

Status: Point in time view as at 01/04/2010.

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SCHEDULES

SCHEDULE 3

Section 9

ENTREPRENEURS' RELIEF

Introduction

1 TCGA 1992 is amended as follows.

Main provisions

2 In Part 5 (transfer of business assets), after section 169G insert—

“CHAPTER 3

ENTREPRENEURS' RELIEF

169H Introduction

- (1) This Chapter provides relief from capital gains tax in respect of qualifying business disposals (to be known as “entrepreneurs' relief”).
- (2) The following are qualifying business disposals—
 - (a) a material disposal of business assets: see section 169I,
 - (b) a disposal of trust business assets: see section 169J, and
 - (c) a disposal associated with a relevant material disposal: see section 169K.
- (3) But in the case of certain qualifying business disposals, entrepreneurs' relief is given only in respect of disposals of relevant business assets comprised in the qualifying business disposal: see section 169L.
- (4) Section 169M makes provision requiring the making of a claim for entrepreneurs' relief.
- (5) Sections 169N to 169P make provision as to the amount of entrepreneurs' relief.
- (6) Sections 169Q and 169R make provision about reorganisations.
- (7) Section 169S contains interpretative provisions for the purposes of this Chapter.

169I Material disposal of business assets

- (1) There is a material disposal of business assets where—

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- (a) an individual makes a disposal of business assets (see subsection (2)), and
 - (b) the disposal of business assets is a material disposal (see subsections (3) to (7)).
- (2) For the purposes of this Chapter a disposal of business assets is—
- (a) a disposal of the whole or part of a business,
 - (b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or
 - (c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.
- (3) A disposal within paragraph (a) of subsection (2) is a material disposal if the business is owned by the individual throughout the period of 1 year ending with the date of the disposal.
- (4) A disposal within paragraph (b) of that subsection is a material disposal if—
- (a) the business is owned by the individual throughout the period of 1 year ending with the date on which the business ceases to be carried on, and
 - (b) that date is within the period of 3 years ending with the date of the disposal.
- (5) A disposal within paragraph (c) of subsection (2) is a material disposal if condition A or B is met.
- (6) Condition A is that, throughout the period of 1 year ending with the date of the disposal—
- (a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and
 - (b) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.
- (7) Condition B is that the conditions in paragraphs (a) and (b) of subsection (6) are met throughout the period of 1 year ending with the date on which the company—
- (a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or
 - (b) ceases to be a member of a trading group without continuing to be or becoming a trading company,
- and that date is within the period of 3 years ending with the date of the disposal.
- (8) For the purposes of this section—
- (a) an individual who disposes of (or of interests in) assets used for the purposes of a business carried on by the individual on entering into a partnership which is to carry on the business is to be treated as disposing of a part of the business,
 - (b) the disposal by an individual of the whole or part of the individual's interest in the assets of a partnership is to be treated as a disposal

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by the individual of the whole or part of the business carried on by the partnership, and

- (c) at any time when a business is carried on by a partnership, the business is to be treated as owned by each individual who is at that time a member of the partnership.

169J Disposal of trust business assets

- (1) There is a disposal of trust business assets where—
- (a) the trustees of a settlement make a disposal of settlement business assets (see subsection (2)),
 - (b) there is an individual who is a qualifying beneficiary (see subsection (3)), and
 - (c) the relevant condition is met (see subsections (4) and (5)).
- (2) In this Chapter “settlement business assets” means—
- (a) assets consisting of (or of interests in) shares in or securities of a company, or
 - (b) assets (or interests in assets) used or previously used for the purposes of a business,
- which are part of the settled property.
- (3) An individual is a qualifying beneficiary if the individual has, under the settlement, an interest in possession (otherwise than for a fixed term) in—
- (a) the whole of the settled property, or
 - (b) a part of it which consists of or includes the settlement business assets disposed of.
- (4) In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of 1 year ending not earlier than 3 years before the date of the disposal—
- (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and
 - (b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group.
- (5) In relation to a disposal of settlement business assets within paragraph (b) of that subsection, the relevant condition is that—
- (a) the settlement business assets are used for the purposes of the business carried on by the qualifying beneficiary throughout the period of 1 year ending not earlier than 3 years before the date of the disposal, and
 - (b) the qualifying beneficiary ceases to carry on the business on the date of the disposal or within the period of three years before that date.
- (6) In subsection (5)—
- (a) the reference to a business carried on by the qualifying beneficiary includes a business carried on by a partnership of which the qualifying beneficiary is a member, and

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- (b) the reference to the qualifying beneficiary ceasing to carry on the business includes the qualifying beneficiary ceasing to be a member of the partnership or the partnership ceasing to carry on the business.

169K Disposal associated with relevant material disposal

- (1) There is a disposal associated with a relevant material disposal if conditions A, B and C are met.
- (2) Condition A is that an individual makes a material disposal of business assets which consists of—
 - (a) the disposal of the whole or part of the individual's interest in the assets of a partnership, or
 - (b) the disposal of (or of interests in) shares in or securities of a company.
- (3) Condition B is that the individual makes the disposal as part of the withdrawal of the individual from participation in the business carried on by the partnership or by the company or (if the company is a member of a trading group) a company which is a member of the trading group.
- (4) Condition C is that, throughout the period of 1 year ending with the earlier of—
 - (a) the date of the material disposal of business assets, and
 - (b) the cessation of the business of the partnership or company,
 the assets which (or interests in which) are disposed of are in use for the purposes of the business.
- (5) For the purposes of this Chapter the disposal mentioned in Condition B is the disposal associated with a relevant material disposal.

169L Relevant business assets

- (1) If a qualifying business disposal is one which does not consist of the disposal of (or of interests in) shares in or securities of a company, entrepreneurs' relief is given only in respect of the disposal of relevant business assets comprised in the qualifying business disposal.
- (2) In this Chapter “relevant business assets” means assets (including goodwill) which are, or are interests in, assets to which subsection (3) applies, other than excluded assets (see subsection (4) below).
- (3) This subsection applies to assets which—
 - (a) in the case of a material disposal of business assets, are assets used for the purposes of a business carried on by the individual or a partnership of which the individual is a member,
 - (b) in the case of a disposal of trust business assets, are assets used for the purposes of a business carried on by the qualifying beneficiary or a partnership of which the qualifying beneficiary is a member, or
 - (c) in the case of a disposal associated with a relevant material disposal, are assets used for the purposes of a business carried on by the partnership or company.
- (4) The following are excluded assets—

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- (a) shares and securities, and
- (b) assets, other than shares or securities, which are held as investments.

169M Relief to be claimed

- (1) Entrepreneurs' relief is to be given only on the making of a claim.
- (2) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made—
 - (a) in the case of a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
 - (b) otherwise, by the individual.
- (3) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made.
- (4) A claim for entrepreneurs' relief in respect of a qualifying business disposal may only be made if the amount resulting under section 169N(1) is a positive amount.

169N Amount of relief: general

- (1) Where a claim is made in respect of a qualifying business disposal—
 - (a) the relevant gains (see subsection (5)) are to be aggregated, and
 - (b) any relevant losses (see subsection (6)) are to be aggregated and deducted from the aggregate arrived at under paragraph (a).
- (2) The resulting amount is to be reduced by 4/9ths.
- (3) But if the aggregate of—
 - (a) the amount resulting under subsection (1), and
 - (b) the total of the amounts resulting under that subsection by virtue of its operation in relation to earlier relevant qualifying business disposals (if any),exceeds £1 million, the reduction is to be made in respect of only so much (if any) of the amount resulting under subsection (1) as (when added to that total) does not exceed £1 million.
- (4) The amount arrived at under subsections (1) to (3) is to be treated for the purposes of this Act as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made.
- (5) In subsection (1)(a) “relevant gains” means—
 - (a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), the gains accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of chargeable gains), and
 - (b) otherwise, the gains accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed).
- (6) In subsection (1)(b) “relevant losses” means—

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- (a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), any losses accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of allowable losses, on the assumption that notice has been given under section 16(2A) in respect of them), and
 - (b) otherwise, any losses accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed, on that assumption).
- (7) In subsection (3) “earlier relevant qualifying business disposals” means—
- (a) where the qualifying business disposal is made by an individual, earlier qualifying business disposals made by the individual and earlier disposals of trust business assets in respect of which the individual is the qualifying beneficiary, and
 - (b) where the qualifying business disposal is a disposal of trust business assets in respect of which an individual is the qualifying beneficiary, earlier disposals of trust business assets in respect of which that individual is the qualifying beneficiary and earlier qualifying business disposals made by that individual.
- (8) If, on the same day, there is both a disposal of trust business assets in respect of which an individual is the qualifying beneficiary and a qualifying business disposal by the individual, this section applies as if the disposal of trust business assets were later.
- (9) Any gain or loss taken into account under subsection (1) is not to be taken into account under this Act as a chargeable gain or an allowable loss.

1690 Amount of relief: special provisions for certain trust disposals

- (1) This section applies where, on a disposal of trust business assets, there is (in addition to the qualifying beneficiary) at least one other beneficiary who, at the material time, has an interest in possession in—
- (a) the whole of the settled property, or
 - (b) a part of it which consists of or includes the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of.
- (2) Only the relevant proportion of the amount which would otherwise result under subsection (1) of section 169N is to be treated as so resulting.
- (3) And the balance of that amount, with no reduction under subsection (2) of that section, is accordingly a chargeable gain for the purposes of this Act.
- (4) For the purposes of this section “the relevant proportion” of an amount is the same proportion of the amount as that which, at the material time—
- (a) the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of, bears to
 - (b) the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part of the settled property.

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- (5) In subsection (4) “the qualifying beneficiary's interest” means the interest by virtue of which he is the qualifying beneficiary (and not any other interest the qualifying beneficiary may have).
- (6) In this section “the material time” means the end of the latest period of 1 year which ends not earlier than 3 years before the date of the disposal and—
 - (a) in the case of a disposal of settlement business assets within paragraph (a) of subsection (2) of section 169J, throughout which the conditions in paragraphs (a) and (b) of subsection (4) of that section are met, and
 - (b) in the case of a disposal of settlement business assets within paragraph (b) of subsection (2) of that section, throughout which the business is carried on by the qualifying beneficiary.

169P Amount of relief: special provision for certain associated disposals

- (1) This section applies where, on a disposal associated with a relevant material disposal, any of the conditions in subsection (4) is met.
- (2) Only such part of the amount which would otherwise result under subsection (1) of section 169N as is just and reasonable is to be treated as so resulting.
- (3) And the balance of that amount, with no reduction under subsection (2) of that section, is accordingly a chargeable gain for the purposes of this Act.
- (4) The conditions referred to in subsection (1) are—
 - (a) that the assets which (or interests in which) are disposed of are in use for the purposes of the business for only part of the period in which they are in the ownership of the individual,
 - (b) that only part of the assets which (or interests in which) are disposed of are in use for the purposes of the business for that period,
 - (c) that the individual is concerned in the carrying on of the business (whether personally, as a member of a partnership or as an officer or employee of a company which is the individual's personal company) for only part of the period in which the assets which (or interests in which) are disposed of are in use for the purposes of the business, and
 - (d) that, for the whole or any part of the period for which the assets which (or interests in which) are disposed of are in use for the purposes of the business, their availability is dependent on the payment of rent.
- (5) In determining how much of an amount it is just and reasonable to bring into account under subsection (2) regard is to be had to—
 - (a) in a case within paragraph (a) of subsection (4), the length of the period for which the assets are in use as mentioned in that paragraph,
 - (b) in a case within paragraph (b) of that subsection, the part of the assets that are in use as mentioned in that paragraph,
 - (c) in a case within paragraph (c) of that subsection, the length of the period for which the individual is concerned in the carrying on of the business as mentioned in that paragraph, and

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- (d) in a case within paragraph (d) of that subsection, the extent to which any rent paid is less than the amount which would be payable in the open market for the use of the assets.

169Q Reorganisations: disapplication of section 127

- (1) This section applies where—
 - (a) there is a reorganisation (within the meaning of section 126), and
 - (b) the original shares and the new holding (within the meaning of that section) would fall to be treated by virtue of section 127 as the same asset.
- (2) If an election is made under this section, a claim for entrepreneurs' relief may be made as if the reorganisation involved a disposal of the original shares; and if such a claim is made section 127 does not apply.
- (3) An election under this section must be made—
 - (a) if the reorganisation would (apart from section 127) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
 - (b) otherwise, by the individual.
- (4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place.
- (5) The references in this section to a reorganisation (within the meaning of section 126) includes an exchange of shares or securities which is treated as such a reorganisation by virtue of section 135 or 136.

169R Reorganisations involving acquisition of qualifying corporate bonds

- (1) This section applies where the calculation under section 116(10)(a) has effect to produce a chargeable gain for an individual by reason of a relevant transaction.
- (2) This Chapter has effect as if—
 - (a) (despite section 116(10)) the relevant transaction were a disposal, and
 - (b) the disposal were a disposal of business assets consisting of the old asset made by the individual at the time of the relevant transaction.
- (3) Where the disposal would be a material disposal of business assets and entrepreneurs' relief is claimed in respect of it—
 - (a) the amount resulting under section 169N(1) is to be taken to be the amount of the chargeable gain produced by the calculation under section 116(10)(a), and
 - (b) accordingly, the amount arrived at under section 169N(1) to (3) (or a corresponding part of it) is the amount deemed to accrue by virtue of section 116(10)(b) on a disposal of the whole or part of the new asset.
- (4) In this section “new asset”, “old asset” and “relevant transaction” have the meaning given by section 116.

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169S Interpretation of Chapter

- (1) For the purposes of this Chapter “a business” means anything which—
 - (a) is a trade, profession or vocation, and
 - (b) is conducted on a commercial basis and with a view to the realisation of profits.
- (2) References in this Chapter to a disposal of an interest in shares in a company include a disposal of an interest in shares treated as made by virtue of section 122.
- (3) For the purposes of this Chapter “personal company”, in relation to an individual, means a company—
 - (a) at least 5% of the ordinary share capital of which is held by the individual, and
 - (b) at least 5% of the voting rights in which are exercisable by the individual by virtue of that holding.
- (4) For the purposes of subsection (3) if the individual holds any shares in the company jointly or in common with one or more other persons, the individual is to be treated as sole holder of so many of them as is proportionate to the value of the individual's share (and as able to exercise voting rights by virtue of that holding).
- (5) In this Chapter—
 - “disposal associated with a relevant material disposal” has the meaning given by section 169K,
 - “disposal of business assets” has the meaning given by section 169I(2),
 - “disposal of trust business assets” has the meaning given by section 169J,
 - “employment” has the meaning given by section 4 of ITEPA 2003,
 - “entrepreneurs' relief” has the meaning given by section 169H(1),
 - “holding company” has the same meaning as in section 165 (see section 165A),
 - “material disposal of business assets” has the meaning given by section 169I,
 - “office” has the meaning given by section 5(3) of ITEPA 2003,
 - “ordinary share capital” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007),
 - “qualifying business disposal” has the meaning given by section 169H(2),
 - “relevant business asset” has the meaning given by section 169L,
 - “rent”, in relation to an asset, includes any form of consideration given for the use of the asset,
 - “securities”, in relation to a company, includes any debentures of the company which are deemed by subsection (6) of section 251 to be securities for the purposes of that section,

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“settlement business assets” has the meaning given by section 169J(2),

“trade” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007), and

“trading company” and “trading group” have the same meaning as in section 165 (see section 165A).”

Other amendments

3 In section 241(3A) (furnished holiday lettings), after the entry relating to section 165 insert— “ section 169S(1) (entrepreneurs' relief), ”.

4 In paragraph 1(1)(b) of Schedule 5B (enterprise investment scheme: re-investment), after “164FA,” insert “ section 169N, ”.

Commencement

5 The amendments made by this Schedule have effect in relation to disposals, reorganisations (within the meaning of section 169Q of TCGA 1992) and relevant transactions (within the meaning of section 116 of TCGA 1992) taking place on or after 6 April 2008.

Transitionals: section 169P(4)(d)

6 Section 169P of TCGA 1992 has effect in a case where the period for which the assets are in use for the purposes of the business began before 6 April 2008 as if the reference in subsection (4)(d) of that section to that period were to so much of it as falls on or after that date.

Transitionals: reorganisations

7 (1) This paragraph applies where, by virtue of section 116(10)(b), a chargeable gain is deemed to accrue to an individual on a disposal made on or after 6 April 2008 (a “relevant disposal”) by reason of a relevant transaction to which the individual was a party taking place before that date.

(2) Subject as follows, Chapter 3 of Part 5 (as inserted by this Schedule) has effect as if—

- (a) (despite section 116(10)) the relevant transaction were a disposal of the old asset made by the individual,
- (b) that Chapter applied in relation to that disposal (even though made before 6 April 2008), and
- (c) for the purposes of the time limit for making a claim for entrepreneurs' relief, that disposal were made at the time of the first relevant disposal.

(3) In sub-paragraph (2) “the first relevant disposal” means the first disposal made on or after 6 April 2008 on which a chargeable gain is deemed to accrue to the individual by reason of the relevant transaction.

(4) Where entrepreneurs' relief is claimed by virtue of this paragraph—

- (a) the amount of the chargeable gain produced by the calculation under section 116(10)(a), reduced by
- (b) any amount deemed to accrue under section 116(10)(b) and (12) before 6 April 2008 by reason of the relevant transaction,

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is to be treated as constituting the amount resulting under section 169N(1).

- (5) Accordingly (but subject as follows), the amount of the chargeable gain which is deemed to accrue by virtue of section 116(10)(b) on the relevant disposal is that arrived at under section 169N(1) to (3) (in accordance with sub-paragraph (4)).
- (6) The amount of the chargeable gain which is deemed to accrue by virtue of section 116(10)(b) on the relevant disposal is the amount specified in sub-paragraph (7)—
 - (a) except in a case within paragraph (b), where the relevant disposal is not a disposal of the whole of the new asset, and
 - (b) in a case in which part of the new asset was disposed of before 6 April 2008, where the relevant disposal is not a disposal of the whole of the part not so disposed of.
- (7) The amount referred to in sub-paragraph (6) is the appropriate proportion of the amount in sub-paragraph (5); and “the appropriate proportion” means the proportion of the new asset, or of so much of the new asset as was not disposed of before 6 April 2008, which is disposed of on the relevant disposal.
- (8) In this paragraph—
 - “new asset”,
 - “old asset”, and
 - “relevant transaction”,have the meaning given by section 116.
- (9) References in this paragraph to any provision are to be read as they would be if this paragraph formed part of TCGA 1992.

Transitionals: EIS and VCT

- 8 (1) This paragraph applies where there is a relevant chargeable event in a case in which the original gain would, apart from Schedule 5B (enterprise investment scheme) or Schedule 5C (venture capital trusts), have accrued before 6 April 2008.
- (2) “Relevant chargeable event” means a chargeable event under—
 - (a) paragraph 3(1) of Schedule 5B, or
 - (b) paragraph 3(1) of Schedule 5C,which occurs on or after 6 April 2008 in relation to any of the relevant shares held by the investor immediately before the first relevant chargeable event.
- (3) In this paragraph “the first relevant chargeable event” means the first relevant chargeable event in the case.
- (4) The following provisions apply if—
 - (a) the relevant disposal would have been a material disposal of business assets had Chapter 3 of Part 5 applied in relation to it (even though made before 6 April 2008), and
 - (b) a claim is made on or before the first anniversary of the 31 January following the tax year in which the first relevant chargeable event occurs.
- (5) In this paragraph “the relevant disposal” means—

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- (a) where the original gain would have accrued in accordance with section 164F or 164FA, paragraphs 4 and 5 of Schedule 5B or paragraphs 4 and 5 of Schedule 5C (the “original gain event”), the relevant underlying disposal, and
 - (b) otherwise, the disposal on which the original gain would have accrued (“the original gain disposal”).
- (6) In sub-paragraph (5)(a) “the relevant underlying disposal” means the disposal (not being a disposal within paragraph 3 of Schedule 5B or 5C) by virtue of which Schedule 5B or 5C has effect.
- (7) Subject as follows, the amount treated as accruing on the relevant chargeable event in respect of the original gain event or original gain disposal is the amount which would be arrived at under section 169N(1) to (3) if—
- (a) the relevant chargeable event were a qualifying business disposal (within the meaning of Chapter 3 of Part 5), and
 - (b) the relevant proportion of the postponed gain constituted the amount resulting under section 169N(1);
- and “the relevant proportion” means the proportion of the relevant shares which is held by the investor immediately before the first relevant chargeable event.
- (8) The amount treated as accruing on the relevant chargeable event in respect of the original gain event or original gain disposal is that specified in sub-paragraph (9) where the relevant chargeable event is not a chargeable event in relation to all the relevant shares held by the investor immediately before the first relevant chargeable event.
- (9) The amount referred to in sub-paragraph (8) is the appropriate proportion of the amount in sub-paragraph (7); and “the appropriate proportion” means the proportion of the relevant shares held by the investor immediately before the first relevant chargeable event as respects which the relevant chargeable event is a chargeable event.
- (10) In this paragraph—
- “chargeable event” is to be construed in accordance with paragraph 3 of Schedule 5B or paragraph 3 of Schedule 5C,
 - “investor” has the same meaning as in paragraph 1 of Schedule 5B or paragraph 1 of Schedule 5C,
 - “the original gain” has the same meaning as in paragraph 1 of Schedule 5B or paragraph 1 of Schedule 5C,
 - “the postponed gain” means so much of the original gain as is treated by paragraph 2(2)(a) of Schedule 5B or paragraph 2(2)(a) of Schedule 5C as not having accrued at the accrual time, and
 - “relevant shares” has the same meaning as in Schedule 5B or Schedule 5C.
- (11) References in this paragraph to any provision are to be read as they would be if this paragraph formed part of TCGA 1992.

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Point in time view as at 01/04/2010.

Changes to legislation:

Finance Act 2008, SCHEDULE 3 is up to date with all changes known to be in force on or before 04 July 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.