



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART VII

#### OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

##### *Debts*

#### **251 General provisions.**

- (1) Where a person incurs a debt to another, whether in sterling or in some other currency, no chargeable gain shall accrue to that (that is the original) creditor or his personal representative or legatee on a disposal of the debt, except in the case of the debt on a security (as defined in section 132).
- (2) Subject to the provisions of sections [F<sup>1</sup>132, 135 and 136] and subject to subsection (1) above, the satisfaction of a debt or part of it (including a debt on a security as defined in section 132) shall be treated as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.
- (3) Where property is acquired by a creditor in satisfaction of his debt or part of it, then subject to the provisions of sections [F<sup>2</sup>132, 135 and 136] the property shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but if under subsection (1) above (and in a case not falling within [F<sup>3</sup>section 132, 135 or 136]) no chargeable gain is to accrue on a disposal of the debt by the creditor (that is the original creditor), and a chargeable gain accrues to him on a disposal by him of the property, the amount of the chargeable gain shall (where necessary) be reduced so as not to exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part of it.
- (4) A loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or his personal representative or legatee at a time when the creditor or his personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more purchases

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through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.

- (5) [<sup>F4</sup>Where the trustees of a settlement are the original creditor], subsections (1) and (4) above shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled, [<sup>F5</sup>as against the trustees], to the debt on its ceasing to be settled property, and to that person's personal representative or legatee.
- [<sup>F6</sup>(5A) References in this section to the disposal of a debt include the disposal of an interest in a debt (and, in the case of an interest in a debt, the reference in subsection (3) to the amount of the debt is to the amount of the person's interest in the debt).]
- [<sup>F7</sup>(6) For the purposes of this section a debenture issued by any company on or after 16th March 1993 shall be deemed to be a security (as defined in section 132) if—
- (a) it is issued on a reorganisation (as defined in section 126(1)) or in pursuance of its allotment on any such reorganisation;
  - (b) it is issued in exchange for shares in or debentures of another company and in a case [<sup>F8</sup>to which section 135 applies and which is unaffected by section 137(1)];
  - (c) it is issued under any such arrangements as are mentioned in subsection (1) (a) of section 136 and in a case unaffected by section 137 where section 136 requires shares or debentures in another company to be treated as exchanged for, or for anything that includes, that debenture; or
  - (d) it is issued in pursuance of rights attached to any debenture issued on or after 16th March 1993 and falling within paragraph (a), (b) or (c) above
- [<sup>F9</sup>and any debenture which results from a conversion of securities within the meaning of section 132, or is issued in pursuance of rights attached to such a debenture, shall be deemed for the purposes of this section to be a security (as defined in that section).]
- [<sup>F10</sup>(7) Where any instrument specified in subsection (8) below is not a security (as defined in section 132), that instrument shall be deemed to be such a security for the purposes of this section, other than the purposes of determining what is or is not an allowable loss in any case.
- (8) The instruments mentioned in subsection (7) above are—
- [<sup>F11</sup>(a) . . . . .]
  - (b) any instrument which [<sup>F12</sup>... is not a loan relationship of a company but which would be a [<sup>F13</sup>deeply discounted security for the purposes of Chapter 8 of Part 4 of ITTOIA 2005 if section 432(2) of that Act] (excluded indexed securities) were omitted.]

#### Textual Amendments

- F1** Words in s. 251(2) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(12\)\(a\)](#)
- F2** Words in s. 251(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(12\)\(b\)\(i\)](#)
- F3** Words in s. 251(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 5\(12\)\(b\)\(ii\)](#)
- F4** Words in s. 251(5) substituted (with effect in accordance with Sch. 12 para. 23(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 23\(1\)\(a\)](#)

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- F5** Words in s. 251(5) substituted (with effect in accordance with Sch. 12 para. 23(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 23(1)(b)**
- F6** [S. 251\(5A\)](#) inserted (with effect in accordance with s. 34(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **s. 35(3)**
- F7** [S. 251\(6\)](#) inserted (27.7.1993 with effect as mentioned in s. 84(3)) by [1993 c. 34](#), **s. 84(2)(3)**
- F8** Words in s. 251(6)(b) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 9 para. 5(12)(c)**
- F9** Words in s. 251(6) inserted (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **s. 88(5)**
- F10** [S. 251\(7\)\(8\)](#) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 14 para. 64** (with [Sch. 15](#))
- F11** [S. 251\(8\)\(a\)](#) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 1329\(1\)](#), [Sch. 1 para. 381\(a\)](#), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))
- F12** Words in s. 251(8)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 1329\(1\)](#), [Sch. 1 para. 381\(b\)](#), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))
- F13** Words in s. 251(8)(b) substituted (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. 442** (with [Sch. 2](#))

**Modifications etc. (not altering text)**

- C1** [S. 251\(8\)](#) modified (27.7.1999) by [Finance Act 1999 \(c. 16\)](#), **s. 65(11)**

**[<sup>F14</sup>252 Foreign currency bank accounts.**

- (1) Section 251(1) does not apply in relation to a gain accruing to a person on a disposal of a foreign currency debt (or an interest in such a debt) unless that person is—
  - (a) an individual,
  - (b) the trustees of a settlement, or
  - (c) the personal representatives of a deceased person.
- (2) A “foreign currency debt” is a debt—
  - (a) owed by a bank in a currency other than sterling, and
  - (b) represented by a sum standing to the credit of an account-holder in an account in that bank.]

**Textual Amendments**

- F14** [S. 252](#) substituted (with effect in accordance with s. 34(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **s. 35(4)**

**<sup>F15</sup>252A Foreign currency bank accounts and the remittance basis**

**Textual Amendments**

- F15** [S. 252A](#) omitted (with effect in accordance with s. 34(6) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), **s. 35(5)**

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## 253 Relief for loans to traders.

- (1) In this section “a qualifying loan” means a loan in the case of which—
- (a) the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money, and
  - (b) the borrower is resident in the United Kingdom, and
  - (c) the borrower’s debt is not a debt on a security as defined in section 132;

and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.

- (2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.

- (3) [<sup>F16</sup>Where a person who has made a qualifying loan makes a claim and at that time]—
- (a) any outstanding amount of the principal of the loan has become irrecoverable, and
  - (b) the claimant has not assigned his right to recover that amount, and
  - (c) the claimant and the borrower were not each other’s spouses [<sup>F17</sup>or civil partners], or companies in the same group, when the loan was made or at any subsequent time,

[<sup>F18</sup>then, to the extent that that amount is not an amount which, in the case of the claimant, falls to be brought into account as a debit given for the purposes of [<sup>F19</sup>Part 5 of CTA 2009] (loan relationships),] this Act shall have effect as if an allowable loss equal to that amount had accrued to the claimant [<sup>F20</sup>at the time of the claim or (subject to subsection (3A) below) any earlier time specified in the claim].

- [<sup>F21</sup>(3A) For the purposes of subsection (3) above, an earlier time may be specified in the claim if:

- (a) the amount to which that subsection applies was also irrecoverable at the earlier time; and either
- (b) for capital gains tax purposes the earlier time falls not more than two years before the beginning of the year of assessment in which the claim is made; or
- (c) for corporation tax purposes the earlier time falls on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.]

- (4) [<sup>F22</sup>Where a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan makes a claim and at that time]—
- (a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower, and
  - (b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount, and
  - (c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment, and
  - (d) the lender and the borrower were not each other’s spouses [<sup>F23</sup>or civil partners], or companies in the same group, when the loan was made or

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at any subsequent time and the claimant and the borrower were not each other's spouses [<sup>F23</sup>or civil partners], and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,

this Act shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.

[<sup>F24</sup>(4A) A claim under subsection (4) above shall be made—

- (a) for the purposes of capital gains tax, [<sup>F25</sup>not more than 4 years after the end of] the year of assessment in which the payment was made;
- (b) for the purposes of corporation tax, within [<sup>F26</sup>4 years] after the end of the accounting period in which the payment was made.]

(5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(6) Where—

- (a) an allowable loss has been treated under subsection (4) above as accruing to any person, and
- (b) the whole or any part of the amount of the payment mentioned in subsection (4)(b) is at any time recovered by him,

this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(7) Where—

- (a) an allowable loss has been treated under subsection (3) above as accruing to a company (“the first company”), and
- (b) the whole or any part of the outstanding amount mentioned in subsection (3) (a) is at any time recovered by a company (“the second company”) in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(8) Where—

- (a) an allowable loss has been treated under subsection (4) above as accruing to a company (“the first company”), and
- (b) the whole or any part of the outstanding amount mentioned in subsection (4) (a), or the whole or any part of the amount of the payment mentioned in subsection (4)(b), is at any time recovered by a company (“the second company”) in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(9) For the purposes of subsections (5) to (8) above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money's

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- worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm's length he shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.
- (10) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.
- (11) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—
- (a) no chargeable gain shall accrue to him otherwise than under subsection (5) above, and
  - (b) no allowable loss shall accrue to him under this Act,
- on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.
- (12) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.
- (13) For the purposes of subsections (7) and (8) above, 2 companies are in the same group if they were in the same group when the loan was made or have been in the same group at any subsequent time.
- (14) In this section—
- (a) “spouses” means spouses who are living together (construed in accordance with section 288(3)),
  - <sup>F27</sup>(aa) “civil partners” means civil partners who are living together (construed in accordance with section 288(3)),]
  - (b) “trading company” has the [<sup>F28</sup>same meaning as in section 165 (see section 165A)], and
  - (c) “group” shall be construed in accordance with section 170.
- (15) Subsection (3) above does not apply where the loan was made before 12th April 1978 and subsection (4) above does not apply where the guarantee was given before that date.

#### Textual Amendments

- F16** Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(2\)\(a\)](#)
- F17** Words in s. 253(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [120\(2\)](#)
- F18** Words in s. 253(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 65](#) (with [Sch. 15](#))
- F19** Words in s. 253(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 382](#) (with [Sch. 2 Pts. 1, 2](#))
- F20** Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(2\)\(b\)](#)

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- F21** S. 253(3A) inserted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 39 para. 8(3)**
- F22** Words in s. 253(4) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 39 para. 8(4)**
- F23** Words in s. 253(4)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **120(3)**
- F24** S. 253(4A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 21 para. 40**
- F25** Words in s. 253(4A)(a) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), **Sch. 39 para. 30(a)**; [S.I. 2009/403](#), art. 2(2) (with art. 10)
- F26** Words in s. 253(4A)(b) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), **Sch. 39 para. 30(b)**; [S.I. 2009/403](#), art. 2(2) (with art. 10)
- F27** S. 253(14)(aa) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **120(4)**
- F28** Words in s. 253(14)(b) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 38**

#### **Modifications etc. (not altering text)**

- C2** Ss. 253, 254 modified (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 9(3)(4)**
- C3** Ss. 253, 254 restricted (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 9(5)**
- C4** Ss. 253, 254 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(2)(3)** (with [Sch. 4 para. 9\(3\)\(5\)](#), 14); [S.I. 1994/2189](#), art. 2, Sch.
- C5** S. 253(4) modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 9(2)(5)**
- C6** S. 253(4) modified (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), **Sch. 3 para. 6(2)**
- C7** S. 253(7)(8) excluded (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 9(9)**
- C8** S. 253(9) modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(5)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C9** S. 253(10) modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(6)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.
- C10** S. 253(13) applied (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), **Sch. 4 para. 9(7)** (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

#### **F29 254 Relief for debts on qualifying corporate bonds.**

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#### **Textual Amendments**

- F29** Ss. 254, 255 repealed (with effect in accordance with s. 141(2)(b) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 141(1)(b), **Sch. 27 Pt. III(32)**

#### **F29 255 Provisions supplementary to section 254.**

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#### **Textual Amendments**

**F29** Ss. 254, 255 repealed (with effect in accordance with s. 141(2)(b) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 141(1)(b), [Sch. 27 Pt. III\(32\)](#)



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