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Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART IV

SHARES, SECURITIES, OPTIONS ETC.

VALID FROM 06/04/1992

CHAPTER III

MISCELLANEOUS PROVISIONS RELATING TO
COMMODITIES, FUTURES, OPTIONS AND OTHER SECURITIES

141 Stock dividends: consideration for new holding.

- (1) In applying section 128(1) in relation to the issue of any share capital to which section 249 of the Taxes Act (stock dividends) applies as involving a reorganisation of the company's share capital, there shall be allowed, as consideration given for so much of the new holding as was issued as mentioned in subsection (4), (5) or (6) of section 249 (read in each case with subsection (3) of that section) an amount equal to what is, for that much of the new holding, the appropriate amount in cash within the meaning of section 251(2) of the Taxes Act.
- (2) This section shall have effect notwithstanding section 128(2).

142 Capital gains on certain stock dividends.

- (1) This section applies where a company issues any share capital to which section 249 of the Taxes Act applies in respect of shares in the company held by a person as trustee, and another person is at the time of the issue absolutely entitled thereto as against the trustee or would be so entitled but for being an infant or other person under disability (or 2 or more other persons are or would be jointly so entitled thereto).

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- (2) Notwithstanding paragraph (a) of section 126(2) the case shall not constitute a reorganisation of the company's share capital for the purposes of sections 126 to 128.
- (3) Notwithstanding section 17(1), the person who is or would be so entitled to the share capital (or each of the persons who are or would be jointly so entitled thereto) shall be treated for the purposes of section 38(1)(a) as having acquired that share capital, or his interest in it, for a consideration equal to the appropriate amount in cash within the meaning of section 251(2) to (4) of the Taxes Act.

143 Commodity and financial futures and qualifying options.

- (1) If, apart from section 128 of the Taxes Act, gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, for the purposes of the Tax Acts, profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, then his outstanding obligations under any futures contract entered into in the course of that dealing and any qualifying option granted or acquired in the course of that dealing shall be regarded as assets to the disposal of which this Act applies.
- (2) In subsection (1) above—
 - (a) “commodity or financial futures” means commodity futures or financial futures which are for the time being dealt in on a recognised futures exchange; and
 - (b) “qualifying option” means a traded option or financial option as defined in section 144(8).
- (3) Notwithstanding the provisions of subsection (2)(a) above, where, otherwise than in the course of dealing on a recognised futures exchange—
 - (a) an authorised person or listed institution enters into a commodity or financial futures contract with another person, or
 - (b) the outstanding obligations under a commodity or financial futures contract to which an authorised person or listed institution is a party are brought to an end by a further contract between the parties to the futures contract,
 then, except in so far as any gain or loss arising to any person from that transaction arises in the course of a trade, that gain or loss shall be regarded for the purposes of subsection (1) above as arising to him in the course of dealing in commodity or financial futures.
- (4) In subsection (3) above—
 - “authorised person” has the same meaning as in the ^{M1}Financial Services Act 1986, and
 - “listed institution” has the same meaning as in section 43 of that Act.
- (5) For the purposes of this Act, where, in the course of dealing in commodity or financial futures, a person who has entered into a futures contract closes out that contract by entering into another futures contract with obligations which are reciprocal to those of the first-mentioned contract, that transaction shall constitute the disposal of an asset (namely, his outstanding obligations under the first-mentioned contract) and, accordingly—
 - (a) any money or money's worth received by him on that transaction shall constitute consideration for the disposal; and

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(b) any money or money's worth paid or given by him on that transaction shall be treated as incidental costs to him of making the disposal.

(6) In any case where—

- (a) a person who, in the course of dealing in financial futures, has entered into a futures contract does not close out that contract (as mentioned in subsection (5) above), and
- (b) the nature of the futures contract is such that, at its expiry date, the person concerned is entitled to receive or liable to make a payment in full settlement of all obligations under that contract,

then, for the purposes of this Act, he shall be treated as having disposed of an asset (namely, his outstanding obligations under the futures contract) and the payment received or made by him shall be treated as consideration for that disposal or, as the case may be, as incidental costs to him of making the disposal.

Marginal Citations

M1 1986 c. 60.

144 Options and forfeited deposits.

- (1) Without prejudice to section 21, 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.

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- (4) The abandonment of—
- (a) a quoted option to subscribe for shares in a company, or
 - (b) a traded option or financial option, or
 - (c) 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) This section shall apply in relation to an option binding the grantor both to sell and to buy as if it were 2 separate options with half the consideration attributed to each.
- (6) 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.
- (7) 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.
- (8) In subsection (4) above and sections 146 and 147—
- (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 (9) 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 ^{M2}Financial Services Act 1986 or by a listed institution within the meaning of section 43 of that Act; or
 - (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.
- (9) 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 (8)(c) above.

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Modifications etc. (not altering text)

C1 S. 144 extended (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 26(2)**

Marginal Citations

M2 1986 c. 60.

145 Call options: indexation allowance.

- (1) This section applies where, on a disposal to which section 53 applies, the relevant allowable expenditure includes both—
 - (a) the cost of acquiring an option binding the grantor to sell (“the option consideration”); and
 - (b) the cost of acquiring what was sold as a result of the exercise of the option (“the sale consideration”),
 but does not apply in any case where section 114 applies.
- (2) For the purpose of computing the indexation allowance (if any) on the disposal referred to in subsection (1) above—
 - (a) the option consideration and the sale consideration shall be regarded as separate items of expenditure; and
 - (b) subsection (4) of section 54 shall apply to neither of those items and, accordingly, they shall be regarded as incurred when the option was acquired and when the sale took place, respectively.
- (3) This section has effect notwithstanding section 144, but expressions used in this section have the same meaning as in that section and subsection (5) of that section applies for the purpose of determining the cost of acquiring an option binding the grantor to sell.

146 Options: application of rules as to wasting assets.

- (1) Section 46 shall not apply—
 - (a) to a quoted option to subscribe for shares in a company, or
 - (b) to a traded option, or financial option, or
 - (c) 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 an option falling within subsection (1)(a) or (b) 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.

Subsections (5) and (6) of section 144 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 44 to 47 to options not within those provisions.
- (4) In this section—

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- (a) “financial option”, “quoted option” and “traded option” have the meanings given by section 144(8), 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.

147 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 3 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 this Part applies, or within such longer period as the Board may by notice allow—
 - (a) the option shall, for the purposes of that Chapter be regarded as the shares which could be acquired by exercising the option, and
 - (b) section 272(3) shall apply for determining its market value.
- (2) In this section “quoted option” has the meaning given by section 144(8).

148 Traded options: closing purchases.

- (1) This section applies where a person (“the grantor”) who has granted a traded option (“the original option”) closes it out by acquiring a traded option of the same description (“the second option”).
- (2) Any disposal by the grantor involved in closing out the original option shall be disregarded for the purposes of capital gains tax or, as the case may be, corporation tax on chargeable gains.
- (3) The incidental costs to the grantor of making the disposal constituted by the grant of the original option shall be treated for the purposes of the computation of the gain as increased by an amount equal to the aggregate of—
 - (a) the amount or value of the consideration, in money or money’s worth, given by him or on his behalf wholly and exclusively for the acquisition of the second option, and
 - (b) the incidental costs to him of that acquisition.
- (4) In this section “traded option” has the meaning given by section 144(8).

149 Rights to acquire qualifying shares.

- (1) This section applies where on or after 25th July 1991 (the day on which the ^{M3}Finance Act 1991 was passed) a building society confers—
 - (a) on its members, or
 - (b) on any particular class or description of its members,
 any rights to acquire, in priority to other persons, shares in the society which are qualifying shares.
- (2) Any such right so conferred shall be regarded for the purposes of capital gains tax as an option granted to, and acquired by, the member concerned for no consideration and having no value at the time of that grant and acquisition.
- (3) In this section—

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“member” includes a former member, and
“qualifying share” has the same meaning as in section 117(4).

Marginal Citations

M3 1991 c. 31.

VALID FROM 27/07/1993

[149A ^{F1} Approved share option schemes.

- (1) This section applies where—
- (a) an option is granted on or after 16th March 1993,
 - (b) the option consists of a right to acquire shares in a body corporate and is obtained as mentioned in section 185(1) of the Taxes Act (approved share option schemes), and
 - (c) section 17(1) would (apart from this section) apply for the purposes of calculating the consideration for the grant of the option.
- (2) The grantor of the option shall be treated for the purposes of this Act as if section 17(1) did not apply for the purposes of calculating the consideration and, accordingly, as if the amount or value of the consideration was its actual amount or value.
- (3) Where the option is granted wholly or partly in recognition of services or past services in any office or employment, the value of those services shall not be taken into account in calculating the actual amount or value of the consideration.
- (4) The preceding provisions of this section shall not affect the treatment for the purposes of this Act of the person to whom the option is granted.]

Textual Amendments

F1 S. 149A inserted (27.7.1993) by 1993 c. 34, s.104

150 Business expansion schemes.

- (1) In this section “relief” means relief under Chapter III of Part VII of the Taxes Act, Schedule 5 to the ^{M4}Finance Act 1983 (“the 1983 Act”) or Chapter II of Part IV of the ^{M5}Finance Act 1981 (“the 1981 Act”) and “eligible shares” has the meaning given by section 289(4) of the Taxes Act.
- (2) A gain or loss which accrues to an individual on the disposal of any shares issued after 18th March 1986 in respect of which relief has been given to him and not withdrawn shall not be a chargeable gain or allowable loss for the purposes of capital gains tax.
- (3) The sums allowable as deductions from the consideration in the computation for the purposes of capital gains tax of the gain or loss accruing to an individual on the disposal of shares issued before 19th March 1986 in respect of which relief has been

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given and not withdrawn shall be determined without regard to that relief, except that where those sums exceed the consideration they shall be reduced by an amount equal to—

- (a) the amount of that relief; or
- (b) the excess,

whichever is the less, but the foregoing provisions of this subsection shall not apply to a disposal falling within section 58(1).

(4) Any question—

- (a) as to which of any shares issued to a person at different times, being shares in respect of which relief has been given and not withdrawn, a disposal relates, or
- (b) whether a disposal relates to shares in respect of which relief has been given and not withdrawn or to other shares,

shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act, or section 57 of the ^{M6}Finance Act 1981 if the relief has only been given under that Act; and Chapter I of this Part shall have effect subject to the foregoing provisions of this subsection.

(5) Notwithstanding anything in section 107(1) and (2), section 107 does not apply to shares in respect of which relief has been given and not withdrawn.

(6) Where an individual holds shares which form part of the ordinary share capital of a company and the relief has been given (and not withdrawn) in respect of some but not others, then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply separately to the shares in respect of which the relief has been given (and not withdrawn) and to the other shares (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(7) Where section 58 has applied to any eligible shares disposed of by an individual to his or her spouse (“the transferee”), subsection (2) above shall apply in relation to the subsequent disposal of the shares by the transferee to a third party.

(8) Where section 135 or 136 would, but for this subsection, apply in relation to eligible shares issued after 18th March 1986 in respect of which an individual has been given relief, that section shall apply only if the relief is withdrawn.

(9) Sections 127 to 130 shall not apply in relation to any shares in respect of which relief (other than relief under the 1981 Act) has been given and which form part of a company’s ordinary share capital if—

- (a) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation occurring after 18th March 1986 affecting those shares; and
- (b) immediately following the reorganisation, the relief has not been withdrawn in respect of those shares or relief has been given in respect of the allotted shares and not withdrawn.

(10) Where relief is reduced by virtue of subsection (2) of section 305 of the Taxes Act—

- (a) the sums allowable as deductions from the consideration in the computation, for the purposes of capital gains tax, of the gain or loss accruing to an individual on the disposal, after 18th March 1986, of any of the allotted shares or debentures shall be taken to include the amount of the reduction

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apportioned between the allotted shares or (as the case may be) debentures in such a way as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable; and

- (b) the sums so allowable on the disposal (in circumstances in which subsections (2) to (8) above do not apply) of any of the shares referred to in section 305(2)(a) shall be taken to be reduced by the amount mentioned in paragraph (a) above, similarly apportioned between those shares.

- (11) There shall be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the relief being given or withdrawn.

Marginal Citations

M4 1983 c. 28.

M5 1981 c. 35.

M6 1981 c. 35.

151 Personal equity plans.

- (1) The Treasury may make regulations providing that an individual who invests under a plan shall be entitled to relief from capital gains tax in respect of the investments.
- (2) Subsections (2) to (5) of section 333 of the Taxes Act (personal equity plans) shall apply in relation to regulations under subsection (1) above as they apply in relation to regulations under subsection (1) of that section but with the substitution for any reference to income tax of a reference to capital gains tax.
- (3) Regulations under this section may include provision securing that losses are disregarded for the purposes of capital gains tax where they accrue on the disposal of investments on or after 18th January 1988.

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