the amount of the chargeable gain, and not the whole amount of the gain.
- (3) This section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning twelve months before and ending three years after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice in writing allow:  
 Provided that, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets, or the interest in the new assets, is acquired in pursuance of the contract, and, when that fact is ascertained, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments may be made.
- (4) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of, or of the interest in, the new assets.
- (5) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.
- (6) If the old assets were not used for the purposes of the trade throughout the period of ownership this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.
- (7) This section shall apply in relation to a person who, either successively or at the same time, carries on two or more trades as if both or all of them were a single trade.
- [<sup>F1</sup>(7A) In this section “period of ownership” does not include any period before 31st March 1982.]
- (8) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.
- (9) Without prejudice to section 43(4) above (general provision for apportionments), where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

#### Textual Amendments

**F1** S. 115(7A) added where Finance Act 1988 (c. 39, SIF 63;1, 2), s. 96 and Sch. 8 para. 9 (rebasng to 1982) apply in relation to disposals on or after 6th April 1988

*Status: Point in time view as at 25/07/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Capital Gains Tax Act 1979 (repealed 6.3.1992), Part VI. (See end of Document for details)*

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

- C1** See also Capital Gains Tax Act 1979 (c. 14), **Sch. 6 para. 22**
- C2** See Finance (No. 2) Act 1983 (c. 49), **s. 7(6)**
- C3** See— Finance Act 1988 (c. 39, SIF 63:1, 2), **ss. 97, 105, 106** and Sch. 9 para. 2(3); Finance Act 1989 (c. 26, SIF 63:2), **ss. 129, 133**
- C4** Ss. 115–121 restricted by Finance Act 1990 (c. 29, SIF 63:2), **s. 40(5)(6)**
- C5** Ss. 115–121 excluded (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, **Sch. 2 para.10**
- C6** S. 115 excluded by Finance Act 1991 (c. 31, SIF 63:2), **ss. 83(6)(9), 87(1)(3)**.
- C7** S. 115: definitions of "the old assets" and "the new assets" applied by Finance Act 1991 (c. 31, SIF 63:2), **s. 83(8)(9)**.
- C8** S. 115: definition of "the new assets " applied by Finance Act 1991 (c. 31, SIF 63:2), **s. 87(2)(3)**.
- C9** See— Finance Act 1970 (c. 24, SIF 63:1, 2), **s. 278**; Development Land Tax Act 1976 (c. 24), **s. 34** and Sch. 6 para. 5 (which Act was repealed by Finance Act 1985 (c. 54, SIF 63:2), **ss. 93, 98(6)** and Sch. 27 Pt. X); Finance Act 1976 (c. 40), **s. 54(3)**; Finance Act 1984 (c. 43, SIF 63:1), **ss. 50(1), 80** and Sch. 11 para. 1; Finance Act 1988 (c. 39, SIF 63:1, 2), **ss. 105(5)** and 106(4)
- C10** See Capital Gains Tax Act 1979 (c. 14), **s. 111A(5)(a)**
- C11** See Capital Gains Tax Act 1979 (c. 14), **s. 111A(5)(b)**

**116 Assets only partly replaced.**

- (1) Section 115(1) above shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Act—
- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
  - (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under paragraph (a) of this subsection,
- but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.
- (2) Subsections (3) to (9) of section 115 above shall apply as if this section formed part of that section.

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

- C12** Ss. 115–121 excluded (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, **Sch. 2 para. 10**
- C13** See also Capital Gains Tax Act 1979 (c. 14), **Sch. 6 para. 22**
- C14** See Finance (No. 2) Act 1983 (c. 49), **s. 7(6)**
- C15** Ss. 115–121 restricted by Finance Act 1990 (c. 29, SIF 63:2), **s. 40(5)(6)**
- C16** See Finance Act 1984 (c. 43, SIF 63:2), **ss. 50(1), 80** and Sch. 11 para. 1

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## 117 New assets which are depreciating assets.

(1) Sections 115 and 116 above [<sup>F2</sup>and section 33 of the Finance Act 1990] shall have effect subject to the provisions of this section in which—

- (a) the “held over gain” means the amount by which, under those sections, and apart from the provisions of this section, any chargeable gain on one asset (called “asset No. 1”) is reduced, with a corresponding reduction of the expenditure allowable in respect of another asset (called “asset No. 2”),
- (b) any reference to a gain of any amount being carried forward to any asset is a reference to a reduction of that amount in a chargeable gain coupled with a reduction of the same amount in expenditure allowable in respect of that asset.

(2) If asset No. 2 is a depreciating asset, the held over gain shall not be carried forward, but the claimant shall be treated as if so much of the chargeable gain on asset No. 1 as is equal to the held over gain did not accrue until—

- (a) the claimant disposes of asset No. 2, or
- (b) he ceases to use asset No. 2 for the purposes of a trade carried on by him, or
- (c) the expiration of a period of ten years beginning with the acquisition of asset No. 2,

whichever event comes first.

[<sup>F3</sup>(2A) Where section 33 of the Finance Act 1990 has effect subject to the provisions of this section, subsection (2)(b) above shall have effect as if it read—

“(b) section 36(3) of the Finance Act 1990 applies as regards asset No. 2 (whether or not by virtue of section 36(5)), or”]

(3) If, in the circumstances specified in subsection (4) below, the claimant acquires an asset (called “asset No. 3”) which is not a depreciating asset, [<sup>F4</sup>and claims] under section 115 or 116 above—

- (a) the gain held over from asset No. 1 shall be carried forward to asset No. 3, and
- (b) the claim which applies to asset No. 2 shall be treated as withdrawn (so that subsection (2) above does not apply).

(4) The circumstances are that asset No. 3 is acquired not later than the time when the chargeable gain postponed under subsection (2) above would accrue and, assuming—

- (a) that the consideration for asset No. 1 was applied in acquiring asset No. 3, and
- (b) that the time between the disposal of asset No. 1 and the acquisition of asset No. 3 was within the time limited by section 115(3) above,

the whole amount of the postponed gain could be carried forward from asset No. 1 to asset No. 3; and the claim under subsection (3) above shall be accepted as if those assumptions were true.

(5) If part only of the postponed gain could be carried forward from asset No. 1 to asset No. 3, and the claimant so requires, that and the other part of the postponed gain shall be treated as derived from two separate assets, so that, on that claim—

- (a) subsection (3) above applies to the first-mentioned part, and
- (b) the other part remains subject to subsection (2) above.

(6) For the purposes of this section, an asset is a depreciating asset at any time if—

- (a) at that time it is a wasting asset, as defined in section 37 above, or
- (b) within the period of ten years beginning at that time it will become a wasting asset (so defined).

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### Textual Amendments

- F2** Words inserted by [Finance Act 1990 \(c. 29, SIF 63:2\), s. 40\(2\)](#)  
**F3** [S. 117\(2A\)](#) inserted by [Finance Act 1990 \(c. 29, SIF 63:2\), s. 40\(3\)](#)  
**F4** Words substituted by [Finance Act 1990 \(c. 29, SIF 63:2\), s. 40\(4\)](#)

### Modifications etc. (not altering text)

- C17** [Ss. 115-121](#) excluded (E.W.S.) (16.1.1992) by [S.I. 1992/58, art. 9, Sch. 2 para.10](#)  
**C18** See also [Capital Gains Tax Act 1979 \(c. 14\), Sch. 6 para. 22](#)  
**C19** See [Finance \(No. 2\) Act 1983 \(c. 49\), s. 7\(6\)](#)  
**C20** [Ss. 115–121](#) restricted by [Finance Act 1990 \(c. 29, SIF 63:2\), s. 40\(5\)\(6\)](#)  
**C21** See also [Capital Gains Tax Act 1979 \(c. 14\), s. 111B\(3\)](#)  
**C22** See [Finance Act 1984 \(c. 43, SIF 63:2\), ss. 50\(1\), 80](#) and [Sch. 11 para. 1](#)  
**C23** See— [Finance Act 1970 \(c. 24, SIF 63:1, 2\), s. 276\(2\)](#); [Development Land Tax Act 1976 \(c. 24\), s. 34](#) and [Sch. 6 para. 5](#) (which Act was repealed by [Finance Act 1985 \(c. 54, SIF 63:2\), ss. 93, 98\(6\)](#) and [Sch. 27 Pt. X](#)); [Finance Act 1988 \(c. 39, SIF 63:1, 2\), s. 97](#) and [Sch. 9 para. 3\(2\)](#); [Finance Act 1989 \(c. 26, SIF 63:2\), s. 141](#) and [Sch. 15 para. 1\(2\)](#)

## 118 Relevant classes of assets.

The classes of assets for the purposes of section 115 (1) above are as follows.

Class 1. Assets within heads A and B below.

Head A

1. Any building or part of a building and any permanent or semi-permanent structure in the nature of a building, occupied (as well as used) only for the purposes of the trade.
2. Any land occupied (as well as used) only for the purposes of the trade.

Head A has effect subject to section 119 below.

Head B

Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

Class 2

Ships, aircraft and hovercraft (“hovercraft” having the same meaning as in the <sup>M1</sup>Hovercraft Act 1968).

[<sup>F5</sup>Class 2A]

[<sup>F5</sup>Satellites, space stations and spacecraft (including launch vehicles).]

Class 3

Goodwill.

[<sup>F6</sup>Class 4]

[<sup>F6</sup>Milk quotas (that is, rights to sell dairy produce without being liable to pay milk levy or to deliver dairy produce without being liable to pay a contribution to milk levy) and potato quotas (that is, rights to produce potatoes without being liable to pay more than the ordinary contribution to the Potato Marketing Board’s fund).]

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#### Textual Amendments

- F5** Class 2A inserted by [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **s. 112** with respect to disposals and acquisitions on or after 28th July 1987
- F6** Class 4 inserted by [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **s. 112** with respect to disposals and acquisitions on or after 30th October 1987

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

- C24** Ss. 115-121 excluded (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, **Sch. 2 para.10**
- C25** See also [Capital Gains Tax Act 1979 \(c. 14\)](#), **Sch. 6 para. 22**
- C26** See [Finance \(No. 2\) Act 1983 \(c. 49\)](#), **s. 7(6)**
- C27** Ss. 115-121 restricted by [Finance Act 1990 \(c. 29, SIF 63:2\)](#), **s. 40(5)(6)**
- C28** See— [Finance Act 1984 \(c. 43, SIF 63:1\)](#), **s. 50(1)** and Sch. 11 para. 1; [Finance \(No. 2\) Act 1987 \(c. 51\)](#), **s. 80**

#### Marginal Citations

- M1** 1968 c. 59.

### 119 Assets of Class 1.

- (1) This section has effect as respects head A of Class 1 in section 118 above.
- (2) Head A shall not apply where the trade is a trade—
- of dealing in or developing land, or
  - of providing services for the occupier of land in which the person carrying on the trade has an estate or interest.
- (3) Where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, then, as regards that land, the trade shall be treated for the purposes of subsection (2) (a) of this section as if it were not a trade of dealing in or developing land.
- (4) A person who is a lessor of tied premises shall be treated as if he occupied (as well as used) those tied premises only for the purposes of the relevant trade.

This subsection shall be construed in accordance with section [<sup>F7</sup>98(2)] of [<sup>F7</sup>the Taxes Act 1988] (income tax and corporation tax on tied premises).

#### Textual Amendments

- F7** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 paras. 15** and 32

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

- C29** Ss. 115-121 excluded (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, **Sch. 2 para.10**
- C30** See also [Capital Gains Tax Act 1979 \(c. 14\)](#), **Sch. 6 para. 22**
- C31** See [Finance \(No. 2\) Act 1983 \(c. 49\)](#), **s. 7(6)**
- C32** Ss. 115-121 restricted by [Finance Act 1990 \(c. 29, SIF 63:2\)](#), **s. 40(5)(6)**
- C33** See [Finance Act 1984 \(c. 43, SIF 63:1\)](#), **s. 50(1)** and Sch. 11 para. 1

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## 120 Trade carried on by family company: business assets dealt with by individual.

In relation to a case where—

- (a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and
- (b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his family company, within the meaning of [F8Schedule 20 to the Finance Act 1985],

any reference in sections 115 to 119 above to the person carrying on the trade (or the two or more trades) includes a reference to that individual.

### Textual Amendments

- F8** Words substituted by [Finance Act 1985 \(c. 54\), s. 70\(9\)](#) with respect to disposals (and associated acquisitions) made on or after 6 April 1985

### Modifications etc. (not altering text)

- C34** [Ss. 115–121](#) excluded (E.W.S.) (16.1.1992) by [S.I. 1992/58, art. 9, Sch. 2 para.10](#)
- C35** See also [Capital Gains Tax Act 1979 \(c. 14\), Sch. 6 para. 22](#)
- C36** See [Finance \(No. 2\) Act 1983 \(c. 49\), s. 7\(6\)](#)
- C37** [Ss. 115–121](#) restricted by [Finance Act 1990 \(c. 29, SIF 63:2\), s. 40\(5\)\(6\)](#)
- C38** See [Finance Act 1984 \(c. 43, SIF 63:1\), s. 50\(1\)](#) and [Sch. 11 para. 1](#)

## 121 Activities other than trades, and interpretation.

- (1) Sections 115 to 120 above shall apply with the necessary modifications—
  - (a) in relation to the discharge of the functions of a public authority, and
  - (b) in relation to the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits, and
  - (c) in relation to a profession, vocation, office or employment, and
  - (d) in relation to such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed, and
  - (e) in relation to the activities of an unincorporated association or other body chargeable to corporation tax, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within head A of class 1 only if they are both occupied and used by the body, and in the case of other assets only if they are used by the body, as they apply in relation to a trade.
- (2) In sections 115 to 120 above and this section the expressions “trade”, “profession”, “vocation”, “office” and “employment” have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.
- (3) Sections 115 to 120 above, and this section, shall be construed as one.

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

- C39** Ss. 115–121 excluded (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, **Sch. 2 para.10**  
**C40** See also Capital Gains Tax Act 1979 (c. 14), **Sch. 6 para. 22**  
**C41** See Finance (No. 2) Act 1983 (c. 49), **s. 7(6)**  
**C42** Ss. 115–121 restricted by Finance Act 1990 (c. 29, SIF 63:2), **s. 40(5)(6)**

*Stock in trade*

**122 Appropriations to and from stock.**

- (1) Subject to subsection (3) below, where an asset acquired by a person otherwise than as trading stock of a trade carried on by him is appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if he had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to him, he shall be treated as having thereby disposed of the asset by selling it for its then market value.
- (2) If at any time an asset forming part of the trading stock of a person's trade is appropriated by him for any other purpose, or is retained by him on his ceasing to carry on the trade, he shall be treated as having acquired it at that time for a consideration equal to the amount brought into the accounts of the trade in respect of it for tax purposes on the appropriation or on his ceasing to carry on the trade, as the case may be.
- (3) Subsection (1) above shall not apply in relation to a person's appropriation of an asset for the purposes of a trade if he is chargeable to income tax in respect of the profits of the trade under Case I of Schedule D, and elects that instead the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for purposes of tax, be treated as reduced by the amount of the chargeable gain or increased by the amount of the allowable loss referred to in that subsection, and where that subsection does not apply by reason of such an election, the profits of the trade shall be computed accordingly:  
 Provided that if a person making an election under this subsection is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others.

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

- C43** See Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 777(11)**  
**C44** S. 122(3) excluded (E.W.S.) (16.1.1992) by S.I. 1992/58, **art. 11(3)**

*Transfer of business to a company*

**123 Roll-over relief on transfer of business.**

- (1) This section shall apply for the purposes of this Act where a person who is not a company transfers to a company a business as a going concern, together with the whole assets of the business, or together with the whole of those assets other than cash, and



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the business is so transferred wholly or partly in exchange for shares issued by the company to the person transferring the business.

Any shares so received by the transferor in exchange for the business are referred to below as “the new assets”.

- (2) The amount determined under subsection (4) below shall be deducted from the aggregate (referred to below as “the amount of the gain on the old assets”) of the chargeable gains less allowable losses.
- (3) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—
  - (a) the amount determined under subsection (4) below shall be apportioned between the new assets as a whole, and
  - (b) the sums allowable as a deduction under section 32(1)(a) above shall be reduced by the amount apportioned to the new asset under paragraph (a) above;and if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the transferor.
- (4) the amount referred to in subsections (2) and (3)(a) above shall not exceed the cost of the new assets but, subject to that, the said amount shall be a fraction

$$\frac{P(1) - P(3)}{P(1)}$$

of the amount of the gain on the old assets

where—

“A” is the cost of the new assets, and

“B” is the value of the whole of the consideration received by the transferor in exchange for the business;

and for the purposes of this subsection “the cost of the new assets” means any sums which would be allowable as a deduction under section 32(1)(a) above if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

- (5) References in this section to the business, in relation to shares or consideration received in exchange for the business, include references to such assets of the business as are referred to in subsection (1) above.

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

**C45** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 28 para. 3\(2\)](#)

**C46** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), [s. 97](#) and [Sch. 9 para. 2\(3\)](#)

**C47** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 763\(5\)](#) for variation of “B” where a 1979 Act disposal (as defined in [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 763\(1\)](#)) forms part of a transfer to which [s. 123](#) applies

**C48** See [Capital Gains Tax Act 1979 \(c. 14\)](#), [Sch. 6 para. 23](#) re accrual of development gains

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[<sup>F9</sup>123A

- (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 5 to this Act 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 1988) which provides also for the dissolution of the transferor.]

#### Textual Amendments

**F9** S. 123A added by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 22**

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

**C49** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **s. 96** and Sch. 8 para. 1

**C50** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 28 para. 3(2)**

### *Transfer of business on retirement*

#### [124 <sup>F10</sup> Relief on transfer.

- (1) If an individual who has attained the age of 60 years—
- (a) disposes by way of sale or gift of the whole or part of a business, or
  - (b) disposes by way of sale or gift of shares or securities of a company,
- and throughout a period of at least one year ending with the disposal the relevant conditions have been fulfilled, relief shall be given under this section in respect of gains accruing to him on the disposal.
- (2) For the purposes of subsection (1) above the relevant conditions are fulfilled at any time if at that time,—
- (a) in the case of a disposal falling within paragraph (a) of that subsection, the business in question is owned either by the individual or by a company with respect to which the following conditions are at that time fulfilled, namely,—
    - (i) it is a trading company,
    - (ii) it is the individual's family company, and
    - (iii) he is a full-time working director of it;
 and
  - (b) in the case of a disposal falling within paragraph (b) of that subsection, either the conditions in sub-paragraphs (i) to (iii) of paragraph (a) above are fulfilled with respect to the company in question or the individual owns the business which, at the time of the disposal, is owned by the company;
- and in relation to a particular disposal the period, up to a maximum of 10 years, which ends with the disposal and throughout which the relevant conditions are fulfilled is in this section referred to as “the qualifying period”.
- (3) The amount available for relief under this section shall be—

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- (a) in the case of an individual who has attained the age of 65 years, the relevant percentage of [<sup>F11</sup>£100,000], and
  - (b) in the case of an individual who has not attained that age, the relevant percentage of the aggregate of [<sup>F12</sup>£20,000] for every year by which his age exceeds 60 and a corresponding part of [<sup>F12</sup>£20,000] for any odd part of a year; and for the purpose of this subsection “the relevant percentage” means a percentage determined according to the length of the qualifying period on a scale rising arithmetically from 10 per cent. where that period is precisely one year to 100 per cent. where it is ten years.
- (4) Where subsection (1)(a) above applies the gains accruing to the individual on the disposal of chargeable business assets comprised in the disposal by way of sale or gift shall be aggregated, and only so much of that aggregate as exceeds the amount available for relief under this section shall be chargeable gains (but not so as to affect liability in respect of gains accruing on the disposal of assets other than chargeable business assets).
- (5) Where subsection (1)(b) above applies—
- (a) the gains which accrue to the individual on the disposal of the shares or securities shall be aggregated, and
  - (b) of a proportion of that aggregate sum which is equal to the proportion which the part of the value of the company’s chargeable assets at the time of the disposal which is attributable to the value of the company’s chargeable business assets bears to the whole of that value, only so much as exceeds the amount available for relief under this section shall constitute chargeable gains (but not so as to affect liability in respect of gains representing the balance of the said aggregate sum),
- and for the purposes of paragraph (b) above every asset is a chargeable asset except one, on the disposal of which by the company at the time of the disposal of the shares or securities, no chargeable gain would accrue.
- (6) So far as the amount available for relief under this section is applied in giving relief to an individual as respects a disposal it shall not be applied in giving relief to that individual as respects any other disposal (and the relief shall be applied in the order in which any disposals take place).
- (7) In arriving at the aggregate under subsection (4) or sub-section (5) above—
- (a) the respective amounts of the gains shall be computed in accordance with the provisions of this Act (other than this section) fixing the amount of chargeable gains, and
  - (b) any allowable loss which accrues on the disposal shall be deducted,
- and the provisions of this section shall not affect the computation of the amount of any allowable loss.
- (8) In this section—
- “chargeable business asset” means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by the individual, or as the case may be by the individual’s family company, other than an asset on the disposal of which no chargeable gain accrues or (where the disposal is of shares or securities in the family company) on the disposal of which no chargeable gain would

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accrue if the family company disposed of the asset at the time of the disposal of the shares or securities,

“family company” means, in relation to an individual, a company the voting rights in which are—

- (a) as to not less than 25 per cent., exercisable by the individual, or
- (b) as to not less than 51 per cent., exercisable by the individual or a member of his family, and, as to not less than 5 per cent., exercisable by the individual himself,

“family” means, in relation to an individual, the husband or wife of the individual, and a relative of the individual or the individual’s husband or wife, and “relative” means brother, sister, ancestor or lineal descendant, “full time working director” means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity,

“trade”, “profession”, “vocation”, “office” and “employment” have the same meanings as in the Income Tax Acts,

“trading company” has the meaning given by paragraph [F137 of Schedule 19 to the Taxes Act 1988];

and in this section references to the disposal of the whole or part of a business include references to the disposal of the whole or part of the assets provided or held for the purposes of an office or employment by the person exercising that office or employment.]

#### Textual Amendments

- F10** Ss. 124, 125 repealed by [Finance Act 1985 \(c. 54\)](#), **ss. 69(1), 98(6)** and Sch. 27 Part VII in relation to any disposal made on or after 6 April 1985 unless the qualifying period relating to the disposal ends before 6 April 1985
- F11** “£100,000” substituted by [Finance Act 1984 \(c. 43, SIF 63:2\)](#), **s. 63(4)** in relation to disposals on or after 6 April 1983
- F12** “£20,000” substituted by [Finance Act 1984 \(c. 43, SIF 63:2\)](#), **s. 63(4)** in relation to disposals on or after 6 April 1983
- F13** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 32**

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

- C51** See— [Development Land Tax Act 1976 \(c. 24\)](#), **s. 34** and Sch. 6 para. 1(5) (which Act was repealed by [Finance Act 1985 \(c. 54, SIF 63:2\)](#), **ss. 93, 98(6)** and Sch. 27 Pt. X); [Finance Act 1984 \(c. 43, SIF 63:1\)](#), **s. 50(1)** and Sch. 11 para. 1
- C52** See [Finance Act 1985 \(c. 54\)](#), **ss. 69, 70** and Sch. 20

### [F14] 125 Transfer by way of capital distribution from family company.

- (1) Subject to subsection (2) below, section 124(1)(b) above shall apply where under section 72 above (distribution which is not a new holding) the individual is treated as disposing of interests in shares or securities of a company in consideration of a capital distribution from the company in the course of dissolving or winding up the company as it applies where he disposes of shares or securities of a company by way of sale or gift.
- (2) Subsection (1) above shall not apply if the capital distribution consists wholly of chargeable business assets of the company, and if it consists partly of chargeable

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business assets (and partly of money or money's worth), relief shall only be given under section 124 above in respect of that proportion of the gains accruing on the disposal which the part of the capital distribution not consisting of chargeable business assets bears to the entire capital distribution.]

#### Textual Amendments

**F14** Ss. 124, 125 repealed by Finance Act 1985 (c. 54), ss. 69(1), 98(6) and Sch. 27 Part VII in relation to any disposal made on or after 6 April 1985 unless the qualifying period relating to the disposal ends before 6 April 1985

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

**C53** See Finance Act 1985 (c. 54), ss. 69, 70 and Sch. 20

### *Gifts of business assets*

#### **126 Relief for gifts of business assets.**

[<sup>F15</sup>(1) If—

- (a) an individual (in this section referred to as “the transferor”) makes a disposal otherwise than under a bargain at arm’s length of an asset within subsection (1A) below, and
  - (b) a claim for relief under this section is made by the transferor and the person who acquires the asset (in this section referred to as “the transferee”) or, where the trustees of a settlement are the transferee, by the transferor alone,
- then, subject to subsection (2) and sections 126A and 126B below, subsection (3) below shall apply in relation to the disposal.

(1A) An asset is within this subsection if—

- (a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—
  - (i) the transferor, or
  - (ii) his family company, or
  - (iii) a member of a trading group of which the holding company is his family company, or
- (b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—
  - (i) the shares or securities are neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market, or
  - (ii) the trading company or holding company is the transferor’s family company.]

(2) Subsection (3) below does not apply in relation to a disposal if—

- (a) in the case of a disposal of an asset, any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under [<sup>F16</sup>Schedule 20 to the Finance Act 1985], or
- (b) in the case of a disposal of shares or securities, [<sup>F16</sup>the appropriate proportion] determined under [<sup>F16</sup>paragraph 7(2) or paragraph 8(2) of Schedule 20 to the Finance Act 1985] of any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under [<sup>F16</sup>that Schedule][<sup>F17</sup>or]

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- [<sup>F18</sup>(c) in the case of a disposal of qualifying corporate bonds within the meaning of section 64 of the Finance Act 1984, a gain is deemed to accrue by virtue of paragraph 10(1)(b) of Schedule 13 to that Act, or
- (d) subsection (3) of section 147A below applies in relation to the disposal (or would apply if a claim for relief were duly made under that section)].
- (3) Where a claim for relief is made under this section in respect of a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
- (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,
- shall each be reduced by an amount equal to the held-over gain on the disposal.
- (4) Part I of Schedule 4 to this Act shall have effect for extending the relief provided for by virtue of subsections (1) to (3) above in the case of agricultural property and for applying it in relation to settled property.
- (5) Subject to Part II of Schedule 4 to this Act (which provides for reductions in the held-over gain in certain cases) and subsection (6) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (3) above and (in appropriate cases) [<sup>F16</sup>Schedule 20 to the Finance Act 1985], and in subsection (6) below that chargeable gain is referred to as the unrelieved gain on the disposal.
- (6) In any case where—
- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of [<sup>F19</sup>section 29A(1)] above) for a disposal in respect of which a claim for relief is made under this section, and
- (b) that actual consideration exceeds the sums allowable as a deduction under section 32 above,
- the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.
- (7) Subject to subsection (8) below, in this section and Schedule 4 to this Act—
- (a) “family company” [<sup>F20</sup>, “holding company”, “trading company” and “trading group” have the meanings] given by [<sup>F16</sup>paragraph 1 of Schedule 20 to the Finance Act 1985],
- (b) [<sup>F21</sup> “trading company” has the meaning given by paragraph [<sup>F22</sup>7 of Schedule 19 to the Taxes Act 1988]], and
- (c) “trade”, “profession” and “vocation” have the same meaning as in the Income Tax Acts.
- (8) In this section and Schedule 4 to this Act and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression “trade” shall be taken to include the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits.
- [<sup>F23</sup>(9) Where a disposal in respect of which a claim is made under this section is (or proves to be) a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing

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to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

- (a) the inheritance tax attributable to the value of the asset, and
- (b) the amount of the chargeable gain as computed apart from this subsection, and, in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

(10) Where an amount of inheritance tax—

- (a) falls to be redetermined in consequence of the transferor's death within seven years of making the chargeable transfer in question, or
- (b) is otherwise varied,

after it has been taken into account under subsection (9) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.]

#### Textual Amendments

- F15** S. 126(1)(1A) substituted for s. 126(1) by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 1(2)(3) in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)
- F16** Words substituted by Finance Act 1985 (c. 54), s. 70(9) with respect to disposals on which relief falls to be due under Finance Act 1985 (c. 54), Sch. 20 from 6 April 1985
- F17** Word inserted by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 1(2)(3) in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)
- F18** S. 126(2)(c)(d) inserted by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 1(2)(3) in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)
- F19** Words substituted by Finance Act 1981 (c. 35, SIF 63:2), s. 90(3)(a) in relation to acquisitions and disposals on or after 10 March 1981
- F20** Words substituted by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 1(4)(a) in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)
- F21** Words repealed by Finance Act 1989 (c. 26, SIF 63:2), ss. 124, 187, Schs. 14 para. 1(4)(b) and 17 Part VII in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)
- F22** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 para. 32
- F23** S. 126(9)(10) added by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 1(5) in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)

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

- C54** See— Finance Act 1980 (c. 48, SIF 63:2), s. 79(4); Finance Act 1984 (c. 43, SIF 63:1), s. 50(1) and Sch. 11 para. 1
- C55** See Finance Act 1988 (c. 39, SIF 63:1, 2), s. 97 and Sch. 9 para. 2(3)

#### [<sup>F24</sup>126A Section 126 relief: gifts to non-residents.

- (1) Section 126(3) above shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.

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- (2) Section 126(3) above shall not apply where the transferee is an individual or a company if that individual or company—
- (a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.]

#### Textual Amendments

**F24** Ss. 126A–C added by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 2 in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)

#### [<sup>F25</sup> 126B Section 126 relief: gifts to foreign-controlled companies.

- (1) Section 126(3) above shall not apply where the transferee is a company which is within subsection (2) below.
- (2) A company is within this subsection if it is controlled by a person who, or by persons each of whom,—
  - (a) is neither resident nor ordinarily resident in the United Kingdom, and
  - (b) is connected with the person making the disposal.
- (3) For the purposes of subsection (2) above, a person who (either alone or with others) controls a company by virtue of holding assets relating to that or any other company and who is resident or ordinarily resident in the United Kingdom shall be regarded as neither resident nor ordinarily resident there if—
  - (a) he is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements he would not be liable in the United Kingdom to tax on a gain arising on a disposal of the assets.]

#### Textual Amendments

**F25** Ss. 126A–C added by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 2 in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 79 in respect of a disposal before that date)

#### <sup>F26</sup> 126C.....

#### Textual Amendments

**F26** S. 126C repealed by Finance Act 1991 (c. 31, SIF 63:2), ss. 92(1)(5), 123, Sch. 19, Pt.VI.



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### *Movable property*

#### **127 Wasting assets.**

- (1) Subject to the provisions of this section, no chargeable gain shall accrue on the disposal of, or of an interest in, an asset which is tangible movable property and which is a wasting asset.
- (2) Subsection (1) above shall not apply to a disposal of, or of an interest in, an asset—
  - (a) if, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, the asset has been used and used solely for the purposes of a trade, profession or vocation and if that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset or interest under paragraph (a) or paragraph (b) of section 32(1) above (allowable expenditure), or
  - (b) if the person making the disposal has incurred any expenditure on the asset or interest which has otherwise qualified in full for any capital allowance.
- (3) In the case of the disposal of, or of an interest in, an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—
  - (a) the consideration for the disposal, and any expenditure attributable to the asset or interest by virtue of section 32(1)(a) and (b) above, shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
  - (b) the computation under Chapter II of Part II above shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
  - (c) subsection (1) above shall not apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances.
- (4) Subsection (1) above shall not apply to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market.
- (5) This section shall be construed as one with Chapter II of Part II above.

#### **128 Chattel exemption.**

- (1) Subject to this section a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the amount of value of the consideration for the disposal does not exceed [<sup>F27</sup>£6,000].
- (2) Where the amount or value of the consideration for the disposal of an asset which is tangible movable property exceeds [<sup>F27</sup>£6,000], there shall be excluded from any chargeable gain accruing on the disposal so much of it as exceeds five-thirds of the difference between—
  - (a) the amount or value of the consideration, and
  - (b) [<sup>F27</sup>£6,000].

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- (3) Subsections (1) and (2) above shall not affect the amount of an allowable loss accruing on the disposal of an asset, but for the purposes of computing under this Act the amount of a loss accruing on the disposal of tangible movable property the consideration for the disposal shall, if less than [<sup>F27</sup>£6,000], be deemed to be [<sup>F27</sup>£6,000] and the losses which are allowable losses shall be restricted accordingly.
- (4) If two or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, and—
- (a) to the same person, or
  - (b) to persons who are acting in concert or who are connected persons,
- whether on the same or different occasions, the two or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in chargeable gains, and in allowable losses, under subsections (2) and (3) above.
- (5) If the disposal is of a right or interest in or over tangible movable property—
- (a) in the first instance subsections (1), (2) and (3) above shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration,
  - (b) where the sum of the actual consideration and that market value exceeds [<sup>F27</sup>£6,000], the part of any chargeable gain that is excluded from it under subsection (2) above shall be so much of the gain as exceeds five-thirds of the difference between that sum and [<sup>F27</sup>£6,000] multiplied by the fraction equal to the actual consideration divided by the said sum, and
  - (c) where that sum is less than [<sup>F27</sup>£6,000] any loss shall be restricted under subsection (3) above by deeming the consideration to be the actual consideration plus the said fraction of the difference between the said sum and [<sup>F27</sup>£6,000].
- (6) This section shall not apply—
- (a) in relation to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market, or
  - (b) in relation to a disposal of currency of any description.

#### Textual Amendments

**F27** “£6,000” substituted by [Finance Act 1989 \(c. 26, SIF 63:2\)](#), [s. 123\(1\)\(a\)](#) in respect of disposals on or after 6 April 1989

### 129 Leases of property other than land.

Schedule 3 to this Act has effect, to the extent specified in paragraph 9 of that Schedule, as respects leases of property other than land.

### 130 Passenger vehicles.

A mechanically propelled road vehicle constructed or adapted for the carriage of passengers, except for a vehicle of a type not commonly used as a private vehicle and

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unsuitable to be so used, shall not be a chargeable asset; and accordingly no chargeable gain or allowable loss shall accrue on its disposal.

### **131 Decorations for valour or gallant conduct.**

A gain shall not be a chargeable gain if accruing on the disposal by any person of a decoration awarded for valour or gallant conduct which he acquired otherwise than for consideration in money or money's worth.

*Other property*

### **132 Commodities and other assets without earmark.**

Sections 65 and 66 above (rules of identification), and paragraph 13 of Schedule 5 to this Act (assets held on 6th April 1965) have effect, to the extent there specified, as respects assets dealt with without identifying the particular assets disposed of or acquired.

<sup>F28</sup>132A

- (1) Subject to subsections (2) and (3) below, in computing for the purposes of capital gains tax, the gain accruing on the disposal by any person of any deep discount securities (within the meaning of Schedule 4 to the Taxes Act 1988)—
  - (a) section 31 above shall not apply but the consideration for the disposal shall be treated as reduced by the amount mentioned in paragraph 4(1)(a) of that Schedule (including any amount mentioned in paragraph 3 of that Schedule); and
  - (b) where that amount exceeds the consideration for the disposal, the amount of the excess shall be treated as expenditure within section 32(1)(b) above incurred by that person on the security immediately before the disposal.
- (2) Subsection (3) below applies where—
  - (a) there is a conversion of securities to which section 82 above applies and those securities include deep discount securities; or
  - (b) securities including deep discount securities are exchanged (or by virtue of section 86(1) above are treated as exchanged) for other securities in circumstances in which section 85(3) above applies.
- (3) Where this subsection applies—
  - (a) subsection (1) and section 31 above shall not apply but any sum payable to the beneficial owner of the deep discount securities by way of consideration for their disposal (in addition to his new holding) shall be treated for the purpose of capital gains tax as reduced by the amount of the accrued income on which he is chargeable to income tax by virtue of paragraph 7(3) of Schedule 4 to the Taxes Act 1988 or, in a case where paragraph 3 of that Schedule applies, on which he would be so chargeable if that paragraph did not apply; and
  - (b) where that amount exceeds any such sum, the excess shall be treated as expenditure within section 32(1)(b) above incurred by him on the security immediately before the time of the conversion or exchange.
- (4) Where a disposal of a deep discount security is to be treated for the purposes of capital gains tax as one on which neither a gain nor a loss accrues to the person making the disposal, the consideration for which the person acquiring the security would, apart

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from this subsection, be treated for those purposes as having acquired the security shall be increased by the amount mentioned in paragraph 4(1)(a) of Schedule 4 to the Taxes Act 1988 (including any amount mentioned in paragraph 3 of that Schedule).]

- [<sup>F29</sup>(5) Where by virtue of paragraph 18(3) of Schedule 4 to the Taxes Act 1988 trustees are deemed for the purposes of that Schedule to dispose of a security at a particular time—
- (a) they shall be deemed to dispose of the security at that time for the purposes of this Act, and
  - (b) the disposal deemed by paragraph (a) above shall be deemed to be at the market value of the security.
- (6) Where by virtue of paragraph 18(4) of Schedule 4 to the Taxes Act 1988 trustees are deemed for the purposes of that Schedule to acquire a security at a particular time—
- (a) they shall be deemed to acquire the security at that time for the purposes of this Act, and
  - (b) the acquisition deemed by paragraph (a) above shall be deemed to be at the market value of the security.]

#### Textual Amendments

**F28** S. 132A(1)–(4) added by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 23**

**F29** S. 132A(5)(6) added by [Finance Act 1989 \(c. 26, SIF 63:2\)](#), **s. 96(3)**

### 133 Foreign currency for personal expenditure.

A gain shall not be a chargeable gain if accruing on the disposal by an individual of currency of any description acquired by him for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

### 134 Debts.

- (1) Where a person incurs a debt to another, whether in sterling or in some other currency, no chargeable gain shall accrue to that (that is the original) creditor or his personal representative or legatee on a disposal of the debt, except in the case of the debt on a security (as defined in section 82 above).
- (2) Subject to the provisions of sections 82 and 85 above (conversion of securities and company amalgamations), and subject to subsection (1) above, the satisfaction of a debt or part of it (including a debt on a security as defined in section 82 above) shall be treated as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.
- (3) Where property is acquired by a creditor in satisfaction of his debt or part of it, then subject to the provisions of sections 82 and 85 above the property shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but if under subsection (1) above (and in a case not falling within either of the said sections 82 and 85) no chargeable gain is to accrue on a disposal of the debt by the creditor (that is the original creditor), and a chargeable gain accrues to him on a disposal by him of the property, the amount of the chargeable gain shall (where necessary) be reduced so as not to

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exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part of it.

- (4) A loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or his personal representative or legatee at a time when the creditor or his personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more purchases through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.
- (5) Where the original creditor is a trustee and the debt, when created, is settled property, subsections (1) and (4) above shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled, as against the trustee, to the debt on its ceasing to be settled property, and to that person's personal representative or legatee.

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

**C56** See [Trustee Savings Banks Act 1985 \(c. 58, SIF 110\)](#), [s. 5](#) and [Sch. 2 para. 4\(1\)](#)

**C57** [S. 134](#) modified by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), [s. 80](#), [Sch. 12 para. 2\(3\)](#)

**135 Debts: foreign currency bank accounts.**

- (1) Subject to subsection (2) below, section 134(1) above shall not apply to a debt owed by a bank which is not in sterling and which is represented by a sum standing to the credit of a person in an account in the bank.
- (2) Subsection (1) above shall not apply to a sum in an individual's bank account representing currency acquired by the holder for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

**136 Relief in respect of loans to traders.**

- (1) In this section "a qualifying loan" means a loan in the case of which—
  - (a) the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money, and
  - (b) the borrower is resident in the United Kingdom, and
  - (c) the borrower's debt is not a debt on a security as defined in section 82 above;and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.
- (2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.
- (3) If, on a claim by a person who has made a qualifying loan, the inspector is satisfied that—

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- (a) any outstanding amount of the principal of the loan has become irrecoverable, and
- (b) the claimant has not assigned his right to recover that amount, and
- (c) the claimant and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time,

this Act shall have effect as if an allowable loss equal to that amount had accrued to the claimant when the claim was made.

- (4) If, on a claim by a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan, the inspector is satisfied that—

- (a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower, and
- (b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount, and
- (c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment, and
- (d) the lender and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time and the claimant and the borrower were not each other's spouses, and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,

this Act shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.

- (5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

<sup>F30</sup>(5A) Where—

- (a) an allowable loss has been treated under subsection (4) above as accruing to any person, and
- (b) the whole or any part of the amount of the payment mentioned in subsection (4)(b) is at any time recovered by him,

this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(5B) Where—

- (a) an allowable loss has been treated under subsection (3) above as accruing to a company (the first company), and
- (b) the whole or any part of the outstanding amount mentioned in subsection (3) (a) is at any time recovered by a company (the second company) in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(5C) Where—

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- (a) an allowable loss has been treated under subsection (4) above as accruing to a company (the first company), and
  - (b) the whole or any part of the outstanding amount mentioned in subsection (4) (a), or the whole or any part of the amount of the payment mentioned in subsection (4)(b), is at any time recovered by a company (the second company) in the same group as the first company,
- this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.]
- (6) For the purposes of [<sup>F31</sup>subsections (5) to (5C)] above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money's worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm's length he shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.
  - (7) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.
  - (8) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—
    - (a) no chargeable gain shall accrue to him otherwise than under subsection (5) above, and
    - (b) no allowable loss shall accrue to him under this Act,on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.
  - (9) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.
- [<sup>F32</sup>(9A) For the purposes of subsections (5B) and (5C) above two companies are in the same group if they were in the same group when the loan was made or have been in the same group at any subsequent time.]
- (10) In this section—
    - (a) “spouses” means spouses who are living together (construed in accordance with section 155(2) below),
    - (b) “trading company” has the meaning given by [<sup>F33</sup>paragraph 1 of Schedule 20 to the Finance Act 1985], and
    - (c) “group” shall be construed in accordance with section 272 of [<sup>F34</sup>the Taxes Act 1970].
  - (11) Subsection (3) above applies where the loan is made after 11th April 1978 and subsection (4) above applies where the guarantee is given after that date.

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#### Textual Amendments

- F30** S. 136(5A)–(5C) inserted by Finance Act 1990 (c. 29, SIF 63:2), s. 83(2)(5)  
**F31** Words substituted by Finance Act 1990 (c. 29, SIF 63:2), s. 83(3)(5)  
**F32** S. 136(9A) inserted by Finance Act 1990 (c. 29, SIF 63:2), s. 83(4)(5)  
**F33** Words substituted by Finance Act 1989 (c. 26, SIF 63:2), s. 124 and Sch. 14 para. 1(4)(a) in relation to disposals on or after 14 March 1989 (except where relief given under Finance Act 1980 (c. 48, SIF 63:1), s. 107 and Sch. 12 para. 6 for claims made after 31 March 1989  
**F34** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 paras. 15 and 32

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

- C58** See Finance Act 1984 (c. 43, SIF 63:1), s. 50(1) and Sch. 11 para. 1

### [<sup>F35</sup>136A] Relief for qualifying corporate bonds.

- (1) In this section “a qualifying loan” means a loan in the case of which—
- (a) the borrower’s debt is a debt on a security as defined in section 82 above,
  - (b) but for that fact, the loan would be a qualifying loan within the meaning of section 136 above, and
  - (c) the security is a qualifying corporate bond.
- (2) If, on a claim by a person who has made a qualifying loan, the inspector is satisfied that one of the following three conditions is fulfilled, this Act shall have effect as if an allowable loss equal to the allowable amount had accrued to the claimant when the claim was made.
- (3) The first condition is that—
- (a) the value of the security has become negligible,
  - (b) the claimant has not assigned his right to recover an outstanding amount of the principal of the loan, and
  - (c) the claimant and the borrower are not companies which have been in the same group at any time after the loan was made.
- (4) The second condition is that—
- (a) the security’s redemption date has passed,
  - (b) all the outstanding amount of the principal of the loan was irrecoverable (taking the facts existing on that date) or proved to be irrecoverable (taking the facts existing on a later date), and
  - (c) subsection (3)(b) and (c) above are fulfilled.
- (5) The third condition is that—
- (a) the security’s redemption date has passed,
  - (b) part of the outstanding amount of the principal of the loan was irrecoverable (taking the facts existing on that date) or proved to be irrecoverable (taking the facts existing on a later date), and
  - (c) subsection (3)(b) and (c) above are fulfilled.
- (6) In a case where the inspector is satisfied that the first or second condition is fulfilled, the allowable amount is the lesser of—
- (a) the outstanding amount of the principal of the loan;



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- (b) the amount of the security's acquisition cost;  
and if any amount of the principal of the loan has been recovered the amount of the security's acquisition cost shall for this purpose be treated as reduced (but not beyond nil) by the amount recovered.
- (7) In a case where the inspector is satisfied that the third condition is fulfilled, then—
- (a) if the security's acquisition cost exceeds the relevant amount, the allowable amount is an amount equal to the excess;
  - (b) if the security's acquisition cost is equal to or less than the relevant amount, the allowable amount is nil.
- (8) For the purposes of subsection (7) above the relevant amount is the aggregate of—
- (a) the amount (if any) of the principal of the loan which has been recovered, and
  - (b) the amount (if any) of the principal of the loan which has not been recovered but which in the inspector's opinion is recoverable.
- (9) Where an allowable loss has been treated under subsection (2) above as accruing to any person and the whole or any part of the relevant outstanding amount is at any time recovered by him, this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (10) Where—
- (a) an allowable loss has been treated under subsection (2) above as accruing to a company (the first company), and
  - (b) the whole or any part of the relevant outstanding amount is at any time recovered by a company (the second company) in the same group as the first company,
- this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (11) In subsections (9) and (10) above "the relevant outstanding amount" means—
- (a) the amount of the principal of the loan outstanding when the claim was allowed, in a case where the inspector was satisfied that the first or second condition was fulfilled;
  - (b) the amount of the part (or the greater or greatest part) arrived at by the inspector under subsection (5)(b) above, in a case where he was satisfied that the third condition was fulfilled.
- (12) This section applies if the security was—
- (a) issued on or after 15th March 1989, or
  - (b) issued before 15th March 1989 but held on 15th March 1989 by the person who made the loan.]

#### Textual Amendments

**F35** Ss. 136A, 136B inserted by Finance Act 1990 (c. 29, SIF 63:2), s. 84

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### [<sup>F36</sup>136B Section 136A: supplementary.

- (1) In section 136A above “qualifying corporate bond” has the same meaning as in section 64 of the Finance Act <sup>M2</sup>1984.
- (2) For the purposes of section 136A above a security’s redemption date is the latest date on which, under the terms on which the security was issued, the company or body which issued it can be required to redeem it.
- (3) For the purposes of section 136A above a security’s acquisition cost is the amount or value of the consideration in money or money’s worth given, by or on behalf of the person who made the loan, wholly and exclusively for the acquisition of the security, together with the incidental costs to him of the acquisition.
- (4) For the purposes of section 136A(10) above two companies are in the same group if they have been in the same group at any time after the loan was made.
- (5) Section 136(6) above shall apply for the purposes of section 136A(6) and (8) to (10) above as it applies for the purposes of section 136(5) above.
- (6) Section 136(7), (9) and (10)(c) above shall apply for the purposes of section 136A above and of this section as they apply for the purposes of section 136, ignoring for this purpose the words following “lender” in section 136(9).]

#### Textual Amendments

**F36** Ss. 136A, 136B inserted by Finance Act 1990 (c. 29, SIF 63:2), s. 84

#### Marginal Citations

**M2** 1984 (c. 43)(63:2).

### 137 Options and forfeited deposits.

- (1) Without prejudice to section 19 above (general provisions about the disposal of assets), the grant of an option, and in particular—
  - (a) the grant of an option in a case where the grantor binds himself to sell what he does not own, and because the option is abandoned, never has occasion to own, and
  - (b) the grant of an option in a case where the grantor binds himself to buy what, because the option is abandoned, he does not acquire,
 is the disposal of an asset (namely of the option), but subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction.
- (2) If an option is exercised the grant of the option and the transaction entered into by the grantor in fulfilment of his obligations under the option shall be treated as a single transaction and accordingly—
  - (a) if the option binds the grantor to sell, the consideration for the option is part of the consideration for the sale, and
  - (b) if the option binds the grantor to buy, the consideration for the option shall be deducted from the cost of acquisition incurred by the grantor in buying in pursuance of his obligations under the option.

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- (3) The exercise of an option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person, but, if an option is exercised then the acquisition of the option (whether directly from the grantor or not) and the transaction entered into by the person exercising the option in exercise of his rights under the option shall be treated as a single transaction and accordingly—
- (a) if the option binds the guarantor to sell, the cost of acquiring the option shall be part of the cost of acquiring what is sold, and
  - (b) if the option binds the grantor to buy, the cost of the option shall be treated as a cost incidental to the disposal of what is bought by the grantor of the option.
- (4) The abandonment of—
- (a) a quoted option to subscribe for shares in a company, or
  - [<sup>F37</sup>(aa) a traded option or financial option, or]
  - (b) an option to acquire assets exercisable by a person intending to use them, if acquired, for the purpose of a trade carried on by him,
- shall constitute the disposal of an asset (namely of the option); but the abandonment of any other option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person.
- (5) In the case of an option relating to shares or securities this section shall apply subject to the provisions of section 65 above (rules for identification: pooling) and, accordingly, the option may be regarded, in relation to the grantor or in relation to the person entitled to exercise the option, as relating to part of a holding (as defined in section 65 above) of shares or securities.
- (6) This section shall apply in relation to an option binding the grantor both to sell and to buy as if it were two separate options with half the consideration attributed to each.
- (7) In this section references to an option include references to an option binding the grantor to grant a lease for a premium or enter into any other transaction which is not a sale, and references to buying and selling in pursuance of an option shall be construed accordingly.
- (8) This section shall apply in relation to a forfeited deposit of purchase money or other consideration money for a prospective purchase or other transaction which is abandoned as it applies in relation to the consideration for an option which binds the grantor to sell and which is not exercised.
- [<sup>F38</sup>(9) In subsection (4) above and sections 138 and 139 below—
- (a) “quoted option” means an option which, at the time of the abandonment or other disposal, is quoted on a recognised stock exchange;
  - (b) “traded option” means an option which, at the time of the abandonment or other disposal, is quoted on a recognised stock exchange or a recognised futures exchange; and
  - (c) “financial option” means an option which is not a traded option, as defined in paragraph (b) above, but which, subject to subsection (10) below,—
    - (i) relates to currency, shares, securities or an interest rate and is granted (otherwise than as agent) by a member of a recognised stock exchange, by an authorised person within the meaning of the Financial Services Act 1986 or by a listed institution within the meaning of section 43 of that Act; or

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- (ii) relates to shares or securities which are dealt in on a recognised stock exchange and is granted by a member of such an exchange, acting as agent; or
  - (iii) relates to currency, shares, securities or an interest rate and is granted to such an authorised person or institution as is referred to in sub-paragraph (i) above and concurrently and in association with an option falling within that sub-paragraph which is granted by that authorised person or institution to the grantor of the first mentioned option; or
  - (iv) relates to shares or securities which are dealt in on a recognised stock exchange and is granted to a member of such an exchange, including such a member acting as agent;
- and in this subsection “recognised stock exchange” has the meaning given by section [F39 841] of [F40 the Taxes Act 1988].
- (10) If the Treasury by order so provide, an option of a description specified in the order shall be taken to be within the definition of “financial option” in subsection (9)(c) above; and the power to make an order under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.]

#### Textual Amendments

- F37** S. 137(4)(aa) substituted by Finance (No. 2) Act 1987 (c. 51), s. 81(4)
- F38** S. 137(9)(10) substituted for s. 137(9) by Finance (No. 2) Act 1987 (c. 51), s. 81(5)
- F39** Figure substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 paras. 15 and 32
- F40** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 paras. 15 and 32

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

- C59** See Finance Act 1988 (c. 39, SIF 63:1, 2), s. 145 and Sch. 12 para. 5(1)
- C60** See Finance Act 1982 (c. 39, SIF 63:2), s. 86 and Sch. 13 para. 7
- C61** S. 137(9)(b): definition of “traded option” applied by Finance Act 1991 (c. 31, SIF 63:2), s. 102(4).

### 138 Options: application of rules as to wasting assets.

- (1) Section 38 above (wasting assets: restriction of allowable expenditure) shall not apply—
- (a) to a quoted option to subscribe for shares in a company, or
  - [F41(aa) to a traded option or financial option, or]
  - (b) to an option to acquire assets exercisable by a person intending to use them, if acquired, for the purpose of a trade carried on by him.
- (2) In relation to the disposal by way of transfer of an option [F42(other than an option falling within subsection 1(a) or (aa) above)] binding the grantor to sell or buy quoted shares or securities, the option shall be regarded as a wasting asset the life of which ends when the right to exercise the option ends, or when the option becomes valueless, whichever is the earlier.

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Subsections (6) and (7) of section 137 shall apply in relation to this subsection as they apply in relation to that section.

- (3) The preceding provisions of this section are without prejudice to the application of sections 37 to 39 above (wasting assets) to options not within those provisions.
- (4) In this section—
- <sup>F43</sup>(a) “financial option”, “quoted option” and “traded option” have the meaning given by section 137(9) above, and]
  - (b) “quoted shares or securities” means shares or securities which have a quoted market value on a recognised stock exchange in the United Kingdom or elsewhere.

#### Textual Amendments

- F41** S. 138(1)(aa) substituted by Finance (No. 2) Act 1987 (c. 51), s. 81(6)(7)
- F42** Words substituted by Finance Act 1980 (c. 48, SIF 63:1), s. 84
- F43** S. 138(4)(a) substituted by Finance (No. 2) Act 1987 (c. 51), s. 81(6)(7)

### 139 Quoted options treated as part of new holdings.

- (1) If a quoted option to subscribe for shares in a company is dealt in (on the stock exchange where it is quoted) within three months after the taking effect, with respect to the company granting the option, of any reorganisation, reduction, conversion or amalgamation to which Chapter II of Part IV above applies, or within such longer period as the Board may by notice in writing allow—
- (a) the option shall, for the purposes of the said Chapter II (under which a holding prior to the reorganisation or reduction of capital, conversion or amalgamation is to be treated as the same as the resulting new holding) be regarded as the shares which could be acquired by exercising the option, and
  - (b) section 150(3) below shall apply for determining its market value.
- (2) In this section “quoted option” has the meaning given by section 137(9) above.

**Status:**

Point in time view as at 25/07/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Capital Gains Tax Act 1979 (repealed 6.3.1992), Part VI.