

RESOLUTION X

Clause X: Elections in relation to assets appropriated to trading stock

Summary

1. This clause restricts the circumstances where an election may be made to compute a chargeable gain or allowable loss on an alternative basis when assets are appropriated into trading stock. The effect of the change is that an election may not be made where an allowable loss would arise on an appropriation into trading stock at market value.

Details of the clause

2. Subsection (1) introduces amendments to section 161 of the Taxation of Chargeable Gains Act 1992 (TCGA).
3. Subsection (2) amends section 161(3) of TCGA. That subsection provides for an election to be made where assets are appropriated into trading stock and a chargeable gain or allowable loss would arise because the disposal is deemed by section 161(1) of TCGA to take place at the market value of the asset. The election amends the disposal proceeds by deducting the amount of the chargeable gain or adding the amount of the allowable loss, thereby in effect giving the result that there is no chargeable gain or allowable loss. The cost of the stock for the calculation of future trading profits is reduced or increased accordingly.
4. Paragraph (a) of subsection (2) restricts the application of section 161(3) of TCGA to cases where the application of section 161(1) gives rise to a chargeable gain on the disposal at market value.
5. Paragraph (b) of subsection (2) consequently removes the reference in section 161(3) of TCGA to the disposal proceeds being increased by the amount of an allowable loss.
6. Subsection (3) amends section 161(3ZB) of TCGA. This subsection performs a similar function to section 161(3), but in respect of cases where an "ATED-related" gain or loss would arise. An "ATED-related" gain or loss can arise where an asset has been within the charge to ATED (the Annual Tax on Enveloped Dwellings). The election can only apply to a "non-ATED" related gain or loss. That is, the gain or loss that accrued whilst the asset was not within the charge to ATED.
7. Subsection (3)(a) and (3)(b) has the same effect for an election under section 161(3ZB) of TCGA as subsection (2)(a) and (2)(b) has for an election under section 161(3) of

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TCGA, but only in respect of a “non-ATED related” gain or loss.

8. Subsection 3(c) clarifies that a “non-ATED” related loss is therefore unaffected by an election under section 161(3ZB) of TCGA. Any “ATED-related” gain or loss is not currently eligible for the election, and that position is unchanged.
9. Subsection (4) sets out the commencement condition. The change applies to appropriations into trading stock made on or after 8th March 2017.

Background note

10. This change affects legislation in the chargeable gains code where an asset that is a fixed asset of a trade or that is held as an investment is appropriated into trading stock. For example, where a commercial property has been held to earn rental income and the owner then decides to take it into trading stock with a view to selling it.
11. The legislation treats that appropriation as taking place at market value, which can give rise to a chargeable gain or allowable loss. The legislation allows for an election that has the effect of reducing any chargeable gain or allowable loss to zero, and of making an equivalent adjustment to the cost of the trading stock in computing future trading profits.
12. The purpose of reducing a chargeable gain is to prevent a “dry” tax charge – that is, a charge to tax where no disposal proceeds have been received. However, in the case of an allowable loss the effect is to convert an amount that has accrued as a capital loss whilst the asset was held as a fixed asset or as an investment into a more flexible trading deduction. The change prevents this conversion so that the loss retains the character that it had when the loss accrued.
13. Where the asset is within ATED a similar election can be made, but only in respect of the “non-ATED related” part of any gain or loss. That is, any part of the gain or loss that accrued whilst the asset was not within the charge to ATED. A similar change to the election will be made, but this will only affect any “non-ATED related” loss.