

## SCHEDULES

### SCHEDULE 14

Section 124.

#### CAPITAL GAINS TAX: GIFTS ETC.

##### *Gifts of business assets*

- 1 (1) Section 126 of the Capital Gains Tax Act 1979 shall be amended as follows.
- (2) For subsection (1) there shall be substituted—
- “(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.”
- (3) At the end of subsection (2) there shall be added the words “or
- (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).”
- (4) In subsection (7)—

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- (a) in paragraph (a), for the words “has the meaning” there shall be substituted the words “, “holding company”, “trading company” and “trading group” have the meanings”, and
- (b) paragraph (b) shall be omitted.

(5) After subsection (8) there shall be added—

“(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 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.”

2 After section 126 there shall be inserted—

**“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.
- (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.

**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

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- (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.

### **126C Section 126 relief: emigration of controlling trustees**

- (1) Subsection (2) below applies where—
- (a) relief under section 126 above is given in respect of a disposal of an asset to a company which is controlled by the trustees of a settlement (“the relevant disposal”),
  - (b) at the time of the relevant disposal the person making it is connected with the trustees, and
  - (c) at a time when the company has not disposed of the asset and the trustees have not ceased to control the company, they become neither resident nor ordinarily resident in the United Kingdom.
- (2) Where this subsection applies then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the trustees immediately before the time mentioned in subsection (1)(c) above, and its amount shall be equal to the held-over gain (within the meaning of section 126 above) on the relevant disposal.
- (3) For the purposes of paragraph (c) of subsection (1) above, the company shall be taken to have disposed of an asset before the time referred to in that paragraph only if it has made a disposal or disposals in connection with which the whole of the held-over gain on the relevant disposal was represented by reductions made in accordance with section 126(3)(b) above; and where the company has made a disposal in connection with which part of that gain was so represented, the amount of chargeable gain deemed by virtue of this section to accrue to the trustees shall be correspondingly reduced.
- (4) The disposals by the company that are to be taken into account under subsection (3) above shall not include any disposal to which section 273 of the Taxes Act 1970 (transfers within a group) applies; but where the company disposes of an asset by a disposal to which that section applies, the first subsequent disposal of the asset by another member of the group which is a disposal to which that section does not apply shall be taken into account under subsection (3) above as if it had been made by the company.
- (5) Where an amount of tax assessed on trustees by virtue of this section is not paid within the period of twelve months beginning with the date when the tax becomes payable then, subject to subsection (6) below, the transferor may be assessed and charged (in the name of the trustees) to all or any part of that tax.

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- (6) No assessment shall be made under subsection (5) above more than six years after the end of the year in which the relevant disposal was made.
  - (7) Where the transferor pays an amount of tax in pursuance of subsection (5) above, he shall be entitled to recover a corresponding sum from the trustees.
  - (8) Gains on disposals made after a chargeable gain has under this section been deemed to accrue by reference to a held-over gain shall be computed without any reduction under section 126(3)(b) above in respect of that held-over gain.
  - (9) Section 126B(3) above shall apply for the purposes of subsection (1)(c) above as it applies for the purposes of section 126B(2).”
- 3 (1) Schedule 4 to the Capital Gains Tax Act 1979 shall be amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1)(b), for the words “section 126(1)(a)” there shall be substituted the words “section 126(1)” and for the words “that paragraph” there shall be substituted the words “section 126(1A)(a)”; and
  - (b) in sub-paragraph (2), the words “at the rate of 50 per cent.” shall be omitted, and at the end of paragraph (b) there shall be added the words “; or
  - (c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).”
- (3) For paragraph 2 there shall be substituted—
- “2 (1) If—
- (a) the trustees of a settlement make a disposal otherwise than under a bargain at arm’s length of an asset within sub-paragraph (2) below, and
  - (b) a claim for relief under section 126 of this Act is made by the trustees and the person who acquires the asset (in this Schedule referred to as “the transferee”) or, where the trustees of a settlement are also the transferee, by the trustees making the disposal alone,
- then, subject to subsection (2) of section 126 and to sections 126A and 126B, subsection (3) of section 126 shall apply in relation to the disposal.
- (2) An asset is within this sub-paragraph 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 trustees making the disposal, or
    - (ii) a beneficiary who had an interest in possession in the settled property immediately before the disposal, 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) not less than 25 per cent. of the voting rights exercisable by shareholders of the company in general meeting are exercisable by the trustees at the time of the disposal.

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- (3) Where section 126(3) applies by virtue of this paragraph, references to the trustees shall be substituted for the references in sections 126(3)(a) and 126C to the transferor; and where it applies in relation to a disposal which is deemed to occur by virtue of section 54(1) or 55(1) of this Act, section 126(6) shall not apply.”
- (4) In paragraph 3—
- (a) in sub-paragraph (1)—
- (i) the words from “by virtue” to “(settled property)” shall be omitted,
- (ii) for the words “(a) of paragraph 2(1)” there shall be substituted “2(1)(a)”, and
- (iii) for the words “the said paragraph (a)” there shall be substituted the words “paragraph 2(2)(a) above”, and
- (b) in sub-paragraph (2), the words “at the rate of 50 per cent.” shall be omitted, and at the end of paragraph (b) there shall be added the words “, or
- (c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).”
- (5) In paragraph 4—
- (a) in sub-paragraph (2)(a), for the words “section 126(1)” there shall be substituted the words “section 126(1A)”, and for the words “sub-paragraph (1)” there shall be substituted the words “sub-paragraph (2)”;
- (b) for sub-paragraph (2)(c) there shall be substituted—
- “(c) “the transferor” has the same meaning as in section 126 of this Act except that, in a case where paragraph 2 above applies, it refers to the trustees mentioned in that paragraph.”;
- (c) for sub-paragraph (3) there shall be substituted—
- “(3) In this Part of this Schedule—
- (a) any reference to a disposal of an asset is a reference to a disposal which falls within subsection (1) of section 126 of this Act by virtue of subsection (1A)(a) of that section or, as the case may be, falls within sub-paragraph (1) of paragraph 2 above by virtue of sub-paragraph (2)(a) of that paragraph, and
- (b) any reference to a disposal of shares is a reference to a disposal which falls within subsection (1) of section 126 of this Act by virtue of subsection (1A)(b) of that section or, as the case may be, falls within sub-paragraph (1) of paragraph 2 above by virtue of sub-paragraph (2)(b) of that paragraph.”; and
- (d) in sub-paragraph (4), for the words “as the case may be” there shall be substituted the words “where it applies”, and the words “(taking account” onwards shall be omitted.
- (6) At the end of each of paragraph 5 and paragraph 6 there shall be added—
- “(2) This paragraph shall not apply where the circumstances are such that a reduction in respect of the asset—

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- (a) is made under Chapter II of Part V of the Inheritance Tax Act 1984 in relation to a chargeable transfer taking place on the occasion of the disposal, or
- (b) would be so made if there were a chargeable transfer on that occasion, or
- (c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).”

(7) For paragraph 7 there shall be substituted—

- “7 (1) If in the case of a disposal of shares assets which are not business assets are included in the chargeable assets of the company whose shares are disposed of, or, where that company is the holding company of a trading group, in the group’s chargeable assets, and either—
- (a) at any time within the period of twelve months before the disposal not less than 25 per cent. of the voting rights exercisable by shareholders of the company in general meeting are exercisable by the transferor, or
  - (b) the transferor is an individual and, at any time within that period, the company is his family company,
- the amount of the held-over gain shall be reduced by multiplying it by the fraction defined in sub-paragraph (2) below.
- (2) The fraction referred to in sub-paragraph (1) above is that of which—
- (a) the denominator is the market value on the date of the disposal of all the chargeable assets of the company, or as the case may be of the group, and
  - (b) the numerator is the market value on that date of those chargeable assets of the company or of the group which are business assets.
- (3) For the purposes of this paragraph—
- (a) an asset is a business asset in relation to a company or a group if it is or is an interest in an asset used for the purposes of a trade, profession or vocation carried on by the company, or as the case may be by a member of the group; and
  - (b) an asset is a chargeable asset in relation to a company or a group at any time if, on a disposal at that time, a gain accruing to the company, or as the case may be to a member of the group, would be a chargeable gain.
- (4) Where the shares disposed of are shares of the holding company of a trading group, then for the purposes of this paragraph—
- (a) the holding by one member of the group of the ordinary share capital of another member shall not count as a chargeable asset, and
  - (b) if the whole of the ordinary share capital of a 51 per cent. subsidiary of the holding company is not owned directly or indirectly by that company, the value of the chargeable assets of the subsidiary shall be taken to be reduced by multiplying it by the fraction of which the denominator is the whole of the ordinary share capital of the subsidiary and the numerator is the

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amount of that share capital owned directly or indirectly by the holding company.

(5) Expressions used in sub-paragraph (4) above have the same meanings as in section 838 of the Taxes Act 1988.”

*Gifts on which inheritance tax is chargeable etc.*

4 The following sections shall be inserted after section 147 of the Capital Gains Tax Act 1979—

**“147A Gifts on which inheritance tax is chargeable etc**

(1) If—

- (a) an individual or the trustees of a settlement (in this section referred to as “the transferor”) make a disposal within subsection (2) below of an asset,
- (b) the asset is acquired by an individual or the trustees of a settlement (in this section referred to as “the transferee”), and
- (c) a claim for relief under this section is made by the transferor and the transferee or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (6) and section 147B below, subsection (3) below shall apply in relation to the disposal.

(2) A disposal is within this subsection if it is made otherwise than under a bargain at arm’s length and—

- (a) is a chargeable transfer within the meaning of the Inheritance Tax Act 1984 (or would be but for section 19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act),
- (b) is an exempt transfer by virtue of—
  - (i) section 24 of that Act (transfers to political parties),
  - (ii) section 26 of that Act (transfers for public benefit),
  - (iii) section 27 of that Act (transfers to maintenance funds for historic buildings etc.), or
  - (iv) section 30 of that Act (transfers of designated property),
- (c) is a disposition to which section 57A of that Act applies and by which the property disposed of becomes held on trusts of the kind referred to in subsection (1)(b) of that section (maintenance funds for historic buildings etc.),
- (d) by virtue of subsection (4) of section 71 of that Act (accumulation and maintenance trusts) does not constitute an occasion on which inheritance tax is chargeable under that section,
- (e) by virtue of section 78(1) of that Act (transfers of works of art etc.) does not constitute an occasion on which tax is chargeable under Chapter III of Part III of that Act, or
- (f) is a disposal of an asset comprised in a settlement where, as a result of the asset or part of it becoming comprised in another settlement, there is no charge, or a reduced charge, to inheritance tax by virtue of paragraph 9, 16 or 17 of Schedule 4 to that Act (transfers to maintenance funds for historic buildings etc.).

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- (3) Where this subsection applies in relation to 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 in question,
- shall each be reduced by an amount equal to the held-over gain on the disposal.
- (4) Subject to subsection (5) 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 this section.
- (5) 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 any provision of this Act) 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 reduced by the excess referred to in paragraph (b) above or, if part of the gain on the disposal is relieved under Schedule 20 to the Finance Act 1985 (retirement relief), by so much, if any, of that excess as exceeds the part so relieved.
- (6) Subsection (3) above does not apply in relation to a disposal of assets within section 67(1) above on which a gain is deemed to accrue by virtue of paragraph 10(1)(b) of Schedule 13 to the Finance Act 1984.
- (7) In the case of a disposal within subsection (2)(a) above there shall be allowed as a deduction in computing the chargeable gain accruing 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.
- (8) Where an amount of inheritance tax is varied after it has been taken into account under subsection (7) 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.
- (9) Where subsection (3) above applies in relation to a disposal which is deemed to occur by virtue of section 54(1) or 55(1) above, subsection (5) above shall not apply.
- (10) Where a disposal is partly within subsection (2) above, or is a disposal within paragraph (f) of that subsection on which there is a reduced charge such as is mentioned in that paragraph, the preceding provisions of this section shall have effect in relation to an appropriate part of the disposal.



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### **147B Section 147A relief: gifts to non-residents**

- (1) Section 147A(3) above shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.
- (2) Section 147A(3) above shall not apply where the transferee is an individual who—
  - (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.”

#### *Payment of tax by instalments*

- 5 The following section shall be inserted after section 7 of the Capital Gains Tax Act 1979—

### **“7A Payment by instalments of tax on gifts**

- (1) Subsection (2) below applies where—
  - (a) the whole or any part of any assets to which this section applies is disposed of by way of gift or is deemed to be disposed of under section 54(1) or 55(1) below, and
  - (b) the disposal is one—
    - (i) to which neither section 126(3) nor section 147A(3) below applies (or would apply if a claim were duly made), or
    - (ii) to which either of those sections does apply but on which the held-over gain (within the meaning of the section applying) is less than the chargeable gain which would have accrued on that disposal apart from that section.
- (2) Where this subsection applies, the capital gains tax chargeable on a gain accruing on the disposal may, if the person paying it by notice in writing to the inspector so elects, be paid by ten equal yearly instalments.
- (3) The assets to which this section applies are—
  - (a) land or an estate or interest in land,
  - (b) any shares or securities of a company which, immediately before the disposal, gave control of the company to the person by whom the disposal was made or deemed to be made, and
  - (c) any shares or securities of a company not falling under paragraph (b) above and not quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market.
- (4) Where tax is payable by instalments by virtue of this section, the first instalment shall be due on the day on which the tax would be payable apart from this section.
- (5) Subject to the following provisions of this section—

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- (a) tax payable by instalments by virtue of this section shall carry interest in accordance with Part IX (except section 88) of the Taxes Management Act 1970, and
  - (b) the interest on the unpaid portion of the tax shall be added to each instalment and paid accordingly.
- (6) Tax payable by instalments by virtue of this section which is for the time being unpaid, with interest to the date of payment, may be paid at any time.
- (7) Tax which apart from this subsection would be payable by instalments by virtue of this section and which is for the time being unpaid, with interest to the date of payment, shall become due and payable immediately if—
- (a) the disposal was by way of gift to a person connected with the donor or was deemed to be made under section 54(1) or 55(1) below, and
  - (b) the assets are disposed of for valuable consideration under a subsequent disposal (whether or not the subsequent disposal is made by the person who acquired them under the first disposal)."

*Minor and consequential amendments*

- 6 (1) In section 56A of the Capital Gains Tax Act 1979 (gifts relief in cases within section 55 or 56)—
- (a) in subsection (1), for the words “79 of the Finance Act 1980” there shall be substituted the words “126 or 147A below”, and
  - (b) in subsection (4), for the words “79(1) of the Finance Act 1980” there shall be substituted the words “126 or, as the case may be, 147A below”.
- (2) In section 155(1) of that Act, the following definition shall be inserted after the definition of “quoted”—
- ““recognised stock exchange” has the meaning given by section 841 of the Taxes Act 1988.”
- (3) In section 79 of the Finance Act 1981 (emigration of donee)—
- (a) in subsection (1), for paragraph (a) there shall be substituted—
    - “(a) relief is given under section 126 of the Capital Gains Tax Act 1979 in respect of a disposal to an individual or the trustees of a settlement or under section 147A of that Act in respect of any disposal (“the relevant disposal”);”,
 and for the words “the said section 79” there shall be substituted the words “section 126 or 147A”, and
  - (b) for the words “subsection (1)(b) of the said section 79” in subsection (2) and for the words “section 79(1)(b) of the Finance Act 1980” in subsections (6) and (10) there shall be substituted the words “section 126(3)(b) or 147A(3)(b) of the Capital Gains Tax Act 1979”.
- (4) In section 64(5)(b) of the Finance Act 1984 (qualifying corporate bonds), for the words “of that Act or section 79 of the Finance Act 1980” there shall be substituted the words “or 147A of that Act”.
- (5) In section 58 of the Finance Act 1986 (gifts into dual resident trusts)—
- (a) in subsection (1), for the words “79 of the Finance Act 1980 (general relief)” there shall be substituted the words “126 or 147A of the Capital Gains

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Tax Act 1979 (relief”, and for the words “subsection (1)” there shall be substituted the words “subsection (3)”,

- (b) subsection (2)(b) shall be omitted, and
- (c) in subsections (3) and (5), for the words “the 1980 provision” in each place where they occur there shall be substituted the words “section 126 or 147A of the Capital Gains Tax Act 1979”.

- (6) In paragraph 3(3) of Schedule 28 to the Taxes Act 1988 (offshore income gains), for the words “79 of the Finance Act 1980 (relief for gifts), that section” there shall be substituted the words “126 or 147A of the Capital Gains Tax Act 1979 (relief for gifts), the claim”.