



# Capital Gains Tax Act 1979

## 1979 CHAPTER 14

### PART VI

#### PROPERTY: FURTHER PROVISIONS

##### *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.

#### **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 denned 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.

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- (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 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.

### **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.

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- (3) If, on a claim by a person who has made a qualifying loan, the inspector is satisfied that—
- (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.
- (6) For the purposes of subsection (5) 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,

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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.
- (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 paragraph 11 of Schedule 16 to the Finance Act 1972, and
  - (c) “group ” shall be construed in accordance with section 272 of the Taxes Act.
- (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.

### **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.
- (3) The exercise of an option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person, but, if an option is exercised then the acquisition of the option (whether directly from the grantor or not) and the transaction entered into by the person exercising the option in exercise of his rights under the option shall be treated as a single transaction and accordingly—
- (a) if the option binds the grantor to sell, the cost of acquiring the option shall be part of the cost of acquiring what is sold, and
  - (b) if the option binds the grantor to buy, the cost of the option shall be treated as a cost incidental to the disposal of what is bought by the grantor of the option.
- (4) The abandonment of—

- (a) a quoted option to subscribe for shares in a company, or
- (b) 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.
- (9) In subsection (4)(a) above, and in sections 138 and 139 below, “quoted option” means an option of a kind which, at the time of the abandonment or other disposal, is quoted on a recognised stock exchange within the meaning of section 535 of the Taxes Act, and there dealt in the same manner as shares.

### **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
  - (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 (other than a quoted option to subscribe for shares in a company) binding the grantor to sell or buy quoted shares or securities, the option shall be regarded as a wasting asset the life of which ends when the right to exercise the option ends, or when the option becomes valueless, whichever is the earlier.

Subsections (6) and (7) of section 137 above 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—
  - (a) “quoted option” has the meaning given by section 137(9) above,

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- (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.

### **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.