



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART IV

SHARES, SECURITIES, OPTIONS ETC.

CHAPTER II

REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

^{F1} Company reconstructions ...

140 Postponement of charge on transfer of assets to non-resident company.

- (1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a [^{F1}permanent establishment] and—
- that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) is transferred to a company not resident in the United Kingdom;
 - the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee company to the transferor company;
 - the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company; and
 - either no allowable losses accrue to the transferor company on the transfer or the aggregate of the chargeable gains so accruing exceeds the aggregate of the allowable losses so accruing;

and also applies in any case where section 268A of the ^{M1}Income and Corporation Taxes Act 1970 applied unless the deferred gain had been wholly taken into account in accordance with that section before the coming into force of this section.

Status: Point in time view as at 15/03/2018.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Section 140 is up to date with all changes known to be in force on or before 19 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)

Section 170(1) shall apply for the purposes of this section.

- (2) In any case to which this section applies the transferor company may claim that this Act shall have effect in accordance with the following provisions.
- (3) Any allowable losses accruing to the transferor company on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses and—
- (a) if the securities are the whole consideration for the transfer, the whole of that gain shall be treated as not accruing to the transferor company on the transfer but an equivalent amount (“the deferred gain”) shall be brought into account in accordance with subsections (4) and (5) below;
 - (b) if the securities are not the whole of that consideration—
 - (i) paragraph (a) above shall apply to the appropriate proportion of that gain; and
 - (ii) the remainder shall be treated as accruing to the transferor company on the transfer.

In paragraph (b)(i) above “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

- (4) If at any time after the transfer the transferor company disposes of the whole or part of the securities held by it immediately before that time, [^{F2}there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion] the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (5) below.

In this subsection “the appropriate proportion” means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal.

[^{F3}(4A) A chargeable gain which is deemed to accrue under subsection (4) is in addition to any gain or loss that actually accrues to the transferor company on the disposal of the securities.]

[^{F4}(4B) In determining whether a chargeable gain is deemed to accrue under subsection (4), any disapplication of section 127 by paragraph 4(3)(a) of Schedule 7AC in a case in which that section would otherwise have applied shall be disregarded.]

- (5) If at any time within 6 years after the transfer the transferee company disposes of the whole or part of the relevant assets held by it immediately before that time there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (4) above.

In this subsection “relevant assets” means assets the chargeable gains on which were taken into account in arriving at the deferred gain and “the appropriate proportion” means the proportion which the chargeable gain so taken into account in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

- (6) There shall be disregarded—

Status: Point in time view as at 15/03/2018.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Section 140 is up to date with all changes known to be in force on or before 19 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)

- (a) for the purposes of subsection (4) above any disposal to which section 171 applies; and
- (b) for the purposes of subsection (5) above any disposal to which that section would apply [^{F5}if subsections (1)(b) and (1A) of that section and section 170(9) were disregarded];

and where a person acquires securities or an asset on a disposal disregarded for the purposes of subsection (4) or (5) above (and without there having been a previous disposal not so disregarded) a disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, transferee company.

[^{F6}(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140C.]

[^{F7}(6AA) If securities are transferred by a transferor company as part of the process of the transfer of a business to which section 140A or 140C applies—

- (a) the transfer shall be disregarded for the purposes of subsection (4), and
- (b) the transferee company shall be treated as if it were the transferor company in relation to—
 - (i) any subsequent disposal of the securities, and
 - (ii) any subsequent disposal by the transferee of assets to which subsection 5 applies.]

[^{F8}(6B) If securities are transferred by a transferor as part of the process of a merger to which section 140E applies—

- (a) the transfer shall be disregarded for the purposes of subsection (4), and
- (b) the transferee shall be treated as if it were the transferor in relation to—
 - (i) any subsequent disposal of the securities, and
 - (ii) any subsequent disposal by the transferee of assets to which subsection (5) applies.

(6C) In subsection (6B) “transferor” and “transferee” have the meaning given by section 140E(9).]

(7) If in the case of any such transfer as was mentioned in section 268(1) of the ^{M2}Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section chargeable gains which by virtue of section 268(2) and 268A(8) of that Act were treated as not having accrued to the transferor company, subsection (4) above shall (without any claim in that behalf) apply to the aggregate of those gains as if references to the deferred gain were references to that aggregate and as if references to the transfer and the securities were references to the transfer and the shares, or shares and loan stock, mentioned in section 268(1).

(8) If in the case of any such transfer as was mentioned in section 268A(1) of the ^{M3}Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section deferred gains which by virtue of section 268A(3) were treated as not having accrued to the transferor company, subsections (4) and (5) above shall (without any claim in that behalf) apply to those deferred gains as they apply to gains deferred by virtue of subsection (3) above (as if the references to the transfer and the securities were references to the transfer and securities mentioned in section 268A(1)).

Status: Point in time view as at 15/03/2018.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Section 140 is up to date with all changes known to be in force on or before 19 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)

Textual Amendments

- F1** Words in s. 140(1) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(b\)](#)
- F2** Words in s. 140(4) substituted (with effect in accordance with s. 37(3) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 37\(1\)\(a\)](#)
- F3** S. 140(4A) inserted (with effect in accordance with s. 37(3) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 37\(1\)\(b\)](#)
- F4** S. 140(4B) inserted (with effect in accordance with s. 27(2) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 27\(1\)](#)
- F5** Words in s. 140(6)(b) substituted (with effect in accordance with Sch. 29 para. 23(2) of the amending Act) by [Finance Act 2000 \(c. 17\), Sch. 29 para. 23\(1\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F6** S. 140(6A) inserted (*retrosp.*) by 1992 c. 48, [s. 46\(1\)\(4\)](#)
- F7** S. 140(6AA) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 1 para. 7](#) (with [S.I. 2008/1579, reg. 4\(1\)](#))
- F8** S. 140(6B)(6C) substituted for s. 140(6B) (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 2 para. 5](#) (with [S.I. 2008/1579, reg. 4\(1\)](#))

Marginal Citations

- M1** 1970 c. 10.
M2 1970 c. 10.
M3 1970 c. 10.

Status:

Point in time view as at 15/03/2018.

Changes to legislation:

Taxation of Chargeable Gains Act 1992, Section 140 is up to date with all changes known to be in force on or before 19 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.