

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Consequential Amendments

Part 2: Other Enactments

Taxation of Chargeable Gains Act 1992

Section 148C Deemed disposals at a loss under section 564(4) of ITTOIA 2005

3492. **Section 564** (deemed disposal where futures run to delivery or options are exercised) deems a disposal to take place immediately before a future runs to delivery or an option is exercised. Eventually the asset acquired under that future or option may itself be sold for a capital loss. Any loss on that eventual disposal will, under the TCGA rules, include that part of the loss that may be relieved under Chapter 12 of Part 4 of this Act as a result of the deemed disposal. This new section of TCGA provides rules to prevent a double allowance of that loss by excluding the loss allowable under Chapter 12 of Part 4 of this Act from the capital loss. The section is based on paragraph 4A of Schedule 5AA to ICTA.
3493. *Subsection (2)* provides for the rules in sections 37 and 39 of TCGA to be disregarded. These sections prevent an amount taxed as income from being included in disposal proceeds of an asset or sums deductible in an income tax computation from being deductible against the capital gains computation.
3494. *Subsection (3)* provides for the grant of an option and its deemed disposal to be treated as a single acquisition for the purposes of adjusting the capital gains computation under subsections (4) and (5). This allows the premium received by the grantor of the option to be taken into account in calculating the consideration for acquisition of the asset. Section 144 of TCGA which applies by virtue of section 562 (when disposals of futures or options occur: general) performs the same service for disposals under Chapter 12 of Part 4 of this Act other than deemed disposals (see commentary on section 563 (timing of certain grants of options where related disposals occur later)). But deemed disposals under section 564 (deemed disposals where futures run to delivery or options are exercised) are not disposals for the purposes of section 144 of TCGA.
3495. *Subsections (4) and (5)* apply where an asset has been disposed of at a loss by means of a future running to delivery or an option being exercised. The consideration for that asset for the purposes of the capital gains computation is decreased by the amount of the loss arising under Chapter 12 of Part 4 of this Act, thus effectively preventing a double allowance of the loss that arises on the deemed disposal under that Chapter. Under subsection (4) two distinct situations are foreseen, first where the person sustaining a loss on the deemed disposal acquires an asset as a result of a future running to delivery or the exercise of an option and, second, where the person sustaining a loss on the

*These notes refer to the Income Tax (Trading and Other Income)
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

deemed disposal disposes of an asset as a result of a future running to delivery or the exercise of an option.

3496. *Subsection (5)* ensures that the consideration cannot be reduced below zero. Where the loss under Chapter 12 of Part 4 of this Act exceeds the consideration, the consideration is reduced to nil and the excess is treated as a chargeable gain.
3497. *Subsections (6) and (7)* deal with occasions where the loss under Chapter 12 of Part 4 of this Act on the deemed disposal exceeds the consideration for the asset and is treated as a capital gain under subsection (5). The capital gain arises either when an asset acquired under the future or option is eventually disposed of, or, if the asset is already held but disposed of under the future or option, on that disposal.
3498. *Subsections (8) and (9)* supplement the rule in subsections (6) and (7). They establish when a chargeable gain under subsection (5)(b) is treated as arising in circumstances which involve special capital gains tax provisions.