

SCHEDULES

SCHEDULE 11

Section 91.

EXTENSION OF ROLL-OVER RELIEF ON RE-INVESTMENT

1 Chapter IA of Part V of the Taxation of Chargeable Gains Act 1992 shall be amended as follows.

Disposals on which relief available

2 In section 164A—

- (a) in subsection (1)(a), for the words following “(“the re-investor”)” there is substituted “on any disposal by him of any asset (“the asset disposed of”); and”,
- (b) in subsection (2), “Subject to section 164C” is omitted and for “initial holding” (in three places) there is substituted “asset disposed of”,
- (c) subsections (3) to (7) are omitted,
- (d) in subsection (9), for “initial holding” there is substituted “asset disposed of”, and
- (e) for subsection (12) there is substituted—

“(12) Without prejudice to section 52(4), where consideration is given for the acquisition of any assets some of which are shares to the acquisition of which a claim under this section relates and some of which are not, the consideration shall be apportioned in such manner as is just and reasonable”.

3 For section 164B there is substituted—

“164B Roll-over relief on re-investment by trustees

- (1) Subject to the following provisions of this section, section 164A shall apply, as it applies in such a case as is mentioned in subsection (1) of that section, where there is—
 - (a) a disposal by the trustees of a settlement of any asset comprised in any settled property to which this section applies, and
 - (b) such an acquisition by those trustees of eligible shares in a qualifying company as would for the purposes of that section be an acquisition of a qualifying investment at a time in the qualifying period.
- (2) This section applies—
 - (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
 - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals, and references in this section to individuals include any charity.

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- (3) If, at the time of the disposal of the asset mentioned in subsection (1) (a) above, the settled property comprising that asset is property to which this section applies by virtue of subsection (2)(b) above but not all the beneficiaries are individuals, then—
- (a) only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of section 164A(2)(a)(i), and
 - (b) no reduction under section 164A(2) shall be made in respect of the whole or any part of the balance of the gain.
- (4) Section 164A shall not apply by virtue of this section in a case where, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property which comprises that asset is property to which this section applies by virtue of subsection (2)(a) above unless, immediately after the acquisition of shares mentioned in subsection (1)(b) above, the settled property comprising the shares is also property to which this section applies by virtue of subsection (2)(a) above.
- (5) Section 164A shall not apply by virtue of this section in a case where, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property which comprises that asset is property to which this section applies by virtue of subsection (2)(b) above unless, immediately after the acquisition of shares mentioned in subsection (1)(b) above—
- (a) the settled property comprising the shares is also property to which this section applies by virtue of subsection (2)(b) above, and
 - (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the asset mentioned in subsection (1)(a) above.
- (6) If, at any time, in the case of settled property to which this section applies by virtue of subsection (2)(b) above, both individuals and others have interests in possession, the relevant proportion at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—
- (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
 - (b) the total amount of all the income of the settled property.
- (7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this section shall apply as if—
- (a) the interests of the relevant beneficiaries were a single interest in possession, and
 - (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.
- (8) In this section references to interests in possession do not include interests for a fixed term.”

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- 4 Sections 164C to 164E are omitted.
- 5 In section 164H(1), “within the meaning of section 164C” is omitted.
- 6 In section 164L(10), for the words following “trustees or” there is substituted “any individual or charity by virtue of whose interest, at the time of the acquisition, section 164B applies to the settled property”.

Acquisitions on which relief available

- 7 For section 164A(8) there is substituted—
- “(8) For the purposes of this section, a person who acquires any eligible shares in a qualifying company shall be regarded as acquiring a qualifying investment unless, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—
- (a) is the company in which the initial holding subsisted, or
 - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the acquisition of the qualifying investment, a member of the same group of companies as the company in which the initial holding subsisted.”

Retirement relief

- 8 Section 164A(11) is omitted and after section 164B there is inserted—

“164BA Interaction with retirement relief

- (1) The provisions of section 164A for making any reduction shall apply before any provisions for calculating the amount of, or giving effect to, any relief under section 163 or 164; and references in that section and this to a chargeable gain (except the second reference in subsection (4)(a) below) shall be construed accordingly.
- (2) Subsection (3) below applies where—
 - (a) any claim for relief is made under section 164A in respect of any chargeable gain, and
 - (b) apart from this Chapter, the whole or any part of that gain would be relieved under section 163 or 164.
- (3) For the purpose of giving relief under section 163 or 164, any reduction under section 164A shall be treated as having been made first against the unrelieved part of the chargeable gain; and only the amount (if any) which is equal to the unrelieved part of the chargeable gain after that reduction shall be treated as exceeding the amount available for relief.
- (4) For the purposes of this section—
 - (a) the unrelieved part of a chargeable gain is so much of that gain as, apart from this Chapter, would constitute a chargeable gain after the application of the appropriate paragraph of Schedule 6,
 - (b) “amount available for relief” has the same meaning as in the appropriate paragraph of that Schedule, and
 - (c) the “appropriate paragraph” means, as the case may be, paragraph 6, 7(1)(b) or 8(1)(b).”

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

Clawback

9 (1) In section 164F—

- (a) for subsection (1) there is substituted—

“(1) This section shall apply where a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced, under section 164A or this section, by any amount (“the held-over gain”),

- (b) in subsection (3), for the words from “either” to the end of paragraph (b) there is substituted “charged on any disposal or under this section”,
- (c) for subsection (4) there is substituted—

“(4) For the purposes of this section the whole or a part of any held-over gain on the acquisition of the acquired holding shall be treated—

- (a) in accordance with subsection (4A) below as charged on any disposal in relation to which the whole or any part of the held-over gain falls to be taken into account in determining the chargeable gain or allowable loss accruing on the disposal, and
- (b) as charged under this section so far as it falls to be disregarded in accordance with subsection (11) below.

(4A) In the case of any such disposal as is mentioned in subsection (4)(a) above, the amount of the held-over gain charged on that disposal—

- (a) shall, except in the case of a part disposal, be the amount taken into account as so mentioned, and
- (b) in the case of a part disposal, shall be calculated by multiplying the following, that is to say—
- (i) so much of the amount of the held-over gain as has not already been charged on a previous disposal, and
- (ii) the fraction used in accordance with section 42(2) for determining, subject to any deductions in pursuance of this Chapter, the amount allowable as a deduction in the computation of the gain accruing on the disposal in question”,

- (d) in subsection (5)—

(i) in paragraph (a) “or 164D” is omitted, and

(ii) in paragraph (c), for the words from “section 164D(4)” to the end there is substituted “subsections (4) and (4A) above”,

- (e) in subsection (10), “(within the meaning of section 164D)” is omitted, and
- (f) after that subsection there is inserted—

“(10A) Where (apart from this subsection) a chargeable gain of any amount would by virtue of subsection (2) above accrue to the person who acquired the acquired holding but, within the period mentioned in subsection (10B) below, that person acquires a qualifying investment (within the meaning of section 164A), that person shall, on making a claim as respects the qualifying investment, be treated—

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- (a) as if the amount of the gain were reduced by whichever is the smallest of the following—
 - (i) the actual amount or value of the consideration for the acquisition of the qualifying investment,
 - (ii) in the case of a qualifying investment acquired otherwise than by a transaction at arm's length, the market value of that investment at the time of its acquisition,
 - (iii) the amount specified for the purposes of this subsection in the claim, and
- (b) as if the amount or value of the consideration for the acquisition of the qualifying investment were reduced by the amount of the reduction made under paragraph (a) above;

but paragraph (b) above shall not affect the treatment for the purposes of this Act of the other party to the transaction involving the qualifying investment.

(10B) The period referred to in subsection (10A) above is the period (not including any period before the acquisition of the acquired holding) which begins 12 months before and ends 3 years after the time when the chargeable gain accrues or would but for that subsection accrue, together with any such further period after the disposal as the Board may by notice allow.”

- (2) Section 164F as amended by sub-paragraph (1) above shall have effect as follows—
 - (a) the reference in subsection (1) to consideration treated as reduced under section 164A includes consideration treated as reduced under section 164D,
 - (b) the reference in subsection (3) to a gain having been charged on any disposal includes any gain having been carried forward from any disposal of shares, and
 - (c) the amounts referred to in subsection (4A)(a) and (b)(i) shall be treated as reduced by any amounts carried forward from any disposal of shares.
- (3) References in sub-paragraph (2) above to an amount being carried forward from a disposal of shares are references to the reduction by that amount, in accordance with section 164D(3)(a), of the amount of the consideration for the disposal of those shares.

Anti-avoidance

10 In section 164L—

- (a) after subsection (10) there is inserted—

“(10A) For the purposes of this Chapter, where—

- (a) a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced under this Chapter by any amount (“the held-over gain”), and
- (b) after that acquisition, he acquires eligible shares in a relevant company,

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he shall not be regarded in relation to his acquisition of those shares in the relevant company as acquiring a qualifying investment for the purposes of section 164A.

(10B) For the purposes of subsection (10A) above a company is a relevant company if—

- (a) where that person has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding,
- (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Chapter such that, without that or an equivalent claim, there would have been no held-over gain in relation to the acquired holding, or
- (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above”, and

(b) in subsection (11), for the definition of “chargeable business assets” there is substituted—

““chargeable business asset”, in relation to any company, means a chargeable asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by—

- (a) the individual acquiring the shares,
- (b) any personal company of that individual,
- (c) a member of a trading group of which the holding company is a personal company of that individual, or
- (d) a partnership of which that individual is a member”.

Miscellaneous

11 In section 164N, after subsection (1) there is inserted—

“(1A) Every asset of a company is for the purposes of this Chapter a chargeable asset of that company at any time, except one on the disposal of which by the company at that time no gain accruing to the company would be a chargeable gain”.