



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART V

TRANSFER OF BUSINESS ASSETS

CHAPTER I

GENERAL PROVISIONS

Replacement of business assets

152 Roll-over relief.

(1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (“the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (“the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade, and the old assets and new assets are within the classes of assets listed in section 155, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Act—

- (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and
- (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,

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

Status: Point in time view as at 24/07/2005.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 17 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. (See end of Document for details)

- (2) Where subsection (1)(a) above applies to exclude a gain which, in consequence of Schedule 2, is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) above shall be the amount of the chargeable gain, and not the whole amount of the gain.
- (3) Subject to subsection (4) below, this section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice allow.
- (4) Where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets, or the interest in the new assets, is acquired in pursuance of the contract, and, when that fact is ascertained, all necessary adjustments shall be made by making [^{F1}or amending] assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments [^{F2}or amendments] may be made.
- (5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of, or of the interest in, the new assets.
- (6) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.
- (7) If the old assets were not used for the purposes of the trade throughout the period of ownership this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.
- (8) This section shall apply in relation to a person who, either successively or at the same time, carries on 2 or more trades as if both or all of them were a single trade.
- (9) In this section “period of ownership” does not include any period before 31st March 1982.
- (10) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.
- (11) Without prejudice to section 52(4), where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

Textual Amendments

- F1** Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(1\)\(a\)](#)

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F2 Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 141\(1\)\(b\)](#)

Modifications etc. (not altering text)

- C1** Ss. 152-156 modified (16.7.1992) by [1992 c. 48](#), [s. 77](#), [Sch. 17 paras.3, 7](#)
Ss. 152-156 modified (27.7.1993) by [1993 c. 37](#), [s. 12](#), [Sch. 2 Pt. I para. 6\(2\)](#)
- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 252\(3\)](#), [Sch. 24 para. 6\(1\)](#)
- C3** S. 152 restricted (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 252\(3\)](#), [Sch. 24 para. 6\(3\)](#)
- C4** Ss. 152-154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 252\(3\)](#), [Sch. 24 para. 6\(4\)](#)
- C5** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 25 para. 3\(2\)](#)
- C6** S. 152 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), [s. 68\(4\)](#), [Sch. 4 para. 7\(1\)\(a\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), [art. 2](#), [Sch.](#)
- C7** S. 152 restricted (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), [s. 68\(4\)](#), [Sch. 4 para. 7\(2\)\(a\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), [art. 2](#), [Sch.](#)
- C8** S. 152 applied (with modifications) (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), [s. 68\(4\)](#), [Sch. 4 para. 7\(3\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), [art. 2](#), [Sch.](#)
- C9** Ss. 152, 153 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 22 para. 67](#)
- C10** S. 152 modified (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 132](#)

153 Assets only partly replaced.

(1) Section 152(1) shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Act—

- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
- (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under paragraph (a) of this subsection,

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

(2) Subsections (3) to (11) of 152 shall apply as if this section formed part of that section.

Modifications etc. (not altering text)

- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 252\(3\)](#), [Sch. 24 para. 6\(1\)](#)
- C4** Ss. 152-154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 252\(3\)](#), [Sch. 24 para. 6\(4\)](#)
- C5** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 25 para. 3\(2\)](#)

Status: Point in time view as at 24/07/2005.

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- C9** Ss. 152, 153 excluded (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 22 para. 67](#)
- C11** Ss. 152-156 modified (16.7.1992) by [1992 c. 48, s. 77, Sch. 17 paras.3, 7](#)
 Ss. 152-156 modified (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 6\(2\)](#)
- C12** S. 153 restricted (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(3\)](#)
- C13** S. 153 restricted (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(2\)\(a\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C14** S. 153 applied (with modifications) (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(3\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C15** S. 153 modified (with effect in accordance with s. 84(1) of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 29 para. 132\(2\)\(3\)](#)

[^{F3}153A Provisional application of sections 152 and 153.

- (1) This section applies where a person carrying on a trade who for a consideration disposes of, or of his interest in, any assets (“the old assets”) declares, in his return for the chargeable period in which the disposal takes place—
 - (a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets (“the new assets”) which on the acquisition will be taken into use, and used only, for the purposes of the trade;
 - (b) that the acquisition will take place as mentioned in subsection (3) of section 152; and
 - (c) that the new assets will be within the classes listed in section 155.
- (2) Until the declaration ceases to have effect, section 152 or, as the case may be, section 153 shall apply as if the acquisition had taken place and the person had made a claim under that section.
- (3) The declaration shall cease to have effect as follows—
 - (a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 152 or 153, on the day on which it is so withdrawn or superseded; and
 - (b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.
- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—
 - (a) shall be made by making or amending assessments or by repayment or discharge of tax; and
 - (b) shall be so made notwithstanding any limitation on the time within which assessments or amendments may be made.
- (5) In this section “the relevant day” means—
 - (a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place;
 - (b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.
- (6) Subsections (6), (8), (10) and (11) of section 152 shall apply for the purposes of this section as they apply for the purposes of that section.]

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Textual Amendments

- F3** S. 153A inserted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 141\(2\)](#)

154 New assets which are depreciating assets.

- (1) Sections 152, 153 and 229 shall have effect subject to the provisions of this section in which—
- the “held-over gain” means the amount by which, under those sections, and apart from the provisions of this section, any chargeable gain on one asset (“asset No.1”) is reduced, with a corresponding reduction of the expenditure allowable in respect of another asset (“asset No.2”), and
 - any reference to a gain of any amount being carried forward to any asset is a reference to a reduction of that amount in a chargeable gain coupled with a reduction of the same amount in expenditure allowable in respect of that asset.
- (2) If asset No.2 is a depreciating asset, the held-over gain shall not be carried forward, but the claimant shall be treated as if so much of the chargeable gain on asset No.1 as is equal to the held-over gain did not accrue until—
- the claimant disposes of asset No.2, or
 - he ceases to use asset No.2 for the purposes of a trade carried on by him, or
 - the expiration of a period of 10 years beginning with the acquisition of asset No.2,
- whichever event comes first.
- [^{F4}(2A) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, asset No 2 or shares in a company which holds asset No 2 are transferred to the SE, the transfer to the SE shall be disregarded for the purposes of subsection (2), and—
- if the SE holds asset No 2, it shall be treated for the purposes of subsection (2), in relation to asset No 2, as if it were the claimant, or
 - if the SE holds shares in the company which holds asset No 2, section 175 shall apply in relation to the group of which the SE is a member as if it were the same group as any group of which the claimant was a member before the formation of the SE.
- (2B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, the SE becomes a member (whether or not as the principal company) of a group of which the claimant is also a member, for the purposes of subsection (2) section 175 shall apply in relation to the trade carried on by the claimant as if the group of which the SE is a member were the same group as the group of which the claimant was a member before the formation of the SE.]
- (3) Where section 229 has effect subject to the provisions of this section, subsection (2) (b) above shall have effect as if it read—
- “(b) section 232(3) applies as regards asset No.2 (whether or not by virtue of section 232(5)), or”.
- (4) If, in the circumstances specified in subsection (5) below, the claimant acquires an asset (“asset No.3”) which is not a depreciating asset, and claims under section 152 or 153—

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- (a) the gain held-over from asset No.1 shall be carried forward to asset No.3, and
 - (b) the claim which applies to asset No.2 shall be treated as withdrawn (so that subsection (2) above does not apply).
- (5) The circumstances are that asset No.3 is acquired not later than the time when the chargeable gain postponed under subsection (2) above would accrue and, assuming—
- (a) that the consideration for asset No.1 was applied in acquiring asset No.3, and
 - (b) that the time between the disposal of asset No.1 and the acquisition of asset No.3 was within the time limited by section 152(3),
- the whole amount of the postponed gain could be carried forward from asset No.1 to asset No.3; and the claim under subsection (4) above shall be accepted as if those assumptions were true.
- (6) If part only of the postponed gain could be carried forward from asset No.1 to asset No.3, and the claimant so requires, that and the other part of the postponed gain shall be treated as derived from 2 separate assets, so that, on that claim—
- (a) subsection (4) above applies to the first-mentioned part, and
 - (b) the other part remains subject to subsection (2) above.
- (7) For the purposes of this section, an asset is a depreciating asset at any time if—
- (a) at that time it is a wasting asset, as defined in section 44, or
 - (b) within the period of 10 years beginning at that time it will become a wasting asset (so defined).

Textual Amendments

- F4** S. 154(2A)(2B) inserted (with effect in accordance with s. 64(5) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 64\(3\)](#)

Modifications etc. (not altering text)

- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(1\)](#)
- C4** Ss. 152-154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(4\)](#)
- C5** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\), Sch. 25 para. 3\(2\)](#)
- C16** Ss. 152-156 modified (16.7.1992) by [1992 c. 48, s. 77, Sch. 17 paras.3, 7](#)
 Ss. 152-156 modified (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 6\(2\)](#)
- C17** S. 154 applied (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(5\)](#)
- C18** S. 154 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(2\)](#)
- C19** S. 154 restricted (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(2\)\(b\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C20** S. 154 applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 7\(6\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C21** S. 154 modified (1.2.2001) by [Transport Act 2000 \(c. 38\), s. 275\(1\), Sch. 7 para. 6\(2\)](#); [S.I. 2001/57](#), art. 3(1)

155 Relevant classes of assets.

The classes of assets for the purposes of section 152(1) are as follows.

CLASS 1

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Assets within heads A and B below.

Head A

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

Head A has effect subject to section 156.

Head B

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

CLASS 2

Ships, aircraft and hovercraft (“hovercraft” having the same meaning as in the ^{M1}Hovercraft Act 1968).

CLASS 3

Satellites, space stations and spacecraft (including launch vehicles).

CLASS 4

Goodwill.

CLASS 5

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

[^{F5}CLASS 6

Ewe and suckler cow premium quotas (that is, rights in respect of any ewes or suckler cows to receive payments by way of any subsidy entitlement to which is determined by reference to limits contained in a Community instrument).]

[^{F6}CLASS 7

Fish quota (that is, an allocation of quota to catch fish stocks, which derives from the Total Allowable Catches set in pursuance of Article 8(4) of Council Regulation (EEC) 3760/92 and under annual Council Regulations made in accordance with that Article, or under any replacement Community Instruments).]

[^{F7}CLASS 7A

Payment entitlements under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No. 1782/2003).]

[^{F8}CLASS 8

Assets within heads A and B below.

Head A

Rights of a member of Lloyd’s under a syndicate within the meaning of Chapter III of Part II of the Finance Act 1993.

Head B

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An asset which a member of Lloyd’s is treated as having acquired by virtue of section 82 of the Finance Act 1999.]

Textual Amendments

- F5** Words in s. 155 inserted (27.7.1993 with effect as mentioned in s. 86(4)) by [1993 c. 34, s. 86\(1\)\(4\)](#)
- F6** Words in s. 155 added (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 1993, Section 86\(2\), \(Fish Quota\) Order 1999 \(S.I. 1999/564\), arts. 1\(1\), 3](#)
- F7** Words in s. 155 inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 1993, Section 86\(2\), \(Single Payment Scheme\) Order 2005 \(S.I. 2005/409\), arts. 1\(1\), 2](#)
- F8** Words in s. 155 inserted (with application in accordance with s. 84(2) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 84\(1\)](#)

Modifications etc. (not altering text)

- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(1\)](#)
- C5** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\), Sch. 25 para. 3\(2\)](#)
- C22** Ss. 152-156 modified (16.7.1992) by [1992 c. 48, s. 77, Sch. 17 paras. 3, 7](#)
 Ss. 152-156 modified (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 6\(2\)](#)
- C23** S. 155 restricted (24.7.2002) by [Finance Act 2002 \(c. 23\), Sch. 29 para. 132\(5\)](#)

Marginal Citations

- M1** [1968 c.59.](#)

156 Assets of Class 1.

- (1) This section has effect as respects head A of Class 1 in section 155.
- (2) Head A shall not apply where the trade is a trade—
 - (a) of dealing in or developing land, or
 - (b) of providing services for the occupier of land in which the person carrying on the trade has an estate or interest.
- (3) Where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, then, as regards that land, the trade shall be treated for the purposes of subsection (2) (a) above as if it were not a trade of dealing in or developing land.
- [^{F9}(4) Where section 98 of the Taxes Act [^{F10}or section 19 of ITTOIA 2005] applies (tied premises: receipts and expenses treated as those of trade), the trader shall be treated, to the extent that the conditions in subsection (1) of that section are met in relation to premises, as occupying as well as using the premises for the purposes of the trade.]

Textual Amendments

- F9** S. 156(4) substituted (with effect in accordance with s. 41(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 41\(2\)](#) (with [art. 41\(4\)-\(7\)](#))
- F10** Words in s. 156(4) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 439](#) (with [Sch. 2](#))

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Modifications etc. (not altering text)

- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(1\)](#)
- C5** Ss. 152-156 modified (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 25 para. 3\(2\)](#)
- C24** Ss. 152-156 modified (16.7.1992) by [1992 c. 48](#), s. 77, [Sch. 17 paras.3, 7](#)
Ss. 152-156 modified (27.7.1993) by [1993 c. 37](#), s. 12, [Sch. 2 Pt. I para. 6\(2\)](#)

[^{F11}156A Cessation of trade by limited liability partnership.

- (1) Where, immediately before the time of cessation of trade, a member of a limited liability partnership holds an asset, or an interest in an asset, acquired by him for a consideration treated as reduced under section 152 or 153, he shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.
- (2) Where, as a result of section 154(2), a chargeable gain on the disposal of an asset, or an interest in an asset, by a member of a limited liability partnership has not accrued before the time of cessation of trade, the member shall be treated as if the chargeable gain accrued immediately before that time.
- (3) In this section “the time of cessation of trade”, in relation to a limited liability partnership, means the time when section 59A(1) ceases to apply in relation to the limited liability partnership.]

Textual Amendments

- F11** S. 156A inserted (6.4.2001) by [Limited Liability Partnerships Act 2000 \(c. 12\)](#), [ss. 10\(4\)](#), 19(1); [S.I. 2000/3316](#), art. 2

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

In relation to a case where—

- (a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and
- (b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his [^{F12}personal company], [^{F13}that is to say, a company the voting rights in which are exercisable, as to not less than 5 per cent., by him],

any reference in sections 152 to 156 to the person carrying on the trade (or the 2 or more trades) includes a reference to that individual.

Textual Amendments

- F12** Words in s. 157 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by [1993 c. 34](#), s. 87, [Sch. 7 Pt. I para. 1\(1\)](#)
- F13** Words in s. 157 substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 140\(3\)](#)

Status: Point in time view as at 24/07/2005.

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Modifications etc. (not altering text)

- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(1\)](#)

158 Activities other than trades, and interpretation.

- (1) Sections 152 to 157 shall apply with the necessary modifications—
- (a) in relation to the discharge of the functions of a public authority, and
 - (b) in relation to the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits, and
 - (c) in relation to a profession, vocation, office or employment, and
 - (d) in relation to such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed, and
 - (e) in relation to the activities of an unincorporated association or other body chargeable to corporation tax, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within head A of class 1 only if they are both occupied and used by the body, and in the case of other assets only if they are used by the body, as they apply in relation to a trade.
- (2) In sections 152 to 157 and this section the expressions “trade”, “profession”, “vocation”, “office” and “employment” have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.
- (3) Sections 152 to 157 and this section shall be construed as one.

Modifications etc. (not altering text)

- C2** Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 6\(1\)](#)
- C25** S. 158 applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 7\(7\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

159 Non-residents: roll-over relief.

- (1) Section 152 shall not apply in the case of a person if the old assets are chargeable assets in relation to him at the time they are disposed of, unless the new assets are chargeable assets in relation to him immediately after the time they are acquired.
- (2) Subsection (1) above shall not apply where—
- (a) the person acquires the new assets after he has disposed of the old assets, and
 - (b) immediately after the time they are acquired the person is resident or ordinarily resident in the United Kingdom.

Status: Point in time view as at 24/07/2005.

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- (3) Subsection (2) above shall not apply where immediately after the time the new assets are acquired—
- (a) the person is a dual resident, and
 - (b) the new assets are prescribed assets.
- (4) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—
- (a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or
 - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section [F14]10B].
- (5) In this section—
- “dual resident” means a person who is resident or ordinarily resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and
- “prescribed asset”, in relation to a dual resident, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, he falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to him on a disposal.
- (6) In this section—
- (a) “the old assets” and “the new assets” have the same meanings as in section 152,
 - (b) references to disposal of the old assets include references to disposal of an interest in them, and
 - (c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.
- (7) Where the acquisition of the new assets took place before 14th March 1989 and the disposal of the old assets took place, or takes place, on or after that date, this section shall not apply if the disposal of the old assets took place, or takes place, within 12 months of the acquisition of the new assets or such longer period as the Board may by notice allow.

Textual Amendments

F14 Word in s. 159(4)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 2\(3\)](#)

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 6\(1\)](#)

F15 **160 Dual resident companies: roll-over relief.**

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Status: Point in time view as at 24/07/2005.

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Textual Amendments

- F15** S. 160 repealed (with effect in accordance with s. 251(1)(a)(6) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 251(6), [Sch. 26 Pt. VIII\(1\)](#)

Stock in trade

161 Appropriations to and from stock.

- (1) Subject to subsection (3) below, where an asset acquired by a person otherwise than as trading stock of a trade carried on by him is appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if he had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to him, he shall be treated as having thereby disposed of the asset by selling it for its then market value.
- (2) If at any time an asset forming part of the trading stock of a person's trade is appropriated by him for any other purpose, or is retained by him on his ceasing to carry on the trade, he shall be treated as having acquired it at that time for a consideration equal to the amount brought into the accounts of the trade in respect of it for tax purposes on the appropriation or on his ceasing to carry on the trade, as the case may be.
- (3) Subject to subsection (4) below, subsection (1) above shall not apply in relation to a person's appropriation of an asset for the purposes of a trade if he is chargeable to income tax in respect of the profits of the trade under Case I of Schedule D, and elects that instead the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for purposes of tax, be treated as reduced by the amount of the chargeable gain or increased by the amount of the allowable loss referred to in subsection (1), and where that subsection does not apply by reason of such an election, the profits of the trade shall be computed accordingly.

[^{F16}(3A) An election under subsection (3) above shall be made—

- (a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the period of account in which the asset is appropriated for the purposes of the trade as trading stock;
- (b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the asset is appropriated for the purposes of the trade as trading stock;

^{F17}]

- (4) If a person making an election under subsection (3) is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others.

Textual Amendments

- F16** S. 161(3A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 36](#)

- F17** Words in s. 161(3A) repealed (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(16\)](#)

Status: Point in time view as at 24/07/2005.

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Modifications etc. (not altering text)

C26 S. 161 applied (with modifications) (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 26 para. 45\(2\)](#)

Transfer of business to a company

162 Roll-over relief on transfer of business.

- (1) This section shall apply for the purposes of this Act where a person who is not a company transfers to a company a business as a going concern, together with the whole assets of the business, or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares issued by the company to the person transferring the business.

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

- (2) The amount determined under subsection (4) below shall be deducted from the aggregate of the chargeable gains less allowable losses (“the amount of the gain on the old assets”).
- (3) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—
- (a) the amount determined under subsection (4) below shall be apportioned between the new assets as a whole, and
 - (b) the sums allowable as a deduction under section 38(1)(a) shall be reduced by the amount apportioned to the new asset under paragraph (a) above;

and if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the transferor.

- (4) The amount referred to in subsections (2) and (3)(a) above shall not exceed the cost of the new assets but, subject to that, it shall be the fraction—

$$\frac{A}{B}$$

of the amount of the gain on the old assets where—

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

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

and for the purposes of this subsection “the cost of the new assets” means any sums which would be allowable as a deduction under section 38(1)(a) if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

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

Status: Point in time view as at 24/07/2005.

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[^{F18}162A Election for section 162 not to apply

- (1) Section 162 shall not apply where the transferor makes an election under this section.
- (2) An election under this section must be made by a notice given to an officer of the Board no later than the relevant date.
- (3) Except where subsection (4) below applies, the relevant date is the second anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.
- (4) Where, by the end of the year of assessment following the one in which the transfer of the business took place, the transferor has disposed of all the new assets, the relevant date is the first anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.
- (5) For the purposes of subsection (4) above—
 - (a) a disposal of any of the new assets by the transferor shall be disregarded if it falls within section 58(1) (transfers between husband and wife); but
 - (b) where a disposal of any assets to a person is disregarded by virtue of paragraph (a) above, a subsequent disposal by that person of any of those assets (other than a disposal to the transferor) shall be regarded as a disposal by the transferor.
- (6) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this section.
- (7) Where, immediately before it was transferred, the business was owned by two or more persons—
 - (a) each of them has a separate entitlement to make an election under this section;
 - (b) an election made by a person by virtue of paragraph (a) above shall apply only to—
 - (i) the share of the amount of the gain on the old assets, and
 - (ii) the share of the new assets,
 that is attributable to that person for the purposes of this Act.
- (8) The reference in subsection (7) above to ownership by two or more persons includes, in Scotland as well as elsewhere in the United Kingdom, a reference to ownership by a partnership consisting of two or more persons.
- (9) Expressions used in this section and in section 162 have the same meaning in this section as in that one.

But references in this section to new assets also include any shares or debentures that are treated by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains) as the same asset as the new assets.]

Textual Amendments

F18 S. 162A inserted (with application in accordance with s. 49(2) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 49\(1\)](#)

Status: Point in time view as at 24/07/2005.

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Retirement relief

F19 163 Relief for disposals by individuals on retirement from family business.

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Textual Amendments

F19 S. 163 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 140(2)(a), [Sch. 27 Pt. III\(31\)](#)

F20 164 Other retirement relief.

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Textual Amendments

F20 S. 164 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 140(2)(b), [Sch. 27 Pt. III\(31\)](#)

F21 CHAPTER IA

ROLL-OVER RELIEF ON RE-INVESTMENT

Textual Amendments

F21 Pt. 5 Ch. 1A repealed (with effect in accordance with s. 141(2)(a), Sch. 27 Pt. 3(32) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 141(1)(a), [Sch. 27 Pt. 3\(32\)](#)

F21 164A Relief on re-investment for individuals.

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F21 164B Roll-over relief on re-investment by trustees.

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F21 164BA Interaction with retirement relief

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F21 164C Restriction applying to retirement relief and roll-over relief on re-investment.

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Status: Point in time view as at 24/07/2005.

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F21 164D Relief carried forward into replacement shares.

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F21 164E Application of Chapter in cases of an exchange of shares.

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F21 164F Failure of conditions of relief.

.....

F21 164FA Loss of relief in cases where shares acquired on being issued.

.....

F21 164FQ Qualifying investment acquired from husband or wife.

.....

F21 164FQ Multiple claims.

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F21 164G Meaning of “qualifying company”.

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F21 164H Property companies etc. not to be qualifying companies.

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F21 164I Qualifying trades.

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F21 164J Provisions supplementary to section 164I.

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F21 164K Foreign residents.

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F21 164L Anti-avoidance provisions.

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F21 164M Exclusion of double relief.

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^{F21}**164M** ~~Exclusion of double relief~~

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^{F21}**164N** Interpretation of Chapter IA.

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CHAPTER II

GIFTS OF BUSINESS ASSETS

165 Relief for gifts of business assets.

(1) If—

- (a) an individual (“the transferor”) makes a disposal otherwise than under a bargain at arm’s length of an asset within subsection (2) below, and
- (b) a claim for relief under this section is made by the transferor and the person who acquires the asset (“the transferee”) or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (3) and [^{F22}sections 166, 167^{F23}, 169, 169B and 169C]], subsection (4) below shall apply in relation to the disposal.

(2) 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 [^{F24}personal company], or
 - (iii) a member of a trading group of which the holding company is his [^{F24}personal 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 [^{F25}not listed on a recognised stock exchange], or
 - (ii) the trading company or holding company is the transferor’s [^{F24}personal company].

(3) Subsection (4) below does not apply in relation to a disposal if—

- ^{F26}(a)
- ^{F26}(b)
- [^{F27}(ba) in the case of a disposal of shares or securities, the transferee is a company,]
- (c) in the case of a disposal of qualifying corporate bonds, a gain is deemed to accrue by virtue of section 116(10)(b), or
- (d) subsection (3) of section 260 applies in relation to the disposal (or would apply if a claim for relief were duly made under that section).

(4) Where a claim for relief is made under this section in respect of a disposal—

- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and

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- (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities, shall each be reduced by an amount equal to the held-over gain on the disposal.
- (5) Part I of Schedule 7 shall have effect for extending the relief provided for by virtue of subsections (1) to (4) above in the case of agricultural property and for applying it in relation to settled property.
- (6) Subject to Part II of Schedule 7 and subsection (7) below, the reference in subsection (4) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (4) above ^{F28}..., and in subsection (7) below that chargeable gain is referred to as the unrelieved gain on the disposal.
- (7) 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 section 17(1)) 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 38,
- the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.
- (8) Subject to subsection (9) below, in this section and Schedule 7—
- ^{F29}(a) “personal company”, in relation to an individual, means a company the voting rights in which are exercisable, as to not less than 5 per cent., by that individual;
 - ^{F30}(aa) “holding company” has the meaning given by paragraph 22(1), “trading company” has the meaning given by paragraph 22A, and “trading group” has the meaning given by paragraph 22B, of Schedule A1; and]]
 - (b) “trade”, “profession” and “vocation” have the same meaning as in the Income Tax Acts.
- (9) In this section and Schedule 7 and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression “trade” shall be taken to include the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits.
- (10) Where a disposal [^{F31}in relation to which subsection (4) above applies] 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.
- (11) Where an amount of inheritance tax—

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- (a) falls to be redetermined in consequence of the transferor's death within 7 years of making the chargeable transfer in question, or
- (b) is otherwise varied,

after it has been taken into account under subsection (10) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

Textual Amendments

- F22** Words in s. 165(1) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 90\(1\)](#)
- F23** Words in s. 165(1) substituted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(2\)](#)
- F24** Words in s. 165 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by [1993 c. 34, s. 87, Sch. 7 Pt. I para. 1\(1\)](#)
- F25** Words in s. 165(2)(b)(i) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 90\(3\)](#)
- F26** S. 165(3)(a)(b) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. III\(31\)](#)
- F27** S. 165(3)(ba) inserted (with effect in accordance with Sch. 21 para. 10(5) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(3\)](#)
- F28** Words in s. 165(6) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. III\(31\)](#)
- F29** S. 165(8)(a)(aa) substituted for s. 165(8)(a) (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 140\(4\)](#)
- F30** S. 165(8)(aa) substituted (with effect in accordance with Sch. 21 para. 10(6) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(4\)](#)
- F31** Words in s. 165(10) substituted (with effect in accordance with Sch. 21 para. 10(7) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(5\)](#)

166 Gifts to non-residents.

- (1) Section 165(4) shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.
- (2) Section 165(4) shall not apply where the transferee is an individual ^{F32}... if that individual ^{F32}... —
 - (a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements 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.

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Textual Amendments

- F32** Words in s. 166(2) repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by Finance Act 1994 (c. 9), s. 251(7)(a), **Sch. 26 Pt. VIII(1)**

167 Gifts to foreign-controlled companies.

- (1) Section 165(4) shall not apply where the transferee is a company which is within subsection (2) below.
- (2) A company is within this subsection if it is controlled by a person who, or by persons each of whom—
 - (a) is neither resident nor ordinarily resident in the United Kingdom, and
 - (b) is connected with the person making the disposal.
- (3) For the purposes of subsection (2) above, a person who (either alone or with others) controls a company by virtue of holding assets relating to that or any other company and who is resident or ordinarily resident in the United Kingdom shall be regarded as neither resident nor ordinarily resident there if—
 - (a) he is regarded for the purposes of any double taxation relief arrangements 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.

168 Emigration of donee.

- (1) If—
 - (a) relief is given under section 165 in respect of a disposal to an individual or under section 260 in respect of a disposal to an individual (“the relevant disposal”); and
 - (b) at a time when he has not disposed of the asset in question, the transferee becomes neither resident nor ordinarily resident in the United Kingdom,
 then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 165 or 260) on the relevant disposal.
- (2) For the purposes of subsection (1) above the transferee shall be taken to have disposed of an asset before the time there referred to only if he 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 165(4)(b) or 260(3)(b) and where he has made a disposal in connection with which part of that gain was so represented, the amount of the chargeable gain deemed by virtue of this section to accrue to him shall be correspondingly reduced.
- (3) The disposals by the transferee that are to be taken into account under subsection (2) above shall not include any disposal to which section 58 applies; but where any such disposal is made by the transferee, disposals by his spouse shall be taken into account under subsection (2) above as if they had been made by him.

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- (4) Subsection (1) above shall not apply by reason of a person becoming neither resident nor ordinarily resident more than 6 years after the end of the year of assessment in which the relevant disposal was made.
- (5) Subsection (1) above shall not apply in relation to a disposal made to an individual if—
 - (a) the reason for his becoming neither resident nor ordinarily resident in the United Kingdom is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and
 - (b) he again becomes resident or ordinarily resident in the United Kingdom within the period of 3 years from the time when he ceases to be so, without having meanwhile disposed of the asset in question;and accordingly no assessment shall be made by virtue of subsection (1) above before the end of that period in any case where the condition in paragraph (a) above is, and the condition in paragraph (b) above may be, satisfied.
- (6) For the purposes of subsection (5) above a person shall be taken to have disposed of an asset if he has made a disposal in connection with which the whole or part of the held-over gain on the relevant disposal would, had he been resident in the United Kingdom, have been represented by a reduction made in accordance with section 165(4)(b) or 260(3)(b) and subsection (3) above shall have effect for the purposes of this subsection as it has effect for the purposes of subsection (2) above.
- (7) Where an amount of tax assessed on a transferee by virtue of subsection (1) above is not paid within the period of 12 months beginning with the date when the tax becomes payable then, subject to subsection (8) below, the transferor may be assessed and charged (in the name of the transferee) to all or any part of that tax.
- (8) No assessment shall be made under subsection (7) above more than 6 years after the end of the year of assessment in which the relevant disposal was made.
- (9) Where the transferor pays an amount of tax in pursuance of subsection (7) above, he shall be entitled to recover a corresponding sum from the transferee.
- (10) 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 165(4)(b) or 260(3)(b) in respect of that held-over gain.

169 Gifts into dual resident trusts.

- (1) This section applies where there is or has been a disposal of an asset to the trustees of a settlement in such circumstances that, on a claim for relief, section 165 or 260 applies, or would but for this section apply, so as to reduce the amounts of the chargeable gain and the consideration referred to in section 165(4) or 260(3).
- (2) In this section “a relevant disposal” means such a disposal as is referred to in subsection (1) above.
- (3) Relief under section 165 or 260 shall not be available on a relevant disposal if—
 - (a) at the material time the trustees to whom the disposal is made fall to be treated, under section 69, as resident and ordinarily resident in the United Kingdom, although the general administration of the trust is ordinarily carried on outside the United Kingdom; and

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- (b) on a notional disposal of the asset concerned occurring immediately after the material time, the trustees would be regarded for the purposes of any double taxation relief arrangements—
 - (i) as resident in a territory outside the United Kingdom; and
 - (ii) as not liable in the United Kingdom to tax on a gain arising on that disposal.
- (4) In subsection (3) above—
 - (a) “the material time” means the time of the relevant disposal; and
 - (b) a “notional disposal” means a disposal by the trustees of the asset which was the subject of the relevant disposal.

[^{F33}169A Cessation of trade by limited liability partnership

- (1) This section applies where section 59A(1) ceases to apply to a limited liability partnership.
- (2) A member of the partnership who immediately before the time at which section 59A(1) ceases to apply holds an asset, or an interest in an asset, acquired by him—
 - (a) on a disposal to members of a partnership, and
 - (b) for a consideration which is treated as reduced under section 165(4)(b) or 260(3)(b),
 shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.]

Textual Amendments

F33 S. 169A inserted (with effect in accordance with s. 75(5) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 75\(3\)\(5\)](#) (with [Sch. 3](#))

[^{F34}169B Gifts to settlor-interested settlements etc

- (1) Neither section 165(4) nor section 260(3) shall apply in relation to a disposal (“the relevant disposal”)—
 - (a) made by a person (“the transferor”) to the trustees of a settlement, and
 - (b) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, immediately after the making of the relevant disposal,—
 - (a) there is a settlor (see section 169E) who has an interest in the settlement (see section 169F), or
 - (b) an arrangement (see section 169G) subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
 - (a) a chargeable gain would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal,
 - (b) in computing the gain, the allowable expenditure would to any extent fall to be reduced in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and

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- (c) immediately after the making of the relevant disposal,—
 - (i) that individual has an interest in the settlement, or
 - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) This section is subject to section 169D (exception for maintenance funds for historic buildings and certain settlements for disabled persons).

Textual Amendments

F34 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 4](#)

169C Clawback of relief if settlement becomes settlor-interested etc

- (1) This section applies in relation to a disposal (“the relevant disposal”)—
 - (a) made by a person (“the transferor”) to the trustees of a settlement,
 - (b) in relation to which section 165(4) or 260(3) applies, or would apart from this section apply, and
 - (c) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, at any time during the clawback period,—
 - (a) there is a settlor who has an interest in the settlement, or
 - (b) an arrangement subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
 - (a) in computing the chargeable gain which would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal, the allowable expenditure would fall to be reduced,
 - (b) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
 - (c) at any time during the clawback period,—
 - (i) that individual has an interest in the settlement, or
 - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) If no claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time, neither section 165(4) nor section 260(3) shall apply in relation to that disposal.
- (5) Subsections (7) to (9) below apply if a claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time.
- (6) But those subsections do not apply if—
 - (a) the transferor is an individual, and
 - (b) he dies before the material time.
- (7) A chargeable gain, of an amount equal to the amount of the held-over gain (within the meaning of section 165 or 260) on the relevant disposal, shall be treated for the

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purposes of tax in respect of chargeable gains as accruing to the transferor at the material time.

- (8) For any chargeable period ending after the making of the relevant disposal, the chargeable gains and allowable losses of—
- (a) the trustees of the settlement, or
 - (b) any person whose title to any property to any extent derives, directly or indirectly, from them,
- shall be determined on the assumption that neither section 165(4)(b) nor section 260(3)(b) ever applied in relation to that disposal.
- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (8) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (10) If a claim for relief under section 165 or 260 in respect of the relevant disposal is revoked, this section shall apply as if the claim had never been made.
- (11) In this section “the clawback period” means the period—
- (a) beginning immediately after the making of the relevant disposal, and
 - (b) ending six years after the end of the year of assessment in which that disposal was made.
- (12) In this section “the material time” means the time at which subsection (1)(c) above first becomes satisfied.
- (13) This section is subject to section 169D.

Textual Amendments

F34 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 4](#)

169D Exceptions to sections 169B and 169C

- (1) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement in a year of assessment if the trustees have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc) shall have effect in the case of—
- (a) the settlement, or
 - (b) any part of the settlement,
- in relation to that year of assessment.
- (2) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement if the following conditions are satisfied.
- (3) The first condition is that, immediately after the making of the disposal,—
- (a) the settled property is held on trusts which secure that, during the lifetime of a disabled person, not less than half of the property which is applied is applied for the benefit of that person, and
 - (b) the settled property is held on trusts—

Status: Point in time view as at 24/07/2005.

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- (i) which secure that, during his lifetime, he is entitled to not less than half of the income arising from the property,
 - (ii) which secure that, during his lifetime, no such income may be applied for the benefit of any other person, or
 - (iii) under which, during his lifetime, no interest in possession in the settled property subsists.
- (4) The second condition is that if, immediately after the making of the disposal, one or more settlors is an interested settlor, each such settlor must at that time be a disabled beneficiary.
- (5) For the purposes of subsection (4) above a settlor is an “interested settlor” in relation to a settlement if—
 - (a) he has an interest in the settlement, or
 - (b) an arrangement subsists under which such an interest will or may be acquired by him;and for this purpose, the references to an individual’s spouse in section 169F(2) and (3) shall be disregarded.
- (6) In subsection (4) above “disabled beneficiary”, in relation to a settlement, means a disabled person who—
 - (a) is a beneficiary under the settlement, or
 - (b) would be such a beneficiary if he had the interest in the settlement by virtue of which subsection (5)(b) above applies in relation to him.
- (7) In this section “disabled person” means—
 - (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his property or managing his affairs; or
 - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (8) In this section “attendance allowance” means an allowance under—
 - (a) section 64 of the Social Security Contributions and Benefits Act 1992, or
 - (b) section 64 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (9) In this section “disability living allowance” means a disability living allowance under—
 - (a) section 71 of the Social Security Contributions and Benefits Act 1992, or
 - (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (10) The trusts on which settled property is held shall not be treated as falling outside subsection (3) above by reason only of the powers conferred on the trustees by—
 - (a) section 32 of the Trustee Act 1925, or
 - (b) section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement).
- (11) The references in subsection (3) above to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as references to the period during which the income is held on trust for him.

Status: Point in time view as at 24/07/2005.

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Textual Amendments

F34 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), [Sch. 21 para. 4](#)

169E Meaning of “settlor” in sections 169B to 169D and 169G

- (1) For the purposes of this section, sections 169B to 169D and section 169G, a person is a settlor in relation to a settlement if—
 - (a) he is an individual, and
 - (b) the settled property consists of, or includes, property originating from him.
- (2) In subsection (1) above, the reference to property originating from a settlor is a reference to—
 - (a) property which that settlor has provided directly or indirectly for the purposes of the settlement, and
 - (b) property which wholly or partly represents that property or any part of it.
- (3) In subsection (2) above, the references to property which a settlor has provided directly or indirectly—
 - (a) include references to property which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but
 - (b) do not include references to property which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person.
- (4) In subsection (2) above, the reference to property which represents other property includes a reference to property which represents accumulated income from that other property.

Textual Amendments

F34 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), [Sch. 21 para. 4](#)

169F Meaning of “interest in a settlement” in sections 169B to 169D

- (1) For the purposes of this section and sections 169B to 169D, an individual is to be regarded as having an interest in a settlement if subsection (2) or (3) below applies.
- (2) This subsection applies if—
 - (a) any property which may at any time be comprised in the settlement, or
 - (b) any derived property,
 is, or will or may become, payable to or applicable for the benefit of the individual or his spouse in any circumstances whatsoever.
- (3) This subsection applies if the individual or his spouse enjoys a benefit deriving directly or indirectly from—
 - (a) any property which is comprised in the settlement, or
 - (b) any derived property.

Status: Point in time view as at 24/07/2005.

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- (4) The references in subsections (2) and (3) above to the spouse of the individual do not include—
- (a) a spouse from whom the individual is separated—
 - (i) under an order of a court,
 - (ii) under a separation agreement, or
 - (iii) in such circumstances that the separation is likely to be permanent, or
 - (b) the widow or widower of the individual.
- (5) An individual is not to be regarded as having an interest in a settlement by virtue of subsection (2) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
- (a) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
 - (b) the death of a child of the individual where the child had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (6) In this section “derived property”, in relation to any property, means—
- (a) income from that property,
 - (b) property directly or indirectly representing—
 - (i) proceeds of that property, or
 - (ii) proceeds of income from that property, or
 - (c) income from property which is derived property by virtue of paragraph (b) above.

Textual Amendments

F34 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 4](#)

169G Meaning of “arrangement” in sections 169B to 169E and information power

- (1) In sections 169B to 169E “arrangement” or “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.
- (2) An officer of the Board may by notice require any person to whom subsection (3) or (4) below applies to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of sections 169B to 169F.
- (3) This subsection applies to a person who is or has been—
- (a) a trustee of a settlement,
 - (b) a beneficiary under a settlement, or
 - (c) a settlor in relation to a settlement.
- (4) This subsection applies to a person who—
- (a) is the spouse of a settlor in relation to a settlement, or
 - (b) has at any time on or after the making of the relevant disposal been the spouse of such a settlor.
- (5) In subsection (4) above “relevant disposal” means the disposal—

Status: Point in time view as at 24/07/2005.

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- (a) to which section 169B(1), 169C (1) or 169D (1) or (2) applies or may apply, and
- (b) in connection with which the notice is given.]

Textual Amendments

F34 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

Status:

Point in time view as at 24/07/2005.

Changes to legislation:

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