Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART V

TRANSFER OF BUSINESS ASSETS[F1, [F2BUSINESS ASSET DISPOSAL RELIEF] AND INVESTORS' RELIEF]

Textual Amendments

F1 Words in Pt. 5 heading inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 14 para. 1(1)**

F2 Words in Act substituted (with effect for the tax year 2020-21 and subsequent tax years) by Finance Act 2020 (c. 14), Sch. 3 paras. 7(2)(a), **8** (with Sch. 3 para. 7(3))

CHAPTER I

[F3TRANSFER OF BUSINESS ASSETS:] GENERAL PROVISIONS

Textual Amendments

F3 Words in Pt. 5 Ch. 1 heading inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 14 para. 1(2)**

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

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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.

(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 **[**[F4]or amending**]** assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments **[**[F5]or amendments**]** 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.

Textual Amendments

F4 Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(1)(a)**

F5 Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(1)(b)**

Modifications etc. (not altering text)

C1 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C3 S. 152 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(3)**

C4 Ss. 152-154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(4)**

C5 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C6 S. 152 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(1)(a)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C7 S. 152 restricted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(2)(a)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C8 S. 152 applied (with modifications) (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C9 Ss. 152, 153 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 22 para. 67**

C10 S. 152 modified (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 132**

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 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

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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.

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C4 Ss. 152-154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(4)**

C5 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C9 Ss. 152, 153 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 22 para. 67**

C11 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C12 S. 153 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(3)**

C13 S. 153 restricted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(2)(a)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C14 S. 153 applied (with modifications) (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C15 S. 153 modified (with effect in accordance with s. 84(1) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 132(2)(3)**

[F6 153A Provisional application of sections 152 and 153.

(1) This section applies where a person carrying on a trade who for a consideration disposes of, or of his interest in, any assets ("the old assets") declares, in his return for the chargeable period in which the disposal takes place—

(a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets ("the new assets") which on the acquisition will be taken into use, and used only, for the purposes of the trade;

(b) that the acquisition will take place as mentioned in subsection (3) of section 152; and

(c) that the new assets will be within the classes listed in section 155.

(2) Until the declaration ceases to have effect, section 152 or, as the case may be, section 153 shall apply as if the acquisition had taken place and the person had made a claim under that section.

(3) The declaration shall cease to have effect as follows—

(a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 152 or 153, on the day on which it is so withdrawn or superseded; and

(b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.

(4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—

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(a) shall be made by making or amending assessments or by repayment or discharge of tax; and

(b) shall be so made notwithstanding any limitation on the time within which assessments or amendments may be made.

(5) In this section "the relevant day" means—

(a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place;

(b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.

(6) Subsections (6), (8), (10) and (11) of section 152 shall apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F6 S. 153A inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(2)**

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.

[[F7](2A) If asset No 2 or shares in a company which holds asset No 2 are transferred as part of the process of a merger to which section 140E applies, the transfer shall be disregarded for the purpose of subsection (2), and for that purpose—

(a) if the transferee holds asset No 2, it shall be treated for the purpose of subsection (2), in relation to asset No 2, as if it were the claimant, or

(b) if the transferee holds shares in the company which holds asset No 2, section 175 shall apply in relation to the group of which the transferee is a member as if it were the same group as any group of which the claimant was a member before the merger.

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(2B) If, as part of the process of a merger to which section 140E applies, the transferee becomes a member (whether or not as the principal company) of a group of which the claimant is also a member, for the purposes of subsection (2) section 175 shall apply in relation to the trade carried on by the claimant as if the group of which the transferee is a member were the same group as the group of which the claimant was a member before the merger.

(2C) In subsections (2A) and (2B), "transferor" and "transferee" have the meaning given by section 140E(9).**]**

[[F8](2D) Subsections (2A) and (2B) shall apply in relation to the transfer of an asset in circumstances where section 140A applies as they apply in relation to the transfer of an asset on a merger to which section 140E applies, and for that purpose—

(a) references to the merger shall be treated as references to the transfer,

(b) references to section 140E shall be treated as references to section 140A, and

(c) references to the transferor and the transferee shall be treated as references to the transferor and the transferee in relation to the asset.**]**

(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).

(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).

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Textual Amendments

F7 S. 154(2A)-(2C) substituted for s. 154(2A)(2B) (with effect in accordance with reg. 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 6** (with S.I. 2008/1579, reg. 4(1))

F8 S. 154(2D) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 8** (with S.I. 2008/1579, **reg. 4(1)**)

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C4 Ss. 152-154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(4)**

C5 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C16 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C17 S. 154 applied (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(5)**

C18 S. 154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(2)**

C19 S. 154 restricted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(2)(b)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C20 S. 154 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(6)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C21 S. 154 modified (1.2.2001) by Transport Act 2000 (c. 38), s. 275(1), **Sch. 7 para. 6(2)**; S.I. 2001/57, art. 3(1)

C22 S. 154 modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 12(2)**

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 [M1]Hovercraft Act 1968).

CLASS 3

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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).

[[F9]CLASS 6

Ewe and suckler cow premium quotas (that is, rights in respect of any ewes or suckler cows to receive payments by way of any subsidy entitlement to which is determined by reference to limits contained in a Community instrument).**]**

[[F10]CLASS 7

Fish quota (that is, an allocation of quota to catch fish stocks, which derives from the Total Allowable Catches set in pursuance of Article 8(4) of Council Regulation (EEC) 3760/92 and under annual Council Regulations made in accordance with that Article, or under any replacement Community Instruments).**]**

[[F11]CLASS 7A

[[F12]Assets within heads A and B below.

Head A**]**

Payment entitlements under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of **[**[F13]Council Regulation (EC) No 73/2009**]**).

[[F14]Head B

Payment entitlements under the basic payment scheme (that is, the scheme of income support for farmers in pursuance of Regulation (EU) No 1307/2013 of the European Parliament and of the Council).**]]**

[[F15]CLASS 8

Assets within heads A and B below.

Head A

Rights of a member of Lloyd's under a syndicate within the meaning of Chapter III of Part II of the Finance Act 1993.

Head B

An asset which a member of Lloyd's is treated as having acquired by virtue of section 82 of the Finance Act 1999.**]**

Textual Amendments

F9 Words in s. 155 inserted (27.7.1993 with effect as mentioned in s. 86(4)) by 1993 c. 34, **s. 86(1)(4)**

F10 Words in s. 155 added (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 1993, Section 86(2), (Fish Quota) Order 1999 (S.I. 1999/564), arts. 1(1), **3**

F11 Words in s. 155 inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 1993, Section 86(2), (Single Payment Scheme) Order 2005 (S.I. 2005/409), arts. 1(1), **2**

F12 Words in s. 155 inserted (with effect in accordance with s. 61(4) of the amending Act) by Finance Act 2014 (c. 26), **s. 61(2)**

F13 Words in s. 155 substituted (with effect in accordance with s. 37(4) of the amending Act) by Finance Act 2012 (c. 14), **s. 37(1)**

F14 Words in s. 155 inserted (with effect in accordance with s. 61(4) of the amending Act) by Finance Act 2014 (c. 26), **s. 61(3)**

F15 Words in s. 155 inserted (with application in accordance with s. 84(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 84(1)**

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C5 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C23 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras. 3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C24 S. 155 restricted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 132(5)**

Marginal Citations

M1 1968 c.59.

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.

[[F16](4) Where [F17]... **[**[F18]section 19 of ITTOIA 2005**]**[**[**[F19]or section 42 of CTA 2009**]** applies (tied premises: receipts and expenses treated as those of trade), the trader shall be treated, to the extent that the conditions in subsection (1) of that section are met in relation to premises, as occupying as well as using the premises for the purposes of the trade.**]**

Textual Amendments

F16 S. 156(4) substituted (with effect in accordance with s. 41(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 41(2)** (with art. 41(4)-(7))

F17 Words in s. 156(4) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 371(a), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F18 Words in s. 156(4) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 439** (with Sch. 2)

F19 Words in s. 156(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 371(b)** (with Sch. 2 Pts. 1, 2)

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Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C5 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C25 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

[F20 156ZA Intangible fixed assets: roll-over relief

(1) This section applies if a company is entitled to relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of realisation and reinvestment) as a result of—

(a) section 898 of that Act (roll-over relief where pre-FA 2002 assets disposed of on or after 1 April 2002), or

(b) section 899 of that Act (roll-over relief where degrouping charge on pre-FA 2002 asset arises on or after 1 April 2002).

(2) The company is treated for the purposes of this Act as if the consideration for the disposal of the old asset were reduced by the amount available for relief.

(3) Subsection (2) does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets.

(4) In this section—

"the old asset" has the same meaning as in Chapter 7 of Part 8 of CTA 2009 (see section 754(2)), and

"the Taxes Acts" means the enactments relating to income tax, corporation tax or chargeable gains.

Textual Amendments

F20 Ss. 156ZA, 156ZB inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 372** (with Sch. 2 Pts. 1, 2)

156ZB Intangible fixed assets: interaction with relief under Chapter 7 of Part 8 of CTA 2009

(1) **[**F21 Subsection (2)**]** applies if there is a disposal on or after 1 April 2002 of an asset that is both—

(a) an asset of a class specified in section 155, and

(b) an intangible fixed asset for the purposes of Part 8 of CTA 2009.

(2) The period specified in section 152(3)—

(a) does not include any period beginning on or after 1 April 2002, and

(b) may not be extended so as to include any such period.

(3) Classes 4 to 7A in section 155 do not apply for the purposes of corporation tax as respects the acquisition of new assets that are chargeable intangible assets for the purposes of Part 8 of CTA 2009 (see section 741 of that Act).

(4) In the case of an acquisition before 22 March 2005, subsection (3) applies as if it referred to Classes 4 to 7, instead of Classes 4 to 7A.**]**

Textual Amendments

F20 Ss. 156ZA, 156ZB inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 372** (with Sch. 2 Pts. 1, 2)

F21 Words in s. 156ZB(1) substituted (with effect in accordance with s. 62(3) of the amending Act) by Finance Act 2014 (c. 26), **s. 62(1)**

[F22 156A Cessation of trade by limited liability partnership.

(1) Where, immediately before the time of cessation of trade, a member of a limited liability partnership holds an asset, or an interest in an asset, acquired by him for a consideration treated as reduced under section 152 or 153, he shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.

(2) Where, as a result of section 154(2), a chargeable gain on the disposal of an asset, or an interest in an asset, by a member of a limited liability partnership has not accrued before the time of cessation of trade, the member shall be treated as if the chargeable gain accrued immediately before that time.

(3) In this section "the time of cessation of trade", in relation to a limited liability partnership, means the time when section 59A(1) ceases to apply in relation to the limited liability partnership.**]**

Textual Amendments

F22 S. 156A inserted (6.4.2001) by Limited Liability Partnerships Act 2000 (c. 12), **ss. 10(4)**, 19(1); S.I. 2000/3316, art. 2

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 **[**F23 personal company**]**, **[**F24 that is to say, a company the voting rights in which are exercisable, as to not less than 5 per cent., by him**]**,

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.

Textual Amendments

F23 Words in s. 157 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

F24 Words in s. 157 substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 140(3)**

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

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, **[**[F25]and

(f) in relation to the activities of a company owned by such an unincorporated association or other body ("the parent body"), but in the case of any assets within head A of class 1 only if they are both occupied and used by the parent body, and in the case of any other assets only if they are used by the parent body,**]**

as they apply in relation to a trade.

[[F26](1A) For the purposes of subsection (1)(f) the parent body owns the company if—

(a) it holds not less than 90% of the company's ordinary share capital,

(b) it is beneficially entitled to not less than 90% of the profits available for distribution to the equity holders of the company, and

(c) it would be beneficially entitled on a winding up to not less than 90% of the assets of the company available for distribution to equity holders.

(1B) For the purposes of subsection (1A)—

(a) "ordinary share capital" has the meaning given by section 832(1) of the Taxes Act and also includes, in relation to a company that has no share capital, any interests in the company possessed by members of the company, and

(b) the meaning of "equity holder" and method of determination of profits or assets available for distribution shall be that prescribed for the purposes of paragraph 8 of Schedule 7AC by sub-paragraphs (2) and (3) of that paragraph.**]**

(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, [F27]... .

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

(3) Sections 152 to 157 and this section shall be construed as one.

Textual Amendments

F25 S. 158(1)(f) and preceding word inserted (with effect in accordance with art. 6(4) of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2009 (S.I. 2009/730), arts. 1(1), **6(2)**

F26 S. 158(1A)(1B) inserted (with effect in accordance with art. 6(4) of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2009 (S.I. 2009/730), arts. 1(1), **6(3)**

F27 Words in s. 158(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 373, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C26 S. 158 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(7)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

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 [F28]... 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 **[**[F29]the disposal would be chargeable to capital gains tax under section 1A(3)(a) or to corporation tax under section 2B(3).**]**

(5) In this section—

"dual resident" means a person who is resident [F30]... 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,

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(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.

(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.

Textual Amendments

F28 Words in s. 159(2)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 98(2)**

F29 Words in s. 159(4) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 52**

F30 Words in s. 159(5) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 98(3)**

Modifications etc. (not altering text)

C2 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

[F31 159A Disposals of interests in UK land by non-residents: roll-over relief

(1) This section applies in a case where—

(a) the old assets that are disposed of are interests in UK land, and

(b) a chargeable gain accruing on the disposal would (apart from section 152) be within the charge to tax because of section 1A(3)(b) or 2B(4)(a).

(2) Section 152 applies only if the new assets that are acquired are interests in UK land.

(3) In this section—

(a) "interest in UK land" has the meaning given by section 1C,

(b) "the old assets" and "the new assets" have the same meaning as in section 152,

(c) any reference to a disposal of the old assets includes a disposal of an interest in them,

(d) the reference to the acquisition of the new assets includes the acquisition of an interest in them or entering into an unconditional contract for their acquisition.]

Textual Amendments

F31 S. 159A substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 53**

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[F32]160 Dual resident companies: roll-over relief.

. . . . . .

Textual Amendments

F32 S. 160 repealed (with effect in accordance with s. 251(1)(a)(6) of the amending Act) by Finance Act 1994 (c. 9), s. 251(6), **Sch. 26 Pt. VIII(1)**

Stock in trade

161 Appropriations to and from stock.

(1) Subject to **[**[F33]subsection (3)**]** below, where an asset acquired by a person otherwise than as trading stock of a trade carried on by him is appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if he had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to him, he shall be treated as having thereby disposed of the asset by selling it for its then market value.

(2) If at any time an asset forming part of the trading stock of a person's trade is appropriated by him for any other purpose, or is retained by him on his ceasing to carry on the trade, he shall be treated as having acquired it at that time for a consideration equal to the amount brought into the accounts of the trade in respect of it for tax purposes on the appropriation or on his ceasing to carry on the trade, as the case may be.

(3) Subject to subsection (4) below, subsection (1) above shall not apply in relation to **[**[F34]a case where a chargeable gain would have accrued to a person on the appropriation of an asset for the purposes of a trade as mentioned in that subsection**][**[F35]if—

(a) he is chargeable to corporation tax in respect of the profits of the trade **[**[F36]under Chapter 2 of Part 3 of CTA 2009 and the trade is carried on wholly or partly in the United Kingdom**]**, or

(b) he is chargeable to income tax in respect of the profits of the trade under Chapter 2 of Part 2 of ITTOIA 2005 and the trade is carried on wholly or partly in the United Kingdom,

and he elects**]** that instead the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for purposes of tax, be treated as reduced by the amount of **[**[F37]that chargeable gain, and where subsection (1)**]** does not apply by reason of such an election, the profits of the trade shall be computed accordingly.

[F38](3ZA) . . . . . .

[F39](3ZB) . . . . . .

[[F40](3A) An election under subsection (3) [F41]... above shall be made—

(a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the period of account in which the asset is appropriated for the purposes of the trade as trading stock;

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(b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the asset is appropriated for the purposes of the trade as trading stock;

[F42] . . . . .]

(4) If a person making an election under subsection (3) [[F43]or (3ZA)] is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others.

[[F44](5) If—

[[F45](a) any person is charged to income tax by virtue of sections 517B and 517C of ITA 2007 (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 517B(7) of that Act is met, and]

(b) the gain is calculated on the basis that any property was appropriated as trading stock,

the property shall be treated on that basis also for the purposes of this section.]

[[F46](6) If—

[[F47](a) any person is charged to corporation tax by virtue of sections 356OB and 356OC of CTA 2010 (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 356OB(7) of that Act is met, and]

(b) the gain is calculated on the basis that any property was appropriated as trading stock,

the property shall be treated on that basis also for the purposes of this section.]

Textual Amendments

F33 Words in s. 161(1) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 54(2)**

F34 Words in s. 161(3) substituted (with effect in accordance with s. 26(4) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **s. 26(2)(a)**

F35 Words in s. 161(3) substituted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by The Income Tax (Trading and Other Income) Act 2005 (Consequential Amendments) Order 2006 (S.I. 2006/959), arts. 1(2), **3(3)**

F36 Words in s. 161(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 374** (with Sch. 2 Pts. 1, 2)

F37 Words in s. 161(3) substituted (with effect in accordance with s. 26(4) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **s. 26(2)(b)**

F38 S. 161(3ZA) omitted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 1 para. 54(3)**

F39 S. 161(3ZB) omitted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 1 para. 54(3)**

F40 S. 161(3A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 36**

F41 Words in s. 161(3A) omitted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 1 para. 54(4)**

F42 Words in s. 161(3A) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

F43 Words in s. 161(4) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 25 para. 11(5)**

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F44 S. 161(5) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 321** (with Sch. 2)

F45 S. 161(5)(a) substituted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(10)** (with savings in 2017 c. 32, s. 39(1)(2))

F46 S. 161(6) inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 240** (with Sch. 2)

F47 S. 161(6)(a) substituted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(9)** (with savings in 2017 c. 32, s. 39(1)(2))

Modifications etc. (not altering text)

C27 S. 161 applied (with modifications) (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 26 para. 45(2)**

Transfer of business to a company

162 Roll-over relief on transfer of business.

(1) This section shall apply for the purposes of this Act where a person who is not a company transfers to a company a business as a going concern, together with the whole assets of the business, or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares issued by the company to the person transferring the business.

Any shares so received by the transferor in exchange for the business are referred to below as "the new assets".

(2) The amount determined under subsection (4) below shall be deducted from the aggregate of the chargeable gains less allowable losses ("the amount of the gain on the old assets").

(3) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—

(a) the amount determined under subsection (4) below shall be apportioned between the new assets as a whole, and

(b) the sums allowable as a deduction under section 38(1)(a) shall be reduced by the amount apportioned to the new asset under paragraph (a) above;

and if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the transferor.

(4) The amount referred to in subsections (2) and (3)(a) above shall not exceed the cost of the new assets but, subject to that, it shall be the fraction—

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

of the amount of the gain on the old assets where—

"A" is the cost of the new assets, and

"B" is the value of the whole of the consideration received by the transferor in exchange for the business;

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and for the purposes of this subsection "the cost of the new assets" means any sums which would be allowable as a deduction under section 38(1)(a) if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

(5) References in this section to the business, in relation to shares or consideration received in exchange for the business, include references to such assets of the business as are referred to in subsection (l) above.

Modifications etc. (not altering text)

C28 S. 162 modified by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2010/294, regs. 1(1), **21**)

C29 S. 162(4) modified (with effect in accordance with art. 1(2)(3), Sch. 1 of the affecting S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), regs. 1(1), **46(2)**

C30 S. 162(4) modified by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Z7 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2010/294, regs. 1(1), **21**)

[F48 162A Election for section 162 not to apply

(1) Section 162 shall not apply where the transferor makes an election under this section.

(2) An election under this section must be made by a notice given to an officer of the Board no later than the relevant date.

(3) Except where subsection (4) below applies, the relevant date is the second anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.

(4) Where, by the end of the year of assessment following the one in which the transfer of the business took place, the transferor has disposed of all the new assets, the relevant date is the first anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.

(5) For the purposes of subsection (4) above—

(a) a disposal of any of the new assets by the transferor shall be disregarded if it falls within section 58(1) (transfers between **[**F49 spouses and civil partners**]**); but

(b) where a disposal of any assets to a person is disregarded by virtue of paragraph (a) above, a subsequent disposal by that person of any of those assets (other than a disposal to the transferor) shall be regarded as a disposal by the transferor.

(6) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this section.

(7) Where, immediately before it was transferred, the business was owned by two or more persons—

(a) each of them has a separate entitlement to make an election under this section;

(b) an election made by a person by virtue of paragraph (a) above shall apply only to—

(i) the share of the amount of the gain on the old assets, and

(ii) the share of the new assets,

that is attributable to that person for the purposes of this Act.

(8) The reference in subsection (7) above to ownership by two or more persons includes, in Scotland as well as elsewhere in the United Kingdom, a reference to ownership by a partnership consisting of two or more persons.

(9) Expressions used in this section and in section 162 have the same meaning in this section as in that one.

But references in this section to new assets also include any shares or debentures that are treated by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains) as the same asset as the new assets.**]**

Textual Amendments

F48 S. 162A inserted (with application in accordance with s. 49(2) of the amending Act) by Finance Act 2002 (c. 23), **s. 49(1)**

F49 Words in s. 162A(5)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **111**

[F50 Transfer of business from company to shareholders

Textual Amendments

F50 Ss. 162B, 162C and cross-heading inserted (with effect in accordance with s. 61(6) of the amending Act) by Finance Act 2013 (c. 29), **s. 61(1)**

162B Disincorporation relief: assets (including pre-FA 2002 goodwill)

(1) This section applies where—

(a) a company transfers its business to some or all of the shareholders of the company, and

(b) a claim for disincorporation relief in respect of the transfer has been made under section 58 of the Finance Act 2013.

(2) The disposal and acquisition of any qualifying asset of the business included in the transfer is to be deemed to be for a consideration equal to the lower of—

(a) the sums allowable under section 38 as a deduction in the computation of the gain accruing to the company on the disposal of the asset in question, and

(b) the market value of the asset.

(3) In subsection (2) a "qualifying asset" means—

(a) goodwill, or

(b) an interest in land which is not held as trading stock.

(4) But subsection (2) does not apply to the goodwill of the business if section 162C applies to it.

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162C Disincorporation relief: post-FA 2002 goodwill

(1) This section applies where—

(a) a company transfers its business to some or all of the shareholders of the company,

(b) a claim for disincorporation relief in respect of the transfer has been made under section 58 of the Finance Act 2013, and

(c) section 849A of CTA 2009 (disincorporation relief: transfer values for post-FA 2002 goodwill) applies to the transfer of the goodwill of the business.

(2) The acquisition of the goodwill of the business is deemed to be for a consideration equal to the value at which the goodwill is treated as transferred by virtue of section 849A of CTA 2009.**]**

Retirement relief

[F51]163 Relief for disposals by individuals on retirement from family business.

. . . . . .

Textual Amendments

F51 S. 163 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), s. 140(2)(a), **Sch. 27 Pt. III(31)**

[F52]164 Other retirement relief.

. . . . . .

Textual Amendments

F52 S. 164 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), s. 140(2)(b), **Sch. 27 Pt. III(31)**

[F53]CHAPTER IA

ROLL-OVER RELIEF ON RE-INVESTMENT

Textual Amendments

F53 Pt. 5 Ch. 1A repealed (with effect in accordance with s. 141(2)(a), Sch. 27 Pt. 3(32) of the amending Act) by Finance Act 1998 (c. 36), s. 141(1)(a), **Sch. 27 Pt. 3(32)**

[F53]164A Relief on re-investment for individuals.

. . . . . .

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

[F53]164B Roll-over relief on re-investment by trustees.

. . . . . .

[F53]164BA Interaction with retirement relief

. . . . . .

[F53]164C Restriction applying to retirement relief and roll-over relief on re-investment.

. . . . . .

[F53]164D Relief carried forward into replacement shares.

. . . . . .

[F53]164E Application of Chapter in cases of an exchange of shares.

. . . . . .

[F53]164F Failure of conditions of relief.

. . . . . .

[F53]164FA Loss of relief in cases where shares acquired on being issued.

. . . . . .

[F53]164FB Qualifying investment acquired from husband or wife.

. . . . . .

[F53]164FC Multiple claims.

. . . . . .

[F53]164G Meaning of “qualifying company".

. . . . . .

[F53]164H Property companies etc. not to be qualifying companies.

. . . . . .

[F53]164I Qualifying trades.

. . . . . .

[F53]164J Provisions supplementary to section 164I.

. . . . . .

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

[F53]164K Foreign residents.

. . . . . .

[F53]164L Anti-avoidance provisions.

. . . . . .

[F53]164M Exclusion of double relief.

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[F53]164MA Exclusion of double relief

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[F53]164N Interpretation of Chapter IA.

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CHAPTER II

GIFTS OF BUSINESS ASSETS

165 Relief for gifts of business assets.

(1) If—

(a) an individual ("the transferor") makes a disposal otherwise than under a bargain at arm's length of an asset within subsection (2) below, and

(b) a claim for relief under this section is made by the transferor and the person who acquires the asset ("the transferee") or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (3) and **[**[F54]sections 166, 167**[**[F55], **[**[F56]167A,**]** 169, 169B and 169C**]]**, subsection (4) below shall apply in relation to the disposal.

(2) An asset is within this subsection if—

(a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—

(i) the transferor, or

(ii) his **[**[F57]personal company**]**, or

(iii) a member of a trading group of which the holding company is his **[**[F57]personal company**]**, or

(b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—

(i) the shares or securities are **[**[F58]not listed on a recognised stock exchange**]**, or

(ii) the trading company or holding company is the transferor's **[**[F57]personal company**]**.

(3) Subsection (4) below does not apply in relation to a disposal if—

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[F59](a) . . . . . .

[F59](b) . . . . . .

[[F60](ba) in the case of a disposal of shares or securities, the transferee is a company,**]**

(c) in the case of a disposal of qualifying corporate bonds, a gain is deemed to accrue by virtue of section 116(10)(b), or

(d) subsection (3) of section 260 applies in relation to the disposal (or would apply if a claim for relief were duly made under that section).

(4) Where a claim for relief is made under this section in respect of a disposal—

(a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and

(b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,

shall each be reduced by an amount equal to the held-over gain on the disposal.

(5) Part I of Schedule 7 shall have effect for extending the relief provided for by virtue of subsections (1) to (4) above in the case of agricultural property and for applying it in relation to settled property.

(6) Subject to Part II of Schedule 7 and subsection (7) below, the reference in subsection (4) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (4) above [F61]..., and in subsection (7) below that chargeable gain is referred to as the unrelieved gain on the disposal.

(7) In any case where—

(a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of section 17(1)) for a disposal in respect of which a claim for relief is made under this section, and

(b) that actual consideration exceeds the sums allowable as a deduction under section 38,

the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.

[[F62](7A) Subsections (7B) and (7C) apply in any case where—

(a) the disposal is a **[**[F63]direct or indirect disposal of UK land which meets the non-residence condition**]**, and

(b) the transferee is resident in the United Kingdom.

(7B) Subsections (4) and (6) have effect in relation to the disposal as if the references to "chargeable gain" were **[**[F64]references to "so much of any gain accruing on the disposal as falls to be dealt with as mentioned in subsection (7D)(a) or (b)"**]**.

(7C) Subsection (7) has effect in relation to the disposal as if the reference to "the excess referred to in paragraph (b) above" were a reference to **[**[F65]"so much of the gain mentioned in subsection (7B)**]** which, ignoring this section and section 17(1), would accrue to the transferor on the disposal".**]**

[[F66](7D) For the purposes of subsections (7A) to (7C) a disposal is a "direct or indirect disposal of UK land which meets the non-residence condition" if it is—

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(a) a disposal on which a gain accrues that falls to be dealt with by section 1A(3) because the asset disposed of is within paragraph (b) or (c) of that subsection, or

(b) a disposal on which a gain accrues that falls to be dealt with by section 1A(1) in accordance with section 1G(2) because the asset disposed of is within section 1A(3)(b) or (c).**]**

(8) Subject to subsection (9) below, in this section and Schedule 7—

[[F67](a) "personal company", in relation to an individual, means a company the voting rights in which are exercisable, as to not less than 5 per cent., by that individual;

[[F68](aa) "holding company", "trading company" and "trading group" have the meaning given by section 165A; and**]]**

(b) "trade", "profession" and "vocation" have the same meaning as in the Income Tax Acts.

(9) In this section and Schedule 7 and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression "trade" shall be taken to include 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.

(10) Where a disposal **[**[F69]in relation to which subsection (4) above applies**]** is (or proves to be) a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

(a) the inheritance tax attributable to the value of the asset, and

(b) the amount of the chargeable gain as computed apart from this subsection,

and, in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

(11) Where an amount of inheritance tax—

(a) falls to be redetermined in consequence of the transferor's death within 7 years of making the chargeable transfer in question, or

(b) is otherwise varied,

after it has been taken into account under subsection (10) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

Textual Amendments

F54 Words in s. 165(1) substituted (with effect in accordance with s. 90(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 90(1)**

F55 Words in s. 165(1) substituted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 3(2)**

F56 Word in s. 165(1) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 23(2)**

F57 Words in s. 165 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**

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F58 Words in s. 165(2)(b)(i) substituted (with effect in accordance with s. 90(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 90(3)**

F59 S. 165(3)(a)(b) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

F60 S. 165(3)(ba) inserted (with effect in accordance with Sch. 21 para. 10(5) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 3(3)**

F61 Words in s. 165(6) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

F62 S. 165(7A)-(7C) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 23(3)**

F63 Words in s. 165(7A)(a) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 55(2)**

F64 Words in s. 165(7B) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 55(3)**

F65 Words in s. 165(7C) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 55(4)**

F66 S. 165(7D) inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 55(5)**

F67 S. 165(8)(a)(aa) substituted for s. 165(8)(a) (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 140(4)**

F68 S. 165(8)(aa) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 33**

F69 Words in s. 165(10) substituted (with effect in accordance with Sch. 21 para. 10(7) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 3(5)**

Modifications etc. (not altering text)

C31 S. 165 modified by S.I. 2006/964, reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2010 (S.I. 2010/294), regs. 1(1), **21**)

[F70 165A Meaning of "holding company", "trading company" and "trading group"

(1) This section has effect for the interpretation of section 165 (and this section).

(2) "Holding company" means a company that has one or more 51% subsidiaries.

(3) "Trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

(4) For the purposes of subsection (3) above "trading activities" means activities carried on by the company—

(a) in the course of, or for the purposes of, a trade being carried on by it,

(b) for the purposes of a trade that it is preparing to carry on,

(c) with a view to its acquiring or starting to carry on a trade, or

(d) with a view to its acquiring a significant interest in the share capital of another company that—

(i) is a trading company or the holding company of a trading group, and

(ii) if the acquiring company is a member of a group of companies, is not a member of that group.

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(5) Activities do not qualify as trading activities under subsection (4)(c) or (d) above unless the acquisition is made, or the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

(6) The reference in subsection (4)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

(a) such as would make that company a 51% subsidiary of the acquiring company, or

(b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group of companies.

(7) For the purpose of determining whether a company which has a qualifying shareholding in a joint venture company is a trading company—

(a) any holding by it of shares in the joint venture company is to be disregarded, and

(b) it is to be treated as carrying on an appropriate proportion of the activities of the joint venture company or, where the joint venture company is the holding company of a trading group, of the activities of that group;

and in paragraph (b) above "appropriate proportion" means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the company.

(8) "Trading group" means a group of companies—

(a) one or more of whose members carry on trading activities, and

(b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.

(9) For the purposes of subsection (8) above "trading activities" means activities carried on by a member of the group—

(a) in the course of, or for the purposes of, a trade being carried on by any member of the group,

(b) for the purposes of a trade that any member of the group is preparing to carry on,

(c) with a view to any member of the group acquiring or starting to carry on a trade, or

(d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—

(i) is a trading company or the holding company of a trading group, and

(ii) is not a member of the same group of companies as the acquiring company.

(10) Activities do not qualify as trading activities under subsection (9)(c) or (d) above unless the acquisition is made, or the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

(11) The reference in subsection (9)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

(a) such as would make that company a member of the same group of companies as the acquiring company, or

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(b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture company a member of the same group of companies as the acquiring company.

(12) For the purpose of determining whether a group of companies is a trading group in a case where any one or more members of the group has a qualifying shareholding in a joint venture company which is not a member of the group—

(a) every holding of shares in the joint venture company by a member of the group having a qualifying shareholding in it is to be disregarded, and

(b) each member of the group having such a qualifying shareholding is to be treated as carrying on an appropriate proportion of the activities of the joint venture company or, where the joint venture company is a holding company of a trading group, of the activities of that group;

and in paragraph (b) above "appropriate proportion" means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the member of the group.

(13) For the purposes of this section the activities of the members of a group of companies are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).

(14) In this section—

"51% subsidiary" has the meaning given by **[**[F71]Chapter 3 of Part 24 of CTA 2010**]**,

"group of companies" means a company which has one or more 51% subsidiaries together with those subsidiaries,

"joint venture company" means a company—

(a) which is a trading company or the holding company of a trading group, and

(b) 75% or more of the ordinary share capital of which (in aggregate) is held by not more than 5 persons (the shareholdings of members of a group of companies being regarded for the purposes of this paragraph as held by a single company),

"ordinary share capital" has the meaning given by section 989 of ITA 2007,

"qualifying shareholding", in relation to a company and a joint venture company, means—

(a) the holding by the company of 10% or more of the ordinary share capital of the joint venture company, or

(b) (where the company is a member of a group of companies) the holding by the company and the other members of the group (between them) of 10% or more of that ordinary share capital, and

"trade" means (subject to section 241(3)) anything which—

(a) is a trade, profession or vocation, within the meaning of the Income Tax Acts, and

(b) is conducted on a commercial basis and with a view to the realisation of profits.**]**

Textual Amendments

F70 S. 165A inserted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 34**

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F71 Words in s. 165A(14) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 241** (with Sch. 2)

166 Gifts to non-residents.

(1) **[**[F72]Subject to section 167A, section 165(4)**]** shall not apply where the transferee is **[**[F73]not resident**]** in the United Kingdom.

(2) Section 165(4) shall not apply where the transferee is an individual [F74]... if that individual [F74]... —

(a) though resident [F75]... in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

Textual Amendments

F72 Words in s. 166(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 24**

F73 Words in s. 166(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 99(2)**

F74 Words in s. 166(2) repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by Finance Act 1994 (c. 9), s. 251(7)(a), **Sch. 26 Pt. VIII(1)**

F75 Words in s. 166(2)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 99(3)**

167 Gifts to foreign-controlled companies.

(1) **[**[F76]Subject to section 167A, section 165(4)**]** shall not apply where the transferee is a company which is within subsection (2) below.

(2) A company is within this subsection if it is controlled by a person who, or by persons each of whom—

(a) is **[**[F77]not resident**]** in the United Kingdom, and

(b) **[**[F78]is or**]** is connected with the person making the disposal.

(3) For the purposes of subsection (2) above, a person who (either alone or with others) controls a company by virtue of holding assets relating to that or any other company and who is resident **[**[F79]in the United Kingdom is to be regarded as not resident**]** there if—

(a) he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements he would not be liable in the United Kingdom to tax on a gain arising on a disposal of the assets.

Textual Amendments

F76 Words in s. 167(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 25**

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F77 Words in s. 167(2)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 100(2)**

F78 Words in s. 167(2)(b) inserted (with effect in accordance with s. 41(2) of the amending Act) by Finance Act 2021 (c. 26), **s. 41(1)**

F79 Words in s. 167(3) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 100(3)**

[F80 167A Gifts of [F81 direct or indirect interests in UK land] to non-residents

(1) This section applies where the disposal in relation to which a claim could be made under section 165 is a disposal **[**F82 of an asset within section 1A(3)(b) or (c)**]** to a transferee who is not resident in the United Kingdom and, ignoring section 165—

(a) a gain would accrue to the transferor on the disposal, and

[F83 (b) on the assumption that the disposal is a direct or indirect disposal of UK land which meets the non-residence condition (whether or not that is the case), that gain would be a relevant gain (see subsections (6) and (7)).**]**

(2) Section 165(4) has effect in relation to the disposal as if it read—

"(4) Where a claim for relief is made under this section in respect of the disposal, the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, shall be reduced by an amount equal to the held-over gain on the disposal."

(3) Where the disposal is a **[**F84 direct or indirect disposal of UK land which meets the non-residence condition**]**—

(a) section 165(4), as modified by subsection (2) of this section, has effect in relation to the disposal as if the reference to "chargeable gain" were a reference to **[**F85 "relevant gain"**]**,

(b) section 165(6) has effect in relation to the disposal as if the references to "chargeable gain" were references to **[**F86 "relevant gain"**]**, and

(c) section 165(7) has effect in relation to the disposal as if the reference to "the excess referred to in paragraph (b) above" were a reference to **[**F87 "the relevant gain**]** which, ignoring this section and section 17(1), would accrue to the transferor on the disposal".

(4) Where a claim for relief is made under section 165 in relation to the disposal mentioned in subsection (1), on a subsequent disposal by the transferee of the whole or part of **[**F88 the asset within section 1A(3)(b) or (c)**]** which is the subject of the disposal mentioned in subsection (1), the whole or a corresponding part of the held-over gain (see section 165(6))—

(a) is deemed to accrue to the transferee (in addition to any gain or loss that actually accrues on that subsequent disposal), and

[F89 (b) (if that would not otherwise be the case) is to be treated as a relevant gain.**]**

(5) Where the subsequent disposal mentioned in subsection (4) is (or proves to be) a chargeable transfer for inheritance tax purposes, section 165(10) has effect in relation to the disposal as if—

(a) the reference to "the chargeable gain accruing to the transferee on the disposal of the asset" were a reference to the chargeable gain accruing on the disposal as computed apart from subsection (4), and

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(b) the reference in section 165(10)(b) to "the chargeable gain" were a reference to—

(i) the chargeable gain chargeable to capital gains tax by virtue of any provision of this Act accruing on the disposal, and

(ii) the held-over gain deemed to accrue under subsection (4).

[[F90](6) For the purposes of this section, a disposal is a "direct or indirect disposal of UK land which meets the non-residence condition" if it is—

(a) a disposal on which a gain accrues that falls to be dealt with by section 1A(3) because the asset disposed of is within paragraph (b) or (c) of that subsection, or

(b) a disposal on which a gain accrues that falls to be dealt with by section 1A(1) in accordance with section 1G(2) because the asset disposed of is within section 1A(3)(b) or (c).

(7) For the purposes of this section, a "relevant gain" means so much of any chargeable gain accruing on a disposal as falls to be dealt with as mentioned in subsection (6)(a) or (b).**]]**

Textual Amendments

F80 S. 167A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 26**

F81 Words in s. 167A heading substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(6)**

F82 Words in s. 167A(1) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(2)(a)**

F83 S. 167A(1)(b) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(2)(b)**

F84 Words in s. 167A(3) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(3)(a)**

F85 Words in s. 167A(3)(a) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(3)(b)**

F86 Words in s. 167A(3)(b) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(3)(c)**

F87 Words in s. 167A(3)(c) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(3)(d)**

F88 Words in s. 167A(4) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(4)(a)**

F89 S. 167A(4)(b) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(4)(b)**

F90 S. 167A(6)(7) substituted for s. 167A(6) (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 56(5)**

168 Emigration of donee.

(1) If—

(a) relief is given under section 165 in respect of a disposal to an individual or under section 260 in respect of a disposal to an individual ("the relevant disposal"); and

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[[F91](aa) the transferee is resident in the United Kingdom at the time of that disposal; and**]**

(b) at a time when he has not disposed of the asset in question, the transferee **[**[F92]ceases to be resident**]** in the United Kingdom,

then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 165 or 260) on the relevant disposal.

(2) For the purposes of subsection (1) above the transferee shall be taken to have disposed of an asset before the time there referred to only if he has made a disposal or disposals in connection with which the whole of the held-over gain on the relevant disposal was represented by reductions made in accordance with section 165(4)(b) or 260(3)(b) and where he has made a disposal in connection with which part of that gain was so represented, the amount of the chargeable gain deemed by virtue of this section to accrue to him shall be correspondingly reduced.

(3) The disposals by the transferee that are to be taken into account under subsection (2) above shall not include any disposal to which section 58 applies; but where any such disposal is made by the transferee, disposals by his spouse **[**[F93]or civil partner**]** shall be taken into account under subsection (2) above as if they had been made by him.

(4) Subsection (1) above shall not apply by reason of a person **[**[F94]ceasing to be resident**]** more than 6 years after the end of the year of assessment in which the relevant disposal was made.

(5) Subsection (1) above shall not apply in relation to a disposal made to an individual if—

(a) the reason for his **[**[F95]ceasing to be resident**]** in the United Kingdom is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and

(b) he again becomes resident [F96]... in the United Kingdom within the period of 3 years from the time when he ceases to be so, without having meanwhile disposed of the asset in question;

and accordingly no assessment shall be made by virtue of subsection (1) above before the end of that period in any case where the condition in paragraph (a) above is, and the condition in paragraph (b) above may be, satisfied.

(6) For the purposes of subsection (5) above a person shall be taken to have disposed of an asset if he has made a disposal in connection with which the whole or part of the held-over gain on the relevant disposal would, had he been resident in the United Kingdom, have been represented by a reduction made in accordance with section 165(4)(b) or 260(3)(b) and subsection (3) above shall have effect for the purposes of this subsection as it has effect for the purposes of subsection (2) above.

(7) Where an amount of tax assessed on a transferee by virtue of subsection (1) above is not paid within the period of 12 months beginning with the date when the tax becomes payable then, subject to subsection (8) below, the transferor may be assessed and charged (in the name of the transferee) to all or any part of that tax.

(8) No assessment shall be made under subsection (7) above more than 6 years after the end of the year of assessment in which the relevant disposal was made.

(9) Where the transferor pays an amount of tax in pursuance of subsection (7) above, he shall be entitled to recover a corresponding sum from the transferee.

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

(10) Gains on disposals made after a chargeable gain has under this section been deemed to accrue by reference to a held-over gain shall be computed without any reduction under section 165(4)(b) or 260(3)(b) in respect of that held-over gain.

Textual Amendments

F91 S. 168(1)(aa) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 7 para. 27**

F92 Words in s. 168(1)(b) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 101(2)**

F93 Words in s. 168(3) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **112**

F94 Words in s. 168(4) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 101(3)**

F95 Words in s. 168(5)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 101(4)(a)**

F96 Words in s. 168(5)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 101(4)(b)**

[F97 168A Postponing held-over gain: interests in UK land

(1) This section applies if—

(a) an interest in UK land is deemed to have been disposed of under section 168(1) by a transferee at any time, and

(b) the transferee makes an election under this subsection.

(2) The held-over gain (within the meaning of section 165 or 260) that, but for this subsection, would have accrued to the transferee at that time is not to accrue at that time.

(3) But, on a subsequent disposal by the transferee of the whole or part of the interest in UK land, the whole or a corresponding part of the held-over gain is treated as accruing on the subsequent disposal.

(4) This gain is in addition to any gain or loss that actually accrues on the subsequent disposal.

(5) In this section "interest in UK land" has the meaning given by section 1C.**]**

Textual Amendments

F97 S. 168A substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 57**

169 Gifts into dual resident trusts.

(1) This section applies where there is or has been a disposal of an asset to the trustees of a settlement in such circumstances that, on a claim for relief, section 165 or 260 applies, or would but for this section apply, so as to reduce the amounts of the chargeable gain and the consideration referred to in section 165(4) or 260(3).

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

(2) In this section "a relevant disposal" means such a disposal as is referred to in subsection (1) above.

(3) Relief under section 165 or 260 shall not be available on a relevant disposal if—

(a) at the material time the trustees to whom the disposal is made **[**[F98]are**]** resident [F99]... in the United Kingdom [F100]... ; and

(b) on a notional disposal of the asset concerned occurring immediately after the material time, the trustees would be regarded for the purposes of any double taxation relief arrangements—

(i) as resident in a territory outside the United Kingdom; and

(ii) as not liable in the United Kingdom to tax on a gain **[**[F101]accruing**]** on that disposal.

(4) In subsection (3) above—

(a) "the material time" means the time of the relevant disposal; and

(b) a "notional disposal" means a disposal by the trustees of the asset which was the subject of the relevant disposal.

Textual Amendments

F98 Word in s. 169(3)(a) substituted (with effect in accordance with Sch. 12 para. 37(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 paras. 37(1)(a)**, 41

F99 Words in s. 169(3)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 102**

F100 Words in s. 169(3)(a) repealed (with effect in accordance with Sch. 12 para. 37(3) of the amending Act) by Finance Act 2006 (c. 25), Sch. 12 paras. 37(1)(b), 41, **Sch. 26 Pt. 3(15)**

F101 Word in s. 169(3)(b)(ii) substituted (with effect in accordance with Sch. 12 para. 37(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 paras. 37(2)**, 41

[[F102]**169A Cessation of trade by limited liability partnership**

(1) This section applies where section 59A(1) ceases to apply to a limited liability partnership.

(2) A member of the partnership who immediately before the time at which section 59A(1) ceases to apply holds an asset, or an interest in an asset, acquired by him—

(a) on a disposal to members of a partnership, and

(b) for a consideration which is treated as reduced under section 165(4)(b) or 260(3)(b),

shall be treated as if a chargeable gain equal to the amount of the reduction accrued to him immediately before that time.**]**

Textual Amendments

F102 S. 169A inserted (with effect in accordance with s. 75(5) of the amending Act) by Finance Act 2001 (c. 9), **s. 75(3)**(5) (with Sch. 3)

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

[F103 169B Gifts to settlor-interested settlements etc

(1) Neither section 165(4) nor section 260(3) shall apply in relation to a disposal ("the relevant disposal")—
- (a) made by a person ("the transferor") to the trustees of a settlement, and
- (b) in respect of which Condition 1 or Condition 2 below is satisfied.

(2) Condition 1 is that, immediately after the making of the relevant disposal,—
- (a) there is a settlor (see section 169E) who has an interest in the settlement (see section 169F), or
- (b) an arrangement (see section 169G) subsists under which such an interest will or may be acquired by a settlor.

(3) Condition 2 is that—
- (a) a chargeable gain would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal,
- (b) in computing the gain, the allowable expenditure would to any extent fall to be reduced in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
- (c) immediately after the making of the relevant disposal,—
  - (i) that individual has an interest in the settlement, or
  - (ii) an arrangement subsists under which such an interest will or may be acquired by him.

(4) This section is subject to section 169D (exception for maintenance funds for historic buildings and certain settlements for disabled persons).

Textual Amendments

F103 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

169C Clawback of relief if settlement becomes settlor-interested etc

(1) This section applies in relation to a disposal ("the relevant disposal")—
- (a) made by a person ("the transferor") to the trustees of a settlement,
- (b) in relation to which section 165(4) or 260(3) applies, or would apart from this section apply, and
- (c) in respect of which Condition 1 or Condition 2 below is satisfied.

(2) Condition 1 is that, at any time during the clawback period,—
- (a) there is a settlor who has an interest in the settlement, or
- (b) an arrangement subsists under which such an interest will or may be acquired by a settlor.

(3) Condition 2 is that—
- (a) in computing the chargeable gain which would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal)

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accrue to the transferor on that disposal, the allowable expenditure would fall to be reduced,

(b) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and

(c) at any time during the clawback period,—

(i) that individual has an interest in the settlement, or

(ii) an arrangement subsists under which such an interest will or may be acquired by him.

(4) If no claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time, neither section 165(4) nor section 260(3) shall apply in relation to that disposal.

(5) Subsections (7) to (9) below apply if a claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time.

(6) But those subsections do not apply if—

(a) the transferor is an individual, and

(b) he dies before the material time.

(7) A chargeable gain, of an amount equal to the amount of the held-over gain (within the meaning of section 165 or 260) on the relevant disposal, shall be treated for the purposes of tax in respect of chargeable gains as accruing to the transferor at the material time.

(8) For any chargeable period ending after the making of the relevant disposal, the chargeable gains and allowable losses of—

(a) the trustees of the settlement, or

(b) any person whose title to any property to any extent derives, directly or indirectly, from them,

shall be determined on the assumption that neither section 165(4)(b) nor section 260(3)(b) ever applied in relation to that disposal.

(9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (8) above (notwithstanding any limitation on the time within which any adjustment may be made).

(10) If a claim for relief under section 165 or 260 in respect of the relevant disposal is revoked, this section shall apply as if the claim had never been made.

(11) In this section "the clawback period" means the period—

(a) beginning immediately after the making of the relevant disposal, and

(b) ending six years after the end of the year of assessment in which that disposal was made.

(12) In this section "the material time" means the time at which subsection (1)(c) above first becomes satisfied.

(13) This section is subject to section 169D.

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Textual Amendments

F103 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

169D Exceptions to sections 169B and 169C

(1) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement in a year of assessment if the trustees have elected**[**F104, or could have elected,**]** that section **[**F105508 of ITA 2007 (trustees' election in respect of income arising from heritage maintenance property)**]** shall have effect in the case of—

(a) the settlement, or

(b) any part of the settlement,

in relation to that year of assessment.

(2) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement if the following conditions are satisfied.

[F106(3) The first condition is that, immediately after the making of the disposal, the settled property is held on trusts which secure that, during the lifetime of a disabled person—

(a) if any of the property is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit, and

(b) either—

(i) the disabled person is entitled to all of the income (if there is any) arising from any of the property, or

(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit.**]**

(4) The second condition is that if, immediately after the making of the disposal, one or more settlors is an interested settlor, each such settlor must at that time be a disabled beneficiary.

F107**[** (4A) Where the income arising from the settled property is held on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), subsection (3) has effect as if the reference to the lifetime of a disabled person were a reference to the period during which the income is held on trust for the disabled person.

(4B) The trusts on which the settled property is held are not to be treated as falling outside subsection (3) by reason only of—

(a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,

(b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),

(c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,

(d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),

(e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or

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(f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).

(4C) For the purposes of this section, the "annual limit" for a tax year is whichever is the lower of the following amounts—

(a) £3,000, and

(b) 3% of the amount that is the maximum value of the settled property during the tax year in question.

(4D) The Treasury may by order—

(a) specify circumstances in which subsection (4B)(a) is, or is not, to apply in relation to a trust, and

(b) amend the definition of "the annual limit" in subsection (4C).

(4E) An order under subsection (4D) may—

(a) make different provision for different cases, and

(b) contain transitional and saving provision.

(4F) A statutory instrument containing an order under subsection (4D) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

(5) For the purposes of subsection (4) above a settlor is an "interested settlor" in relation to a settlement if—

(a) he has an interest in the settlement, or

(b) an arrangement subsists under which such an interest will or may be acquired by him;

and for this purpose, the references to an individual's spouse **[**[F108]or civil partner**]** in section 169F(2) and (3) **[**[F109]and to an individual's dependent child in section 169F(2A)**]** shall be disregarded.

(6) In subsection (4) above "disabled beneficiary", in relation to a settlement, means a disabled person who—

(a) is a beneficiary under the settlement, or

(b) would be such a beneficiary if he had the interest in the settlement by virtue of which subsection (5)(b) above applies in relation to him.

[[F110](7) In this section "disabled person" has the meaning given by Schedule 1A to the Finance Act 2005.**]**

[F111](10) . . . . . .

(11) The references in subsection (3) above to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as references to the period during which the income is held on trust for him.

Textual Amendments

F103 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

F104 Words in s. 169D(1) inserted (with effect in accordance with s. 63(2) of the amending Act) by Finance Act 2013 (c. 29), **s. 63(1)**

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F105 Words in s. 169D(1) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 322** (with Sch. 2)

F106 S. 169D(3) substituted (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 12(2)**

F107 S. 169D(4A)-(4F) inserted (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 12(3)**

F108 Words in s. 169D(5) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **113**

F109 Words in s. 169D(5) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 12 para. 19(1)**(2)

F110 S. 169D(7) substituted for s. 169D(7)-(9) (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 12(4)**

F111 S. 169D(10) omitted (with effect in accordance with Sch. 44 para. 12(6)(7) of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 44 para. 12(5)**

169E Meaning of "settlor" in sections 169B to 169D and 169G

(1) For the purposes of this section **[**[F112]and**]**, sections 169B to 169D [F113]... , a person is a settlor in relation to a settlement if—

(a) he is an individual, and

(b) the settled property consists of, or includes, property originating from him.

(2) In subsection (1) above, the reference to property originating from a settlor is a reference to—

(a) property which that settlor has provided directly or indirectly for the purposes of the settlement, and

(b) property which wholly or partly represents that property or any part of it.

(3) In subsection (2) above, the references to property which a settlor has provided directly or indirectly—

(a) include references to property which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but

(b) do not include references to property which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person.

(4) In subsection (2) above, the reference to property which represents other property includes a reference to property which represents accumulated income from that other property.

Textual Amendments

F103 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

F112 Word in s. 169E(1) inserted (13.8.2009) by The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 1, **Sch. para. 30(a)**

F113 Words in s. 169E(1) omitted (13.8.2009) by virtue of The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 1, **Sch. para. 30(b)**

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169F Meaning of "interest in a settlement" in sections 169B to 169D

(1) For the purposes of this section and sections 169B to 169D, an individual is to be regarded as having an interest in a settlement if subsection (2)**[**[F114], (3) or (3A)**]** below applies.

(2) This subsection applies if—

(a) any property which **[**[F115]is or**]** may at any time be comprised in the settlement, or

(b) any derived property,

is, or will or may become, payable to or applicable for the benefit of the individual or his spouse **[**[F116]or civil partner**]** in any circumstances whatsoever.

(3) This subsection applies if the individual or his spouse **[**[F117]or civil partner**]** enjoys a benefit deriving directly or indirectly from—

(a) any property which is comprised in the settlement, or

(b) any derived property.

[F118](3A) **[** This subsection applies if—

(a) any property which is or may at any time be comprised in the settlement, or any derived property, is, or will or may become, payable to or applicable for the benefit of a child of the individual, at a time when that child is a dependent child of his, in any circumstances whatsoever, or

(b) a dependent child of the individual enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.**]**

(4) The references in subsections (2) and (3) above to the spouse **[**[F119]or civil partner**]** of the individual do not include—

(a) a spouse **[**[F120]or civil partner**]** from whom the individual is separated—

(i) under an order of a court,

(ii) under a separation agreement, or

(iii) in such circumstances that the separation is likely to be permanent, or

(b) the widow or widower **[**[F121]or surviving civil partner**]** of the individual.

[F122](4A) **[** In this section—

(a) "dependent child" means a child who—

(i) is under the age of 18 years,

(ii) is unmarried, and

(iii) does not have a civil partner, and

(b) "child" includes a stepchild.

(4B) For the purposes of subsection (3A) above no account shall be taken of a term of a settlement relating to dependent children of an individual in respect of any time at which he has no dependent child.**]**

(5) An individual is not to be regarded as having an interest in a settlement by virtue of subsection (2) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—

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[[F123](a) in the case of a marriage settlement or civil partnership settlement, the death of both parties to the marriage or civil partnership and of all or any of the children of the family of the parties to the marriage or civil partnership, or**]**

(b) the death of a child of the individual where the child had become beneficially entitled to the property or any derived property at an age not exceeding 25.

[In subsection (5) "child of the family", in relation to parties to a marriage or civil [F124](5A) partnership, means a child of one or both of them.**]**

(6) In this section "derived property", in relation to any property, means—

(a) income from that property,

(b) property directly or indirectly representing—

(i) proceeds of that property, or

(ii) proceeds of income from that property, or

(c) income from property which is derived property by virtue of paragraph (b) above.

Textual Amendments

F103 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

F114 Words in s. 169F(1) substituted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 4(1)(a)**

F115 Words in s. 169F(2)(a) inserted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 4(1)(b)**

F116 Words in s. 169F(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(2)**

F117 Words in s. 169F(3) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(3)**

F118 S. 169F(3A) inserted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 4(1)(c)**

F119 Words in s. 169F(4) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(4)(a)**

F120 Words in s. 169F(4)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(4)(b)**

F121 Words in s. 169F(4)(b) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(4)(c)**

F122 S. 169F(4A)(4B) inserted (with effect in accordance with Sch. 12 para. 4(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 4(1)(d)**

F123 S. 169F(5)(a) substituted (with effect in accordance with reg. 1(6) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(5)**

F124 S. 169F(5A) inserted (with effect in accordance with reg. 1(6) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **114(6)**

169G Meaning of "arrangement" in sections 169B to 169E and information power

(1) In sections 169B to 169E "arrangement" or "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.

[F125](2) . . . . . .

[F125](3) . . . . . .

[F125](4) . . . . . .

[F125](5) . . . . .]

Textual Amendments

F103 Ss. 169B-169G inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 21 para. 4**

F125 S. 169G(2)-(5) omitted (13.8.2009) by virtue of The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 1, **Sch. para. 31**

[[F126] CHAPTER 3

[[F2]BUSINESS ASSET DISPOSAL RELIEF]

Textual Amendments

F126 Pt. 5 Ch. 3 inserted (with effect in accordance with Sch. 3 para. 5 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 3 para. 2** (with Sch. 3 paras. 6-8)

169H Introduction

(1) This Chapter provides [[F127]for a lower rate of capital gains tax] in respect of qualifying business disposals ([[F128]to be known as "business asset disposal relief"]).

(2) The following are qualifying business disposals—

(a) a material disposal of business assets: see section 169I,

(b) a disposal of trust business assets: see section 169J, and

(c) a disposal associated with a relevant material disposal: see section 169K.

(3) But in the case of certain qualifying business disposals, [[F2]business asset disposal relief] is given only in respect of disposals of relevant business assets comprised in the qualifying business disposal: see [[F129]sections 169L and 169LA].

(4) Section 169M makes provision requiring the making of a claim for [[F2]business asset disposal relief].

(5) Sections 169N to 169P make provision as to the amount of [[F2]business asset disposal relief].

(6) Sections 169Q and 169R make provision about reorganisations.

(7) [[F130]Sections 169S and 169SA contain] interpretative provisions for the purposes of this Chapter.

Textual Amendments

F127 Words in s. 169H(1) substituted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by Finance (No. 2) Act 2010 (c. 31), **Sch. 1 para. 4**

F128 Words in s. 169H(1) substituted (with effect for the tax year 2020-21 and subsequent tax years) by Finance Act 2020 (c. 14), Sch. 3 paras. 7(1), **8** (with Sch. 3 para. 7(3))

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F129 Words in s. 169H(3) substituted (with effect in accordance with s. 42(5) of the amending Act) by Finance Act 2015 (c. 11), **s. 42(2)**

F130 Words in s. 169H(7) substituted (with effect in accordance with Sch. 13 para. 6(1) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 13 para. 2**

169I Material disposal of business assets

(1) There is a material disposal of business assets where—

(a) an individual makes a disposal of business assets (see subsection (2)), and

(b) the disposal of business assets is a material disposal (see subsections (3) to (7)).

(2) For the purposes of this Chapter a disposal of business assets is—

(a) a disposal of the whole or part of a business,

(b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or

(c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.

(3) A disposal within paragraph (a) of subsection (2) is a material disposal if the business is owned by the individual throughout the period of **[**[F131]2 years**]** ending with the date of the disposal.

(4) A disposal within paragraph (b) of that subsection is a material disposal if—

(a) the business is owned by the individual throughout the period of **[**[F132]2 years**]** ending with the date on which the business ceases to be carried on, and

(b) that date is within the period of 3 years ending with the date of the disposal.

(5) A disposal within paragraph (c) of subsection (2) is a material disposal if condition A**[**[F133], B, C or D**]** is met.

(6) Condition A is that, throughout the period of **[**[F134]2 years**]** ending with the date of the disposal—

(a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and

(b) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

(7) Condition B is that the conditions in paragraphs (a) and (b) of subsection (6) are met throughout the period of **[**[F135]2 years**]** ending with the date on which the company—

(a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or

(b) ceases to be a member of a trading group without continuing to be or becoming a trading company,

and that date is within the period of 3 years ending with the date of the disposal.

[F136](7ZA) **[** If, in any case where an individual disposes of any shares in a company—

(a) there has been an issue of shares in the company to the individual following a relevant business transfer, and

(b) any of the issued shares constitute, or otherwise form part of, the shares disposed of,

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the conditions in subsection (6)(a) and (b) are to be treated as met in any period ending immediately before the transfer throughout which the individual owned the business.

(7ZB) For the purposes of subsection (7ZA), shares have been issued "following a relevant business transfer" if they have been issued wholly or partly in exchange for the transfer of a business as a going concern, together with the whole assets of the business or the whole of those assets other than cash.**]**

[Condition C is that—

[F137](7A)
(a) the assets disposed of are relevant EMI shares,
(b) the option grant date is, or is before, the first date of the period of **[**[F138]2 years**]** ending with the date of the disposal, and
(c) throughout that period of **[**[F139]2 years**]**—
(i) the company is either a trading company or the holding company of a trading group, and
(ii) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

(7B) Condition D is that—
(a) the assets disposed of are relevant EMI shares acquired by the individual before the cessation date,
(b) the option grant date is, or is before, the first date of the period of **[**[F140]2 years**]** ending with the cessation date,
(c) the conditions in paragraph (c) of subsection (7A) are met throughout that period of **[**[F141]2 years**]**, and
(d) the cessation date is within the period of 3 years ending with the date of the disposal.

(7C) In this section "relevant EMI shares" means—
(a) shares of a company acquired by an individual to which subsection (7D) applies, or
(b) shares of a company to which subsection (7F) applies.

(7D) This subsection applies to shares of a company acquired by an individual if the individual—
(a) acquires them on or after 6 April 2013, and
(b) acquires them as a result of the exercise of a qualifying option within the meaning given by section 527(4) of ITEPA 2003 (enterprise management incentives) where the option is exercised on or before the tenth anniversary of the date mentioned in section 529(2) of that Act.

(7E) Subsection (7D) does not apply to shares acquired as a result of the exercise of a qualifying option if—
(a) a disqualifying event (see section 533 of ITEPA 2003) occurs in relation to the option before its exercise, and
(b) it is exercised later than the period mentioned in section 532(1)(b) of ITEPA 2003.

(7F) This subsection applies to shares of a company if—
(a) the shares are the new holding in a case in which section 127 applies in relation to an individual,

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(b) the original shares in that case are relevant EMI shares (whether by virtue of subsection (7D) or this subsection), and

(c) that case is one in which section 127 applies by virtue only of—

(i) section 126, or

(ii) subject to subsection (7G), section 135(3).

(7G) Subsection (7F)(c)(ii) applies only if—

(a) the exchange of shares in question is a qualifying exchange of shares as defined in paragraph 40 of Schedule 5 to ITEPA 2003, and

(b) when the exchange occurs, the independence requirement (see paragraph 9 of Schedule 5 to ITEPA 2003) and the trading activities requirement (see paragraphs 13 and 14 of that Schedule) are met in relation to the new company (see paragraph 40(1)(a) of that Schedule).

(7H) In this section "the original relevant EMI shares", in relation to shares which are relevant EMI shares by virtue of subsection (7F), means the shares originally acquired by the individual to which subsection (7D) applied.

(7I) If the shares disposed of are relevant EMI shares by virtue of subsection (7F), in relation to times before the reorganisation mentioned in section 127, in subsection (7A)(c) references to the company are to be read as references to (if different)—

(a) the company whose shares are the original relevant EMI shares, or

(b) if there has been more than one reorganisation since the original relevant EMI shares were acquired—

(i) the company whose shares are the original relevant EMI shares, or

(ii) if at the time in question the individual is holding relevant EMI shares which are shares of another company, that other company.

This subsection is subject to subsection (7N).

(7J) If the shares disposed of are relevant EMI shares by virtue of subsection (7F), the question of whether the requirement of subsection (7B)(a) is met is to be determined by reference to the date of the acquisition of the original relevant EMI shares.

(7K) Subject to what follows, in subsections (7A)(b) and (7B)(b) "the option grant date" means the date on which the qualifying option in question was granted.

(7L) Subsections (7M) and (7N) apply if the qualifying option is a replacement option for the purposes of the EMI code (see paragraph 41 of Schedule 5 to ITEPA 2003).

(7M) In subsections (7A)(b) and (7B)(b) "the option grant date" means—

(a) the date on which the old option was granted, or

(b) if the old option was also a replacement option, the date on which the earlier old option was granted,

and so on.

(7N) In relation to any time during the currency of an old option taken into account under subsection (7M), in subsection (7A)(c) references to the company are to be read as references to the company whose shares were the subject of the old option.

(7O) In subsection (7B) "the cessation date" means the date on which the company—

(a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or

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(b) ceases to be a member of a trading group without continuing to be or becoming a trading company.

(7P) Subsections (7Q) and (7R) apply in relation to a disposal of relevant EMI shares if—

(a) the shares were acquired as a result of the exercise of a qualifying option where—

(i) a disqualifying event (see section 533 of ITEPA 2003) occurs in relation to the option before its exercise, but

(ii) it is exercised within the period mentioned in section 532(1)(b) of ITEPA 2003, or

(b) if the shares are relevant EMI shares by virtue of subsection (7F), the original relevant EMI shares were acquired as mentioned in paragraph (a).

(7Q) Subsection (7A)(b) has effect as if the reference to the date of the disposal were a reference to the date of the disqualifying event.

(7R) If the disqualifying event is within section 534(1)(c) of ITEPA 2003, subsection (7B)(a) has effect as if the reference to the cessation date were a reference to the first day after the period mentioned in section 532(1)(b) of that Act if that day is later than the cessation date.**]**

(8) For the purposes of this section—

(a) an individual who disposes of (or of interests in) assets used for the purposes of a business carried on by the individual on entering into a partnership which is to carry on the business is to be treated as disposing of a part of the business,

(b) the disposal by an individual of the whole or part of the individual's interest in the assets of a partnership is to be treated as a disposal by the individual of the whole or part of the business carried on by the partnership, and

(c) at any time when a business is carried on by a partnership, the business is to be treated as owned by each individual who is at that time a member of the partnership.

Textual Amendments

F131 Words in s. 169I(3) substituted (with effect in accordance with Sch. 16 para. 4(1) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(a)**

F132 Words in s. 169I(4)(a) substituted (with effect in accordance with Sch. 16 para. 4(2) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(b)**

F133 Words in s. 169I(5) substituted (with effect in accordance with Sch. 24 para. 5(1) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 24 para. 1(2)**

F134 Words in s. 169I(6) substituted (with effect in accordance with Sch. 16 para. 4(1) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(a)**

F135 Words in s. 169I(7) substituted (with effect in accordance with Sch. 16 para. 4(3) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(c)**

F136 S. 169I(7ZA)(7ZB) inserted (with effect in accordance with Sch. 16 para. 4(1) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(d)**

F137 S. 169I(7A)-(7R) inserted (with effect in accordance with Sch. 24 para. 5(1) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 24 para. 1(3)**

F138 Words in s. 169I(7A)(b) substituted (with effect in accordance with Sch. 16 para. 4(1) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(a)**

F139 Words in s. 169I(7A)(c) substituted (with effect in accordance with Sch. 16 para. 4(1) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(a)**

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F140 Words in s. 169I(7B)(b) substituted (with effect in accordance with Sch. 16 para. 4(3) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(c)**

F141 Words in s. 169I(7B)(c) substituted (with effect in accordance with Sch. 16 para. 4(3) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(2)(c)**

Modifications etc. (not altering text)

C32 S. 169I modified (18.3.2015) by Finance Act 2015 (c. 11), **s. 43(4)**(5)

C33 S. 169I modified (with effect in accordance with Sch. 13 para. 6(1) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 13 para. 6(2)** (with Sch. 13 para. 6(3))

169J Disposal of trust business assets

(1) There is a disposal of trust business assets where—

(a) the trustees of a settlement make a disposal of settlement business assets (see subsection (2)),

(b) there is an individual who is a qualifying beneficiary (see subsection (3)), and

(c) the relevant condition is met (see subsections (4) and (5)).

(2) In this Chapter "settlement business assets" means—

(a) assets consisting of (or of interests in) shares in or securities of a company, or

(b) assets (or interests in assets) used or previously used for the purposes of a business,

which are part of the settled property.

(3) An individual is a qualifying beneficiary if the individual has, under the settlement, an interest in possession (otherwise than for a fixed term) in—

(a) the whole of the settled property, or

(b) a part of it which consists of or includes the settlement business assets disposed of.

(4) In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of **[**[F142]2 years**]** ending not earlier than 3 years before the date of the disposal—

(a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and

(b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group.

(5) In relation to a disposal of settlement business assets within paragraph (b) of that subsection, the relevant condition is that—

(a) the settlement business assets are used for the purposes of the business carried on by the qualifying beneficiary throughout the period of **[**[F143]2 years**]** ending not earlier than 3 years before the date of the disposal, and

(b) the qualifying beneficiary ceases to carry on the business on the date of the disposal or within the period of three years before that date.

(6) In subsection (5)—

(a) the reference to a business carried on by the qualifying beneficiary includes a business carried on by a partnership of which the qualifying beneficiary is a member, and

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(b) the reference to the qualifying beneficiary ceasing to carry on the business includes the qualifying beneficiary ceasing to be a member of the partnership or the partnership ceasing to carry on the business.

Textual Amendments

F142 Words in s. 169J(4) substituted (with effect in accordance with Sch. 16 para. 4(3) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(3)(a)**

F143 Words in s. 169J(5)(a) substituted (with effect in accordance with Sch. 16 para. 4(2) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(3)(b)**

169K Disposal associated with relevant material disposal

[[F144](1) There is a disposal associated with a relevant material disposal if—

(a) condition A1, **[**[F145]A1A,**]** A2 or A3 is met, and

(b) conditions B**[**[F146], C and D**]** are met.

(1A) Condition A1 is that an individual ("P") makes a material disposal of business assets which consists of the disposal of the whole or part of P's interest in the assets of a partnership, and—

(a) P's disposed of interest is at least a 5% interest in the partnership's assets, and

(b) at the date of the disposal, no partnership purchase arrangements exist.

[[F147](1AA) Condition A1A is that P makes a material disposal of business assets which consists of the disposal of the whole of P's interest in the assets of a partnership, and—

(a) that interest is an interest of less than 5%,

(b) P holds at least a 5% interest in the partnership's assets throughout a continuous period of at least 3 years in the 8 years ending with the date of the disposal, and

(c) at the date of the disposal, no partnership purchase arrangements exist.

(1AB) Subject to subsection (6A), for the purposes of conditions A1 and A1A, in relation to the disposal of an interest in the assets of a partnership, "partnership purchase arrangements" means arrangements (other than the material disposal itself) under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share).**]**

(1B) Condition A2 is that P makes a material disposal of business assets which consists of the disposal of shares in a company, all or some of which are ordinary shares, and at the date of the disposal—

[[F148](a) the ordinary shares disposed of constitute at least 5% of the company's ordinary share capital and are shares in the individual's personal company (and section 169S(3A)(a) to (c) apply here but as if the reference to the final day of the period mentioned in section 169S(3A)(a) were to the date of the disposal), and**]**

(b) no share purchase arrangements exist.

(1C) But condition A2 is not met if the disposal of shares is a disposal by virtue of section 122, other than such a disposal treated as made in consideration of a capital distribution from a company which is made in the course of dissolving or winding up the company.

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(1D) Condition A3 is that P makes a material disposal of business assets which consists of the disposal of securities of a company, and at the date of the disposal—

(a) the securities disposed of constitute at least 5% of the value of the securities of the company, and

(b) no share purchase arrangements exist.

(1E) **[**[F149]Subject to subsection (6A),**]** For the purposes of conditions A2 and A3, in relation to the disposal of shares in or securities of a company ("company A"), "share purchase arrangements" means arrangements **[**[F150](other than the material disposal itself)**]** under which P or a person connected with P is entitled to acquire shares in or securities of—

(a) company A, or

(b) a company which is a member of a trading group of which company A is a member.

(2) For the purposes of subsection (1E)(b), a company is treated as a member of a trading group of which company A is a member if, at the date of the disposal mentioned in condition A2 or A3, arrangements exist which it is reasonable to assume will result in the company and company A becoming members of the same trading group.**]**

(3) Condition B is that **[**[F151]P**]** makes the disposal as part of **[**[F152]P's withdrawal**]** from participation in the business carried on by the partnership or by the company or (if the company is a member of a trading group) a company which is a member of the trading group.

[F153]**[** (3A) The disposal mentioned in condition B is not treated as part of P's withdrawal from participation in the business carried on by a partnership if at the date of that disposal there exist any partnership purchase arrangements.

[F154]**[** (3AA) Subject to subsection (6A), for the purposes of condition B, in relation to a disposal mentioned in that condition and a partnership, "partnership purchase arrangements" means arrangements under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share), but does not include any arrangements in connection with a material disposal in relation to which condition A1 or A1A is met.**]**

(3B) The disposal mentioned in condition B is not treated as part of P's withdrawal from participation in the business carried on by a company ("company A") if at the date of that disposal there exist any **[**[F155]share purchase arrangements**]**.

[F156]**[** (3BA) Subject to subsection (6A), for the purposes of condition B, in relation to a disposal mentioned in that condition and company A, "share purchase arrangements" means arrangements under which P or a person connected with P is entitled to acquire shares in or securities of—

(a) company A, or

(b) a company which is a member of a trading group of which company A is a member,

but does not include any arrangements in connection with a material disposal in relation to which condition A2 or A3 is met.**]**

(3C) For the purposes of subsection **[**[F157](3BA)**]**(b), a company is treated as a member of a trading group of which company A is a member if, at the date of the disposal mentioned in condition B, arrangements exist which it is reasonable to assume will result in the company and company A becoming members of the same trading group.**]**

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(4) Condition C is that, throughout the period of **[**[F158]2 years**]** ending with the earlier of—

(a) the date of the material disposal of business assets, and

(b) the cessation of the business of the partnership or company,

the assets which (or interests in which) are disposed of are in use for the purposes of the business.

[F159](4A) **[** Condition D is that the disposal mentioned in condition B is of an asset which P owns throughout the period of 3 years ending with the date of that disposal.**]**

(5) For the purposes of this Chapter the disposal mentioned in Condition B is the disposal associated with a relevant material disposal.

[F160]**[** . . . . . .

[F161](6)

[F162](6A) **[** For the purposes of this section, in relation to a material disposal of business assets and a disposal mentioned in condition B, arrangements are not partnership purchase arrangements or share purchase arrangements if they were made before both disposals and without regard to either of them.**]**

(7) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"securities" includes an interest in securities, and an "interest in securities" includes (in particular) an option to acquire securities;

"shares" includes an interest in shares, and an "interest in shares" includes (in particular) an option to acquire shares.

(8) For the purposes of this section, a person is treated as entitled to acquire anything which the person—

(a) is entitled to acquire at a future date, or

(b) will at a future date be entitled to acquire.

(9) For the purposes of this section the assets of—

(a) a Scottish partnership, or

(b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such,

are to be treated as held by the members of the partnership in the proportions in which they are entitled to share in the **[**[F163]capital**]** profits of the partnership.

References in this section to an individual's interest in the partnership's assets are to be construed accordingly.**]**

Textual Amendments

F144 S. 169K(1)-(2) substituted for s. 169K(1)(2) (with effect in accordance with s. 41(6) of the amending Act) by Finance Act 2015 (c. 11), **s. 41(2)**

F145 Word in s. 169K(1)(a) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(2)(a)**

F146 Words in s. 169K(1)(b) substituted (with effect in accordance with s. 84(14) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(2)(b)**

F147 S. 169K(1AA)(1AB) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(3)**

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F148 S. 169K(1B)(a) substituted (with effect in accordance with Sch. 16 para. 4(4) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 2(2)**

F149 Words in s. 169K(1E) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(4)(a)**

F150 Words in s. 169K(1E) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(4)(b)**

F151 Word in s. 169K(3) substituted (with effect in accordance with s. 41(6) of the amending Act) by Finance Act 2015 (c. 11), **s. 41(3)(a)**

F152 Words in s. 169K(3) substituted (with effect in accordance with s. 41(6) of the amending Act) by Finance Act 2015 (c. 11), **s. 41(3)(b)**

F153 S. 169K(3A)-(3C) inserted (with effect in accordance with s. 41(6) of the amending Act) by Finance Act 2015 (c. 11), **s. 41(4)**

F154 Words in s. 169K(3AA) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(5)**

F155 Words in s. 169K(3B) substituted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(6)**

F156 S. 169K(3BA) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(7)**

F157 Word in s. 169K(3C) substituted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(8)**

F158 Words in s. 169K(4) substituted (with effect in accordance with Sch. 16 para. 4(2) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(4)**

F159 S. 169K(4A) inserted (with effect in accordance with s. 84(14) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(9)**

F160 S. 169K(6) omitted (with effect in accordance with s. 84(13) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 84(10)**

F161 S. 169K(6)-(9) inserted (with effect in accordance with s. 41(6) of the amending Act) by Finance Act 2015 (c. 11), **s. 41(5)**

F162 S. 169K(6A) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(11)**

F163 Word in s. 169K(9) inserted (with effect in accordance with s. 84(13) of the amending Act) by Finance Act 2016 (c. 24), **s. 84(12)**

169L Relevant business assets

(1) If a qualifying business disposal is one which does not consist of the disposal of (or of interests in) shares in or securities of a company, **[**[F2]business asset disposal relief**]** is given only in respect of the disposal of relevant business assets comprised in the qualifying business disposal.

(2) In this Chapter "relevant business assets" means assets (including**[**[F164], subject to section 169LA,**]** goodwill) which are, or are interests in, assets to which subsection (3) applies, other than excluded assets (see subsection (4) below).

(3) This subsection applies to assets which—

(a) in the case of a material disposal of business assets, are assets used for the purposes of a business carried on by the individual or a partnership of which the individual is a member,

(b) in the case of a disposal of trust business assets, are assets used for the purposes of a business carried on by the qualifying beneficiary or a partnership of which the qualifying beneficiary is a member, or

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(c) in the case of a disposal associated with a relevant material disposal, are assets used for the purposes of a business carried on by the partnership or company.

(4) The following are excluded assets—

(a) shares and securities, and

(b) assets, other than shares or securities, which are held as investments.

Textual Amendments

F164 Words in s. 169L(2) inserted (with effect in accordance with s. 42(5) of the amending Act) by Finance Act 2015 (c. 11), **s. 42(3)**

[F165 169LA Relevant business assets: goodwill transferred to a [F166close company]

[F167(1) Subject to subsection (1A), subsection (4) applies if—

(a) as part of a qualifying business disposal, a person ("P") disposes of goodwill directly or indirectly to a close company ("C"), and

(b) immediately after the disposal, P meets any of the personal company conditions in the case of C or any company which is a member of a group of companies of which C is a member.

(1ZA) For the purposes of subsection (1)(b)—

(a) the reference to the personal company conditions is a reference to any of the conditions in 169S(3)(a), (b), (c)(i) or (ii), and

(b) P is taken to have all the rights and interests of any relevant connected person.

(1ZB) For the purposes of subsection (1ZA)—

(a) section 169S(3) is treated as having effect with the omission of the references to "by virtue of that holding",

(b) section 169S(3A)(a) and (b) are to apply for the purposes of section 169S(3)(c)(ii) but as if the reference to the final day of the period mentioned in section 169S(3A)(a) were to the time immediately after the disposal, and

(c) the condition in section 169S(3)(c)(i) is to be read as containing two separate conditions (one relating to profits and the other relating to assets).**]**

F168(1A) **[** Where—

(a) **[**F169subsection (1)(b)**]** applies by virtue of P's ownership, or any relevant connected person's ownership, of C's ordinary share capital, and

(b) the conditions mentioned in subsection (1B) are met,

subsection (4) does not apply.

(1B) The conditions referred to in subsection (1A)(b) are—

(a) P and any relevant connected person dispose of C's ordinary share capital to another company ("A") such that, immediately before the end of the relevant period, neither P nor any relevant connected person own any of C's ordinary share capital, and

(b) where A is a close company, immediately before the end of the relevant period—

(i) P and any relevant connected person together own less than 5% of the ordinary share capital of A or of any company which is a member of a group of companies of which A is a member, and

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(ii) P and any relevant connected person together hold less than 5% of the voting rights in A or in any company which is a member of a group of companies of which A is a member.

(1C) In subsection (1B) "the relevant period" means the period of 28 days beginning with the date of the qualifying business disposal, or such longer period as the Commissioners for Her Majesty's Revenue and Customs may by notice allow.**]**

[F170](2) . . . . . .

[F170](3) . . . . . .

(4) For the purposes of this Chapter, the goodwill is not one of the relevant business assets comprised in the qualifying business disposal.

(5) If a company—

(a) is not resident in the United Kingdom, but

(b) would be a close company if it were resident in the United Kingdom,

the company is to be treated as being a close company for the purposes of this section [F171]... .

(6) If a person—

(a) disposes of goodwill as part of a qualifying business disposal, and

(b) is party to relevant avoidance arrangements,

subsection (4) applies (if it would not otherwise do so).

(7) In subsection (6) "relevant avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to secure—

(a) that subsection (4) does not apply in relation to the goodwill, [F172]...

[F172](b) . . . . . .

(8) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

[[F173]"group" is to be construed in accordance with section 170;**]**

[[F174]"relevant connected person" means—

(a) a company connected with P, and

(b) trustees connected with P.**]]**

Textual Amendments

F165 S. 169LA inserted (with effect in accordance with s. 42(5) of the amending Act) by Finance Act 2015 (c. 11), **s. 42(4)**

F166 Words in s. 169LA heading substituted (with effect in accordance with s. 85(9) of the amending Act) by Finance Act 2016 (c. 24), **s. 85(8)**

F167 S. 169LA(1)-(1ZB) substituted for s. 169LA(1) (with effect in accordance with Sch. 16 para. 4(4) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 2(3)(a)**

F168 S. 169LA(1A)-(1C) inserted (with effect in accordance with s. 85(9) of the amending Act) by Finance Act 2016 (c. 24), **s. 85(3)**

F169 Words in s. 169LA(1A)(a) substituted (with effect in accordance with Sch. 16 para. 4(4) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 2(3)(b)**

F170 S. 169LA(2)(3) omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 85(4)**

F171 Words in s. 169LA(5) omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 85(5)**

F172 S. 169LA(7)(b) and preceding word omitted (with effect in accordance with s. 85(9) of the amending Act) by virtue of Finance Act 2016 (c. 24), **s. 85(6)**

F173 Words in s. 169LA(8) inserted (with effect in accordance with s. 85(9) of the amending Act) by Finance Act 2016 (c. 24), **s. 85(7)(a)**

F174 Words in s. 169LA(8) substituted (with effect in accordance with s. 85(9) of the amending Act) by Finance Act 2016 (c. 24), **s. 85(7)(b)**

169M Relief to be claimed

(1) **[**[F2]Business asset disposal relief**]** is to be given only on the making of a claim.

(2) A claim for **[**[F2]business asset disposal relief**]** in respect of a qualifying business disposal must be made—

(a) in the case of a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and

(b) otherwise, by the individual.

(3) A claim for **[**[F2]business asset disposal relief**]** in respect of a qualifying business disposal must be made on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made.

(4) A claim for **[**[F2]business asset disposal relief**]** in respect of a qualifying business disposal may only be made if the amount resulting under section 169N(1) is a positive amount.

Modifications etc. (not altering text)

C34 S. 169M(2)(3) applied (with application in accordance with Sch. 3 para. 3(1) of the amending Act) by Finance Act 2020 (c. 14), **Sch. 3 para. 3(5)**

169N Amount of relief: general

(1) Where a claim is made in respect of a qualifying business disposal—

(a) the relevant gains (see subsection (5)) are to be aggregated, and

(b) any relevant losses (see subsection (6)) are to be aggregated and deducted from the aggregate arrived at under paragraph (a).

[[F175](2) The resulting amount is to be treated for the purposes of this Act as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made.

(3) The rate of capital gains tax in respect of that gain is 10%, but this is subject to subsections (4) to (4B).

(4) Subsections (4A) and (4B) apply if the aggregate of—

(a) the gain mentioned in subsection (2), and

(b) the total of so much of each amount resulting under subsection (1) by virtue of its operation in relation to earlier relevant qualifying business disposals (if any) as was—

(i) charged at the rate in subsection (3), or

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(ii) subject to reduction under subsection (2) of this section as originally enacted,

exceeds **[**[F176]£1 million.**]**.

(4A) The rate in subsection (3) is to apply only to so much (if any) of the gain mentioned in subsection (2) as (when added to the total mentioned in subsection (4)(b)) does not exceed **[**[F177]£1 million.**]**

(4B) **[**[F178]Section 1H**]** (rates of capital gains tax) is to apply to so much of the gain mentioned in subsection (2) as is not subject to the rate in subsection (3).**]**

(5) In subsection (1)(a) "relevant gains" means—

(a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), the gains accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of chargeable gains), and

(b) otherwise, the gains accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed).

(6) In subsection (1)(b) "relevant losses" means—

(a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), any losses accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of allowable losses, on the assumption that notice has been given under section 16(2A) in respect of them), and

(b) otherwise, any losses accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed, on that assumption).

(7) In **[**[F179]subsection (4)**]** "earlier relevant qualifying business disposals" means—

(a) where the qualifying business disposal is made by an individual, earlier qualifying business disposals made by the individual and earlier disposals of trust business assets in respect of which the individual is the qualifying beneficiary, and

(b) where the qualifying business disposal is a disposal of trust business assets in respect of which an individual is the qualifying beneficiary, earlier disposals of trust business assets in respect of which that individual is the qualifying beneficiary and earlier qualifying business disposals made by that individual.

(8) If, on the same day, there is both a disposal of trust business assets in respect of which an individual is the qualifying beneficiary and a qualifying business disposal by the individual, this section applies as if the disposal of trust business assets were later.

(9) Any gain or loss taken into account under subsection (1) is not to be taken into account under this Act as a chargeable gain or an allowable loss.

Textual Amendments

F175 S. 169N(2)-(4B) substituted for s. 169N(2)-(4) (with effect in accordance with Sch. 1 para. 14 of the amending Act) by Finance (No. 2) Act 2010 (c. 31), **Sch. 1 para. 5(2)**

F176 Sum in S. 169N(4) substituted (with effect in accordance with Sch. 3 para. 2 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 3 para. 1(a)**

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

F177 Sum in S. 169N(4A) substituted (with effect in accordance with Sch. 3 para. 2 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 3 para. 1(b)**

F178 Words in s. 169N(4B) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 58**

F179 Words in s. 169N(7) substituted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by Finance (No. 2) Act 2010 (c. 31), **Sch. 1 para. 5(3)**

169O Amount of relief: special provisions for certain trust disposals

(1) This section applies where, on a disposal of trust business assets, there is (in addition to the qualifying beneficiary) at least one other beneficiary who, at the material time, has an interest in possession in—

(a) the whole of the settled property, or

(b) a part of it which consists of or includes the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of.

(2) Only the relevant proportion of the amount which would otherwise result under subsection (1) of section 169N is to be treated as so resulting.

(3) And the balance of that amount, [F180]... , is accordingly a chargeable gain for the purposes of this Act.

(4) For the purposes of this section "the relevant proportion" of an amount is the same proportion of the amount as that which, at the material time—

(a) the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of, bears to

(b) the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part of the settled property.

(5) In subsection (4) "the qualifying beneficiary's interest" means the interest by virtue of which he is the qualifying beneficiary (and not any other interest the qualifying beneficiary may have).

(6) In this section "the material time" means the end of the latest period of **[**[F181]2 years**]** which ends not earlier than 3 years before the date of the disposal and—

(a) in the case of a disposal of settlement business assets within paragraph (a) of subsection (2) of section 169J, throughout which the conditions in paragraphs (a) and (b) of subsection (4) of that section are met, and

(b) in the case of a disposal of settlement business assets within paragraph (b) of subsection (2) of that section, throughout which the business is carried on by the qualifying beneficiary.

Textual Amendments

F180 Words in s. 169O(3) omitted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by virtue of Finance (No. 2) Act 2010 (c. 31), **Sch. 1 para. 6**

F181 Words in s. 169O(6) substituted (with effect in accordance with Sch. 16 para. 4(1) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 1(5)**

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

169P Amount of relief: special provision for certain associated disposals

(1) This section applies where, on a disposal associated with a relevant material disposal, any of the conditions in subsection (4) is met.

(2) Only such part of the amount which would otherwise result under subsection (1) of section 169N as is just and reasonable is to be treated as so resulting.

(3) And the balance of that amount, [F182]... , is accordingly a chargeable gain for the purposes of this Act.

(4) The conditions referred to in subsection (1) are—

(a) that the assets which (or interests in which) are disposed of are in use for the purposes of the business for only part of the period in which they are in the ownership of the individual,

(b) that only part of the assets which (or interests in which) are disposed of are in use for the purposes of the business for that period,

(c) that the individual is concerned in the carrying on of the business (whether personally, as a member of a partnership or as an officer or employee of a company which is the individual's personal company) for only part of the period in which the assets which (or interests in which) are disposed of are in use for the purposes of the business, and

(d) that, for the whole or any part of the period for which the assets which (or interests in which) are disposed of are in use for the purposes of the business, their availability is dependent on the payment of rent.

(5) In determining how much of an amount it is just and reasonable to bring into account under subsection (2) regard is to be had to—

(a) in a case within paragraph (a) of subsection (4), the length of the period for which the assets are in use as mentioned in that paragraph,

(b) in a case within paragraph (b) of that subsection, the part of the assets that are in use as mentioned in that paragraph,

(c) in a case within paragraph (c) of that subsection, the length of the period for which the individual is concerned in the carrying on of the business as mentioned in that paragraph, and

(d) in a case within paragraph (d) of that subsection, the extent to which any rent paid is less than the amount which would be payable in the open market for the use of the assets.

Textual Amendments

F182 Words in s. 169P(3) omitted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by virtue of Finance (No. 2) Act 2010 (c. 31), **Sch. 1 para. 7**

169Q Reorganisations: disapplication of section 127

(1) This section applies where—

(a) there is a reorganisation (within the meaning of section 126), and

(b) the original shares and the new holding (within the meaning of that section) would fall to be treated by virtue of section 127 as the same asset.

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

(2) If an election is made under this section, a claim for **[**[F2]business asset disposal relief**]** may be made as if the reorganisation involved a disposal of the original shares; and if such a claim is made section 127 does not apply.

(3) An election under this section must be made—

(a) if the reorganisation would (apart from section 127) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and

(b) otherwise, by the individual.

(4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place.

(5) The references in this section to a reorganisation (within the meaning of section 126) includes an exchange of shares or securities which is treated as such a reorganisation by virtue of section 135 or 136.

Modifications etc. (not altering text)

C35 S. 169Q modified (with application in accordance with Sch. 3 para. 4(1) of the amending Act) by Finance Act 2020 (c. 14), **Sch. 3 para. 4(3)**

C36 S. 169Q modified (with application in accordance with Sch. 3 para. 5(1)-(3) of the amending Act) by Finance Act 2020 (c. 14), **Sch. 3 para. 5(6)**

C37 S. 169Q applied (with modifications) (with application in accordance with Sch. 3 para. 5(1)-(3) of the amending Act) by Finance Act 2020 (c. 14), **Sch. 3 para. 5(7)(b)**

[[F183]**169R Reorganisations involving acquisition of qualifying corporate bonds**

(1) This section applies where the calculation under section 116(10)(a) would (apart from this section) have effect to produce a chargeable gain for an individual by reason of a relevant transaction.

(2) If an election is made under this section, a claim for **[**[F2]business asset disposal relief**]** may be made as if the relevant transaction involved a disposal of the old asset; and if such a claim is made section 116(10) does not apply.

(3) An election under this section must be made—

(a) if the relevant transaction, so far as it relates to the old asset, would (apart from section 116(10)) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and

(b) otherwise, by the individual.

(4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the relevant transaction takes place.

(5) In this section, "old asset" and "relevant transaction" have the meaning given by section 116.**]**

Textual Amendments

F183 S. 169R substituted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by Finance (No. 2) Act 2010 (c. 31), **Sch. 1 para. 8**

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

169S Interpretation of Chapter

(1) For the purposes of this Chapter "a business" means anything which—

(a) is a trade, profession or vocation, and

(b) is conducted on a commercial basis and with a view to the realisation of profits.

(2) References in this Chapter to a disposal of an interest in shares in a company include a disposal of an interest in shares treated as made by virtue of section 122.

[F184(3) For the purposes of this Chapter a company is a "personal company" in relation to an individual if—

(a) the individual holds at least 5% of the ordinary share capital of the company,

(b) by virtue of that holding, at least 5% of the voting rights in the company are exercisable by the individual, and

(c) either or both of the following conditions are met—

(i) by virtue of that holding, the individual is beneficially entitled to at least 5% of the profits available for distribution to equity holders and, on a winding up, would be beneficially entitled to at least 5% of assets so available, or

(ii) in the event of a disposal of the whole of the ordinary share capital of the company, the individual would be beneficially entitled to at least 5% of the proceeds.

(3A) In determining whether subsection (3)(c)(ii) applies for the purposes of any provision of this Chapter under which a question arises as to whether or not a company is the individual's personal company at any time in a particular period —

(a) it is to be assumed that (so far as this is not otherwise the case) the whole of the ordinary share capital is disposed of at that time for a consideration equal to its market value on the final day of the period,

(b) it is to be assumed that the amount of the proceeds to which the individual would be beneficially entitled at that time is the amount of the proceeds to which, having regard to all the circumstances as they existed at that time, it would be reasonable to expect the person to be beneficially entitled, and

(c) the effect of any avoidance arrangements is to be ignored.

(3B) For the purposes of subsection (3A)(c)—

(a) arrangements are "avoidance arrangements" if the main purpose of, or one of the main purposes of, the arrangements is to secure that any provision of this Chapter applies or does not apply, and

(b) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(3C) For the purposes of subsection (3) if the individual holds any shares in the company jointly with one or more other persons, the individual is to be treated as the sole holder of so many of them as is proportionate to the value of the individual's share (and references in subsection (3) to the exercise of voting rights or beneficial entitlement are to be read accordingly).

(3D) A modified version of Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsection (3) reading references to company A as references to the individual.

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(3E) The reference here to a modified version of Chapter 6 of Part 5 of CTA 2010 is to the provisions of that Chapter having effect as if—

(a) for the purposes of section 158(1)(b), a person carrying on a business of banking were not a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business,

(b) sections 171(1)(b) and (3), 173, 174 and 176 to 181 were omitted, and

(c) any modifications were made as are necessary for the purpose of applying that Chapter as if the individual were company A.**]**

(5) In this Chapter—

"disposal associated with a relevant material disposal" has the meaning given by section 169K,

"disposal of business assets" has the meaning given by section 169I(2),

"disposal of trust business assets" has the meaning given by section 169J,

"employment" has the meaning given by section 4 of ITEPA 2003,

"**[**[F2]business asset disposal relief**]**" has the meaning given by section 169H(1),

"holding company" has the same meaning as in section 165 (see section 165A),

"material disposal of business assets" has the meaning given by section 169I,

"office" has the meaning given by section 5(3) of ITEPA 2003,

"ordinary share capital" has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007),

"qualifying business disposal" has the meaning given by section 169H(2),

"relevant business asset" has the meaning given by section 169L,

"rent", in relation to an asset, includes any form of consideration given for the use of the asset,

"securities", in relation to a company, includes any debentures of the company which are deemed by subsection (6) of section 251 to be securities for the purposes of that section,

"settlement business assets" has the meaning given by section 169J(2),

"trade" has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007), [F185]...

[F185] . . . . . .**]**

Textual Amendments

F184 S. 169S(3)-(3E) substituted for s. 169S(3)(4) (with effect in accordance with Sch. 16 para. 4(4) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 2(4)**

F185 Words in s. 169S(5) omitted (18.3.2015) by virtue of Finance Act 2015 (c. 11), **s. 43(3)**(5)

[[F186]**169SM Meaning of "trading company" and "trading group"**

Schedule 7ZA gives the meaning in this Chapter of "trading company" and "trading group".**]**

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Part V is up to date with all changes known to be in force on or before 21 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*

Textual Amendments

F186 S. 169SA inserted (with effect in accordance with Sch. 13 para. 6(1) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 13 para. 4**

[F187 CHAPTER 3A

[F2 BUSINESS ASSET DISPOSAL RELIEF] WHERE COMPANY CEASES TO BE INDIVIDUAL'S PERSONAL COMPANY

Textual Amendments

F187 Pt. 5 Ch. 3A inserted (with effect in accordance with Sch. 16 para. 4(5) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 16 para. 3**

169SB Overview of Chapter

This Chapter makes provision about an individual claiming [F2 business asset disposal relief] in certain cases where relief would otherwise become unavailable because of a company ceasing to be the individual's personal company.

169SC Election by individual where company ceases to be personal company

(1) If the following conditions are met, an individual may elect for this section to have effect.

(2) The first condition is that, as a result of a relevant share issue, the company ceases to be the individual's personal company.

(3) The second condition is that—

(a) if, immediately before the relevant share issue, the individual had made a disposal at their relevant value of all assets consisting of shares in or securities of the company, the disposal would have been a material disposal of business assets, and

(b) if a claim for [F2 business asset disposal relief] had been made in respect of that disposal, a chargeable gain would have been treated by section 169N(2) as accruing to the individual.

(4) Where this section has effect, the individual is to be treated for the purposes of this Act—

(a) as having made a disposal immediately before the relevant share issue of all assets consisting of shares in or securities of the company, and

(b) immediately after that event, as having reacquired those assets,

at their relevant value.

(5) In this section—

"material disposal of business assets" and "personal company" have the same meanings as in Chapter 3 (see section 169S),

"relevant share issue" means an issue of shares by the company where—

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(a) the shares are issued by the company for consideration consisting wholly of cash, and

(b) the shares are subscribed, and issued, for genuine commercial reasons and not as part of arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage to any person, and

"relevant value" means—

(a) in relation to an asset consisting of shares, an amount equal to the consideration that would be apportioned to the asset if, immediately before the relevant share issue, the whole of the issued share capital of the company were sold for a consideration equal to its market value at that time, or

(b) in relation to any other asset, its market value at the time of the relevant share issue.

(6) For the purposes of the definition of "relevant share issue" in subsection (5)—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

"tax advantage" means—

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax, or

(d) the avoidance of a possible assessment to tax,

and for the purposes of this definition "tax" means capital gains tax, corporation tax or income tax.

(7) In this Chapter—

(a) references to "the notional disposal" are references to the disposal mentioned in subsection (4)(a),

(b) references to "the notional gain" are references to the chargeable gain mentioned in subsection (3)(b), and

(c) references to shares in or securities of a company include references to interests in such shares or securities.

169SD Supplementary election to defer gains until subsequent disposal

(1) An individual who makes an election under section 169SC may also elect that, for the purposes of this Act—

(a) no chargeable gain or allowable loss is to be treated as accruing to the individual on the notional disposal, but

(b) a chargeable gain calculated in accordance with this section is to be treated as accruing to the individual on any subsequent disposal by the individual of one or more assets consisting of shares in or securities of the company (in addition to any gain or loss that actually accrues on that disposal).

(2) The chargeable gain treated as accruing to the individual on a subsequent disposal is the amount resulting from the following steps—

Step 1 Attribute the notional gain to each of the classes of shares in or securities of the company which are the subject of the notional disposal. The attribution must be made, in relation to each class, by reference to the proportion that—

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(a) the relevant gains (see section 169N(5)) accruing on the notional disposal in respect of shares or securities within each class bears to

(b) the total amount of relevant gains accruing on the notional disposal.

Step 2 Apportion the amount attributed to each class under Step 1 to the shares or securities of that class which are the subject of the subsequent disposal. The apportionment must be by reference to the proportion that—

(a) the nominal value of the shares or securities of that class which are the subject of the subsequent disposal bears to

(b) the nominal value of shares or securities of that class which are the subject of the notional disposal.

Step 3 The amount resulting from these steps is—

(a) the total of the amounts apportioned to shares or securities under Step 2, but

(b) excluding, in relation to each class of shares or securities, so much of those amounts as would, together with any chargeable gains treated by this section as accruing on previous disposals of shares or securities of that class, exceed the amount attributed to that class under Step 1.

(3) If the subsequent disposal is a disposal by virtue of section 122, the nominal value of shares of a particular class which are the subject of that disposal is to be treated for the purposes of Step 2 of subsection (2) as being equal to the nominal value of shares of that class as are the subject of the notional disposal.

169SE Application of section 169SD where section 116 applies

(1) This section has effect in any case where a transaction occurs to which section 116 (reorganisations, conversions and reconstructions) applies.

(2) If sections 116(10)(b) and 169SD(1)(b) have effect in relation to a subsequent disposal of the new asset—

(a) there must be calculated the chargeable gain that would have been treated by section 169SD(1)(b) as accruing to the individual if, at the time of the relevant transaction, the old asset had been disposed of immediately before that transaction,

(b) the whole or a corresponding part of the chargeable gain mentioned in paragraph (a) is to be treated as accruing on the subsequent disposal of the whole or part of the new asset (in addition to any gain or loss that actually accrues on that disposal and any chargeable gain treated by section 116(10)(b) as accruing on that disposal), and

(c) on that subsequent disposal, section 115 (exemptions for gilt-edged securities and qualifying corporate bonds) has effect only in relation to any gain that actually accrues and not in relation to any gain which is treated as accruing by virtue of paragraph (b).

(3) In subsection (2) “the new asset”, “the old asset” and “the relevant transaction” have the same meanings as in section 116.

169SF Application of section 169SD where sections 127 to 130 apply

(1) This section has effect in any case where a transaction occurs to which sections 127 to 130 (treatment of share capital following a reorganisation) apply by virtue of any provision of Chapter 2 of Part 4.

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(2) If a gain is treated by section 169SD(1)(b) as accruing on a subsequent disposal of the new holding and it is necessary to apportion the gain between shares or securities forming part of that new holding, the apportionment must be made in the same proportions as those in which the costs of acquisition of the original shares fall to be apportioned under the provisions of that Chapter.

(3) If subsection (3) of section 128 (consideration given or received by holder) has effect in relation to an individual, the individual is treated for the purposes of section 169SD as making the disposal of the interest in the original shares mentioned in that subsection.

(4) In this section "the new holding" and "the original shares" have the same meanings as in sections 127 to 130 (see section 126).

169SG Elections under sections 169SC and 169SD

(1) An election under section 169SC or 169SD is irrevocable.

(2) An election under section 169SC must be made on or before the first anniversary of the 31 January following the tax year in which the notional disposal is made ("the relevant tax year").

(3) An election under section 169SD may not be made more than 4 years after the end of the relevant tax year.

(4) If—

(a) an individual makes an election under both sections 169SC and 169SD, and

(b) a tax return under the Management Act would not otherwise be required for the relevant tax year,

the individual may make the elections by giving notice on or before the first anniversary of the 31 January following the relevant tax year.

169SH Claims for relief in respect of subsequent disposals

(1) Where, as a result of an election under section 169SD, a chargeable gain is to be treated as accruing on a subsequent disposal, the following rules have effect.

(2) The individual making the subsequent disposal must make a claim for **[**[F2]business asset disposal relief**]** on or before the first anniversary of the 31 January following the first tax year in which, as a result of the election, the chargeable gain is to be treated as accruing.

(3) The chargeable gain is to be treated for the purposes of section 169N as the amount resulting from a calculation under subsection (1) of that carried out when that chargeable gain accrues and because of the claim mentioned in subsection (2).

(4) If the chargeable gain is a part only of the notional gain, each chargeable gain that subsequently accrues is to be treated for the purposes of section 169N as the amount resulting from a calculation under subsection (1) of that section carried out when that chargeable gain arises and because of the claim mentioned in subsection (2).

(5) In relation to the claim for **[**[F2]business asset disposal relief**]** in respect of the chargeable gain, the company is to be treated for the purposes of condition A in section 169I(6)

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as if it were, throughout the period of 2 years ending with the date of the subsequent disposal, the individual's personal company.**]**

[[F188]CHAPTER 4

[[F2]BUSINESS ASSET DISPOSAL RELIEF] WHERE HELD-OVER GAINS BECOME CHARGEABLE

Textual Amendments

F188 Pt. 5 Ch. 4 inserted (with effect in accordance with s. 44(2) of the amending Act) by Finance Act 2015 (c. 11), **s. 44(1)**

169T Overview of Chapter

This Chapter makes provision about claiming **[**[F2]business asset disposal relief**]** in certain cases where, in relation to held-over gains that originally arose on a business disposal, there is a chargeable event for the purposes of Schedule 5B or 8B (relief for gains invested under the enterprise investment scheme or in social enterprises).

169U Eligibility conditions for deferred [[F2]business asset disposal relief]

(1) Section 169V applies if, ignoring the operation of section 169V(2)(b), each of the following conditions is met.

(2) The first condition is that a chargeable gain ("the first eventual gain") accrues as a result of the operation of—

paragraph 4 of Schedule 5B (enterprise investment scheme), or

paragraph 5 of Schedule 8B (investments in social enterprises).

(3) If the first condition is met, the paragraph and Schedule mentioned in subsection (2) that apply in the case are referred to in this section, and section 169V, as "the relevant paragraph" and "the applicable Schedule".

(4) The second condition is—

(a) that the first eventual gain accrues in a case in which the original gain would, but for the operation of the applicable Schedule, have accrued on a relevant business disposal, or

(b) where the first eventual gain accrues in a case in which the original gain would, but for the operation of the applicable Schedule, have accrued as a result of the operation of either of the paragraphs mentioned in subsection (2), that the underlying disposal is a relevant business disposal.

(5) The third condition is that a claim for **[**[F2]business asset disposal relief**]** in respect of the first eventual gain is made, on or before the first anniversary of the 31 January following the tax year in which the first eventual gain accrues, by the individual who made the disposal mentioned in subsection (4)(a) or (b).

(6) The fourth condition is that the first eventual gain is the first gain to accrue in the case as a result of the operation of the relevant paragraph.

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(7) In subsection (4) "the underlying disposal" means the disposal (not being a disposal within paragraph 3 of Schedule 5B or paragraph 6 of Schedule 8B) by virtue of which Schedule 5B or 8B has effect.

(8) For the purposes of subsection (4), whether the disposal on which the original gain would have accrued is a relevant business disposal, or whether the underlying disposal is a relevant business disposal, is to be decided according to the law applicable to disposals made at the time the disposal was made.

(9) In this section—

"the original gain", in relation to a particular case, has the same meaning as in the applicable Schedule,

"relevant business asset" has the meaning given by section 169L, and

"relevant business disposal" means—

(a) a disposal—

(i) within section 169H(2)(a) or (c) (qualifying business disposals), and

(ii) consisting of the disposal of (or of interests in) shares in or securities of a company, or

(b) a disposal of relevant business assets which is comprised in a disposal—

(i) within section 169H(2)(a) or (c), and

(ii) not consisting of the disposal of (or of interests in) shares in or securities of a company.

169V Operation of deferred [F2business asset disposal relief]

(1) Where this section applies, the following rules have effect.

(2) The gain mentioned in section 169U(2) ("the first eventual gain")—

(a) is treated for [F189relevant purposes] as the amount resulting from a calculation under section 169N(1) carried out—

(i) in respect of a qualifying business disposal made when the first eventual gain accrues, and

(ii) because of the claim mentioned in section 169U(5), and

(b) except for [F189relevant purposes], is not to be taken into account under this Act as a chargeable gain.

(3) If the first eventual gain is a part only of the original gain in the case concerned, each part of the original gain that subsequently accrues as a chargeable gain as a result of the operation of the relevant paragraph—

(a) is treated for [F189relevant purposes] as the amount resulting from a calculation under section 169N(1) carried out—

(i) in respect of a qualifying business disposal made when that chargeable gain so accrues, and

(ii) because of the claim mentioned in section 169U(5), and

(b) except for [F189relevant purposes], is not to be taken into account under this Act as a chargeable gain.

(4) If the disposal mentioned in paragraph (a) or (b) of section 169U(4) is a disposal within section 169H(2)(c) (qualifying business disposal: disposal associated with a relevant material disposal)—

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(a) a disposal mentioned in subsection (2) or (3) of this section is treated for the purposes of section 169P(1) as a disposal associated with a relevant material disposal, but

(b) section 169P applies in relation to that disposal as if the disposal referred to in section 169P(4) were the disposal mentioned in section 169U(4)(a) or (b).

(5) In this section "**[**[F189]relevant purposes**]**" means the purposes of—

(a) section 169N(2) to (4B), (7) and (8), and

(b) section 169P.**]**

Textual Amendments

F189 Words in s. 169V substituted (with effect for the tax year 2020-21 and subsequent tax years of the amending Act) by Finance Act 2020 (c. 14), Sch. 3 paras. 7(2)(b), **8** (with Sch. 3 para. 7(3))

[[F190]CHAPTER 5

INVESTORS' RELIEF

Textual Amendments

F190 Pt. 5 Ch. 5 inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 14 para. 2**

Overview

169VA Overview of Chapter

(1) This Chapter provides for a relief, in the form of a lower rate of capital gains tax, in respect of disposals of (and disposals of interests in) certain ordinary shares in unlisted companies.

(2) Section 169VB defines "qualifying shares", "potentially qualifying shares" and "excluded shares".

(3) Section 169VC creates the relief, and relief under that section is to be known as "investors' relief".

(4) Section 169VD makes provision about disposals from holdings consisting partly of qualifying shares.

(5) Sections 169VE to 169VG contain rules for cases where there have been previous disposals from a holding, to determine which shares remain in the holding.

(6) Sections 169VH and 169VI make provision about disposals by trustees of a settlement.

(7) Section 169VJ makes provision about disposals of interests in shares.

(8) Sections 169VK and 169VL provide for a cap on the amount of investors' relief that can be claimed.

(9) Section 169VM makes provision about claims for investors' relief.

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(10) Sections 169VN to 169VT make provision about how investors' relief applies following a company's reorganisation of its share capital, an exchange of shares or securities or a scheme of reconstruction.

(11) Sections 169VU to 169VY contain definitions for the purposes of this Chapter.

Qualifying shares

169VB Qualifying shares, potentially qualifying shares and excluded shares

(1) Where there is a disposal of all or part of (or of an interest in) a holding of shares in a company, this section applies to determine whether a share which is in the holding at the time immediately before the disposal ("the relevant time") is for the purposes of this Chapter—
- (a) a qualifying share,
- (b) a potentially qualifying share, or
- (c) an excluded share.

(2) The share is a "qualifying share" at the relevant time if—
- (a) the share was subscribed for, within the meaning given by section 169VU, by the person making the disposal ("the investor"),
- (b) the investor has held the share continuously for the period beginning with the issue of the share and ending with the relevant time ("the share-holding period"),
- (c) the share was issued on or after 17 March 2016,
- (d) at the time the share was issued, none of the shares or securities of the company that issued it were listed on a recognised stock exchange,
- (e) the share was an ordinary share when issued and is an ordinary share at the relevant time,
- (f) the company that issued the share—
  - (i) was a trading company or the holding company of a trading group (as defined by section 169VV) when the share was issued, and
  - (ii) has been so throughout the share-holding period,
- (g) at no time in the share-holding period was the investor or a person connected with the investor a relevant employee in respect of that company (within the meaning given by section 169VW), and
- (h) the period beginning with the date the share was issued and ending with the date of the disposal is at least 3 years.

(3) The share is a "potentially qualifying share" at the relevant time if—
- (a) the conditions in subsection (2)(a) to (g) are met, but
- (b) the period beginning with the date the share was issued and ending with the date of the disposal is less than 3 years.

(4) The share is an "excluded share" at the relevant time if it is, at that time—
- (a) not a qualifying share, and
- (b) not a potentially qualifying share.

(5) This section is subject to Schedule 7ZB (disqualification of share where value received by investor).

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(6) In relation to a share issued on or after 17 March 2016 but before 6 April 2016, any reference in subsection (2)(h) or (3) to "3 years" is to be read as a reference to the minimum period.

(7) In subsection (6) "the minimum period" means the period of 3 years extended by a period equal in length to the period beginning with the date the share was issued and ending with 5 April 2016.

The relief

169VC Investors' relief

(1) This section applies where—
- (a) a qualifying person disposes of a holding, or part of a holding, of shares in a company, and
- (b) immediately before that disposal some or all of the shares in the holding are qualifying shares.

(2) If—
- (a) a chargeable gain accrues to the qualifying person on the disposal, and
- (b) a claim for relief under this section is made,

the rate of capital gains tax in respect of the relevant gain is 10 per cent.

(3) In subsection (2) "the relevant gain" means—
- (a) where immediately before the disposal all the shares in the holding are qualifying shares, the chargeable gain on the disposal;
- (b) where at that time only some of the shares in the holding are qualifying shares, the appropriate part of that chargeable gain (defined by section 169VD).

(4) In this section—
- (a) subsection (1) is subject to section 169VH (disposals by trustees of a settlement: further conditions for relief), and
- (b) subsection (2) is subject to—

  section 169VI (reduction of relief for certain disposals by trustees of a settlement), and

  sections 169VK and 169VL (cap on investors' relief).

(5) A reference in subsection (3) to the chargeable gain on the disposal, or to the appropriate part of that gain, is a reference to that chargeable gain, or (as the case may be) that part, after any deduction of allowable losses which is made in accordance with this Act from that chargeable gain or from that part.

(6) For the application of this section to disposals of interests in shares, see section 169VJ.

(7) In this Chapter a "qualifying person" means—
- (a) an individual, or
- (b) the trustees of a settlement.

169VD Disposal where holding consists partly of qualifying shares

(1) This section applies where—

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(a) a disposal ("the disposal concerned") is made as mentioned in section 169VC(1), and

(b) at the time immediately before the disposal, only some of the shares in the holding are qualifying shares.

(2) Where this section applies, for the purposes of section 169VC(3) "the appropriate part" of the chargeable gain on the disposal is so much of that chargeable gain as is found by multiplying it by the appropriate fraction.

(3) The appropriate fraction is—

Q T

where—

Q is the number of qualifying shares found under subsection (4), and

T is the total number of shares disposed of in the disposal concerned.

(4) The number of qualifying shares found under this subsection is—

(a) all the qualifying shares in the holding at the time immediately before the disposal concerned, or

(b) if less, such number of those qualifying shares as equals the number of shares disposed of in that disposal.

169VE Which shares are in holding immediately before disposal

(1) This section applies where—

(a) a particular disposal is made as mentioned in section 169VC(1)(a) ("the current disposal"),

(b) there have been one or more previous disposals of shares from the holding mentioned in section 169VC(1) before the current disposal, and

(c) it is necessary to determine for the purposes of this Chapter which shares are to be treated as in the holding immediately before the current disposal (and, accordingly, which shares are to be treated as having been disposed of in those previous disposals).

(2) In the case of a previous disposal as regards which investors' relief has been claimed or is being claimed, the shares to be treated as disposed of in that previous disposal are to be determined in accordance with the rules in section 169VF.

(3) In the case of a previous disposal not falling within subsection (2), the shares to be treated as disposed of in that previous disposal are to be determined in accordance with the rules in section 169VG.

169VF Shares treated as disposed of in previous disposal where claim made

(1) The rules referred to in section 169VE(2) are as follows; and in this section "the disposal concerned" means the previous disposal mentioned in section 169VE(2).

(2) There are to be treated as having been disposed of in the disposal concerned—

(a) all the qualifying shares in the holding at the time immediately before that disposal ("the material time"), or

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(b) if less, such number of those qualifying shares as equals the number of shares disposed of in that disposal.

(3) If—

(a) the number of qualifying shares in the holding at the material time was less than the total number of shares disposed of, and

(b) excluded shares were in the holding at the material time,

the available excluded shares are also to be treated as having been disposed of.

(4) "The available excluded shares" means—

(a) all the excluded shares in the holding at the material time, or

(b) if less, such number of those excluded shares as is equal to the difference between—

(i) the total number of shares disposed of, and

(ii) the number of qualifying shares in the holding at the material time.

(5) If the number of shares treated under subsections (2) to (4) as disposed of in the disposal concerned is less than the total number of shares disposed of, such number of the potentially qualifying shares in the holding at the material time as is equal to the difference are also to be treated as having been disposed of.

(6) Where the number of potentially qualifying shares in the holding at the material time exceeds the difference mentioned in subsection (5), under that subsection potentially qualifying shares acquired later are to be treated as disposed of in preference to ones acquired earlier.

(7) In this section "disposed of" (without more) means disposed of in the disposal concerned.

169VG Shares treated as disposed of in previous disposal: no claim made

(1) The rules referred to in section 169VE(3) are as follows; and in this section "the disposal concerned" means the previous disposal mentioned in section 169VE(3).

(2) If any excluded shares were in the holding at the time immediately before the disposal concerned ("the material time"), the maximum number of excluded shares are to be treated as having been disposed of in the disposal concerned.

(3) "The maximum number of excluded shares" means—

(a) all the excluded shares in the holding at the material time, or

(b) if less, such number of those excluded shares as is equal to the number of shares disposed of.

(4) If—

(a) there were no excluded shares in the holding at the material time, or the number of such shares was less than the total number of shares disposed of, and

(b) potentially qualifying shares were in the holding at the material time,

the available potentially qualifying shares are to be treated as having been disposed of.

(5) "The available potentially qualifying shares" means—

(a) all the potentially qualifying shares in the holding at the material time, or

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(b) if less, such number of those potentially qualifying shares as is equal to the difference between—

(i) the total number of shares disposed of, and

(ii) the number of excluded shares in the holding at the material time.

(6) Where the number of potentially qualifying shares in the holding at the material time exceeds the difference mentioned in subsection (5), potentially qualifying shares acquired later are to be treated as disposed of in preference to ones acquired earlier.

(7) If the number of shares treated under subsections (2) to (5) as disposed of in the disposal concerned is less than the total number of shares disposed of, such number of the qualifying shares in the holding at the material time as is equal to the difference are to be treated as having been disposed of.

(8) In this section "disposed of" (without more) means disposed of in the disposal concerned.

Trustees of a settlement: special provision

169VH Disposals by trustees: further conditions for relief

(1) Where a disposal falling within section 169VC(1)(a) and (b) is made by the trustees of a settlement, section 169VC does not apply to the disposal unless there is at least one individual who is an eligible beneficiary in respect of the disposal.

(2) For the purposes of this section, an individual is an "eligible beneficiary" in respect of the disposal if—

(a) at the time immediately before the disposal, the individual has under the settlement an interest in possession in settled property that includes or consists of the holding of shares mentioned in section 169VC(1),

(b) the individual has had such an interest in possession under the settlement throughout the period of 3 years ending with the date of the disposal,

(c) at no time in that period has the individual been a relevant employee in respect of the company that issued the shares (within the meaning given by section 169VW), and

(d) the individual has (by the time of the claim under section 169VC in respect of the disposal) elected to be treated as an eligible beneficiary in respect of the disposal.

(3) For the purposes of subsection (2)(d), an individual elects to be treated as an eligible beneficiary in respect of a disposal if the individual tells the trustees (by whatever means) that he or she wishes to be so treated; and an election under subsection (2)(d) may be withdrawn by the individual at any time until the claim is made.

(4) In this section "interest in possession" does not include an interest in possession for a fixed term.

(5) In relation to a disposal made by the trustees of a settlement, any reference in section 169VB(2)(g) to the investor is to be read as a reference to any trustee of the settlement.

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169VI Disposals by trustees: relief reduced in certain cases

(1) Subsection (2) applies where—

(a) a disposal falling within section 169VC(1)(a) and (b) is made by the trustees of a settlement,

(b) section 169VC applies to the disposal by reason of there being at least one individual who is an eligible beneficiary in respect of the disposal (see section 169VH), and

(c) at the time immediately before the disposal, there are two or more persons each of whom has under the settlement an interest in possession in the settled property.

(2) In such a case the reference in section 169VC(2) to the relevant gain is to be read as a reference—

(a) to the eligible beneficiary's share of the relevant gain (see subsections (3) to (6)), or

(b) if there is more than one individual who is an eligible beneficiary in respect of the disposal, to so much of the relevant gain as is equal to the aggregate of the eligible beneficiaries' shares of that gain.

(3) In this section—

"eligible beneficiary" has the meaning given by section 169VH(2);

"relevant gain" has the meaning given by section 169VC(3);

"the settled property" means settled property that includes or consists of the holding of shares mentioned in section 169VC(1).

(4) Subsection (5) applies to determine for the purposes of this Chapter, in relation to any individual who is an eligible beneficiary in respect of a disposal within section 169VC(1) made by the trustees of a settlement, that individual's share of the relevant gain.

(5) That individual's share of the relevant gain on the disposal is so much of the relevant gain on the disposal as bears to the whole of that gain the same proportion as X bears to Y, where—

X is the interest in possession (other than for a fixed term) which, at the time immediately before the disposal, that individual has under the settlement in the income from the holding of shares mentioned in section 169VC(1), and

Y is all the interests in that income that persons (including that individual) with interests in possession in that holding have under the settlement at that time.

Disposals of interests in shares

169VJ Disposals of interests in shares: joint holdings etc

(1) In section 169VC(1)(a), the reference to the case where a qualifying person disposes of a holding, or part of a holding, of shares in a company includes the case where a qualifying person disposes of an interest in a relevant holding.

(2) In this section a "relevant holding" means either—

(a) a number of shares in a company which are of the same class and were acquired in the same capacity jointly by the same two or more persons including the qualifying person, or

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(b) a number of shares in a company which are of the same class and were acquired in the same capacity by the qualifying person solely.

(3) In this section—

(a) "an interest" in a relevant holding means any interests of the qualifying person, in any of the shares in the relevant holding, which are by virtue of section 104 to be regarded as a single asset, and

(b) references to an interest include part of an interest.

(4) Where section 169VC(1) applies by reason of this section, section 169VD(3) and (4) have effect as if any reference to the number of shares disposed of were a reference to the number of shares an interest in which is disposed of.

(5) In relation to a disposal by the trustees of a settlement of an interest in a relevant holding falling within subsection (2)(a), sections 169VH(2) and 169VI(3) and (5) have effect as if any reference to the holding of shares mentioned in section 169VC(1) were to the interest disposed of.

(6) In accordance with subsection (1)—

(a) in sections 169VN(1)(d), 169VP(1)(d) and 169VS(1)(d) (reorganisations), any reference to a disposal of all or part of a holding includes a disposal by the qualifying person of an interest in the holding, and

(b) the reference in section 169VT(2) to a disposal of the original shares is to be read, in relation to a case where the original shares fall within subsection (2)(a) above, as a reference to a disposal of the qualifying person's interest in those shares.

Cap on relief

169VK Cap on relief for disposal by an individual

(1) This section applies if, on a disposal within section 169VC(1) made by an individual ("the individual concerned"), the aggregate of—

(a) the amount of the relevant gain on the disposal ("the gain in question"),

(b) the total amount of any gains that, in relation to earlier disposals by the individual concerned, were charged at the rate in section 169VC(2), and

(c) the total amount of any reckonable trust gains that, on any previous trust disposals in respect of which the individual concerned was an eligible beneficiary, were charged at the rate in section 169VC(2),

exceeds £10 million.

(2) The rate in section 169VC(2) applies only to so much (if any) of the gain in question as, when added to the aggregate of the total amounts mentioned in subsection (1)(b) and (c), does not exceed £10 million.

(3) **[**[F191]Section 1H**]** (rates of capital gains tax) applies to so much of the gain in question as is not subject to the rate in section 169VC(2).

(4) In this section—

"eligible beneficiary", in relation to a disposal, is to be read in accordance with section 169VH(2);

"reckonable trust gain", in relation to a trust disposal in respect of which the individual concerned was an eligible beneficiary, means—

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(a) if section 169VI(1)(c) applied in relation to the disposal, that individual's share of the relevant gain on that disposal, within the meaning given by section 169VI(4) and (5);

(b) otherwise, the relevant gain on that disposal;

"the relevant gain", in relation to a disposal, has the meaning given by section 169VC(3);

"trust disposal" means a disposal by the trustees of a settlement.

Textual Amendments

F191 Words in s. 169VK(3) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 59**

169VL Cap on relief for disposal by trustees of a settlement

(1) This section applies where—

(a) a disposal ("the disposal in question") is made by the trustees of a settlement,

(b) that disposal is within section 169VC(1), and

(c) there is an excess amount in relation to an individual who is an eligible beneficiary in respect of the disposal in question ("the individual concerned").

(2) For the purposes of this section there is an "excess amount" in relation to the individual concerned if the aggregate of—

(a) the amount of the current gain,

(b) the total amount of any gains that, in relation to earlier disposals made by the individual concerned, were charged at the rate in section 169VC(2), and

(c) the total amount of any reckonable trust gains that, on any previous trust disposals in respect of which the individual concerned was an eligible beneficiary, were charged at the rate in section 169VC(2),

exceeds £10 million.

(3) The rate in section 169VC(2) applies to the current gain only to the extent (if any) that the current gain when added to the aggregate of the total amounts mentioned in subsection (2)(b) and (c) does not exceed £10 million.

(4) **[**[F192]Section 1H**]** (rates of capital gains tax) applies to so much of the current gain as is not subject to the rate in section 169VC(2).

(5) In this section—

"the current gain" means the reckonable trust gain on the disposal in question;

"eligible beneficiary", in relation to a disposal, is to be read in accordance with section 169VH(2);

"reckonable trust gain", in relation to any trust disposal in respect of which the individual concerned is an eligible beneficiary, means—

(a) if section 169VI(1)(c) applies in relation to the disposal, that individual's share of the relevant gain on that disposal, within the meaning given by section 169VI(4) and (5);

(b) otherwise, the relevant gain on that disposal;

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"the relevant gain", in relation to a disposal, has the meaning given by section 169VC(3);

"trust disposal" means a disposal by the trustees of a settlement.

Textual Amendments

F192 Words in s. 169VL(4) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 60**

Claims for relief

169VM Claims for relief

(1) Any claim for investors' relief must be made—

(a) in the case of a disposal by an individual, by that individual;

(b) in the case of a disposal by the trustees of a settlement, jointly by—

(i) the trustees, and

(ii) the eligible beneficiary in respect of the disposal, within the meaning given by section 169VH(2) (or, if more than one, all those eligible beneficiaries).

(2) Any claim for investors' relief in respect of a disposal must be made on or before the first anniversary of the 31 January following the tax year in which the disposal is made.

Reorganisations

169VN Reorganisations where no consideration given

(1) This section applies where—

(a) there is a reorganisation within the meaning of section 126,

(b) immediately before the reorganisation, a qualifying person holds ordinary shares which, in relation to that reorganisation, are original shares within the meaning of section 126,

(c) on the reorganisation that person does not give or become liable to give any consideration for, or for any part of, a new holding, and

(d) at a time after the reorganisation, there is a disposal of all or part of a new holding.

(2) In this section a "new holding" means—

(a) the holding that immediately after the reorganisation is (in relation to the original shares) the new holding within the meaning of section 126, or

(b) where the new holding within the meaning of section 126 consists of two or more actual holdings, any of those actual holdings.

(3) Subsections (4) and (5) apply for the purposes of determining (for any purpose of this Chapter) the status of shares that immediately before the disposal mentioned in subsection (1)(d) are in the new holding mentioned there ("the new holding concerned").

(4) Where a number of the original shares were—

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(a) subscribed for by the qualifying person,
(b) issued on a particular date ("the relevant issue date"), and
(c) held continuously by that person for a particular period ending immediately before the reorganisation ("the period concerned"),

the following assumption is to be made.

(5) That assumption is that an appropriate number of the new shares were—
(a) subscribed for by the qualifying person,
(b) issued on the relevant issue date, and
(c) had by the time immediately after the reorganisation already been held continuously by that person for the period concerned.

(6) In subsections (4) and (5)—

"the appropriate number" has the meaning given by section 169VO;

"the original shares" means the shares held by the qualifying person immediately before the reorganisation that were original shares in relation to the reorganisation;

"the new shares" means the shares that immediately after the reorganisation were in the new holding concerned (including such, if any, of the original shares as remained after the reorganisation and were in that holding).

(7) In this section a reference to the "status" of a share is to whether it is qualifying, potentially qualifying or excluded.

(8) Section 169VE applies to determine, for the purposes of this Chapter, which shares are included in a holding immediately before a reorganisation as it applies for the purposes of determining which shares are included in a holding immediately before a particular disposal.

(9) References in this section to consideration are to be read in accordance with section 128(2).

169VO The appropriate number

(1) The "appropriate number" for the purposes of section 169VN(5) is the number found by multiplying the number of shares that are in the new holding concerned immediately after the reorganisation by the fraction—

A B

where—

A is the number of the original shares that were—
(a) subscribed for by the qualifying person,
(b) issued on the relevant issue date, and
(c) continuously held by that person for the period concerned, and

B is the total number of the original shares.

(2) In this section—

"the new holding concerned" has the meaning given by section 169VN(3);

"the original shares" has the meaning given by section 169VN(6);

"the relevant issue date" has the meaning given by section 169VN(4);

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"the period concerned" has the meaning given by section 169VN(4).

169VP Reorganisations where consideration given

(1) This section applies where—

(a) there is a reorganisation within the meaning of section 126,

(b) immediately before the reorganisation, a qualifying person holds ordinary shares which, in relation to that reorganisation, are original shares within the meaning of section 126,

(c) on the reorganisation that person gives or becomes liable to give consideration for shares (" shares issued for consideration ") which—

(i) are issued to that person on the reorganisation, and

(ii) immediately after the reorganisation are in a new holding, and

(d) at a time after the reorganisation, there is a disposal of all or part of that new holding.

(2) In this section a "new holding" means—

(a) the holding that immediately after the reorganisation is (in relation to the original shares) the new holding within the meaning of section 126, or

(b) where the new holding within the meaning of section 126 consists of two or more actual holdings, any of those actual holdings.

(3) In determining, for any purpose of this Chapter, the status of shares that immediately before the disposal mentioned in subsection (1)(d) are in the new holding mentioned there—

(a) the date of issue of the shares issued for consideration is to be taken to be their actual date of issue (rather than the date of issue of any of the original shares), and

(b) in relation to any part of the new holding for which consideration was not given, sections 169VN(3) to (6) and 169VO apply but as if any reference to the new holding concerned were to that part of the new holding.

(4) Section 169VN(3) to (6) and 169VO also apply in relation to any other holding which is a new holding in relation to the reorganisation and as respects which the person did not, on the reorganisation, give or become liable to give any consideration.

(5) In this section a reference to the "status" of a share is to whether it is qualifying, potentially qualifying or excluded.

(6) References in this section to consideration are to be read in accordance with section 128(2).

169VQ Exchange of shares for those in another company

(1) This section applies where section 135 applies in relation to an issue of shares in a company ("company B") in exchange for shares in another company ("company A").

(2) For the purposes of sections 169VN to 169VP—

(a) companies A and B are to be treated as if they were the same company, and

(b) the exchange of shares is to be treated as if it were a reorganisation of that company's share capital.

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169VR New shares issued on scheme of reconstruction

(1) This section applies where—

(a) section 136 applies in relation to an arrangement between a company ("company A") and the persons holding shares, or any class of shares, in company A, under which another company ("company B") issues shares to those persons, and

(b) under section 136(2)(a) those persons are treated as exchanging shares in company A for the shares held by them in consequence of the arrangement.

(2) For the purposes of sections 169VN to 169VP—

(a) companies A and B are to be treated as if they were the same company, and

(b) the exchange of shares is to be treated as if it were a reorganisation of that company's share capital.

(3) In the following provisions of this Chapter, any reference to an exchange of shares includes anything that section 136(2)(a) treats as an exchange of shares.

169VS Modification of conditions for being a qualifying share

(1) This section applies where—

(a) an ordinary share ("the original share") is subscribed for by a qualifying person ("the investor");

(b) the conditions in section 169VB(2)(c) and (d) are met in relation to the original share,

(c) the share is involved in an exchange of shares treated under section 169VQ or 169VR as a reorganisation of share capital, and accordingly is included in the original shares within the meaning of section 169VN(6), and

(d) subsequently there is a disposal of all or part of a holding of shares that in relation to that exchange is a new holding within the meaning given by section 169VN(2).

(2) As respects a share which is in that holding immediately before that disposal, the conditions in section 169VB(2)(f) and (g) are to be regarded as met if (and only if)—

(a) in relation to the period beginning with the issue of the original share and ending with the exchange of shares, those conditions were met by the original share, and

(b) in relation to the period beginning with the exchange of shares and ending with the disposal, those conditions were met by a share representing the original share.

(3) Accordingly—

(a) in section 169VB(2)(f) and (g) as they apply to the original share, any reference to the share-holding period is to be read as to the period mentioned in subsection (2)(a) above, and

(b) in section 169VB(2)(f) and (g) as they apply to a share representing the original share, any reference to the share-holding period is to be read as to the period mentioned in subsection (2)(b) above.

(4) In subsection (1)(c) "the share" includes a share that, following a reorganisation or following an exchange of shares in relation to which section 169VQ or 169VR applies, represents the original share, and subsections (2) and (3) apply in such a case with the necessary modifications.

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169VT Election to disapply section 127

(1) This section applies where—

(a) there is—

(i) a reorganisation (within the meaning of section 126), or

(ii) an exchange of shares which is treated as such a reorganisation by virtue of section 135 or 136, and

(b) the original shares and the new holding would fall to be treated by virtue of section 127 as the same asset.

(2) If an election is made under this section, a claim for investors' relief may be made as if the reorganisation or exchange of shares involved a disposal of the original shares; and if such a claim is made section 127 and sections 169VN to 169VS do not apply.

(3) Any election under this section must be made—

(a) if the reorganisation or exchange of shares would (apart from section 127) involve a disposal by the trustees of a settlement, jointly by—

(i) the trustees, and

(ii) the person who if the disposal were made would be the eligible beneficiary in respect of the disposal, within the meaning given by section 169VH(2) (or, if more than one, all the persons who would be such eligible beneficiaries);

(b) otherwise, by the individual concerned.

(4) Any election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation or exchange of shares takes place.

(5) In this section "the original shares" and "the new holding" have the meaning given by section 126.

Supplemental

169VU "Subscribe" etc

(1) For the purposes of this Chapter (other than this subsection) a person "subscribes for" a share in a company if—

(a) that person subscribes for the share,

(b) the share is issued to that person by the company for consideration consisting wholly of cash,

(c) the share is fully paid up at the time it is issued,

(d) the share is subscribed for, and issued, for genuine commercial reasons and not as part of arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage to any person, and

(e) the share is subscribed for, and issued, by way of a bargain at arm's length.

(2) In subsection (1) "arrangements" and "tax advantage" have the same meaning as in section 16A.

(3) If—

(a) an individual ("A") subscribed for, or is treated under this subsection as having subscribed for, any shares,

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(b) A transferred the shares to another individual ("B") during their lives, and

(c) A was living together with B as B's spouse or civil partner at the time of the transfer,

B is to be treated for the purposes of this Chapter as having subscribed for the shares.

(4) Accordingly, for the purposes of this Chapter any period for which A held the shares continuously is to be added to, and treated as part of, the period for which B held the shares continuously.

(5) In this Chapter, apart from subsections (3) and (4), references to a person's having subscribed for a share include the person's having subscribed for the share jointly with any other person (and references to a person's holding a share or to a share being issued to a person are to be read accordingly).

169VV "Trading company" etc

(1) In this Chapter "trading company" and "the holding company of a trading group" have the same meaning as in section 165 (see section 165A).

(2) For the purposes of this Chapter a company is not to be regarded as ceasing to be a trading company, or the holding company of a trading group, merely because of anything done in consequence of—

(a) the company, or any of its subsidiaries, being in administration or receivership, or

(b) a resolution having been passed, or an order made, for the winding up of the company or any of its subsidiaries.

(3) But subsection (2) applies only if—

(a) the entry into administration or receivership, or the resolution or order for winding up, and

(b) everything done as a result of the company concerned being in administration or receivership, or as a result of that resolution or order,

is for genuine commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

169VW "Relevant employee"

(1) This section applies to determine for the purposes of—

(a) section 169VB(2)(g), or

(b) section 169VH(2)(c),

whether a particular person has at any time in the relevant period been a "relevant employee" in respect of the issuing company.

(2) A person who has at any time in the relevant period been an officer or employee of—

(a) the issuing company, or

(b) a connected company,

is to be regarded as having at that time been a relevant employee in respect of the issuing company, but this is subject to subsections (3) and (5).

(3) If—

(a) a person is an unremunerated director of the issuing company or a connected company at any time in the relevant period, and

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(b) the condition in subsection (4) is met,

the fact that the person holds that directorship at that time does not make the person a relevant employee in respect of the issuing company at that time.

(4) The condition referred to in subsection (3) is that at no time before the relevant period had the person mentioned in that subsection, or a person connected with that person, been—

(a) connected with the issuing company, or

(b) involved in carrying on (whether on the person's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the issuing company or a company connected with that company.

(5) If—

(a) a person becomes an employee of the issuing company or a connected company at a time which is—

(i) within the relevant period, but

(ii) not within the first 180 days of that period,

(b) at the beginning of the relevant period, there was no reasonable prospect that the person would become such an employee within the relevant period, and

(c) the person is not at any time in the relevant period a director of the issuing company or a connected company,

that employment of the person does not make the person a relevant employee in respect of the issuing company at any time in the relevant period.

(6) For the purposes of subsection (5) there is a "reasonable prospect" of a thing if it is more likely than not.

(7) In this section—

"director" is to be read in accordance with section 452 of CTA 2010,

"connected company" means a company which at any time in the relevant period is connected with the issuing company (and it does not matter for this purpose whether that time is a time when the person in question is an officer or employee of either company);

"the issuing company" means the company mentioned in (as the case may be) section 169VB(2)(g) or section 169VH(2)(c);

"the relevant period" means the period mentioned in (as the case may be) section 169VB(2)(g) or section 169VH(2)(c);

"unremunerated director" has the meaning given by section 169VX.

169VX "Unremunerated director"

(1) For the purposes of section 169VW a person ("the person concerned") is an "unremunerated director" of the issuing company or a connected company at a particular time in the relevant period if that person is a director of that company at that time and—

(a) does not receive in the relevant period any disqualifying payment from the issuing company or a related person, and

(b) is not entitled to receive any such payment in respect of that period or any part of it.

(2) In this section "disqualifying payment" means any payment other than—

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(a) a payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the person concerned in the performance of his or her duties as a director,

(b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,

(c) any dividend or other distribution which does not exceed a normal return on the investment to which the dividend or distribution relates,

(d) any payment for the supply of goods which does not exceed their market value,

(e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, or

(f) any necessary and reasonable remuneration which is—

(i) paid for qualifying services that are provided to the issuing company or a related person in the course of a trade or profession carried on wholly or partly in the United Kingdom, and

(ii) taken into account in calculating for tax purposes the profits of that trade or profession.

(3) In this section a "related person" means—

(a) a connected company of which the person concerned is a director, or

(b) any person connected with the issuing company or with a company within paragraph (a).

(4) In this section any reference to a payment to the person concerned includes a payment made to that person indirectly or to that person's order or for that person's benefit.

(5) In this section "qualifying services" means services which are—

(a) not secretarial or managerial services, and

(b) not services of a kind provided by the person to whom they are provided.

(6) In this section the following expressions have the same meaning as in section 169VW—

"connected company";

"director";

"issuing company";

"relevant period".

169VY General definitions

In this Chapter—

"employee" (except in the expression "relevant employee", which is to be read in accordance with section 169VW) has the meaning given by section 4 of ITEPA 2003;

"employment" has the meaning given by section 4 of ITEPA 2003;

"exchange of shares" is to be read in accordance with section 169VR(3);

"excluded share" has the meaning given by section 169VB;

a "holding" of shares in a company means a holding of such shares which by virtue of section 104(1) is to be regarded as a single asset;

"investors' relief" has the meaning given by section 169VA(3);

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"office" has the meaning given by section 5(3) of ITEPA 2003;

"ordinary shares", in relation to a company, means any shares forming part of the company's ordinary share capital (within the meaning given by section 989 of ITA 2007);

"potentially qualifying share" has the meaning given by section 169VB;

"qualifying person" has the meaning given by section 169VC(7);

"qualifying share" has the meaning given by section 169VB;

"subscribe" is to be read in accordance with section 169VU;

"trading company" and "the holding company of a trading group" are to be read in accordance with section 169VV.**]**

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

- Act applied by 1997 c. 16 Sch. 12 para. 12(7)1314
- Act applied by 2002 c. 23 Sch. 16 para. 48(1)(2)
- Act construed as one with reg. 37 by S.I. 2006/575 reg. 37(2)
- Act construed as one with reg. 38 by S.I. 2006/575 reg. 38(3)

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

- s. 4(10)(11) inserted by 2016 c. 11 s. 15(4)
- s. 4(10) words inserted by 2016 c. 24 s. 83(11)
- s. 35(3)(d)(xviii) added by 2008 c. 17 Sch. 7 para. 9
- s. 35(3)(d)(xviii) inserted by 2008 c. 18 Sch. 13 para. 46
- s. 35(3)(d)(xviii) repealed by S.I. 2008/3002 Sch. 1 para. 42Sch. 3 (This amendment comes into force on the day 2008 c. 4, s. 5 comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by S.I. 2008/3068, art. 2(1)(b))
- s. 104(4)(b)(i) words substituted by S.I. 1989/469, reg. 27(2) (as amended) by S.I. 1997/1716 reg. 13(1)(b)
- s. 107(11) words substituted by S.I. 1989/469, reg. 27(2A) (as amended) by S.I. 1997/1716 reg. 13(2)(b)
- s. 169S(4A) inserted by 2015 c. 11 s. 43(2)
- s. 587B inserted by 2000 c. 17 s. 43(1)
- Sch. 5C para. 3(1) modified by S.I. 2004/2199 reg. 7(1)
- Sch. 5C para. 3(6) modified by S.I. 2004/2199 reg. 7(2)
- Sch. 5C para. 5(1) modified by S.I. 2004/2199 reg. 7(3)
- Sch. 5C para. 3 words inserted by S.I. 2005/3229 reg. 128
- Sch. 5C para. 5 words inserted by S.I. 2005/3229 reg. 128
- Sch. 5C para. 6 words inserted by S.I. 2005/3229 reg. 128
- Sch. 5C para. 3(1)(f) words substituted by 2007 c. 3 Sch. 1 para. 347