



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER III

INSURANCE

213 Spreading of gains and losses under section 212.

- (1) Any chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of section 212 to have been made at the end of a company's accounting period shall be treated as not accruing to it, but instead—
- there shall be ascertained the difference (“the net amount”) between the aggregate of those gains and the aggregate of those losses, and
 - one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company at the end of the accounting period, and
 - a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing at the end of each succeeding accounting period until the whole amount has been accounted for.

[^{F1}(1A) Subsection (1) above shall not apply to chargeable gains or allowable losses except so far as they are gains or losses which—

- are referable [^{F2}(in accordance with section 432A of the Taxes Act)] to basic life assurance and general annuity business; or
- would (apart from that subsection) be taken into account in computing the profits of any business treated as a separate business under section 458 of the Taxes Act;

and that subsection shall apply separately in relation to the gains and losses falling within paragraph (a) above and those falling within paragraph (b) above for the

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purpose of determining what chargeable gains or allowable losses so referable are to be treated as accruing under that subsection and what chargeable gains or allowable losses to be so taken into account are to be treated as so accruing.]

(2) For any accounting period of less than one year, the fraction of one-seventh referred to in subsection (1)(c) above shall be proportionately reduced; and where this subsection has had effect in relation to any accounting period before the last for which subsection (1)(c) above applies, the fraction treated as accruing at the end of that last accounting period shall also be adjusted appropriately.

(3) [^{F3}Subject to [^{F4}subsection (8H)] below,] Where—

- (a) the net amount for an accounting period of an insurance company represents an excess of gains over losses,
- (b) the net amount for [^{F5}either of the next 2] accounting periods (after taking account of any reductions made by virtue of this [^{F6}section]) represents an excess of losses over gains,
- (c) there is (after taking account of any such reductions) no net amount for [^{F7}the intervening accounting period (if there is one)],
- [^{F8}(ca) [^{F9}the intervening accounting period (if there is one) is not] an accounting period in which the company joined a group of companies, and]
- (d) within 2 years after the end of the later accounting period the company makes a claim for the purpose in respect of the whole or part of the net amount for that period,

the net amounts for both the earlier and the later period shall be reduced by the amount in respect of which the claim is made.

^{F10}(3A)

^{F11}(3B)

(4) Subject to subsection (5) below, where a company ceases to carry on [^{F12}long-term] business before the end of the last of the accounting periods for which subsection (1) (c) above would apply in relation to a net amount, the fraction of that amount that is treated as accruing at the end of the accounting period ending with the cessation shall be such as to secure that the whole of the net amount has been accounted for.

[^{F13}(4A) The following provisions apply where an insurance business transfer scheme has effect to transfer business which consists of the effecting or carrying out of contracts of long-term insurance from one person (“the transferor”) to another (“the transferee”).

(5) Subject to subsections (5A) to (7) below, any chargeable gain or allowable loss which (assuming that the transferor had continued to carry on the business transferred) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.]

[^{F14}(5A) Subsection (5) above shall not apply where the transferee is resident outside the United Kingdom unless the business to which the transfer relates is carried on by the transferee, for a period beginning with the time when the transfer takes effect, through a [^{F15}permanent establishment] in the United Kingdom.]

(6) Where subsection (5) above has effect, the amount of the gain or loss accruing at the end of the first accounting period of the transferee ending after the day when the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.

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- (7) Where the transfer is of part only of the transferor's [^{F16}long-term] business, subsection (5) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.
- (8) Any question arising as to the operation of subsection (7) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

[^{F17}(8A) Subsection (8B) below applies where—

- (a) immediately before the transfer the transferee did not carry on business consisting of the effecting or carrying out of contracts of long-term insurance,
- (b) the transferor and the transferee are, at the time of the transfer, members of the same group,
- (c) the net amount for the accounting period of the transferor ending with the day of the transfer, or for the immediately preceding accounting period of the transferor, (“the relevant pre-transfer period of the transferor”) represents an excess of gains over losses,
- (d) the net amount for the accounting period of the transferee in which the transfer takes place, or for the immediately following accounting period of the transferee, (“the relevant post-transfer period of the transferee”) represents an excess of losses over gains (after taking account of any reductions made by virtue of this section), and
- (e) within 2 years after the end of the relevant post-transfer period of the transferee, the transferor and the transferee make a joint election in respect of the whole or part of the net amount for that period by notice to an officer of the Board.

(8B) Subject to subsections (8C) to (8E) and (8H) below, the net amounts for both the relevant pre-transfer period of the transferor and the relevant post-transfer period of the transferee shall be reduced by the amount in respect of which the election is made.

(8C) Subsection (8B) above does not apply if—

- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer.

(8D) If—

- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period ending with the day of the transfer,

subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferee in which the transfer takes place.

(8E) If—

- (a) the relevant post-transfer period of the transferee is the accounting period in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer,

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subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferor ending with the day of the transfer.

- (8F) The conditions referred to in subsections (8D) and (8E) above are that—
- (a) there is (after taking account of any reductions made by virtue of this section) no net amount for the accounting period, and
 - (b) the company whose accounting period it is did not join a group of companies in the accounting period.
- (8G) A copy of the notice containing an election under subsection (8A)(e) above must accompany the tax return for the relevant post-transfer period of the transferee; and paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.
- (8H) Subsections (3) and (8A) and (8B) above have effect where the company, or the transferee, in question joins a group of companies in the accounting period for which the net amount represents an excess of losses over gains as if a claim or election could not be made in respect of that net amount except to the extent (if any) that the net amount is an amount which, assuming there to be gains accruing to the company or transferee immediately after the beginning of that period, would fall to be treated under paragraph 4 of Schedule 7AA as a qualifying loss in relation to those gains.
- (8I) References in this section to a company joining a group of companies are to be construed in accordance with paragraph 1 of Schedule 7AA as if those references were contained in that Schedule; and in subsection (8A)(b) above “group” has the same meaning as in that Schedule.]

^{F18}(9)

[^{F19}(10) If the transfer is one to which section 444AA(1) of the Taxes Act applies, the references in this section to the accounting period of the transferor ending with the day of the transfer are references to the accounting period ending immediately before the transfer.]

Textual Amendments

- F1** S. 213(1A) inserted (27.7.1993) by 1993 c. 37, s. 91(4)
- F2** Words in s. 213(1A)(a) inserted (22.7.2004) by Finance Act 2004 (c. 12), Sch. 7 para. 9(3)(c)
- F3** Words in s. 213(3) inserted (with effect in accordance with s. 137(6) of the amending Act) by Finance Act 1998 (c. 36), s. 137(3)(a)
- F4** Words in s. 213(3) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(2)(a)
- F5** Words in s. 213(3)(b) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(2)(b)
- F6** Word in s. 213(3)(b) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(2)(b)
- F7** Words in s. 213(3)(c) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(2)(c)
- F8** S. 213(3)(ca) substituted for word at end of s. 213(3)(c) (with effect in accordance with s. 137(6) of the amending Act) by Finance Act 1998 (c. 36), s. 137(3)(b)
- F9** Words in s. 213(3)(ca) substituted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(2)(d)

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- F10** S. 213(3A) repealed (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(3), **Sch. 43 Pt. 3(12)**
- F11** S. 213(3B) repealed (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), Sch. 33 para. 16(3), **Sch. 43 Pt. 3(12)**
- F12** Word in s. 213(4) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), arts. 1(2)(a), **73(2)(a)**
- F13** S. 213(4A)(5) substituted for s. 213(5) (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 16(4)**
- F14** S. 213(5A) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 4**
- F15** Words in s. 213(5A) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(b)**
- F16** Word in s. 213(7) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), arts. 1(2)(a), **73(2)(a)**
- F17** S. 213(8A)-(8I) inserted (with effect in accordance with Sch. 33 para. 16(6) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 16(5)**
- F18** S. 213(9) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(8) Note
- F19** S. 213(10) inserted (with effect in accordance with Sch. 9 para. 20(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 20(6)**

Modifications etc. (not altering text)

- C1** S. 213 modified (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 para. 15(2)**
- C2** S. 213 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), 46, 47 (as amended (with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2001/3629, arts. 1(2)(b), 162)
- C3** S. 213(1A) modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), reg. 21A (as inserted (10.8.1995) by S.I. 1995/1916, regs. 1, 12)
- C4** S. 213 modified (with effect in accordance with reg. 1 of the amending S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), regs. 1, **11(2)**
- C5** S. 213(5) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), regs. 1, **4(1)(2)(e)**

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