



Capital Gains Tax Act 1979

1979 CHAPTER 14

PART II

GAINS AND LOSSES

CHAPTER I

DISPOSALS

19 Disposal of assets

- (1) All forms of property shall be assets for the purposes of this Act, whether situated in the United Kingdom or not, including—
 - (a) options, debts and incorporeal property generally, and
 - (b) any currency other than sterling, and
 - (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.
- (2) For the purposes of this Act—
 - (a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and
 - (b) there is a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and generally, there is a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.
- (3) Subject to the provisions of this Act, a person's acquisition of an asset and the disposal of it to him shall for the purposes of this Act be deemed to be for a consideration equal to the market value of the asset—
 - (a) where he acquires the asset otherwise than by way of a bargain made at arm's length and in particular where he acquires it by way of gift or by way of distribution from a company in respect of shares in the company, or

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- (b) where he acquires the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another.
- (4) It is hereby declared that winnings from betting, including pool betting, or lotteries or games with prizes are not chargeable gains, and no chargeable gain or allowable loss shall accrue on the disposal of rights to winnings obtained by participating in any pool betting or lottery or game with prizes.
 - (5) It is hereby declared that sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation are not chargeable gains.

20 Capital sums derived from assets

- (1) Subject to sections 21 and 23(1) below, and to any other exceptions in this Act, there is for the purposes of this Act a disposal of assets by their owner where any capital sum is derived from assets notwithstanding that no asset is acquired by the person paying the capital sum, and this subsection applies in particular to—
 - (a) capital sums received by way of compensation for any kind of damage or injury to assets or for the loss, destruction or dissipation of assets or for any depreciation or risk of depreciation of an asset,
 - (b) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, assets,
 - (c) capital sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights, and
 - (d) capital sums received as consideration for use or exploitation of assets.
- (2) In the case of a disposal within paragraph (a), (b), (c) or (d) of subsection (1) above the time of the disposal shall be the time when the capital sum is received as described in that subsection.
- (3) In this section “capital sum” means any money or money's worth which is not excluded from the consideration taken into account in the computation under Chapter II below.

21 Capital sums: compensation and insurance money

- (1) If the recipient so claims, receipt of a capital sum within paragraph (a), (b), (c) or (d) of section 20(1) above derived from an asset which is not lost or destroyed shall not be treated for the purposes of this Act as a disposal of the asset if—
 - (a) the capital sum is wholly applied in restoring the asset, or
 - (b) (subject to subsection (2) below), the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum, or
 - (c) (subject to subsection (2) below), the amount of the capital sum is small, as compared with the value of the asset,

but, if the receipt is not treated as a disposal, all sums which would, if the receipt had been so treated, have been brought into account as consideration for that disposal in the computation under Chapter II below of a gain accruing on the disposal shall be

deducted from any expenditure allowable under Chapter II below as a deduction in computing a gain on the subsequent disposal of the asset.

- (2) If the allowable expenditure is less than the consideration for the disposal constituted by the receipt of the capital sum (or is nil)—
- (a) paragraphs (b) and (c) of subsection (1) above shall not apply, and
 - (b) if the recipient so elects (and there is any allowable expenditure)—
 - (i) the amount of the consideration for the disposal shall be reduced by the amount of the allowable expenditure, and
 - (ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the disposal or any subsequent occasion.

In this subsection “allowable expenditure ” means expenditure which, immediately before the disposal, was attributable to the asset under paragraphs (a) and (b) of section 32(1) below.

- (3) If, in a case not falling within subsection (1)(b) above, a part of a capital sum within paragraph (a) or paragraph (b) of section 20(1) above derived from an asset which is not lost or destroyed is applied in restoring the asset, then if the recipient so claims, that part of the capital sum shall not be treated as consideration for the disposal deemed to be effected on receipt of the capital sum but shall be deducted from any expenditure allowable under Chapter II below as a deduction in computing a gain on the subsequent disposal of the asset.
- (4) If an asset is lost or destroyed and a capital sum received by way of compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is within one year of receipt, or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed the owner shall if he so claims be treated for the purposes of this Act—
- (a) as if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and
 - (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received by way of compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) above.
- (5) A claim shall not be made under subsection (4) above if part only of the capital sum is applied in acquiring the new asset but if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, then the owner shall if he so claims be treated for the purposes of this Act—
- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
 - (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection.

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- (6) Subsections (4) and (5) above have effect subject to paragraph 18 of Schedule 5 to this Act (application to gain which in consequence of that Schedule is not all chargeable gain).
- (7) This section shall not apply in relation to a wasting asset.

22 Assets lost or destroyed, or whose value becomes negligible

- (1) Subject to the provisions of this Act and, in particular to section 137 below (options), the occasion of the entire loss, destruction, dissipation or extinction of an asset shall, for the purposes of this Act, constitute a disposal of the asset whether or not any capital sum by way of compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.
- (2) If, on a claim by the owner of an asset, the inspector is satisfied that the value of an asset has become negligible, he may allow the claim and thereupon this Act shall have effect as if the claimant had sold, and immediately re-acquired, the asset for a consideration of an amount equal to the value specified in the claim.
- (3) For the purposes of subsections (1) and (2) above, a building and any permanent or semi-permanent structure in the nature of a building, may be regarded as an asset separate from the land on which it is situated, but where either of those subsections applies in accordance with this subsection, the person deemed to make the disposal of the building or structure shall be treated as if he had also sold, and immediately reacquired, the site of the building or structure (including in the site any land occupied for purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time.

23 Mortgages and charges

- (1) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of this Act as involving any acquisition or disposal of the asset.
- (2) Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance his dealings with it shall be treated for the purposes of this Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.
- (3) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.

24 Hire-purchase

A hire-purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to that person shall be treated for the purposes of this Act, both in relation to that person and in relation to the person from whom he obtains the use and enjoyment of the asset, as if it amounted to an entire disposal of the asset to that person at the beginning of the period for which he obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by way of repayment or discharge of tax or otherwise, as may be required where the period for which that person has the use and enjoyment of the asset terminates without the property in the asset passing to him.

25 Value shifting

- (1) Without prejudice to the generality of the provisions of this Act as to the transactions which are disposals of assets, any transaction which under the following subsections is to be treated as a disposal of an asset shall be so treated (with a corresponding acquisition of an interest in the asset) notwithstanding that there is no consideration and so far as, on the assumption that the parties to the transaction were at arm's length, the party making the disposal could have obtained consideration, or additional consideration, for the disposal the transaction shall be treated as not being at arm's length and the consideration so obtainable, or the additional consideration so obtainable added to the consideration actually passing, shall be treated as the market value of what is acquired.
- (2) If a person having control of a company exercises his control so that value passes out of shares in the company owned by him or a person with whom he is connected, or out of rights over the company exercisable by him or by a person with whom he is connected, and passes into other shares in or rights over the company, that shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.
- (3) A loss on the disposal of an asset shall not be an allowable loss to the extent to which it is attributable to value having passed out of other assets, being shares in or rights over a company which by virtue of the passing of value are treated as disposed of under subsection (2) above.
- (4) If, after a transaction which results in the owner of land or of any other description of property becoming the lessee of the property there is any adjustment of the rights and liabilities under the lease, whether or not involving the grant of a new lease, which is as a whole favourable to the lessor, that shall be a disposal by the lessee of an interest in the property.
- (5) If an asset is subject to any description of right or restriction the extinction or abrogation, in whole or in part, of the right or restriction by the person entitled to enforce it shall be a disposal by him of the right or restriction.

26 Value shifting: further provisions

- (1) This section has effect as respects the disposal of an asset if a scheme has been effected or arrangements have been made (whether before or after the disposal) whereby—
 - (a) the value of the asset has been materially reduced, and
 - (b) a tax-free benefit has been or will be conferred—

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- (i) on the person making the disposal or a person with whom he is connected, or
 - (ii) subject to subsection (3) below, on any other person.
- (2) For the purposes of subsection (1)(b) above a benefit is conferred on a person if he becomes entitled to any money or money's worth or the value of any asset in which he has an interest is increased or he is wholly or partly relieved from any liability to which he is subject; and a benefit is tax-free unless it is required, on the occasion on which it is conferred on the person in question, to be brought into account in computing his income, profits or gains for the purposes of income tax, capital gains tax or corporation tax.
- (3) This section shall not apply by virtue of subsection (1)(b)(ii) above if it is shown that avoidance of tax was not the main purpose or one of the main purposes of the scheme or arrangements in question.
- (4) Where this section has effect in relation to any disposal, any allowable loss or chargeable gain accruing on the disposal shall be calculated as if the consideration for the disposal were increased by such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the scheme or arrangements and the tax-free benefit in question.
- (5) Where—
 - (a) by virtue of subsection (4) above the consideration for the disposal of an asset has been treated as increased, and
 - (b) the benefit taken into account under subsection (1)(b) above was an increase in the value of another asset,any allowable loss or chargeable gain accruing on the first disposal of the other asset after the increase in its value shall be calculated as if the consideration for that disposal were reduced by such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the scheme or arrangements in question and the increase made in relation to the disposal mentioned in paragraph (a) above.
- (6) References in this section to a disposal do not include references to any disposal falling within—
 - (a) section 44(1) below (disposals between husband and wife), or
 - (b) section 49(4) below (disposals by personal representatives to legatees), or
 - (c) section 273(1) of the Taxes Act (disposals within a group of companies).
- (7) In relation to the disposal by a company of an asset consisting of shares in another company the reference in subsection (1)(a) above to a reduction in the value of the asset does not include a reference to any reduction attributable to—
 - (a) the payment of a dividend by the second company at a time when it and the first company are members of the same group of companies within the meaning of section 272 of the Taxes Act, or
 - (b) the disposal of any asset by the second company at such a time, being a disposal falling within section 273(1) of that Act.
- (8) In relation to a case in which the disposal of an asset precedes its acquisition the reference in subsection (1)(a) above to a reduction shall be read as including a reference to an increase.

27 Time of disposal and acquisition where asset disposed of under contract

- (1) Where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred).

This subsection has effect subject to section 20(2) above, and subsection (2) below.

- (2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied.

CHAPTER II

COMPUTATION

28 Chargeable gains

- (1) The amount of the gains accruing on the disposal of assets shall be computed in accordance with this Chapter, and subject to the other provisions of this Act.
- (2) Every gain shall, except as otherwise expressly provided, be a chargeable gain.
- (3) Schedule 5 to this Act (which restricts the amount of chargeable gains accruing on the disposal of assets owned on 6th April 1965) shall have effect.

29 Losses

- (1) Except as otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.
- (2) Except as otherwise expressly provided, all the provisions of this Act which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain, and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss, and part not; and references in this Act to an allowable loss shall be construed accordingly.
- (3) A loss accruing to a person in a year of assessment during no part of which he is resident or ordinarily resident in the United Kingdom shall not be an allowable loss for the purposes of this Act unless, under section 12 above (non-resident with U.K. branch or agency), he would be chargeable to capital gains tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.
- (4) In accordance with section 14(1) above (foreign assets of person with foreign domicile), losses accruing on the disposal of assets situated outside the United Kingdom to an individual resident or ordinarily resident but not domiciled in the United Kingdom shall not be allowable losses.
- (5) Except as provided by section 49 below (death), an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains accruing in any earlier year of assessment, and relief shall not be given under this Act more than

once in respect of any loss or part of a loss, and shall not be given under this Act if and so far as relief has been or may be given in respect of it under the Income Tax Acts.

Computation of gains

30 Introductory

The following provisions of this Chapter, and Schedule 5 to this Act, shall have effect for computing for the purposes of this Act the amount of a gain accruing on the disposal of an asset.

31 Consideration chargeable to tax on income

- (1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation under this Chapter of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of the Income Tax Acts.
- (2) Subsection (1) above shall not be taken as excluding from the consideration so taken into account any money or money's worth which is taken into account in the making of a balancing charge under the Capital Allowances Act 1968 (including the provisions of the Taxes Act which under that Act are to be treated as contained in the said Act of 1968).
- (3) This section shall not preclude the taking into account in a computation under this Chapter, as consideration for the disposal of an asset, of the capitalised value of a rentcharge (as in a case where a rentcharge is exchanged for some other asset) or of the capitalised value of a ground annual or feu duty, or of a right of any other description to income or to payments in the nature of income over a period, or to a series of payments in the nature of income.

32 Expenditure: general

- (1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to—
 - (a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,
 - (b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
 - (c) the incidental costs to him of making the disposal.
- (2) For the purposes of this section and for the purposes of all other provisions of this Act the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred

by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty) together—

- (a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and
 - (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.
- (3) Except as provided by section 269 of the Taxes Act (companies: interest charged to capital), no payment of interest shall be allowable under this section.
- (4) Any provision in this Act introducing the assumption that assets are sold and immediately re-acquired shall not imply that any expenditure is incurred as incidental to the sale or re-acquisition.

33 Exclusion of expenditure by reference to tax on income

- (1) There shall be excluded from the sums allowable under section 32 above as a deduction in the computation under this Chapter any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains; and this subsection applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.
- (2) Without prejudice to the provisions of subsection (1) above there shall be excluded from the sums allowable under section 32 above as a deduction in the computation under this Chapter any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.

34 Restriction of losses by reference to capital allowances and renewals allowances

- (1) Section 33 above shall not require the exclusion from the sums allowable as a deduction in the computation under this Chapter of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made, but the amount of any losses accruing on the disposal of an asset shall be restricted by reference to capital allowances and renewals allowances as follows.
- (2) In the computation under this Chapter of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of it.

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- (3) If the person making the disposal acquired the asset—
- (a) by a transfer by way of sale in relation to which an election under paragraph 4 of Schedule 7 to the Capital Allowances Act 1968 was made, or
 - (b) by a transfer to which section 35(2) to (4) or section 48(2) of that Act applies, (being enactments under which a transfer is treated for the purposes of capital allowances as being made at written down value), the preceding provisions of this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except so far as any loss to the transferor was restricted under those provisions) been made to the person making the disposal (that is the transferee); and where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection can be taken into account in relation to the transferor shall also be taken into account in relation to the transferee (that is the person making the disposal), and so on for any series of transfers before the disposal.
- (4) In this section “capital allowance ” means—
- (a) any allowance under the Capital Allowances Act 1968 (including the provisions of the Taxes Act which under that Act are to be treated as contained in the said Act of 1968) or under Chapter I of Part III of the Finance Act 1971, other than an allowance under section 79(1) of the Taxes Act (relief for cost of maintenance of agricultural land),
 - (b) any relief given under section 76 of the Taxes Act (expenditure on sea walls), and
 - (c) any deduction in computing profits or gains allowable under section 141 of the Taxes Act (cemeteries).
- (5) In this section “renewals allowance ” means a deduction allowable in computing the profits or gains of a trade, profession or vocation for the purpose of income tax by reference to the cost of acquiring an asset for the purposes of the trade, profession or vocation in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.
- (6) The amount of capital allowances to be taken into account under this section in relation to a disposal include any allowances falling to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event, and of any balancing charge to which effect might have been so given but for the making of an election under section 40 of the Capital Allowances Act 1968 (option in case of replacement of machinery or plant).
- (7) Where the disposal is of machinery or plant in relation to expenditure on which allowances or charges have been made under Chapter I of Part III of the Finance Act 1971, and neither paragraph 5 (assets used partly for trade purposes and partly for other purposes) nor paragraph 6 (wear and tear subsidies) of Schedule 8 to that Act applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the capital expenditure incurred, or treated as incurred, under that Chapter on the provision of the machinery or plant by the person making the disposal and the disposal value required to be brought into account in respect of the machinery or plant.

35 Part disposals

- (1) Where a person disposes of an interest or right in or over an asset, and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums which under paragraphs (a) and (b) of section 32(1) above are attributable to the asset shall, both for the purposes of the computation under this chapter of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of, be apportioned.
- (2) The apportionment shall be made by reference—
 - (a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and
 - (b) to the market value of the property which remains undisposed of on the other hand (call that market value B),

and accordingly the fraction of the said sums allowable as a deduction in computing under this Chapter the amount of the gain accruing on the disposal shall be

$$\frac{A}{A+B}$$

, and the remainder shall be attributed to the property which remains undisposed of.

- (3) Any apportionment to be made in pursuance of this section shall be made before operating the provisions of section 34 above and if, after a part disposal, there is a subsequent disposal of an asset the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to subsection (4) below, be those referable to the sums which under paragraphs (a) and (b) of section 32(1) above are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under the provisions of section 34 above.
- (4) This section shall not be taken as requiring the apportionment of any expenditure which, on the facts, is wholly attributable to what is disposed of, or wholly attributable to what remains undisposed of.
- (5) It is hereby declared that this section, and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain, are to be operated before the operation of, and without regard to—
 - (a) section 44(1) below (disposals between husband and wife),
 - (b) sections 115 to 121 below (replacement of business assets), but without prejudice to the provisions of subsection (8) of the said section 115,
 - (c) section 273(1) of the Taxes Act (transfers within a group of companies), or
 - (d) any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

36 Assets derived from other assets

If and so far as, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in a computation under this Chapter in respect of the other asset under paragraphs (a) and (b) of section 32(1) above shall, both for the purpose of the computation of a gain accruing on the disposal of the first-

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mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

37 Wasting assets

- (1) In this Chapter “wasting asset ” means an asset with a predictable life not exceeding fifty years but so that—
- (a) freehold land shall not be a wasting asset whatever its nature, and whatever the nature of the buildings or works on it,
 - (b) “life ”, in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal,
 - (c) plant and machinery shall in every case be regarded as having a predictable life of less than fifty years, and in estimating that life it shall be assumed that its life will end when it is finally put out of use as being unfit for further use, and that it is going to be used in the normal manner and to the normal extent and is going to be so used throughout its life as so estimated,
 - (d) a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is fifty years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Board.
- (2) In this Chapter “the residual or scrap value ”, in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section.
- (3) The question what is the predictable life of an asset, and the question what is its predictable residual or scrap value at the end of that life, if any, shall, so far as those questions are not immediately answered by the nature of the asset, be taken, in relation to any disposal of the asset, as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

38 Wasting assets: straightline restriction of allowable expenditure

- (1) In the computation under this Chapter of the gain accruing on the disposal of a wasting asset it shall be assumed—
- (a) that any expenditure attributable to the asset under section 32(1)(a) above after deducting the residual or scrap value, if any of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nothing at the end of its life, and
 - (b) that any expenditure attributable to the asset under section 32(1)(b) above is written off from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nothing at the end of its life,
- so that an equal daily amount is written off day by day.
- (2) Thus, calling the predictable life of a wasting asset at the time when it was acquired or provided by the person making the disposal L, the period from that time to the time of disposal T(1), and, in relation to any expenditure attributable to the asset under section 32(1)(b) above, the period from the time when that expenditure is first reflected in the state or nature of the asset to the said time of disposal T(2), there shall be excluded from the computation under this Chapter—

- (a) out of the expenditure attributable to the asset under section 32(1)(a) above a fraction

$$\frac{T(1)}{L}$$

of an amount equal to the amount of that expenditure minus the residual or scrap value, if any, of the asset, and

- (b) out of the expenditure attributable to the asset under section 32(1)(b) above a fraction

$$\frac{T(2)}{L - (T(1) - T(2))}$$

of the amount of the expenditure.

- (3) If any expenditure attributable to the asset under section 32(1)(b) above creates or increases a residual or scrap value of the asset, the provisions of subsection (1)(a) above shall be applied so as to take that into account.

39 Wasting assets qualifying for capital allowances

- (1) Section 38 above shall not apply in relation to a disposal of an asset—
- (a) which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used and used solely for the purposes of a trade, profession or vocation and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under paragraph (a) or paragraph (b) of section 32(1) above, or
- (b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.
- (2) In the case of the disposal of an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—
- (a) the consideration for the disposal, and any expenditure attributable to the asset by paragraph (a) or paragraph (b) of section 32(1) above shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
- (b) the computation under this Chapter shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
- (c) section 38 above shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances, and
- (d) if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on him, that apportionment shall be employed for the purposes of this section, and
- (e) subject to paragraph (d) above, the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under paragraph (a) above.

40 Consideration due after time of disposal

- (1) If the consideration, or part of the consideration, taken into account in the computation under this Chapter is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding eighteen months, then, if the person making the disposal satisfies the Board that he would otherwise suffer undue hardship, the tax on a chargeable gain accruing on the disposal may, at his option, be paid by such instalments as the Board may allow over a period not exceeding eight years and ending not later than the time at which the last of the first-mentioned instalments is payable.
- (2) In the computation under this Chapter consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the inspector to be irrecoverable, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

41 Contingent liabilities

- (1) In the first instance no allowance shall be made in the computation under this Chapter—
 - (a) in the case of a disposal by way of assigning a lease of land or other property, for any liability remaining with, or assumed by, the person making the disposal by way of assigning the lease which is contingent on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms and conditions of the lease,
 - (b) for any contingent liability of the person making the disposal in respect of any covenant for quiet enjoyment or other obligation assumed as vendor of land, or of any estate or interest in land, or as a lessor,
 - (c) for any contingent liability in respect of a warranty or representation made on a disposal by way of sale or lease of any property other than land.
- (2) If it is subsequently shown to the satisfaction of the inspector that any such contingent liability has become enforceable, and is being or has been enforced, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

42 Expenditure reimbursed out of public money

There shall be excluded from the computation under this Chapter any expenditure which has been or is to be met directly or indirectly by the Crown or by any Government, public or local authority whether in the United Kingdom or elsewhere.

43 Supplemental

- (1) No deduction shall be allowable in a computation under this Chapter more than once from any sum or from more than one sum.
- (2) References in this Chapter to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of income tax shall include

Status: This is the original version (as it was originally enacted).

references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.

- (3) In this Chapter references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.
- (4) For the purposes of any computation under this Chapter any necessary apportionments shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Chapter, be such method as appears to the inspector or on appeal the Commissioners concerned to be just and reasonable.
- (5) In this Chapter “capital allowance” and “renewals allowance ” have the meanings given by subsections (4) and (5) of section 34 above.