

# Taxation of Chargeable Gains Act 1992

## 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—

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;

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 (1) above.

### Commentary—

*Simon's Taxes* **B9.111–B9.113.**

### HMRC Manuals—

Capital Gains Manual CG65710 (conditions for relief).

**Concession D32—**

Transfer of a business to a company.

**Press releases etc—**

ICAEW Tax 7/95 20-2-95 (Section C: incorporation of partnership business; company assuming liability for annuities payable to retired partners; relief not restricted under s 165. Relief is available under this section even if partnership contains corporate partners).

**Simon's Tax Cases—**

s 162(1), *Gordon v IRC [1991] STC 174\**.

**Definitions—**

“Asset”, s 21(1); “allowable loss”, ss 8(2), 16, 288(1); “chargeable gain”, s 15(2); “company”, ss 99, 288(1); “issued”, s 288(5); “market value”, ss 272–274, Sch 11; “shares”, s 288(1).

**Cross references—**

TCGA 1992 Sch 4 para 2 (deferred charges on gains accruing before 31 March 1982).