



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART V

#### TRANSFER OF BUSINESS ASSETS

### 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 sections 166 and 167, 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 family company, or
  - (iii) a member of a trading group of which the holding company is his family 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 neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market, or

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*Status: This is the original version (as it was originally enacted).*

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- (ii) the trading company or holding company is the transferor's family company.
- (3) Subsection (4) below does not apply in relation to a disposal if—
- (a) in the case of a disposal of an asset, any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under Schedule 6, or
  - (b) in the case of a disposal of shares or securities, the appropriate proportion determined under paragraph 7(2) or 8(2) of Schedule 6 of any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under that Schedule, or
  - (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 and (in appropriate cases) Schedule 6, 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.
- (8) Subject to subsection (9) below, in this section and Schedule 7—
- (a) “family company”, “holding company”, “trading company” and “trading group” have the meanings given by paragraph 1 of Schedule 6, 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 after 13th March 1989, in respect of which a claim is made under this section, 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.