Finance Act 2002

2002 CHAPTER 23

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

OTHER PROVISIONS

Chargeable gains

42 Reallocation within group of gain or loss accruing under section 179

(1) After section 179 of the Taxation of Chargeable Gains Act 1992 (c. 12) (company ceasing to be member of group) insert—

"**179A Reallocation within group of gain or loss accruing under section 179**

(1) This section applies where—

(a) a company ("company A") is treated by virtue of section 179(3) or (6) as having sold and immediately reacquired an asset at market value, and

(b) a chargeable gain or an allowable loss accrues to the company on the deemed sale.

(2) In this section "time of accrual" means—

(a) in a case where section 179(3) applies, the time at which, by virtue of section 179(4), the gain or loss referred to in subsection (1) above is treated as accruing to company A;

(b) in a case where section 179(6) applies, the latest time at which the company satisfies the conditions in section 179(7).

(3) If—

(a) a joint election under this section is made by company A and a company ("company C") that was a member of the relevant group at the time of accrual, and

(b) the conditions in subsections (6) to (8) below are all met,

the chargeable gain or allowable loss accruing on the deemed sale, or such part of it as may be specified in the election, shall be treated as accruing not to company A but to company C.

(4) In subsection (3) above "the relevant group" means—

(a) in a case where section 179(3) applies, the group of which company A was a member at the time of accrual;

(b) in a case where section 179(6) applies, the second group referred to in section 179(5).

(5) Where two or more elections are made each specifying a part of the same gain or loss, the total amount specified may not exceed the whole of that gain or loss.

(6) The first condition is that, at the time of accrual, company C—

(a) was resident in the United Kingdom, or

(b) owned assets that were chargeable assets in relation to it.

(7) The second condition is that neither company A nor company C was at that time a qualifying friendly society within the meaning given by section 171(5)).

(8) The third condition is that company C was not at that time an investment trust, a venture capital trust or a dual resident investing company.

(9) A gain or loss treated by virtue of this section as accruing to a company that is not resident in the United Kingdom shall be treated as accruing in respect of a chargeable asset held by that company.

(10) An election under this section must be made—

(a) by notice to an officer of the Board;

(b) no later than two years after the end of the accounting period of company A in which the time of accrual fell.

(11) Any payment by company A to company C, or by company C to company A, in pursuance of an agreement between them in connection with the election—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income,

provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the election, as accruing to company C.

(12) For the purposes of this section an asset is a "chargeable asset" in relation to a company at a particular time if any gain accruing to the company on a disposal of the asset by the company at that time would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(2) In Schedule 7B to that Act (modification of Act in relation to overseas life insurance companies), immediately before paragraph 8 insert—

"7A In section 179A(12), the words "section 11(2)(b), (c) or (d) of the Taxes Act" shall be treated as substituted for "section 10(3)".".

(3) In section 97(1) of the Inheritance Tax Act 1984 (c. 51) (transfers within group, etc)—

(a) after sub-paragraph (ii) of paragraph (a) insert "or—

(iii) an election under section 179A of that Act as a result of which a chargeable gain is treated as accruing to the transferor company instead of to another member of the group, or an allowable loss is treated as accruing to another member of the group instead of to the transferor company,";

(b) in paragraph (aa) for "the deemed transfer" substitute " the election ".

(4) This section applies—

(a) in relation to a case where a company is treated by virtue of section 179(3) of the Taxation of Chargeable Gains Act 1992 (c. 12) as having sold and immediately reacquired an asset, where the company's ceasing to be a member of the group in question happens on or after 1st April 2002;

(b) in relation to a case where a company is so treated by virtue of section 179(6) of that Act, where the relevant time (within the meaning of that subsection) is on or after that date.

43 Roll-over of degrouping charge on business assets

(1) After section 179A of the Taxation of Chargeable Gains Act 1992 (c. 12) (inserted by section 42 above) insert—

"**179B Roll-over of degrouping charge on business assets**

(1) Where a company is treated by virtue of section 179(3) or (6) as having sold and immediately reacquired an asset at market value, relief under section 152 or 153 (roll-over relief on replacement of business assets) is available in accordance with this section in relation to any gain accruing to the company on the deemed sale.

(2) For this purpose, sections 152 and 153 and the other enactments specified in Schedule 7AB apply with the modifications set out in that Schedule.

(3) Where there has been an election under section 179A, any claim for relief available in accordance with this section must be made by company C rather than company A.

(4) For this purpose, the enactments modified by Schedule 7AB have effect as if—

(a) references to company A, except those in sections 152(1)(a) and (1B), 153(1B), 153A(5), 159(1), 175 and 198(1), were to company C;

(b) the references to "that company" in section 159(1) and "the company" in section 185(3)(b) were to company C;

(c) the reference to "that trade" in section 198(1) were to a ring fence trade carried on by company C.

(5) Where there has been an election under section 179A in respect of part only of the chargeable gain accruing on the deemed sale of an asset, the enactments modified by Schedule 7AB and subsections (3) and (4) above apply as if the deemed sale had been of a separate asset representing a corresponding part of the asset; and any necessary apportionments shall be made accordingly.

(6) A reference in this section to company A or to company C is to the company referred to as such in section 179A.".

(2) After Schedule 7AA to the 1992 Act insert the Schedule 7AB set out in Schedule 7 to this Act.

(3) In section 86(2) of the Finance Act 1993 (c. 34) (roll-over relief: power to amend section 155 of the 1992 Act by order), at the end add—

"Any such order may make such consequential amendments of Schedule 7AB as appear to the Treasury to be appropriate.".

(4) This section applies—

(a) in relation to a case where a company is treated by virtue of section 179(3) of the 1992 Act as having sold and immediately reacquired an asset, where the company's ceasing to be a member of the group in question happens on or after 1st April 2002;

(b) in relation to a case where a company is so treated by virtue of section 179(6) of that Act, where the relevant time (within the meaning of that subsection) is on or after that date.

44 Exemptions for disposals by companies with substantial shareholding

(1) In Chapter 1 of Part 6 of the Taxation of Chargeable Gains Act 1992 (c. 12) (provisions relating to chargeable gains of companies), after section 192 insert—

"Disposals by companies with substantial shareholding

192A Exemptions for gains or losses on disposal of shares etc

Schedule 7AC (exemptions for disposal of shares etc by companies with substantial shareholding) has effect.".

(2) Schedule 8 to this Act (exemptions for disposals by companies with substantial shareholding) has effect.

In that Schedule—

Part 1 contains Schedule 7AC to be inserted after Schedule 7AB to the Taxation of Chargeable Gains Act 1992 (c. 12) (inserted by Schedule 7 to this Act); and

Part 2 contains consequential amendments.

(3) This section and Schedule 8 to this Act apply in relation to disposals on or after 1st April 2002.

(4) Paragraph 38 of the Schedule 7AC inserted by that Schedule (degrouping: time when deemed sale and reacquisition treated as taking place) has effect where the time of degrouping or relevant time (as defined for the purposes of that paragraph) is on or after that date.

(5) The amendment made by paragraph 2 of Schedule 8 to this Act has effect where the company in question ceases to be a member of the group in question on or after that date.

45 Share exchanges and company reconstructions

(1) Schedule 9 to this Act (chargeable gains: share exchanges and company reconstructions) has effect.

(2) In that Schedule—

Part 1 provides for the replacement of sections 135 and 136 of the Taxation of Chargeable Gains Act 1992;

Part 2 makes consequential amendments; and

Part 3 provides for commencement.

46 Taper relief: holding period for business assets

(1) In the table in section 2A(5) of the Taxation of Chargeable Gains Act 1992 (calculation of taper relief), for the first two columns (under the heading "Gains on disposals of business assets") substitute—

Number of whole years in qualifying holding period	**Percentage of gain chargeable**
1	50
2 or more	25

(2) This section applies to disposals on or after 6th April 2002.

47 Taper relief: minor amendments

Schedule 10 to this Act contains minor amendments relating to taper relief under the Taxation of Chargeable Gains Act 1992 (c. 12).

48 Use of trading losses against chargeable gains

(1) In section 72 of the Finance Act 1991 (c. 31) (use of trading losses against chargeable gains), in subsection (4) (which has the effect that the maximum amount of trading loss that may be so used is calculated by reference to the amount of chargeable gains after taper relief) for "disregarding section 3(1)" substitute " disregarding sections 2A (taper relief) and 3(1) (annual exempt amount) ".

(2) The amendment in subsection (1) has effect in relation to claims under that section in respect of trading losses sustained in the year 2004-05 or subsequent years of assessment, subject to the following provisions.

(3) A person making a claim under section 72 of that Act in respect of a trading loss sustained in the year 2002-03 may elect that, for the purposes of the claim, the amendment made by subsection (1) above shall have effect—

(a) in relation to the chargeable gains accruing to him in the year 2001-02,

(b) in relation to the chargeable gains accruing to him in the year 2002-03, or

(c) in relation to the chargeable gains accruing to him in the year 2001-02 and the year 2002-03.

(4) A person making a claim under that section in respect of a trading loss sustained in the year 2003-04 may elect that, for the purposes of the claim, the amendment made by subsection (1) above shall have effect—

(a) in relation to the chargeable gains accruing to him in the year 2002-03,

(b) in relation to the chargeable gains accruing to him in the year 2003-04, or

(c) in relation to the chargeable gains accruing to him in the year 2002-03 and the year 2003-04.

(5) An election under subsection (3) or (4) must be made—

(a) in writing,

(b) to an officer of the Board,

(c) within the time for making a claim under section 72 of the Finance Act 1991 in respect of a trading loss sustained in the year 2002-03 or, as the case may be, the year 2003-04,

and must specify the year or years of assessment in relation to the chargeable gains of which it is made.

49 Election to forgo roll-over relief on transfer of business

(1) After section 162 of the Taxation of Chargeable Gains Act 1992 (c. 12) (roll-over relief on transfer of business) insert—

"**162A Election for section 162 not to apply**

(1) Section 162 shall not apply where the transferor makes an election under this section.

(2) An election under this section must be made by a notice given to an officer of the Board no later than the relevant date.

(3) Except where subsection (4) below applies, the relevant date is the second anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.

(4) Where, by the end of the year of assessment following the one in which the transfer of the business took place, the transferor has disposed of all the new assets, the relevant date is the first anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.

(5) For the purposes of subsection (4) above—

(a) a disposal of any of the new assets by the transferor shall be disregarded if it falls within section 58(1) (transfers between husband and wife); but

(b) where a disposal of any assets to a person is disregarded by virtue of paragraph (a) above, a subsequent disposal by that person of any of those assets (other than a disposal to the transferor) shall be regarded as a disposal by the transferor.

(6) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this section.

(7) Where, immediately before it was transferred, the business was owned by two or more persons—

(a) each of them has a separate entitlement to make an election under this section;

(b) an election made by a person by virtue of paragraph (a) above shall apply only to—

(i) the share of the amount of the gain on the old assets, and

(ii) the share of the new assets,

that is attributable to that person for the purposes of this Act.

(8) The reference in subsection (7) above to ownership by two or more persons includes, in Scotland as well as elsewhere in the United Kingdom, a reference to ownership by a partnership consisting of two or more persons.

(9) Expressions used in this section and in section 162 have the same meaning in this section as in that one.

But references in this section to new assets also include any shares or debentures that are treated by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains) as the same asset as the new assets.".

(2) This section applies in relation to a transfer of a business on or after 6th April 2002.

50 Shares acquired on same day: election for alternative treatment

(1) After section 105 of the Taxation of Chargeable Gains Act 1992 (c. 12) (disposal on or before day of acquisition of shares and other unidentified assets) insert—

"**105A Shares acquired on same day: election for alternative treatment**

(1) Subsection (2) below applies where an individual—

(a) acquires shares ("the relevant shares") of the same class, on the same day and in the same capacity, and

(b) some of the relevant shares ("the approved-scheme shares") are shares acquired by him as a result of—

(i) the exercise of a qualifying option within the meaning of paragraph 1(1) of Schedule 14 to the Finance Act 2000 (enterprise management incentives) in circumstances where paragraph 44, 45 or 46 of that Schedule (exercise of option to acquire shares) applies, or

(ii) the exercise of an option to which subsection (1) of section 185 of the Taxes Act (approved share option schemes)

applies in circumstances where paragraphs (a) and (b) of subsection (3) of that section apply.

(2) Where the individual first makes a disposal of any of the relevant shares, he may elect for subsections (3) to (5) below to have effect in relation to that disposal and all subsequent disposals of any of those shares.

(3) In circumstances where section 105 applies, that section shall have effect as if—

(a) paragraph (a) of subsection (1) of that section required the approved-scheme shares to be treated as acquired by the individual by a single transaction separate from the remainder of the relevant shares (which shall also be treated by virtue of that paragraph as acquired by the individual by a single transaction), and

(b) subsection (1) of that section required the approved-scheme shares to be treated as disposed of after the remainder of the relevant shares.

(4) If the relevant shares include shares to which relief under Chapter 3 of Part 7 of the Taxes Act or deferral relief (within the meaning of Schedule 5B to this Act) is attributable—

(a) paragraph 4(4) of that Schedule has effect as if it required the approved-scheme shares falling within paragraph (a), (b), (c) or (d) of that provision to be treated as disposed of after the remainder of the relevant shares falling within the paragraph in question, and

(b) section 299 of the Taxes Act has effect for the purposes of section 150A(4) below as if it required—

(i) the approved-scheme shares falling within paragraph (a), (b), (c) or (d) of subsection (6A) of section 299 of that Act to be treated as disposed of after the remainder of the relevant shares falling within the paragraph in question, and

(ii) the approved-scheme shares to which subsection (6B) of that section applies to be treated as disposed of after the remainder of the relevant shares to which that subsection applies.

(5) Where section 127 applies in relation to any of the relevant shares ("the reorganisation shares"), that section shall apply separately to such of those shares as are approved-scheme shares and to the remainder of the reorganisation shares (so that those approved-scheme shares and the remainder of the reorganisation shares are treated as comprised in separate holdings of original shares and identified with separate new holdings).

(6) In subsection (5)—

(a) the reference to section 127 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and

(b) "original shares" and "new holding" have the same meaning as in section 127 or (as the case may be) that section as applied by virtue of the enactment in question.

(7) For the purposes of subsection (1) above—

(a) any shares to which relief under Chapter 3 of Part 7 of the Taxes Act is attributable and which were transferred to an individual as mentioned in section 304 of that Act, and

(b) any shares to which deferral relief (within the meaning of Schedule 5B to this Act), but not relief under that Chapter, is attributable and which were acquired by an individual on a disposal to which section 58 above applies,

shall be treated as acquired by the individual on the day on which they were issued.

(8) In this section the references to Chapter 3 of Part 7, section 299 and section 304 of the Taxes Act shall be read as references to those provisions as they apply to shares issued after 31st December 1993 (enterprise investment scheme).

105B Provision supplementary to section 105A

(1) The provisions of section 105A have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—

(a) by the disposal, or

(b) by a transfer or delivery giving effect to it.

(2) An election must be made, by a notice given to an officer of the Board, on or before the first anniversary of the 31st January next following the year of assessment in which the individual first makes a disposal of any of the relevant shares.

(3) Where—

(a) an election is made in respect of the relevant shares, and

(b) any shares ("the other shares") acquired by the individual on the same day and in the same capacity as the relevant shares cease to be treated under section 104(4) as shares of a different class from the relevant shares,

the election shall have effect in respect of the other shares from the time they cease to be so treated.

(4) In determining for the purposes of section 105A(2) and subsection (2) above whether the individual has made a disposal of any of the relevant shares, sections 122(1) and 128(3) shall be disregarded.

(5) No election may be made in respect of ordinary shares in a venture capital trust.

For this purpose "ordinary shares" has the meaning given in section 151A(7).

(6) For the purposes of section 105A, shares in a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange, or would be so treated if dealt with on that recognised stock exchange.

(7) In section 105A(2) to (5) and subsections (2) to (4) above, any reference to the relevant shares or to the approved-scheme shares includes a reference to the securities (if any) directly or indirectly derived from the shares in question by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains).

(8) In this section—

"the approved-scheme shares" has the same meaning as in section 105A;

"election" means an election under that section;

"the relevant shares" has the same meaning as in that section; and

"securities" has the meaning given in section 104(3);

and in subsection (4) the reference to section 128(3) includes a reference to that provision as it is applied by virtue of any enactment relating to chargeable gains.".

(2) The amendment made by subsection (1) has effect in relation to shares acquired by an individual on or after 6th April 2002.

(3) For this purpose—

(a) any shares to which relief under Chapter 3 of Part 7 of the Taxes Act 1988 is attributable and which were transferred to an individual as mentioned in section 304 of that Act, and

(b) any shares to which deferral relief (within the meaning of Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12)), but not relief under that Chapter, is attributable and which were acquired by an individual on a disposal to which section 58 of that Act applies,

shall be treated as acquired by the individual on the day on which they were issued.

(4) In subsection (3)(a), the references to Chapter 3 of Part 7 and section 304 of the Taxes Act 1988 shall be read as references to those provisions as they apply to shares issued after 31st December 1993 (enterprise investment scheme).

51 Deduction of personal losses from gains treated as accruing to settlors

Schedule 11 to this Act (deduction of personal losses from gains treated as accruing to settlors) has effect.

52 Capital gains tax: variation of dispositions taking effect on death

(1) In section 62(7) of the Taxation of Chargeable Gains Act 1992 (c. 12) (election to treat subsequent variation of dispositions taking effect on death as if effected by deceased) for the words from "unless" to the end of the subsection substitute " unless the instrument contains a statement by the persons making the instrument to the effect that they intend the subsection to apply to the variation. ".

(2) This section applies in relation to instruments made on or after 1st August 2002.

Status:
Point in time view as at 31/12/2004.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2002, Cross Heading: Chargeable gains.