

Contingent liabilities (S.562)

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18.1 Section 562 is primarily an anti-avoidance provision directed against the introduction into a contract of some contingent liability on a person disposing of an asset which both parties know is unlikely to materialise. For example, a professional person may sell a shop to a butcher with a covenant that the vendor would not open a butcher's business in a shop which the professional (the vendor) owns next door.

No allowance is, in the first instance, made in the computation of a chargeable gain or allowable loss for the fact that the person disposing of an asset may have retained or assumed a contingent liability in respect of it. Where, however, the contingent liability is actually enforced, any expenditure incurred by reason of its enforcement should be deducted from the consideration for disposal and the gain or loss recomputed, any necessary adjustment being made by discharge or repayment of tax or otherwise, e.g., by adjustment of losses carried forward. **Section 57 Finance Act 2012** amended **section 562** to provide that no adjustment will be made unless it is shown to the satisfaction of the inspector that the assignor, vendor, lessor or grantor of an option has paid an amount equal to the amount of the contingent liability.

Section 562 may also apply to a transaction which is not designed to avoid tax, e.g., where land which is expected to yield a mineral is sold subject to a condition that the vendor will re-purchase it at the sale price if that expectation fails. If, in such a case, there is no other contingent liability on the vendor so that, after re-purchase, he is in exactly the same position as he was before the sale, **Section 562** should be applied to nullify all tax consequences of the two transactions. In any other case, however, the vendor's sale consideration should be adjusted by reference only to the value of the contingent liability which is enforced and has, in fact, been paid.