



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART VII

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

##### *Employee share ownership trusts*

#### **227 Conditions for roll-over relief.**

- (1) Relief is available under section 229(1) where each of the 6 conditions set out in subsections (2) to (7) below is fulfilled.
- (2) The first condition is that a person (“the claimant”) makes a disposal of shares, or his interest in shares, to the trustees of a trust which—
  - (a) is a qualifying employee share ownership trust at the time of the disposal, and
  - (b) was established by a company (“the founding company”) which immediately after the disposal is a trading company or the holding company of a trading group.
- (3) The second condition is that the shares—
  - (a) are shares in the founding company,
  - (b) form part of the ordinary share capital of the company,
  - (c) are fully paid up,
  - (d) are not redeemable, and
  - (e) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by paragraph 7(2) of Schedule 5 to the <sup>M1</sup>Finance Act 1989.
- (4) The third condition is that, at any time in the entitlement period, the trustees—
  - (a) are beneficially entitled to not less than 10 per cent. of the ordinary share capital of the founding company,
  - (b) are beneficially entitled to not less than 10 per cent. of any profits available for distribution to equity holders of the founding company, and

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- (c) would be beneficially entitled to not less than 10 per cent. of any assets of the founding company available for distribution to its equity holders on a winding-up.
- (5) The fourth condition is that the claimant obtains consideration for the disposal and, at any time in the acquisition period, all the amount or value of the consideration is applied by him in making an acquisition of assets or an interest in assets (“replacement assets”) which—
- (a) are, immediately after the time of the acquisition, chargeable assets in relation to the claimant, and
  - (b) are not shares in, or debentures issued by, the founding company or a company which is (at the time of the acquisition) in the same group as the founding company;
- but the preceding provisions of this subsection shall have effect without the words “, at any time in the acquisition period,” if the acquisition is made pursuant to an unconditional contract entered into in the acquisition period.
- (6) The fifth condition is that, at all times in the proscribed period, there are no unauthorised arrangements under which the claimant or a person connected with him may be entitled to acquire any of the shares, or an interest in or right deriving from any of the shares, which are the subject of the disposal by the claimant.
- (7) The sixth condition is that no chargeable event occurs in relation to the trustees in—
- (a) the chargeable period in which the claimant makes the disposal,
  - (b) the chargeable period in which the claimant makes the acquisition, or
  - (c) any chargeable period falling after that mentioned in paragraph (a) above and before that mentioned in paragraph (b) above.

#### **Marginal Citations**

**M1** 1989 c. 26.

## **228 Conditions for relief: supplementary.**

- (1) This section applies for the purposes of section 227.
- (2) The entitlement period is the period beginning with the disposal and ending on the expiry of 12 months beginning with the date of the disposal.
- (3) The acquisition period is the period beginning with the disposal and ending on the expiry of 6 months beginning with—
  - (a) the date of the disposal, or
  - (b) if later, the date on which the third condition (set out in section 227(4)) first becomes fulfilled.
- (4) The proscribed period is the period beginning with the disposal, and ending on—
  - (a) the date of the acquisition, or
  - (b) if later, the date on which the third condition (set out in section 227(4)) first becomes fulfilled.
- (5) All arrangements are unauthorised unless—

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- (a) they arise wholly from a restriction authorised by paragraph 7(2) of Schedule 5 to the <sup>M2</sup>Finance Act 1989, or
  - (b) they only allow one or both of the following as regards shares, interests or rights, namely, acquisition by a beneficiary under the trust and appropriation under an approved profit sharing scheme.
- (6) An asset is a chargeable asset in relation to the claimant at a particular time if, were the asset to be disposed of at that time, any gain accruing to him on the disposal would be a chargeable gain, and either—
- (a) at that time he is resident or ordinarily resident in the United Kingdom, or
  - (b) he would be chargeable to capital gains tax under section 10(1) in respect of the gain, or it would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3),
- unless (were he to dispose of the asset at that time) the claimant would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gains accruing to him on the disposal.
- (7) The question whether a trust is at a particular time a qualifying employee share ownership trust shall be determined in accordance with Schedule 5 to the <sup>M3</sup>Finance Act 1989; and “chargeable event” in relation to trustees has the meaning given by section 69 of that Act.
- (8) The expressions “holding company”, “trading company” and “trading group” have the meanings given by paragraph 1 of Schedule 6; and “group” (except in the expression “trading group”) shall be construed in accordance with section 170.
- (9) “Ordinary share capital” in relation to the founding company means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- (10) Schedule 18 to the Taxes Act (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of section 227(4) as if—
- (a) the trustees were a company,
  - (b) the references to section 413(7) to (9) of that Act were references to section 227(4),
  - (c) the reference in paragraph 7(1)(a) to section 413(7) of that Act were a reference to section 227(4), and
  - (d) paragraph 7(1)(b) were omitted.

#### Marginal Citations

**M2** 1989 c. 26.

**M3** 1989 c. 26.

## 229 The relief.

- (1) In a case where relief is available under this subsection the claimant shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

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- (a) as if the consideration for the disposal 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 were reduced by the excess of the amount or value of the actual consideration for the disposal over the amount of the consideration which the claimant is treated as receiving under paragraph (a) above.
- (2) Relief is available under subsection (3) below where—
- (a) relief would be available under subsection (1) above but for the fact that part only of the amount or value mentioned in section 227(5) is applied as there mentioned, and
  - (b) all the amount or value so mentioned except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal is so applied.
- (3) In a case where relief is available under this subsection the claimant shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—
- (a) as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in subsection (2)(b) above, and
  - (b) as if the amount or value of the consideration for the acquisition were reduced by the amount by which the gain is reduced under paragraph (a) above.
- (4) Nothing in subsection (1) or (3) above shall affect the treatment for the purposes of this Act of the other party to the disposal or of the other party to the acquisition.
- (5) The provisions of this Act fixing the amount of the consideration deemed to be given for a disposal or acquisition shall be applied before the preceding provisions of this section are applied.

### **230 Dwelling-houses: special provision.**

- (1) Subsection (2) below applies where—
- (a) a claim is made under section 229,
  - (b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset is a dwelling-house or part of a dwelling-house or land, and
  - (d) there was a time in the period beginning with the acquisition and ending with the time when section 229(1) or (3) falls to be applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.
- (2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.
- (3) Subsection (4) below applies where—
- (a) the provisions of section 229(1) or (3) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset

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- in relation to the claimant consists of a dwelling-house or part of a dwelling-house or land, and
- (c) there is a time after section 229(1) or (3) has been applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.
- (4) In such a case—
- (a) the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but
  - (b) any gain treated as accruing in consequence of the application of paragraph (a) above shall be treated as accruing at the time mentioned in subsection (3)(c) above or, if there is more than one such time, at the earliest of them.
- (5) Subsection (6) below applies where—
- (a) a claim is made under section 229,
  - (b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset was an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,
  - (d) the option has been exercised, and
  - (e) there was a time in the period beginning with the exercise of the option and ending with the time when section 229(1) or (3) falls to be applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.
- (6) In such a case the option shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.
- (7) Subsection (8) below applies where—
- (a) the provisions of section 229(1) or (3) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consisted of an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,
  - (c) the option has been exercised, and
  - (d) there is a time after section 229(1) or (3) has been applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.
- (8) In such a case—
- (a) the option shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but
  - (b) any gain treated as accruing in consequence of the application of paragraph (a) above shall be treated as accruing at the time mentioned in subsection (7)(d) above or, if there is more than one such time, at the earliest of them.

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- (9) References in this section to an individual include references to a person entitled to occupy under the terms of a settlement.

### **231 Shares: special provision.**

- (1) Subsection (2) below applies where—
- (a) a claim is made under section 229,
  - (b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset consists of shares, and
  - (d) in the period beginning with the acquisition and ending when section 229(1) or (3) falls to be applied relief is claimed under Chapter III of Part VII of the Taxes Act <sup>F1</sup>... in respect of the asset.
- (2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.
- (3) Subsection (4) below applies where—
- (a) the provisions of section 229(1) or (3) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consists of shares, and
  - (c) after section 229(1) or (3) has been applied relief is claimed under Chapter III of Part VII of the Taxes Act in respect of the asset.
- (4) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly.
- (5) Subsection (4) above shall also apply where section 33(1) or (3) of the <sup>M4</sup>Finance Act 1990 has applied and the claimant acquired the replacement asset in a chargeable period beginning before 6th April 1992.

#### **Textual Amendments**

**F1** Words in s. 231(1)(d) repealed (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 15 para. 34](#), [Sch. 26 Pt. V\(17\)](#)

#### **Marginal Citations**

**M4** [1990 c. 29](#).

### **232 Chargeable event when replacement assets owned.**

- (1) Subsection (3) below applies where—
- (a) the provisions of section 229(1) or (3) are applied,
  - (b) a chargeable event occurs in relation to the trustees on or after the date on which the disposal is made (and whether the event occurs before or after the provisions are applied),

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- (c) the claimant was neither an individual who died before the chargeable event occurs nor trustees of a settlement which ceased to exist before the chargeable event occurs, and
  - (d) the condition set out below is fulfilled.
- (2) The condition is that, at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the replacement assets.
- (3) In a case where this subsection applies, the claimant or connected person (as the case may be) shall be deemed for all purposes of this Act—
  - (a) to have disposed of all the replacement assets immediately before the time when the chargeable event occurs, and
  - (b) immediately to have reacquired them, at the relevant value.
- (4) The relevant value is such value as secures on the deemed disposal a chargeable gain equal to—
  - (a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
  - (b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).
- (5) In a case where subsection (3) above would apply if “all” read “any of” in subsection (2) above, subsection (3) shall nevertheless apply, but as if—
  - (a) in subsection (3)(a) “all the replacement assets” read “ the replacement assets concerned ”, and
  - (b) the relevant value were reduced to whatever value is just and reasonable.
- (6) Subsection (7) below applies where—
  - (a) subsection (3) above applies (whether or not by virtue of subsection (5) above), and
  - (b) before the time when the chargeable event occurs anything has happened as regards any of the replacement assets such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).
- (7) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
  - (a) the relevant value were reduced (or further reduced) to whatever value is just and reasonable, or
  - (b) the relevant value were such value as secures that on the deemed disposal neither a gain nor a loss accrues (if that is just and reasonable);but paragraph (a) above shall not apply so as to reduce the relevant value below that mentioned in paragraph (b) above.
- (8) For the purposes of subsection (6)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (4)(a) or (b) above, as the case may be).

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- (9) In this section “chargeable event” in relation to trustees has the meaning given by section 69 of the <sup>M5</sup>Finance Act 1989.

**Marginal Citations**

**M5** 1989 c. 26.

**233 Chargeable event when replacement property owned.**

- (1) Subsection (3) below applies where—
- (a) paragraphs (a) to (c) of section 232(1) are fulfilled, and
  - (b) the condition set out below is fulfilled.
- (2) The condition is that—
- (a) before the time when the chargeable event occurs, all the gain carried forward by virtue of section 229(1) or (3) was in turn carried forward from all the replacement assets to other property on a replacement of business assets, and
  - (b) at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the property.
- (3) In a case where this subsection applies, the claimant or connected person (as the case may be) shall be deemed for all purposes of this Act—
- (a) to have disposed of all the property immediately before the time when the chargeable event occurs, and
  - (b) immediately to have reacquired it,  
at the relevant value.
- (4) The relevant value is such value as secures on the deemed disposal a chargeable gain equal to—
- (a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
  - (b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).
- (5) In a case where subsection (3) above would apply if “all the” in subsection (2) above (in one or more places) read “any of the”, subsection (3) shall nevertheless apply, but as if—
- (a) in subsection (3)(a) “all the property” read “ the property concerned ”, and
  - (b) the relevant value were reduced to whatever value is just and reasonable.
- (6) Subsection (7) below applies where—
- (a) subsection (3) above applies (whether or not by virtue of subsection (5) above), and
  - (b) before the time when the chargeable event occurs anything has happened as regards any of the replacement assets, or any other property, such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).



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- (7) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
- (a) the relevant value were reduced (or further reduced) to whatever value is just and reasonable, or
  - (b) the relevant value were such value as secures that on the deemed disposal neither a gain nor a loss accrues (if that is just and reasonable);
- but paragraph (a) above shall not apply so as to reduce the relevant value below that mentioned in paragraph (b) above.
- (8) For the purposes of subsections (2) and (6)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (4)(a) or (b) above, as the case may be).
- (9) For the purposes of subsection (2) above a gain is carried forward from assets to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the assets is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.

#### **234 Chargeable events when bonds owned.**

- (1) Subsection (3) below applies where—
- (a) paragraphs (a) to (c) of section 232(1) are fulfilled, and
  - (b) the condition set out below is fulfilled.
- (2) The condition is that—
- (a) all the replacement assets were shares (new shares) in a company or companies,
  - (b) there has been a transaction to which section 116(10) applies and as regards which all the new shares constitute the old asset and qualifying corporate bonds constitute the new asset, and
  - (c) at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the bonds.
- (3) In a case where this subsection applies, a chargeable gain shall be deemed to have accrued to the claimant or connected person (as the case may be); and the gain shall be deemed to have accrued immediately before the time when the chargeable event occurs and to be of an amount equal to the relevant amount.
- (4) The relevant amount is an amount equal to the lesser of—
- (a) the first amount, and
  - (b) the second amount.
- (5) The first amount is—
- (a) the amount of the chargeable gain that would be deemed to accrue under 116(10)(b) if there were a disposal of all the bonds at the time the chargeable event occurs, or
  - (b) nil, if an allowable loss would be so deemed to accrue if there were such a disposal.

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- (6) The second amount is an amount equal to—
- (a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
  - (b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).
- (7) In a case where subsection (3) above would apply if “all the” in subsection (2) above (in one or more places) read “any of the”, subsection (3) shall nevertheless apply, but as if—
- (a) in subsection (5) above “all the bonds” read “the bonds concerned”,
  - (b) the second amount were reduced to whatever amount is just and reasonable, and
  - (c) the relevant amount were reduced accordingly.
- (8) Subsection (9) below applies where—
- (a) subsection (3) above applies (whether or not by virtue of subsection (7) above), and
  - (b) before the time when the chargeable event occurs anything has happened as regards any of the new shares, or any of the bonds, such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).
- (9) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
- (a) the second amount were reduced (or further reduced) to whatever amount is just and reasonable, and
  - (b) the relevant amount were reduced (or further reduced) accordingly (if the second amount is less than the first amount),
- but nothing in this subsection shall have the effect of reducing the second amount below nil.
- (10) For the purposes of subsection (8)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (6)(a) or (b) above, as the case may be).

## **235 Information.**

- (1) An inspector may by notice require a return to be made by the trustees of an employee share ownership trust in a case where—
  - (a) a disposal of shares, or an interest in shares, has at any time been made to them, and
  - (b) a claim is made under section 229(1) or (3).
- (2) Where he requires such a return to be made the inspector shall specify the information to be contained in it.
- (3) The information which may be specified is information the inspector needs for the purposes of sections 232 to 234 and may include information about—

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- (a) expenditure incurred by the trustees;
  - (b) assets acquired by them;
  - (c) transfers of assets made by them.
- (4) The information which may be required under subsection (3)(a) above may include the purpose of the expenditure and the persons receiving any sums.
- (5) The information which may be required under subsection (3)(b) above may include the persons from whom the assets were acquired and the consideration furnished by the trustees.
- (6) The information which may be required under subsection (3)(c) above may include the persons to whom assets were transferred and the consideration furnished by them.
- (7) In a case where section 229(1) or (3) has been applied, the inspector shall send to the trustees of the employee share ownership trust concerned a certificate stating—
- (a) that the provision concerned has been applied, and
  - (b) the effect of the provision on the consideration for the disposal or on the amount of the gain accruing on the disposal (as the case may be).
- (8) For the purposes of this section, the question whether a trust is an employee share ownership trust shall be determined in accordance with Schedule 5 to the <sup>M6</sup>Finance Act 1989.

#### Marginal Citations

M6 1989 c. 26.

### 236 Prevention of double charge.

- (1) Where a charge can be said to accrue by virtue of section 232 or 233 in respect of any of the gain carried forward by virtue of section 229(1) or (3), so much of the gain charged shall not be capable of being carried forward (from assets to other property or from property to other property) under sections 152 to 158 on a replacement of business assets.
- (2) For the purpose of construing subsection (1) above—
- (a) what of the gain has been charged shall be found in accordance with what is just and reasonable;
  - (b) section 233(8) and (9) shall apply.
- (3) In a case where—
- (a) section 234 applies in the case of bonds,
  - (b) subsequently a disposal of the bonds occurs as mentioned in section 116(10)(b), and
  - (c) a chargeable gain is deemed to accrue under section 116(10)(b),
- the chargeable gain shall be reduced by the relevant amount found under section 234 or (if the amount exceeds the gain) shall be reduced to nil.
- (4) The relevant amount shall be apportioned where the subsequent disposal is of some of the bonds mentioned in subsection (3)(a) above; and subsection (3) shall apply accordingly.

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**Changes to legislation:**

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