



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART V

TRANSFER OF BUSINESS ASSETS

CHAPTER I

GENERAL PROVISIONS

Replacement of business assets

152 Roll-over relief

(1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (“the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (“the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade, and the old assets and new assets are within the classes of assets listed in section 155, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Act—

- (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) 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 or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

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- (2) Where subsection (1)(a) above applies to exclude a gain which, in consequence of Schedule 2, is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) above shall be the amount of the chargeable gain, and not the whole amount of the gain.
- (3) Subject to subsection (4) below, this section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice allow.
- (4) Where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets, or the interest in the new assets, is acquired in pursuance of the contract, and, when that fact is ascertained, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments may be made.
- (5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of, or of the interest in, the new assets.
- (6) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.
- (7) If the old assets were not used for the purposes of the trade throughout the period of ownership this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.
- (8) This section shall apply in relation to a person who, either successively or at the same time, carries on 2 or more trades as if both or all of them were a single trade.
- (9) In this section “period of ownership” does not include any period before 31st March 1982.
- (10) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.
- (11) Without prejudice to section 52(4), where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

153 Assets only partly replaced

- (1) Section 152(1) shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that

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subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall 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 or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under paragraph (a) of this subsection,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

- (2) Subsections (3) to (11) of 152 shall apply as if this section formed part of that section.

154 New assets which are depreciating assets

- (1) Sections 152, 153 and 229 shall have effect subject to the provisions of this section in which—

- (a) the “held-over gain” means the amount by which, under those sections, and apart from the provisions of this section, any chargeable gain on one asset (“asset No.1”) is reduced, with a corresponding reduction of the expenditure allowable in respect of another asset (“asset No.2”), and
- (b) any reference to a gain of any amount being carried forward to any asset is a reference to a reduction of that amount in a chargeable gain coupled with a reduction of the same amount in expenditure allowable in respect of that asset.

- (2) If asset No.2 is a depreciating asset, the held-over gain shall not be carried forward, but the claimant shall be treated as if so much of the chargeable gain on asset No.1 as is equal to the held-over gain did not accrue until—

- (a) the claimant disposes of asset No.2, or
- (b) he ceases to use asset No.2 for the purposes of a trade carried on by him, or
- (c) the expiration of a period of 10 years beginning with the acquisition of asset No.2,

whichever event comes first.

- (3) Where section 229 has effect subject to the provisions of this section, subsection (2) (b) above shall have effect as if it read—

“(b) section 232(3) applies as regards asset No.2 (whether or not by virtue of section 232(5)), or”.

- (4) If, in the circumstances specified in subsection (5) below, the claimant acquires an asset (“asset No.3”) which is not a depreciating asset, and claims under section 152 or 153—

- (a) the gain held-over from asset No.1 shall be carried forward to asset No.3, and
- (b) the claim which applies to asset No.2 shall be treated as withdrawn (so that subsection (2) above does not apply).

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- (5) The circumstances are that asset No.3 is acquired not later than the time when the chargeable gain postponed under subsection (2) above would accrue and, assuming—
- (a) that the consideration for asset No.1 was applied in acquiring asset No.3, and
 - (b) that the time between the disposal of asset No.1 and the acquisition of asset No.3 was within the time limited by section 152(3),
- the whole amount of the postponed gain could be carried forward from asset No.1 to asset No.3; and the claim under subsection (4) above shall be accepted as if those assumptions were true.
- (6) If part only of the postponed gain could be carried forward from asset No.1 to asset No.3, and the claimant so requires, that and the other part of the postponed gain shall be treated as derived from 2 separate assets, so that, on that claim—
- (a) subsection (4) above applies to the first-mentioned part, and
 - (b) the other part remains subject to subsection (2) above.
- (7) For the purposes of this section, an asset is a depreciating asset at any time if—
- (a) at that time it is a wasting asset, as defined in section 44, or
 - (b) within the period of 10 years beginning at that time it will become a wasting asset (so defined).

155 Relevant classes of assets

The classes of assets for the purposes of section 152(1) are as follows.

CLASS 1

Assets within heads A and B below

Head A

1. Any building or part of a building and any permanent or semi-permanent structure in the nature of a building, occupied (as well as used) only for the purposes of the trade
2. Any land occupied (as well as used) only for the purposes of the trade.

Head A has effect subject to section 156.

Head B

Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

CLASS 2

Ships, aircraft and hovercraft (“hovercraft” having the same meaning as in the Hovercraft Act 1968).

CLASS 3

Satellites, space stations and spacecraft (including launch vehicles).

CLASS 4

Goodwill.

CLASS 5

Milk quotas (that is, rights to sell dairy produce without being liable to pay milk levy or to deliver dairy produce without being liable to pay a contribution to milk levy) and potato quotas (that is, rights to produce potatoes without being liable to pay more than the ordinary contribution to the Potato Marketing Board’s fund).

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156 Assets of Class 1

- (1) This section has effect as respects head A of Class 1 in section 155.
- (2) Head A shall not apply where the trade is a trade—
 - (a) of dealing in or developing land, or
 - (b) of providing services for the occupier of land in which the person carrying on the trade has an estate or interest.
- (3) Where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, then, as regards that land, the trade shall be treated for the purposes of subsection (2) (a) above as if it were not a trade of dealing in or developing land.
- (4) A person who is a lessor of tied premises shall be treated as if he occupied (as well as used) those tied premises only for the purposes of the relevant trade.

This subsection shall be construed in accordance with section 98(2) of the Taxes Act (income tax and corporation tax on tied premises).

157 Trade carried on by family company: business assets dealt with by individual

In relation to a case where—

- (a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and
- (b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his family company, within the meaning of Schedule 6,

any reference in sections 152 to 156 to the person carrying on the trade (or the 2 or more trades) includes a reference to that individual.

158 Activities other than trades, and interpretation

- (1) Sections 152 to 157 shall apply with the necessary modifications—
 - (a) in relation to the discharge of the functions of a public authority, and
 - (b) in relation to the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits, and
 - (c) in relation to a profession, vocation, office or employment, and
 - (d) in relation to such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed, and
 - (e) in relation to the activities of an unincorporated association or other body chargeable to corporation tax, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within head A of class 1 only if they are both occupied and used by the body, and in the case of other assets only if they are used by the body, as they apply in relation to a trade.

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- (2) In sections 152 to 157 and this section the expressions “trade”, “profession”, “vocation”, “office” and “employment” have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.
- (3) Sections 152 to 157 and this section shall be construed as one.

159 Non-residents: roll-over relief

- (1) Section 152 shall not apply in the case of a person if the old assets are chargeable assets in relation to him at the time they are disposed of, unless the new assets are chargeable assets in relation to him immediately after the time they are acquired.
- (2) Subsection (1) above shall not apply where—
- (a) the person acquires the new assets after he has disposed of the old assets, and
 - (b) immediately after the time they are acquired the person is resident or ordinarily resident in the United Kingdom.
- (3) Subsection (2) above shall not apply where immediately after the time the new assets are acquired—
- (a) the person is a dual resident, and
 - (b) the new assets are prescribed assets.
- (4) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—
- (a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or
 - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3).
- (5) In this section—
- “dual resident” means a person who is resident or ordinarily resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and
- “prescribed asset”, in relation to a dual resident, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, he falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to him on a disposal.
- (6) In this section—
- (a) “the old assets” and “the new assets” have the same meanings as in section 152,
 - (b) references to disposal of the old assets include references to disposal of an interest in them, and
 - (c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

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- (7) Where the acquisition of the new assets took place before 14th March 1989 and the disposal of the old assets took place, or takes place, on or after that date, this section shall not apply if the disposal of the old assets took place, or takes place, within 12 months of the acquisition of the new assets or such longer period as the Board may by notice allow.

160 Dual resident companies: roll-over relief

- (1) Where a company is a dual resident company at the time it disposes of the old assets and at the time it acquires the new assets, and the old assets are not prescribed assets at the time of disposal, section 152 shall not apply unless the new assets are not prescribed assets immediately after the time of acquisition.

- (2) In this section—

“dual resident company” means a company which is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and

“prescribed asset”, in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

- (3) In this section—

- (a) “the old assets” and “the new assets” have the same meanings as in section 152,
- (b) references to disposal of the old assets include references to disposal of an interest in them, and
- (c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

- (4) Where the acquisition of the new assets took place before 14th March 1989 and the disposal of the old assets took place, or takes place, on or after that date, this section shall not apply if the disposal of the old assets took place, or takes place, within 12 months of the acquisition of the new assets or such longer period as the Board may by notice allow.