

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1974, Cross Heading: Replacement of business assets. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 3

PROVISIONS SUPPLEMENTARY TO SECTION 38

Textual Amendments

- F1** Sch. 3 Repealed by Finance Act 1985 (c. 54, SIF 63:1), s. 98(6) and Sch. 27 Part X in relation to disposals of interests in land taking place on or after 19 March Finance Act 1985 (c. 54, SIF 63:1), but without affecting the construction of 1979 (C) Sch. 5 para. 9(5).

PART II

OTHER PROVISIONS SUPPLEMENTARY TO SECTION 38

Replacement of business assets

- 18 (1) *If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (in this paragraph referred to as “the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is wholly or partly applied by him in acquiring other assets, or an interest in other assets (in this paragraph referred to as “the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade, and—*
- (a) *the old assets and new assets are within the classes of assets listed in subsection (6) of [section 118 (with section 119) of the Capital Gains Tax Act 1979 ^{F2}] (replacement of business assets) and the old assets consist of or include land in the United Kingdom; and*
 - (b) *some or all of the new assets are qualifying assets; and*
 - (c) *development gains accrue to the person carrying on the trade in respect of the disposal; and*
 - (d) *the amount of the consideration for the disposal applied as aforesaid is greater than the difference between the whole of that consideration and the amount of those development gains,*
- then, if the person carrying on the trade makes a claim as respects those development gains, the provisions of sub-paragraphs (2) to (5) below shall apply.*
- (2) *There shall be ascertained the following amounts, that is to say—*
- (a) *the amount by which so much of the consideration for the disposal as has been applied as described in sub-paragraph (1) above exceeds the difference mentioned in sub-paragraph (1)(d) above; and*
 - (b) *the amount of the consideration for the disposal which has been so applied in acquiring qualifying assets;*

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and in the following provisions of this paragraph “the material amount” means whichever of those amounts is the smaller (or, if they are equal, the amount which is equal to each of them).

- (3) *The income tax or corporation tax to which the person carrying on the trade is chargeable for the chargeable period in which the disposal was made shall be reduced by an amount equal to whichever of the following amounts is the smallest, that is to say—*
- (a) *30 per cent. of what is, under sub-paragraph (5) below, the appropriate amount;*
 - (b) *30 per cent. of the amount, if any, by which the development gains accruing to him in that chargeable period exceed the development losses, if any, accruing to him in that period (so that if the amount under this head is nil, no reduction will fall to be made under this sub-paragraph);*
 - (c) *the total amount of the income tax for which he is liable for that chargeable period or, in the case of a company, the total amount of the corporation tax for which the company is liable for that chargeable period after setting against that liability the amount of any advance corporation tax falling to be set against it under section 85 of the Finance Act 1972, but before any set-off under subsection (5) of section 240 of the Taxes Act (income tax on distributions etc. received by U.K. company).*

For the purposes of paragraph (b) of this sub-paragraph a man and his wife living with him shall be treated as one person if the result of so treating them is to increase the amount given by that paragraph.

- (4) *Where a reduction falls to be made under the preceding sub-paragraph, the person carrying on the trade shall be treated for the purposes of [the Capital Gains Tax Act 1979 ^{F3}] as if the consideration for the acquisition of, or of the interest in, such of the new assets as are qualifying assets were reduced (or further reduced) by what is, under sub-paragraph (5) below, the appropriate amount; but this sub-paragraph shall not affect the treatment for those purposes of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets ^{F4}.*
- (5) *For the purposes of sub-paragraphs (3)(a) and (4) above—*
- (a) *if the material amount is equal to or greater than one-half of the development gains accruing in respect of the disposal, the appropriate amount is the full amount of the development gains so accruing;*
 - (b) *if the material amount is less than one-half of the development gains so accruing, the appropriate amount is an amount equal to twice the material amount.*

“(6) The following provisions of the Capital Gains Tax Act 1979 shall, with any necessary modifications, apply for the purposes of this paragraph as they apply for the purposes of section 115 of that Act, namely—

- (a) *subsections (3) to (8) of the said section 115,*
- (b) *section 119,*
- (c) *section 121.]”*

- (7) *Without prejudice to the provisions of [section 43(4) of the Capital Gains Tax Act 1979 ^{F5}] where consideration is given—*

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- (a) *for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under this paragraph applies and some or part of which are not; or*
- (b) *for the acquisition or disposal of assets some or part of which are, in relation to a claim under this paragraph, qualifying assets and some or part of which are not,*

the consideration shall be apportioned in such manner as is just and reasonable.

- (8) *For the purposes of this paragraph assets are, in relation to a trade, qualifying assets if they are within the following classes of assets, that is to say the classes listed in [section 118 of the Capital Gains Tax Act 1979 ^{F5}], excluding assets within [paragraph 2 ^{F5}] of head A in class 1 other than land constituting the site of any asset within [paragraph 1 ^{F5}] of that head (including in the site any land in the immediate vicinity of the asset which is occupied for purposes ancillary to the occupation and use of the asset).]*

Textual Amendments

- F2** Capital Gains Tax Act 1979 (c. 14, SIF 63:1), s. 157(2) and Sch. 7 para. 9 for 1979-80 et seq.
- F3** Capital Gains Tax Act 1979 (c. 14, SIF 63:1), s. 157(2) and Sch. 7 paras. 3 and 8 for 1979-80 et seq.
- F4** See 1975 (No.2) s. 55(5)—para. 18(4) excluded in computing chargeable gain on agricultural property.
- F5** Capital Gains Tax Act 1979 (c. 14, SIF 63:1), s. 157(2) and Sch. 7 paras. 3, 8 and 9 for 1979-80 et seq.

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