Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART IV

SHARES, SECURITIES, OPTIONS ETC.

CHAPTER II

REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

Company reconstructions and amalgamations

135 Exchange of securities for those in another company.

(1) Subsection (3) below has effect where a company ("company A") issues shares or debentures to a person in exchange for shares in or debentures of another company ("company B") and—

(a) company A holds, or in consequence of the exchange will hold, more than one-quarter of the ordinary share capital (as defined in section 832(1) of the Taxes Act) of company B, or

(b) company A issues the shares or debentures in exchange for shares as the result of a general offer—

(i) which is made to members of company B or any class of them (with or without exceptions for persons connected with company A), and

(ii) which is made in the first instance on a condition such that if it were satisfied company A would have control of company B **[**[F1]or

(c) company A holds, or in consequence of the exchange will hold, the greater part of the voting power in company B**]**

(2) Subsection (3) below also has effect where under section 136 persons are to be treated as exchanging shares or debentures held by them in consequence of the arrangement there mentioned.

(3) Subject to sections 137 and 138, sections 127 to 131 shall apply with any necessary adaptations as if the 2 companies mentioned in subsection (1) above or, as the case may be, in section 136 were the same company and the exchange were a reorganisation of its share capital.

Textual Amendments

F1 Words in s. 135(1) inserted (*retrosp.*) by 1992 c. 48, **s. 35(1)**

Modifications etc. (not altering text)

C1 S. 135(3) excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

136 Reconstruction or amalgamation involving issue of securities.

(1) Where—

(a) an arrangement between a company and the persons holding shares in or debentures of the company, or any class of such shares or debentures, is entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation, and

(b) under the arrangement another company issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in or debentures of the first-mentioned company, but the shares in or debentures of the first-mentioned company are either retained by those persons or cancelled,

then those persons shall be treated as exchanging the first-mentioned shares or debentures for those held by them in consequence of the arrangement (any shares or debentures retained being for this purpose regarded as if they had been cancelled and replaced by a new issue), and subsections (2) and (3) of section 135 shall apply accordingly.

(2) In this section "scheme of reconstruction or amalgamation" means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies, and references to shares or debentures being retained include their being retained with altered rights or in an altered form whether as the result of reduction, consolidation, division or otherwise.

(3) This section, and section 135(2), shall apply in relation to a company which has no share capital as if references to shares in or debentures of a company included references to any interests in the company possessed by members of the company.

137 Restriction on application of sections 135 and 136.

(1) Subject to subsection (2) below, and section 138, neither section 135 nor section 136 shall apply to any issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of another company unless the exchange, reconstruction or amalgamation in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax.

(2) Subsection (1) above shall not affect the operation of section 135 or 136 in any case where the person to whom the shares or debentures are issued does not hold more than 5 per cent. of, or of any class of, the shares in or debentures of the second company mentioned in subsection (1) above.

(3) For the purposes of subsection (2) above shares or debentures held by persons connected with the person there mentioned shall be treated as held by him.

(4) If any tax assessed on a person (the chargeable person) by virtue of subsection (1) above is not paid within 6 months from the date when it is payable, any other person who—

(a) holds all or any part of the shares or debentures that were issued to the chargeable person, and

(b) has acquired them without there having been, since their acquisition by the chargeable person, any disposal of them not falling within section 58(1) or 171,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable person) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable person.

(5) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (4) above—

(a) for the words “the date when it is payable" there shall be substituted “ the date determined under subsection (4A) below ”;

(b) for the words “the time when the tax became payable" there shall be substituted “ that date ”; and

(c) for the words “a sum" onwards there shall be substituted “ from the chargeable person a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount ”;

and after that subsection there shall be inserted—

“(4A) The date referred to in subsection (4) above is whichever is the later of—

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

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

(6) In this section references to shares or debentures include references to any interests or options to which this Chapter applies by virtue of section 136(3) or 147.

Commencement Information

I1 S. 137(5):30.9.1993 appointed for the purposes of s. 137(5) by S.I. 1992/3066, **art. 2(2)(d)** in force at 30.9.1993 by S.I. 1992/3066, **art. 2(2)(d)**

138 Procedure for clearance in advance.

(1) Section 137 shall not affect the operation of section 135 or 136 in any case where, before the issue is made, the Board have, on the application of either company mentioned in section 137(1), notified the company that the Board are satisfied that the

exchange, reconstruction or amalgamation will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in section 137(1).

(2) Any application under subsection (1) above shall be in writing and shall contain particulars of the operations that are to be effected and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(3) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.

(4) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) above or do not notify their decision to the applicant within the time required by subsection (3) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (2) above, to the Special Commissioners; and in that event any notification by the Special Commissioners shall have effect for the purposes of subsection (1) above as if it were a notification by the Board.

(5) If any particulars furnished under this section do not fully and accurately disclose all facts and considerations material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) above shall be void.

[F2 138A Use of earn-out rights for exchange of securities.

(1) For the purposes of this section an earn-out right is so much of any right conferred on any person ("the seller") as—

(a) constitutes the whole or any part of the consideration for the transfer by him of shares in or debentures of a company ("the old securities");

(b) consists in a right to be issued with shares in or debentures of another company ("the new company");

(c) is such that the value or quantity of the shares or debentures to be issued in pursuance of the right ("the new securities") is unascertainable at the time when the right is conferred; and

(d) is not capable of being discharged in accordance with its terms otherwise than by the issue of the new securities.

(2) Where—

(a) there is an earn-out right,

(b) the exchange of the old securities for the earn-out right is an exchange to which section 135 would apply, in a manner unaffected by section 137, if the earn-out right were an ascertainable amount of shares in or debentures of the new company, and

(c) the seller elects under this section for the earn-out right to be treated as a security of the new company,

this Act shall have effect, in the case of the seller and every other person who from time to time has the earn-out right, in accordance with the assumptions specified in subsection (3) below.

(3) Those assumptions are—

(a) that the earn-out right is a security within the definition in section 132;

(b) that the security consisting in the earn-out right is a security of the new company and is incapable of being a qualifying corporate bond for the purposes of this Act;

(c) that references in this Act (including those in this section) to a debenture include references to a right that is assumed to be a security in accordance with paragraph (a) above; and

(d) that the issue of shares or debentures in pursuance of such a right constitutes the conversion of the right, in so far as it is discharged by the issue, into the shares or debentures that are issued.

(4) For the purposes of this section where—

(a) any right which is assumed, in accordance with this section, to be a security of a company ("the old right") is extinguished,

(b) the whole of the consideration for the extinguishment of the old right consists in another right ("the new right") to be issued with shares in or debentures of that company,

(c) the new right is such that the value or quantity of the shares or debentures to be issued in pursuance of the right ("the replacement securities") is unascertainable at the time when the old right is extinguished,

(d) the new right is not capable of being discharged in accordance with its terms otherwise than by the issue of the replacement securities, and

(e) the person on whom the new right is conferred elects under this section for it to be treated as a security of that company,

the assumptions specified in subsection (3) above shall have effect in relation to the new right, in the case of that person and every other person who from time to time has the new right, as they had effect in relation to the old right.

(5) An election under this section in respect of any right must be made, by a notice given to an officer of the Board—

(a) in the case of an election by a company within the charge to corporation tax, within the period of two years from the end of the accounting period in which the right is conferred; and

(b) in any other case, on or before the first anniversary of the 31st January next following the year of assessment in which that right is conferred.

(6) An election under this section shall be irrevocable.

(7) Subject to subsections (8) to (10) below, where any right to be issued with shares in or debentures of a company is conferred on any person, the value or quantity of the shares or debentures to be issued in pursuance of that right shall be taken for the purposes of this section to be unascertainable at a particular time if, and only if—

(a) it is made referable to matters relating to any business or assets of one or more relevant companies; and

(b) those matters are uncertain at that time on account of future business or future assets being included in the business or assets to which they relate.

(8) Where a right to be issued with shares or debentures is conferred wholly or partly in consideration for the transfer of other shares or debentures or the extinguishment of any right, the value and quantity of the shares or debentures to be issued shall not be taken for the purposes of this section to be unascertainable in any case where, if—

(a) the transfer or extinguishment were a disposal, and

(b) a gain on that disposal fell to be computed in accordance with this Act,

the shares or debentures to be issued would, in pursuance of section 48, be themselves regarded as, or as included in, the consideration for the disposal.

(9) Where any right to be issued with shares in or debentures of a company comprises an option to choose between shares in that company and debentures of that company, the existence of that option shall not, by itself, be taken for the purposes of this section either—

(a) to make unascertainable the value or quantity of the shares or debentures to be issued; or

(b) to prevent the requirements of subsection (1)(b) and (d) or (4)(b) and (d) above from being satisfied in relation to that right.

(10) For the purposes of this section the value or quantity of shares or debentures shall not be taken to be unascertainable by reason only that it has not been fixed if it will be fixed by reference to the other and the other is ascertainable.

(11) In subsection (7) above "relevant company", in relation to any right to be issued with shares in or debentures of a company, means—

(a) that company or any company which is in the same group of companies as that company; or

(b) the company for whose shares or debentures that right was or was part of the consideration, or any company in the same group of companies as that company;

and in this subsection the reference to a group of companies shall be construed in accordance with section 170(2) to (14).**]**

Textual Amendments

F2 S. 138A inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 89(1)(2)** (with s. 89(3)-(8))

139 Reconstruction or amalgamation involving transfer of business.

(1) Subject to the provisions of this section, where—

(a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and

(b) at the time of the transfer both the companies are resident in the United Kingdom, and

(c) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then, so far as relates to corporation tax on chargeable gains, the 2 companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company

making the disposal, and for the purposes of Schedule 2 the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

(2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

Section 170(1) applies for the purposes of this subsection.

F3(3) . . . . . .

(4) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which section 100(2) applies or which is an authorised unit trust or to an investment trust **[**F4or a venture capital trust**]**.

(5) This section does not apply unless the reconstruction or amalgamation is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax; but the foregoing provisions of this subsection shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the acquiring company, notified the company that the Board are satisfied that the reconstruction or amalgamation will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as aforesaid.

Subsections (2) to (5) of section 138 shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.

(6) Where, if the company making the disposal had not been wound up, tax could have been assessed on it by virtue of subsection (5) above, that tax may be assessed and charged (in the name of the company making the disposal) on the company to which the disposal is made.

(7) If any tax assessed on a company ("the chargeable company") by virtue of subsection (5) or (6) above is not paid within 6 months from the date when it is payable, any other person who—

(a) holds all or any part of the assets in respect of which the tax is charged; and

(b) either is the company to which the disposal was made or has acquired the assets without there having been any subsequent disposal not falling within this section or section 171,

may, within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this section shall be entitled to recover a sum of that amount from the chargeable company.

(8) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (7) above—

(a) for the words "when it is payable" there shall be substituted " when it is due and payable or, if later, the date when the assessment is made on the company ";

(b) for the words "the time when the tax became payable" there shall be substituted " the later of those dates "; and

(c) for the words "a sum" onwards there shall be substituted " from the chargeable company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount ".

(9) In this section "scheme of reconstruction or amalgamation" means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies.

Textual Amendments

F3 S. 139(3) repealed (with effect in accordance with s. 251(1)(a)(5) of the amending Act) by Finance Act 1994 (c. 9), s. 251(5), **Sch. 26 Pt. VIII(1)**

F4 Words in s. 139(4) inserted (with application in accordance with s. 134(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 134(1)**

Modifications etc. (not altering text)

C2 S. 139 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

C3 S. 139 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

Commencement Information

I2 S. 139(8): 30.9.1993 appointed for the purposes of s. 139(8) by S.I. 1992/3066, **art. 2(2)(d)**

140 Postponement of charge on transfer of assets to non-resident company.

(1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a branch or agency and—

(a) that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) is transferred to a company not resident in the United Kingdom;

(b) the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee company to the transferor company;

(c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company; and

(d) either no allowable losses accrue to the transferor company on the transfer or the aggregate of the chargeable gains so accruing exceeds the aggregate of the allowable losses so accruing;

and also applies in any case where section 268A of the [M1]Income and Corporation Taxes Act 1970 applied unless the deferred gain had been wholly taken into account in accordance with that section before the coming into force of this section.

Section 170(1) shall apply for the purposes of this section.

(2) In any case to which this section applies the transferor company may claim that this Act shall have effect in accordance with the following provisions.

(3) Any allowable losses accruing to the transferor company on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses and—

(a) if the securities are the whole consideration for the transfer, the whole of that gain shall be treated as not accruing to the transferor company on the transfer but an equivalent amount ("the deferred gain") shall be brought into account in accordance with subsections (4) and (5) below;

(b) if the securities are not the whole of that consideration—

(i) paragraph (a) above shall apply to the appropriate proportion of that gain; and

(ii) the remainder shall be treated as accruing to the transferor company on the transfer.

In paragraph (b)(i) above "the appropriate proportion" means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

(4) If at any time after the transfer the transferor company disposes of the whole or part of the securities held by it immediately before that time, the consideration received by it on the disposal shall be treated as increased by the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (5) below.

In this subsection "the appropriate proportion" means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal.

(5) If at any time within 6 years after the transfer the transferee company disposes of the whole or part of the relevant assets held by it immediately before that time there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (4) above.

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

(6) There shall be disregarded—

(a) for the purposes of subsection (4) above any disposal to which section 171 applies; and

(b) for the purposes of subsection (5) above any disposal to which that section would apply apart from section 170(2)(a) and (9);

and where a person acquires securities or an asset on a disposal disregarded for the purposes of subsection (4) or (5) above (and without there having been a previous disposal not so disregarded) a disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, transferee company.

F5[(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140C.**]**

(7) If in the case of any such transfer as was mentioned in section 268(1) of the [M2]Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section chargeable gains which by virtue of section 268(2) and 268A(8) of that Act were treated as not having accrued to the transferor company, subsection (4) above shall (without any claim in that behalf) apply to the aggregate of those gains as if references to the deferred gain were references to that aggregate and as if references to the transfer and the securities were references to the transfer and the shares, or shares and loan stock, mentioned in section 268(1).

(8) If in the case of any such transfer as was mentioned in section 268A(1) of the [M3]Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section deferred gains which by virtue of section 268A(3) were treated as not having accrued to the transferor company, subsections (4) and (5) above shall (without any claim in that behalf) apply to those deferred gains as they apply to gains deferred by virtue of subsection (3) above (as if the references to the transfer and the securities were references to the transfer and securities mentioned in section 268A(1)).

Textual Amendments

F5 S. 140(6A) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(4)**

Marginal Citations

M1 1970 c. 10.
M2 1970 c. 10.
M3 1970 c. 10.

Status:
Point in time view as at 29/03/1999.

Changes to legislation:
Taxation of Chargeable Gains Act 1992, Cross Heading: Company reconstructions and amalgamations is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.