
Changes to legislation: Finance Act 2008, Cross Heading: Abolition of “kink” test is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 2

CAPITAL GAINS TAX REFORM

Abolition of “kink” test

- 57 TCGA 1992 is amended as follows.
- 58 (1) Section 35 (assets held on 31 March 1982) is amended as follows.
- (2) In subsection (2)—
- (a) for “Subject to the following provisions of this section, in” substitute “ In ”, and
- (b) for “him” substitute “ that person ”.
- (3) After that subsection insert—
- “(2A) For the purposes of corporation tax, subsection (2) above has effect subject to subsections (3) to (8) below (and see also subsections (9) and (10)).”
- (4) In subsection (3)(d), for the words after “any of” substitute “ the no gain/no loss provisions. ”
- (5) In subsection (4), for “him” substitute “ that person ”.
- (6) In subsection (5), for “him” (in both places) substitute “ that person ”.
- (7) In subsection (6), omit—
- (a) paragraph (a),
- (b) in paragraph (aa), “in the case of an election for the purposes of corporation tax,”, and
- (c) in paragraph (b), “in either case”.
- (8) In subsection (7), for “him” substitute “ that person ”.
- (9) In subsection (9), after “effect” insert “ for the purposes of corporation tax ”.
- (10) In subsection (10), insert at the end “ for the purposes of capital gains tax and corporation tax ”.
- 59 After that section insert—

“35A Disposal of asset acquired on no gain/no loss disposal

- (1) This section applies for the purposes of capital gains tax in relation to a disposal of an asset if—
- (a) the person making the disposal acquired the asset after 31 March 1982 and before 6 April 2008,

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- (b) the disposal by which the person acquired the asset (“the relevant disposal”), and any previous disposal of the asset after 31 March 1982, was a disposal on which, by virtue of any enactment, neither a gain nor a loss accrued to the person making the disposal, and
 - (c) section 35(2) did not apply to the relevant disposal.
- (2) It is to be assumed that section 35(2) did apply to the relevant disposal (and that section 56(2) applied to the relevant disposal accordingly).”
- 60 In section 55(5) (indexation allowance: assets acquired on no gain/no loss disposal), for “enactments specified in section 35(3)(d)” substitute “ no gain/no loss provisions ”.
- 61 In section 73(1) (death of life tenant: exclusion of chargeable gain), for “6th April 1965” substitute “ 31 March 1982 ”.
- 62 In section 175(2C) (replacement of business assets by member of group), for “enactments specified in section 35(3)(d)” substitute “ no gain/no loss provisions ”.
- 63 In section 288 (interpretation), after subsection (3) insert—
- “(3A) For the purposes of this Act, the following are “the no gain/no loss provisions”—
- (a) sections 58, 73, 139, 140A, 140E, 171, 211, 215, 216, 217A, 218 to 221, 257(3), 258(4), 264 and 267(2) of this Act;
 - (b) section 148 of the 1979 Act;
 - (c) section 148 of the Finance Act 1982;
 - (d) section 130(3) of the Transport Act 1985;
 - (e) section 486(8) of the Taxes Act;
 - (f) paragraph 2(1) of Schedule 7 to the Broadcasting Act 1996;
 - (g) paragraphs 3 and 9 of Schedule 26 to the Transport Act 2000;
 - (h) paragraphs 3, 18, 29 and 32 of Schedule 9 to the Energy Act 2004;
 - (i) paragraph 9 of Schedule 4 to the Consumers, Estate Agents and Redress Act 2007.”
- 64 (1) Schedule 2 (assets held on 6 April 1965) is amended as follows.
- (2) Omit paragraph 1(3).
- (3) In paragraph 4—
- (a) omit sub-paragraph (6),
 - (b) in sub-paragraph (8), for “him” substitute “ the person ”,
 - (c) in sub-paragraph (9)—
 - (i) for “either section 58 or” (in both places) substitute “ section ”,
 - (ii) omit “the spouse or civil partner of the holder, or”, and
 - (iii) for “him” substitute “ the holder ”,
 - (d) in sub-paragraph (10)(a), for “he” (in both places) substitute “ the person ”, and
 - (e) in sub-paragraph (11), omit—
 - (i) paragraph (a),
 - (ii) in paragraph (b), “in the case of an election for the purposes of corporation tax,”, and
 - (iii) in paragraph (c), “in either case,”.

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- (4) In paragraph 17(3) omit—
 - (a) paragraph (a),
 - (b) in paragraph (b), “in the case of an election for the purposes of corporation tax,”, and
 - (c) in paragraph (c), “in either case.”
- (5) Omit paragraph 22.
- 65 (1) Schedule 3 (assets held on 31 March 1982) is amended as follows.
 - (2) In paragraph 1—
 - (a) in sub-paragraph (1)—
 - (i) for “Where—” substitute “ For the purposes of corporation tax, where— ”, and
 - (ii) for “he” (in each place) substitute “ the person ”, and
 - (b) in sub-paragraph (2), for “enactments specified in section 35(3)(d)” substitute “ no gain/no loss provisions ”.
 - (3) In paragraph 2(1) and (3), omit “58 or”.
- 66 In paragraph 7 of Schedule 4 (deferred charges on pre-31 March 1982 gains), for “enactments specified in section 35(3)(d)” substitute “ no gain/no loss provisions ”.
- 67 In paragraph 7 of Schedule 4ZA (sub-fund settlements), for “sections 104(1) and 109(2)(a)” substitute “ section 104(1) ”.
- 68 In paragraph 12(b) of Schedule 7A (restriction on set-off or pre-entry losses), for “enactment specified in section 35(3)(d)” substitute “ of the no gain/no loss provisions ”.
- 69 (1) FA 1997 is amended as follows.
 - (2) In section 89(8)(a) (earn-out rights), for “enactments specified in section 35(3)(d) of that Act” substitute “ no gain/no loss provisions (within the meaning of that Act: see section 288(3A) of that Act) ”.

^{F1}(3)

Textual Amendments

F1 Sch. 2 para. 69(3) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 2 (with Sch. 2) and (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 10 Pt. 8 (with Sch. 9 paras. 1-9, 22)

- 70 In consequence of paragraphs 57 to 69, omit—
 - (a) in F(No.2)A 1992—
 - (i) section 46(2),
 - (ii) paragraph 21(2) of Schedule 9, and
 - (iii) paragraph 5(9) of Schedule 17,
 - (b) in FA 1994—
 - (i) paragraph 2(2) of Schedule 24, and
 - (ii) paragraph 4(3) of Schedule 25,

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- (c) paragraph 2(3) of Schedule 4 to the Coal Industry Act 1994 (c. 21),
- (d) paragraph 3 of Schedule 7 to the Broadcasting Act 1996 (c. 55),
- (e) in the Transport Act 2000 (c. 38)—
 - (i) paragraph 2(3) of Schedule 7, and
 - (ii) paragraph 37 of Schedule 26,
- (f) paragraph 36 of Schedule 9 to the Energy Act 2004 (c. 20),
- (g) paragraph 33 of Schedule 10 to the Railways Act 2005 (c. 14),
- (h) section 59(2) of F(No.2)A 2005,
- (i) paragraph 14(3) of Schedule 9 to FA 2007, and
- (j) paragraph 11 of Schedule 7 to the Consumers, Estate Agents and Redress Act 2007 (c. 17).

71 The amendments made by paragraphs 57 to 70 have effect in relation to disposals on or after 6 April 2008.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 41 para. 6(1A) inserted by [2015 c. 11 Sch. 20 para. 10\(2\)](#)
- Sch. 41 para. 6A(A1)(1) substituted for Sch. 41 para. 6A(1) by [2015 c. 11 Sch. 20 para. 11\(2\)](#)