



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Status: Point in time view as at 20/07/2005.

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- (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\(2\)](#)

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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—

- (a) 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
- (b) 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—

- (a) the claimant disposes of asset No.2, or
- (b) he ceases to use asset No.2 for the purposes of a trade carried on by him, or
- (c) 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—

- (a) 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
- (b) 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 20/07/2005.

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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.

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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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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 20/07/2005.

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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 20/07/2005.

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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\(1\)](#)

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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\(31\)](#)

Status:

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Changes to legislation:

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