



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART V

TRANSFER OF BUSINESS ASSETS^[F1], ^[F1]BUSINESS ASSET DISPOSAL RELIEF] AND INVESTORS' RELIEF]

CHAPTER II

GIFTS OF BUSINESS ASSETS

165 Relief for gifts of business assets.

(1) If—

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

then, subject to subsection (3) and ^[F1]sections 166, 167^[F2], ^[F3]167A,] 169, 169B and 169C], subsection (4) below shall apply in relation to the disposal.

(2) An asset is within this subsection if—

- (a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—
 - (i) the transferor, or
 - (ii) his ^[F4]personal company], or
 - (iii) a member of a trading group of which the holding company is his ^[F4]personal company], or
- (b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—
 - (i) the shares or securities are ^[F5]not listed on a recognised stock exchange], or

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- (ii) the trading company or holding company is the transferor's
 [F4personal company].
- (3) Subsection (4) below does not apply in relation to a disposal if—
- F6(a)
 - F6(b)
 - [F7(ba) in the case of a disposal of shares or securities, the transferee is a company,]
 - (c) in the case of a disposal of qualifying corporate bonds, a gain is deemed to accrue by virtue of section 116(10)(b), or
 - (d) subsection (3) of section 260 applies in relation to the disposal (or would apply if a claim for relief were duly made under that section).
- (4) Where a claim for relief is made under this section in respect of a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
 - (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,
- shall each be reduced by an amount equal to the held-over gain on the disposal.
- (5) Part I of Schedule 7 shall have effect for extending the relief provided for by virtue of subsections (1) to (4) above in the case of agricultural property and for applying it in relation to settled property.
- (6) Subject to Part II of Schedule 7 and subsection (7) below, the reference in subsection (4) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (4) above F8..., and in subsection (7) below that chargeable gain is referred to as the unrelieved gain on the disposal.
- (7) In any case where—
- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of section 17(1)) for a disposal in respect of which a claim for relief is made under this section, and
 - (b) that actual consideration exceeds the sums allowable as a deduction under section 38,
- the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.
- [F9(7A) Subsections (7B) and (7C) apply in any case where—
- (a) the disposal is a [F10direct or indirect disposal of UK land which meets the non-residence condition], and
 - (b) the transferee is resident in the United Kingdom.
- (7B) Subsections (4) and (6) have effect in relation to the disposal as if the references to “chargeable gain” were [F11references to “so much of any gain accruing on the disposal as falls to be dealt with as mentioned in subsection (7D)(a) or (b)”].
- (7C) Subsection (7) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to [F12“so much of the gain mentioned in subsection (7B)] which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”.]

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- [^{F13}(7D) For the purposes of subsections (7A) to (7C) a disposal is a “direct or indirect disposal of UK land which meets the non-residence condition” if it is—
- (a) a disposal on which a gain accrues that falls to be dealt with by section 1A(3) because the asset disposed of is within paragraph (b) or (c) of that subsection, or
 - (b) a disposal on which a gain accrues that falls to be dealt with by section 1A(1) in accordance with section 1G(2) because the asset disposed of is within section 1A(3)(b) or (c).]
- (8) Subject to subsection (9) below, in this section and Schedule 7—
- [^{F14}(a) “personal company”, in relation to an individual, means a company the voting rights in which are exercisable, as to not less than 5 per cent., by that individual;
 - [^{F15}(aa) “holding company”, “trading company” and “trading group” have the meaning given by section 165A; and]]
 - (b) “trade”, “profession” and “vocation” have the same meaning as in the Income Tax Acts.
- (9) In this section and Schedule 7 and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression “trade” shall be taken to include the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits.
- (10) Where a disposal [^{F16}in relation to which subsection (4) above applies] is (or proves to be) a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—
- (a) the inheritance tax attributable to the value of the asset, and
 - (b) the amount of the chargeable gain as computed apart from this subsection,
- and, in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.
- (11) Where an amount of inheritance tax—
- (a) falls to be redetermined in consequence of the transferor’s death within 7 years of making the chargeable transfer in question, or
 - (b) is otherwise varied,
- after it has been taken into account under subsection (10) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

Textual Amendments

- F1** Words in s. 165(1) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 90\(1\)](#)
- F2** Words in s. 165(1) substituted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 3\(2\)](#)
- F3** Word in s. 165(1) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 7 para. 23\(2\)](#)

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- F4** Words in s. 165 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**
- F5** Words in s. 165(2)(b)(i) substituted (with effect in accordance with s. 90(5) of the amending Act) by **Finance Act 2000 (c. 17), s. 90(3)**
- F6** S. 165(3)(a)(b) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by **Finance Act 1998 (c. 36), Sch. 27 Pt. III(31)**
- F7** S. 165(3)(ba) inserted (with effect in accordance with Sch. 21 para. 10(5) of the amending Act) by **Finance Act 2004 (c. 12), Sch. 21 para. 3(3)**
- F8** Words in s. 165(6) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by **Finance Act 1998 (c. 36), Sch. 27 Pt. III(31)**
- F9** S. 165(7A)-(7C) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by **Finance Act 2015 (c. 11), Sch. 7 para. 23(3)**
- F10** Words in s. 165(7A)(a) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by **Finance Act 2019 (c. 1), Sch. 1 para. 55(2)**
- F11** Words in s. 165(7B) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by **Finance Act 2019 (c. 1), Sch. 1 para. 55(3)**
- F12** Words in s. 165(7C) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by **Finance Act 2019 (c. 1), Sch. 1 para. 55(4)**
- F13** S. 165(7D) inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by **Finance Act 2019 (c. 1), Sch. 1 para. 55(5)**
- F14** S. 165(8)(a)(aa) substituted for s. 165(8)(a) (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by **Finance Act 1998 (c. 36), s. 140(4)**
- F15** S. 165(8)(aa) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by **Finance Act 2008 (c. 9), Sch. 2 para. 33**
- F16** Words in s. 165(10) substituted (with effect in accordance with Sch. 21 para. 10(7) of the amending Act) by **Finance Act 2004 (c. 12), Sch. 21 para. 3(5)**

Modifications etc. (not altering text)

- C1** S. 165 modified by S.I. 2006/964, reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by **The Authorised Investment Funds (Tax) (Amendment) Regulations 2010 (S.I. 2010/294), regs. 1(1), 21**)

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Changes and effects yet to be applied to :

- s. 165(3)(b) words inserted by [2000 c. 17 s. 90\(4\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [1997 c. 16 Sch. 12 para. 12\(7\)](#)[1314](#)
- Act applied by [2002 c. 23 Sch. 16 para. 48\(1\)\(2\)](#)
- Act construed as one with reg. 37 by [S.I. 2006/575 reg. 37\(2\)](#)
- Act construed as one with reg. 38 by [S.I. 2006/575 reg. 38\(3\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(10)(11) inserted by [2016 c. 11 s. 15\(4\)](#)
- s. 4(10) words inserted by [2016 c. 24 s. 83\(11\)](#)
- s. 35(3)(d)(xviii) added by [2008 c. 17 Sch. 7 para. 9](#)
- s. 35(3)(d)(xviii) inserted by [2008 c. 18 Sch. 13 para. 46](#)
- s. 35(3)(d)(xviii) repealed by [S.I. 2008/3002 Sch. 1 para. 42](#)[Sch. 3](#) (This amendment comes into force on the day [2008 c. 4, s. 5](#) comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by [S.I. 2008/3068, art. 2\(1\)\(b\)](#))
- s. 104(4)(b)(i) words substituted by [S.I. 1989/469, reg. 27\(2\)](#) (as amended) by [S.I. 1997/1716 reg. 13\(1\)\(b\)](#)
- s. 107(11) words substituted by [S.I. 1989/469, reg. 27\(2A\)](#) (as amended) by [S.I. 1997/1716 reg. 13\(2\)\(b\)](#)
- s. 169S(4A) inserted by [2015 c. 11 s. 43\(2\)](#)
- s. 587B inserted by [2000 c. 17 s. 43\(1\)](#)
- Sch. 5C para. 3(1) modified by [S.I. 2004/2199 reg. 7\(1\)](#)
- Sch. 5C para. 3(6) modified by [S.I. 2004/2199 reg. 7\(2\)](#)
- Sch. 5C para. 5(1) modified by [S.I. 2004/2199 reg. 7\(3\)](#)
- Sch. 5C para. 3 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 5 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 6 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 3(1)(f) words substituted by [2007 c. 3 Sch. 1 para. 347](#)