

Status: Point in time view as at 16/11/2017.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 25. (See end of Document for details)

SCHEDULES

SCHEDULE 25

Section 65

CHARGE ON CERTAIN HIGH VALUE DISPOSALS BY COMPANIES ETC

PART 1

TAXATION OF CHARGEABLE GAINS ACT 1992

- 1 TCGA 1992 is amended as follows.
- 2 (1) Section 1 (the charge to tax) is amended as follows.
- (2) In subsection (2), after “Acts” insert “, subject to the exception in subsection (2A)”.
- (3) After subsection (2) insert—
- “(2A) But companies are chargeable to capital gains tax, and not corporation tax, in respect of chargeable gains accruing to them to the extent that those gains are ATED-related gains in respect of which the companies are chargeable to capital gains tax under section 2B.”
- (4) In subsection (3) for “subsection (2)” substitute “ subsections (2) and (2A) ”.
- 3 In section 2 (persons and gains chargeable to capital gains tax, and allowable losses), after subsection (7) insert—
- “(7A) Nothing in this section applies in relation to an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B.”
- 4 After section 2 insert—

“2B Persons chargeable to capital gains tax on ATED-related gains

- (1) A person (other than an excluded person) (“P”) is chargeable to capital gains tax in respect of any ATED-related chargeable gain accruing to P in a tax year on a relevant high value disposal.
- (2) A person is “excluded” if the person is an individual, the trustees of a settlement or the personal representatives of a deceased person and—
- (a) the gain accrues on a disposal of any partnership assets and the person is a member of the partnership, or
- (b) the gain accrues on a disposal of any property held for the purposes of a relevant collective investment scheme and the person is a participant in relation to the scheme.
- (3) Capital gains tax is charged on the total amount of ATED-related chargeable gains accruing to P in the tax year on relevant high value disposals, after deducting ring-fenced ATED-related allowable losses in relation to that year.

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- (4) Subsections (5) to (7) apply in relation to an ATED-related allowable loss accruing to P in a tax year on a relevant high value disposal.
- (5) The loss is not allowable as a deduction from ATED-related chargeable gains accruing in any earlier tax year on relevant high value disposals.
- (6) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.
- (7) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.
- (8) The only deductions which can be made from ATED-related chargeable gains are those permitted by this section.
- (9) See section 57A and Schedule 4ZZA for how to compute—
 - (a) the ATED-related gain or loss accruing on a relevant high value disposal, and
 - (b) the gain or loss accruing on a relevant high value disposal which is not ATED-related.
- (10) In this section—

“participant”, in relation to a relevant collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000;

“relevant collective investment scheme” means a collective investment scheme within the meaning of Part 17 of that Act (see section 235 of that Act) other than—

 - (a) a unit trust scheme within the meaning of that Part (see section 237(1) of that Act), or
 - (b) an open-ended investment company within the meaning of that Part (see section 236(1) of that Act);

“ring-fenced ATED-related allowable losses”, in relation to a tax year, means—

 - (a) any ATED-related allowable losses accruing to P in the tax year on relevant high value disposals, and
 - (b) so far as they have not been allowed as a deduction from ATED-related chargeable gains accruing in any previous tax year on relevant high value disposals, any ATED-related allowable losses accruing to P in any previous tax year (not earlier than the tax year 2013-14) on such disposals.

2C “Relevant high value disposal”

- (1) A disposal on which a gain or loss accrues to P is a “relevant high value disposal” if conditions A to D are met.
- (2) Condition A is that the disposal is of the whole or part of a chargeable interest (“the disposed of interest”).
- (3) Condition B is that the disposed of interest has, at any time during the relevant ownership period, been or formed part of a single-dwelling interest.
- (4) Condition C is that—

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- (a) P, or
 - (b) if the disposed of interest is a partnership asset, the responsible partners, or
 - (c) if the disposed of interest is held for the purposes of a relevant collective investment scheme, the person who has day-to-day control over the management of the property subject to the scheme, has or have been within the charge to annual tax on enveloped dwellings with respect to that single-dwelling interest on one or more days in the relevant ownership period which are not relievable days in relation to the interest.
- (5) Condition D is that the amount or value of the consideration for the disposal exceeds the threshold amount (see section 2D).
- (6) In this section and section 2D—
- “chargeable interest” has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act (chargeable interest));
 - “dwelling” has the same meaning as in that Part (see section 112 of that Act);
 - “relevant collective investment scheme” has the same meaning as in section 2B;
 - “the relevant ownership period” means the period which begins—
 - (a) if an election has been made under paragraph 5 of Schedule 4ZZA, with the day on which P acquired the chargeable interest or, if later, 31 March 1982, and
 - (b) in any other case, with the day on which P acquired the chargeable interest or, if later, 6 April 2013,
- and ends with the day before the day on which the disposal occurs;
- “relievable day” means a day which is “relievable” by virtue of any of the provisions mentioned in section 132 of the Finance Act 2013 (ATED: effect of reliefs) and in respect of which a claim has been made under section 106(3) of that Act;
- “the responsible partners” has the same meaning as in section 96 of that Act;
- “single-dwelling interest” has the same meaning as in Part 3 of that Act;
- and a reference to being “within the charge” to annual tax on enveloped dwellings with respect to a single-dwelling interest is to be read in accordance with section 170(2) of that Act.
- (7) For the purposes of Condition C—
- (a) Part 3 of the Finance Act 2013 applies, in relation to any part of the relevant ownership period falling before 1 April 2013, as if section 94(8)(a) of that Act (first chargeable period for ATED) read “the period beginning with 31 March 1982 and ending with 31 March 1983”, and
 - (b) when determining whether any day falling before 1 April 2013 is a relievable day, the definition of “relievable day” in subsection (6) above is to read as if the words “and in respect of which a claim has been made under section 106(3) of that Act” were omitted.

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2D “The threshold amount”

- (1) This section applies to determine “the threshold amount” in relation to a disposal which meets Conditions A to C in section 2C (“the current disposal”).
- (2) If—
 - (a) the current disposal is not a part disposal of an asset, and
 - (b) P has not made any relevant related disposals,
 the threshold amount is £2 million, subject to subsection (5) (joint interests).
- (3) If paragraphs (a) and (b) of subsection (2) do not both apply, the threshold amount is the relevant fraction of £2 million, subject to subsection (5) (joint interests).
- (4) “The relevant fraction” is—

$$\frac{C}{\text{TMV}}$$

where—

“C” is the amount or value of the consideration for the current disposal;

“TMV” is what would be the market value, at the time of the current disposal, of a notional asset comprising—

- (a) the disposed of interest (see section 2C(2)),
 - (b) if the current disposal is a part disposal, any part of the chargeable interest held by P that remains undisposed of immediately following that part disposal,
 - (c) any chargeable interest (or part of a chargeable interest) which was the subject of a relevant related disposal, and
 - (d) any chargeable interest (or part of a chargeable interest) held by P at the time of the current disposal which, if P had disposed of it at that time, would have been the subject of a relevant related disposal.
- (5) If the disposed of interest is a share of the whole of—
 - (a) a chargeable interest, or
 - (b) a part of a chargeable interest,
 subsections (2) and (3) have effect as if the references to “£2 million” were to the joint share fraction of that amount.
 - (6) The joint share fraction is the fraction of the whole of the chargeable interest or part represented by the disposed of interest.
 - (7) “Relevant related disposal”, in relation to the current disposal, means any disposal by P which—
 - (a) meets Conditions A to C in section 2C in circumstances where the single-dwelling interest referred to in Condition C is—
 - (i) the single-dwelling interest by virtue of which Condition C is met in relation to the current disposal, or

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- (ii) another single-dwelling interest in the same dwelling as that interest, and
- (b) was made in the period of 6 years ending with the day on which the current disposal occurs, but not before 6 April 2013.

2E Restriction of losses

- (1) This section applies where (ignoring this section)—
 - (a) a disposal would be a relevant high value disposal, but for a failure to meet condition D in section 2C,
 - (b) if it were a relevant high value disposal, an ATED-related loss would accrue to a person (other than an excluded person) in a tax year on the disposal, and
 - (c) the total of the sums allowable as a deduction under section 38 in relation to the disposal exceeds the threshold amount in relation to the disposal.
- (2) For the purposes of this Act—
 - (a) the disposal is to be treated as a relevant high value disposal (and section 57A and Schedule 4ZZA apply accordingly), and
 - (b) the ATED-related loss which accrues on the disposal is to be restricted to the amount which would have been that loss had the consideration for the disposal been £1 greater than the threshold amount in relation to the disposal.
- (3) In a case where paragraph 2 of Schedule 4ZZA applies (calculation of gains or losses on disposals of assets held on 5 April 2013), the reference in subsection (1)(c) to the disposal is to be read as a reference to the notional disposal referred to in paragraph 3(2) of that Schedule (disposal on which notional post-April 2013 gain or loss accrues).
- (4) Nothing in subsection (2)(b) restricts any loss which is not ATED-related, or affects any gain (whether or not ATED-related), accruing on the relevant high value disposal.
- (5) In this section—
 - “excluded” has the meaning given by section 2B(2);
 - “the threshold amount” has the meaning given by section 2D.

2F Tapering relief for gains

- (1) This section applies to an ATED-related gain which accrues on a relevant high value disposal and is chargeable to capital gains tax by virtue of section 2B.
- (2) There is excluded from the gain so much of it as exceeds five-thirds of the difference between—
 - (a) the amount or value of the consideration, and
 - (b) the threshold amount (within the meaning of section 2D) in relation to the disposal.

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- (3) But where the relevant fraction is less than 1, subsection (2) has effect as if the amount determined under that subsection were the relevant fraction of that amount.
- (4) “The relevant fraction” —
- (a) in a case where the ATED-related gain is determined in accordance with paragraph 3 of Schedule 4ZZA, has the meaning given by paragraph 3(4) of that Schedule, and
 - (b) in a case where the ATED-related gain is determined in accordance with paragraph 6 of that Schedule, has the same meaning as in paragraph 6(5)(a) of that Schedule.
- (5) Nothing in this section restricts any gain which is not ATED-related, or affects any loss (whether or not ATED-related), accruing on the relevant high value disposal.”
- 5 In section 4 (rates of capital gains tax), after subsection (3) insert—
- “(3A) The rate of capital gains tax in respect of gains chargeable under section 2B accruing to a person in a tax year is 28%.”
- 6 In section 8 (company's total profits to include chargeable gains), after subsection (4) insert—
- “(4A) Nothing in this section applies in relation to an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B.”
- 7 In section 13 (attribution of gains to members of non-resident companies), after subsection (1) insert—
- “(1A) But this section does not apply if the gain is an ATED-related gain chargeable to capital gains tax by virtue of section 2B (capital gains tax on ATED-related gains).”
- 8 In section 16 (computation of losses), in subsection (3) after “section” insert “ 2B, ”.
- 9 In Part 2, after Chapter 4 insert—

“CHAPTER 5

COMPUTATION OF GAINS AND LOSSES: RELEVANT HIGH VALUE DISPOSALS

Gains and losses on relevant high value disposals

- 57A (1) Schedule 4ZZA makes provision about the computation of gains and losses on relevant high value disposals, including provision about whether a gain or loss is ATED-related or not.
- (2) But if the effect of Schedule 4ZZA applying in relation to a disposal would be that no ATED-related gain or loss accrues on the disposal, for the purposes of this Act the gain or loss on the disposal is to be computed ignoring that Schedule (and is not ATED-related).”
- 10 After section 100 insert—

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“100A Exemption for certain EEAUCITS

(1) ATED-related gains accruing on relevant high value disposals made by an EEA UCITS which is not an open-ended investment company or a unit trust scheme are not chargeable gains under section 2B.

(2) In this section—

“EEAUCITS” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 237 of that Act);

“unit trust scheme” has same meaning as in that Part (see section 237(1) of that Act);

“open-ended investment company” has the same meaning as in that Part (see section 236(1) of that Act).”

11 (1) Section 161 (appropriations to and from stock) is amended as follows.

(2) In subsection (1) for “subsection (3)” substitute “ subsections (3) to (3ZB) ”.

(3) After subsection (3) insert—

“(3ZA) But if the person—

- (a) meets the requirement of paragraph (a) or (b) of subsection (3), and
- (b) (ignoring any election under this section) would be treated under subsection (1) as making a relevant high value disposal on which an ATED-related gain chargeable to, or loss allowable for the purposes of, capital gains tax under section 2B would accrue,

the person may not elect under subsection (3) but may elect for subsection (3ZB) to apply.

(3ZB) Subject to subsection (4), where an election is made for this subsection to apply—

- (a) a gain or loss accruing on the disposal under subsection (1) which is not ATED-related is not a chargeable gain or an allowable loss,
- (b) the market value of the asset at the time of the appropriation is, for the purposes of computing the profits of the trade for the purposes of tax, to be treated as reduced by the amount of any gain, or increased by the amount of any loss, which would be a chargeable gain or allowable loss but for paragraph (a), and
- (c) the chargeable gain or allowable loss which accrues on that disposal and is ATED-related is unaffected by the election.”

(4) In subsection (3A), after “subsection (3)” insert “ or (3ZA) ”.

(5) In subsection (4), after “subsection (3)” insert “ or (3ZA) ”.

12 In section 171 (transfers within a group: general provisions), in subsection (2), after paragraph (b) insert—

“(ba) a relevant high value disposal on which (ignoring subsection (1)) there accrues to company A an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B; or”.

13 After section 187 insert—

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“187A Deemed disposal under section 185: ATED-related gains and losses

- (1) This section applies if—
- (a) (ignoring subsections (2) and (3)) a gain or loss would accrue to a company on a disposal of an asset deemed to have been made by virtue of section 185(2), and
 - (b) that gain or loss is an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax under section 2B.
- (2) That gain or loss does not accrue to the company on that disposal.
- (3) But, on a subsequent disposal of the whole or part of the asset, the whole or a corresponding part of the gain or loss—
- (a) is deemed to accrue to the company (in addition to any gain or loss that actually accrues on that subsequent disposal), and
 - (b) (if that would not otherwise be the case) is to be treated as an ATED-related gain or loss accruing on a relevant high value disposal.
- (4) Nothing in this section affects the treatment, for the purposes of this Act, of any gain or loss which is not ATED-related and accrues on the disposal of the asset deemed to have been made by virtue of section 185(2).”

- 14 In section 271 (miscellaneous exemptions)—
- (a) in subsection (1A), after “registered pension scheme” insert “ or an overseas pension scheme ”, and
 - (b) in subsection (10), for the words after “above” substitute “—
“investments” includes futures contracts and options contracts;
“overseas pension scheme” has the same meaning as in Part 4 of the Finance Act 2004 (see section 150(7) of that Act).”
- 15 In section 288 (interpretation), in subsection (1), at the appropriate places insert—
- ““ATED-related”, in relation to a gain or loss, is to be construed in accordance with section 57A and Schedule 4ZZA;”;
- ““relevant high value disposal” has the meaning given by section 2C;”.
- 16 After Schedule 4 insert—

“SCHEDULE
4ZZA

RELEVANT HIGH VALUE DISPOSALS: GAINS AND LOSSES

Introductory

- 1 This Schedule applies for the purposes of determining in relation to a relevant high value disposal made by a person (“P”)—
- (a) whether a gain or loss which is ATED-related accrues to P on the disposal, and
 - (b) whether a gain or loss which is not ATED-related accrues to P on the disposal.

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Assets held on 5 April 2013: no paragraph 5 election

- 2 If the interest disposed of was held by P on 5 April 2013—
- (a) paragraph 3 applies for the purposes of computing the gain or loss accruing to P which is ATED-related, and
 - (b) paragraph 4 applies for the purposes of computing the gain or loss accruing to P which is not ATED-related.
- 3 (1) An amount equal to the relevant fraction of the notional post-April 2013 gain or loss is the ATED-related gain or loss (as the case may be).
- (2) “Notional post-April 2013 gain or loss” means the gain or loss which (in the absence of section 2B and this Schedule) would have accrued on the relevant high value disposal had P acquired the interest on 5 April 2013 for a consideration equal to its market value on that date.
- (3) For the purposes of sub-paragraph (2), the amount of the gain or loss accruing to P is to be computed (whether or not that would otherwise be the case) as if P were within the charge to capital gains tax (but not within the charge to corporation tax on chargeable gains).
- (4) “The relevant fraction” is—

$$\frac{CD}{TD}$$

where—

“CD” is the number of days in the relevant ownership period which are ATED chargeable days;

“TD” is the total number of days in the relevant ownership period.

- (5) “The relevant ownership period” means the period beginning with 6 April 2013 and ending with the day before the day on which the relevant high value disposal occurs.
- (6) “ATED chargeable day” means any day by virtue of which condition C in section 2C(4) is met in relation to the relevant high value disposal.
- 4 (1) The gain or loss accruing on the relevant high value disposal which is not ATED-related is computed as follows.
- Step 1* Determine the amount of the notional pre-April 2013 gain or loss.
- Step 2* In a case where there is a notional post-April 2013 gain—
- (a) determine the amount of that gain remaining after the deduction of the ATED-related gain determined under paragraph 3, and
 - (b) adjust that remaining gain by reducing it by the notional indexation allowance.

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Step 3 In a case where there is a notional post-April 2013 loss, determine the amount of that loss remaining after deduction of the ATED-related loss determined under paragraph 3.

Step 4 Add—

- (a) the amount of any gain or loss determined under Step 1, and
- (b) the amount of any adjusted gain determined under Step 2 or (as the case may be) any loss determined under Step 3,

(treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the gain on the relevant high value disposal which is not ATED-related.

If the result is a negative amount, that amount (expressed as a positive number) is the loss on the relevant high value disposal which is not ATED-related.

- (2) “The notional pre-April 2013 gain or loss” means the gain or loss which would have accrued on 5 April 2013 had the interest been disposed of for a consideration equal to its market value on that date.
- (3) For the purposes of sub-paragraph (2), the amount of the gain or loss accruing to P is to be computed (whether or not that would otherwise be the case) as if P were within the charge to corporation tax on chargeable gains (but not within the charge to capital gains tax).
- (4) Paragraph 3(2) and (3) (meaning of “notional post-April 2013 gain or loss”) also applies for the purposes of this paragraph.
- (5) “Notional indexation allowance” means the relevant fraction of an amount equal to the difference between—
 - (a) the indexation allowance which (in the absence of section 2B and this Schedule) would be made under Chapter 4 of Part 2 in determining the gain accruing on the relevant high value disposal were that gain being computed for corporation tax purposes, and
 - (b) the indexation allowance which is made under Chapter 4 of Part 2 in determining the notional pre-April 2013 gain.
- (6) “The relevant fraction” is—

$$\frac{\text{TD} - \text{CD}}{\text{TD}}$$

where “CD” and “TD” have the same meaning as in paragraph 3(4).

Election for paragraph 2 to 4 not to apply to a chargeable interest

- 5 (1) A person may make an election under this paragraph for paragraphs 2 to 4 not to apply in relation to a chargeable interest held by (or any part of which is held by) the person on 5 April 2013.
- (2) An election is irrevocable.

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- (3) An election must be made by being included in a tax return under the Management Act for the tax year in which the first relevant high value disposal by the person of the chargeable interest (or any part of it) on or after 6 April 2013 occurs.
- (4) The reference in sub-paragraph (3) to an election being included in a return includes an election being included by virtue of an amendment of the return.
- (5) All such adjustments are to 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.
- (6) In this paragraph “chargeable interest” has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act).

Cases where election made or assets acquired after 5 April 2013

- 6 (1) This paragraph applies if—
 - (a) an election is made by P under paragraph 5 in respect of the chargeable interest which (or a part of which) is the subject of the relevant high value disposal, or
 - (b) the chargeable interest (or part) disposed of by the relevant high value disposal was not held by P throughout the period beginning with 5 April 2013 and ending with the disposal.
- (2) The ATED-related gain or loss accruing on the relevant high value disposal is computed as follows.

Step 1 Determine the amount of the gain or loss which would accrue to P, ignoring section 2B and this Schedule (but not the remainder of this Step). For this purpose, the amount of the gain or loss is to be computed (whether or not that would otherwise be the case) as if P were within the charge to capital gains tax (but not within the charge to corporation tax on chargeable gains).

Step 2 An amount equal to the relevant fraction of that gain or loss is the ATED-related gain or loss accruing on the relevant high value disposal.
- (3) The gain or loss accruing on the relevant high value disposal which is not ATED-related is to be computed as follows.

Step 1 In a case where there is a gain under Step 1 of sub-paragraph (2)

 - (a) determine the amount of the gain remaining after the deduction of the ATED-related gain, and
 - (b) adjust the remaining gain by reducing it by an amount equal to the notional indexation allowance.

That adjusted gain is the gain accruing on the relevant high value disposal which is not ATED-related.

Step 2 In a case where there is a loss under Step 1 of sub-paragraph (2), determine the amount of the loss remaining after deduction of the ATED-related loss. That remaining loss is the loss accruing on the relevant high value disposal which is not ATED-related.

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- (4) “Notional indexation allowance” means the relevant fraction of the indexation allowance which would be made under Chapter 4 of Part 2 in determining the gain under Step 1 in sub-paragraph (2) were that gain being computed for corporation tax purposes.
- (5) Subject to sub-paragraph (6), “the relevant fraction”—
- in sub-paragraph (2) has the same meaning as in paragraph 3(4), and
 - in sub-paragraph (4) has the same meaning as in paragraph 4(6).
 - For the purpose of determining the relevant fraction under sub-paragraph (5), paragraph 3(5) has effect as if the relevant ownership period began on the day on which P acquired the interest or, if later, 31 March 1982.

Adjustments of ATED chargeable days

- 7 (1) This paragraph applies where, as a result of a claim under section 106(3) of the Finance Act 2013 (adjustment of chargeable amount), or an amendment of or adjustment to such a claim, there is an alteration in the number of ATED chargeable days.
- (2) All such adjustments are to be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to any change in liability to tax as a result of that alteration.”

17 In Schedule 7A (restriction on set-off of pre-entry losses), after paragraph 10 insert—

“10A Section 161(3ZB)(a) and (b) does not apply to a loss if, in the absence of an election under section 161(3ZA), the loss would have been a pre-entry loss.”

PART 2

OTHER AMENDMENTS

Corporation Tax Act 2009

18 In section 2 of CTA 2009 (charge to corporation tax), after subsection (2) insert—

“(2A) But in subsection (2) “chargeable gains” does not include gains chargeable to capital gains tax under section 2B of TCGA 1992 (companies etc chargeable to capital gains tax on ATED-related gains on relevant high value disposals).”

Corporation Tax Act 2010

F119

Textual Amendments

- F1** Sch. 25 para. 19 omitted (with effect in accordance with Sch. 1 para. 22 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 20](#)

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PART 3

COMMENCEMENT

- 20 The amendments made by this Schedule have effect in relation to disposals occurring on or after 6 April 2013.

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