



# Finance Act 1968

## 1968 CHAPTER 44

### PART III

#### CAPITAL GAINS, ESTATE DUTY AND BETTERMENT LEVY

##### *Capital gains*

#### **31 Capital gains tax: exemption for small amounts**

- (1) An individual shall not be chargeable to capital gains tax for a year of assessment if his taxable amount for that year does not exceed £50.
- (2) If an individual's taxable amount for a year of assessment exceeds £50, the amount of capital gains tax to which he is chargeable for that year shall not be greater than the excess.
- (3) For the purposes of this section an individual's taxable amount for a year of assessment is the amount on which he is chargeable under section 20(4) of the Finance Act 1965 for that year (or on which he would be so chargeable but for section 21 of that Act, which affords an alternative charge by reference to income tax).
- (4) In the case of an individual dying in the year of assessment, subsection (3) shall apply with the substitution for the reference to the individual of a reference to his personal representatives, and the taxable amount shall be that on which the personal representatives are chargeable in respect of gains accruing on or before the death.
- (5) In applying the preceding provisions of this section, and in particular in ascertaining an individual's taxable amount, it shall be assumed that paragraph 3(1) of Schedule 10 to the Finance Act 1965 (married woman: assessment and charge on the husband) applies for all years of assessment but where, by virtue of sub-paragraph (2) of the said paragraph 3, any amount is chargeable and assessable on a married woman, any relief afforded by this section shall be apportioned between the husband and the wife according to the respective amounts on which they are chargeable to capital gains tax for the year of assessment.

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(6) This section shall have effect for the year 1967-68 and subsequent years of assessment.

### **32 Quoted securities held on 6th April 1965**

(1) This section has effect subject to the rights of election conferred by Schedule 11 to this Act.

(2) Paragraph 2 of Schedule 7 to the Finance Act 1965 (pooling of shares) shall not apply to quoted securities held on 6th April 1965.

(3) This section has effect as respects any disposal of quoted securities after 19th March 1968.

(4) This section does not affect the computation of the gain accruing on a disposal on or before 19th March 1968, but if by virtue of the said paragraph 2 such a disposal was made out of quoted securities of which some were acquired before 6th April 1965, and some later, then in computing the gain accruing on any disposal after 19th March 1968 the question of what remained undisposed of on the earlier disposal shall be decided on the footing that this section had effect as respects that earlier disposal.

(5) The rules of identification in paragraph 22(6) of Schedule 6 to the Finance Act 1965 (first in, first out, for quoted securities acquired before 6th April 1965) shall apply for the purposes of this section as they apply for the purposes of sub-paragraph (4) of the said paragraph 22.

(6) In this section and in Schedule 11 to this Act—

" quoted securities " means assets to which paragraph 22 of Schedule 6 to the Finance Act 1965 applies,

" fixed interest security " means any security as defined by paragraph 5 of Schedule 7 to that Act,

" preference share " means any share the holder whereof has a right to a dividend at a fixed rate or a rate fluctuating in accordance with the standard rate of income tax, but has no other right to share in the profits of the company,

" year of assessment " for corporation tax, as well as for income tax, means a year beginning on 6th April.

(7) This section and the said Schedule to this Act shall be construed as one with Part II of Schedule 6 to the Finance Act 1965, and in the said Schedule to this Act" the principal section " means this section.

### **33 Government securities issued at a discount**

(1) In section 17 of the Finance Act 1965 subsections (7) and (8) (exemption from tax on short-term gains) shall cease to have effect.

(2) In the case of a disposal by a company—

(a) section 27(3) of the said Act (which, for tax on companies' gains and long-term gains, corresponds to the said subsection (7)) shall not apply unless the disposal of the securities occurs more than twelve months after their acquisition, and

(b) paragraph 5(2) of Schedule 7 to that Act (corresponding to the said subsection (8)) shall not apply to a disposal of, or of part of, the new holding

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unless the disposal occurs more than twelve months after the acquisition of the converted securities.

- (3) The rules of identification in paragraph 8 of Schedule 9 to the Finance Act 1962 shall apply for the purposes of subsection (2) above and, where that subsection applies in relation to any disposal, paragraph 2(4) of Schedule 7 to the Finance Act 1965 (pooling of securities: exclusion of those subject to tax under Case VII of Schedule D) shall apply as if that disposal had been chargeable to income tax under Case VII of Schedule D (tax on short-term gains).
- (4) Where under Schedule 13 to the Finance Act 1965 (groups of companies) the persons disposing of and acquiring an asset are to be treated as if the consideration were of such amount that neither a gain nor a loss accrues on the disposal, the person acquiring the asset shall be treated for the purposes of subsections (2) and (3) above as acquiring it at the time when the other acquired it.
- (5) This section applies where the acquisition and the disposal take place after 19th March 1968.
- (6) In this section "company" has the same meaning as in Part IV of the Finance Act 1965.

### **34 Other amendments of enactments relating to capital gains**

Schedule 12 to this Act (which makes further provision for amending the enactments relating to chargeable gains) and Schedule 13 to this Act (tax on short-term capital gains) shall have effect.

#### *Estate duty*

### **35 Gifts, etc.: period of charge**

- (1) In the case of a death after 19th March 1968 "seven years" shall be substituted for "five years" in the enactments listed in paragraph 1 of Schedule 14 to this Act, except as respects a period beginning on or before 19th March 1963.
- (2) Where any property is deemed to pass on a death after 19th March 1968 by virtue of a relevant disposition or event (estate duty being chargeable on the property apart from this subsection), and the death takes place in the three last years of the seven-year period, the principal value of the property shall be reduced for estate duty purposes—
  - (a) by 15 per cent, thereof, if the death takes place in the first of those three years,
  - (b) by 30 per cent, thereof, if the death takes place in the second of those three years,
  - (c) by 60 per cent, thereof, if the death takes place in the last of those three years.

In this subsection "the seven-year period" means the period of seven years beginning with the relevant disposition or event.

- (3) Subsection (2) above shall have effect in substitution for subsection (1) of section 64 of the Finance Act 1960, and as if contained in that section, and in subsection (3)(b) of that section "seven-year" and "seven" shall be substituted for "five-year" and "five".
- (4) Subsection (2) above shall not have effect so as to give a lesser percentage reduction in the principal value of any property than the percentage reduction (if any) which,

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assuming that the deceased had died on 19th March 1968, would have fallen to be made under subsection (1) or subsection (3)(b) of the said section 64 (without the amendments made by this section) as respects the property:

Provided that this subsection shall not apply unless in the period from 19th March 1968 to the death the deceased was entirely excluded from possession and enjoyment of the property, and of any benefit to him by contract or otherwise.

- (5) The further transitional and consequential provisions of the said Schedule to this Act shall have effect in the case of a death after 19th March 1968, and in that Schedule " the principal section " means this section.

### **36 Marriage gifts**

- (1) Where the deceased made a gift in consideration of marriage, and—
- (a) the gift was an outright gift to a child or remoter descendant of the deceased, or
  - (b) the deceased was the parent or remoter ancestor of either party to the marriage, and either the gift was an outright gift to the other party to the marriage or the property comprised in the gift was settled by the gift, or
  - (c) the deceased was a party to the marriage, and either the gift was an outright gift to the other party to the marriage or the property comprised in the gift was settled by the gift,

then—

- (i) if the principal value of the property comprised in the gift did not exceed £5,000, section 2(1)(c) of the Finance Act 1894 shall not apply to the gift, and
- (ii) if the principal value of the property comprised in the gift exceeded £5,000, the said section 2(1)(c) shall only apply to the excess.

- (2) Where the deceased made a gift in consideration of marriage and subsection (1) above does not apply, then—
- (a) if the principal value of the property comprised in the gift did not exceed £1,000, the said section 2(1)(c) shall not apply to the gift,
  - (b) if the principal value of the property comprised in the gift exceeded £1,000, the said section 2(1)(c) shall only apply to the excess.

- (3) In the case of any one death—
- (a) the total amount of the relief conferred by subsection (1) above in respect of any one marriage shall not exceed £5,000, and
  - (b) the total amount of the relief conferred by subsection (2) above in respect of any one marriage shall not exceed £1,000,

and the reductions required to give effect to paragraph (a) or paragraph (b) above shall be made rateably according to the respective principal values of the gifts in respect of which relief may be given.

- (4) For the purposes of this section the principal value of any property shall be arrived at before making any reduction under section 64 of the Finance Act 1960 (graduation of charge).
- (5) In this section " child " includes an illegitimate child, an adopted child and a step-child, and " parent ", " descendant " and " ancestor " shall be construed accordingly.
- (6) In section 59(2) of the Finance (1909-10) Act 1910 the words " which are made in consideration of marriage or " shall cease to have effect, and references to the provision

so repealed in section 53 of the Finance Act 1963 or elsewhere shall be taken as references to this section.

- (7) This section has effect as respects a gift made after 19th March 1968, and in the case of a death after that date.
- (8) References in this and the next following section to section 2(1)(c) of the Finance Act 1894 are references to so much of that paragraph as makes gifts inter vivos property which is deemed to pass on the death.

### **37 Gifts forming part of normal expenditure of deceased**

- (1) Section 2(1)(c) of the Finance Act 1894 shall not apply to a gift if it is shown to the satisfaction of the Board or, on an appeal under section 10 of the Finance Act 1894, of the court entertaining the appeal that the gift was part of the normal expenditure of the deceased, that the deceased made the gift out of his income and that, after allowing for all gifts forming part of his normal expenditure, the deceased was left with sufficient income to maintain his usual standard of living.
- (2) A payment of a premium on a policy of assurance on the life of the deceased, or a gift of money or money's worth applied, directly or indirectly, in payment of such a premium, shall not for the purposes of subsection (1) above be regarded as part of the normal expenditure of the deceased if, when the insurance was made, or at any earlier or later time, an annuity was purchased on the life of the deceased, unless it is shown to the satisfaction of the Board or, on an appeal under section 10 of the Finance Act 1894, of the court entertaining the appeal, that the purchase of the annuity and the making or any variation of the insurance, or of any prior insurance for which the first-mentioned insurance was directly or indirectly substituted, were not associated operations.

In this subsection " associated operations " has the meaning given by section 59 of the Finance Act 1940.

- (3) In section 59(2) of the Finance (1909-10) Act 1910 the words from " which are proved " to " the circumstances or " (exemption for gifts forming part of normal expenditure) shall cease to have effect.
- (4) This section has effect as respects a gift made after 19th March 1968, and in the case of a death after that date.

### **38 Aggregation**

- (1) For the purposes of aggregation, any property which under section 2(1)(c) of the Finance Act 1894 (gifts inter vivos and other dispositions in life-time of the deceased) passes on the death shall be property in which the deceased had an interest.
- (2) Subsection (1) above applies in particular in relation to—
  - (a) section 4 of the Finance Act 1894 (non-aggregation of property in which deceased never had an interest), and
  - (b) section 33(2) of the Finance Act 1954 (policies of assurance, etc., in which the deceased never had an interest).
- (3) If any property passes on a death under the said section 2(1)(c), and all or part of the property also passes, as non-aggregable property, on the death otherwise than under the said section 2(1)(c), estate duty shall be charged and levied on the property as if it passed solely under the said section 2(1)(c).

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- (4) If part of any property passes on a death under the said section 2(1)(c), and that part is comprised in property which, or part of which, also passes, as non-aggregable property, on the death otherwise than under the said section 2(1)(c), estate duty shall be charged and levied on the part passing under the said section 2(1)(c) as if it passed solely thereunder, and shall be charged and levied separately on any other part of the property.
- (5) For the purposes of subsections (3) and (4) above—
- (a) property passes as non-aggregable property under any estate duty provision if, on the footing that it so passes, it would be property in which the deceased never had an interest,
  - (b) the amount or value of any property or part of property shall be ascertained before any reduction under section 64 of the Finance Act 1960 (graduation of charge) and
  - (c) references to any property or part of property include references to rights or interests in the property.
- (6) This section shall apply in the case of a death after 19th March 1968.
- (7) Subject to the following subsections, this section shall not apply to property passing on the death as comprised in a gift of, or of rights under, a policy of assurance on the life of the deceased issued in respect of an insurance made before 20th March 1968.
- (8) If the aggregate value of all policies related to the death which were issued in respect of an insurance made before 20th March 1968 exceeds £25,000 the relief given by subsection (7) above shall apply only to a fraction of the said property, and that fraction shall be £25,000 divided by the said aggregate value:
- Provided that the rate at which estate duty is to be charged in respect of that fraction of any property shall not be less than the rate at which it would have been charged if the relief given by subsection (7) was not restricted by this subsection.
- (9) The relief given by subsection (7) above in respect of a policy which had matured or been surrendered before 20th March 1968 shall not be reduced under subsection (8) above, and the value of all such matured or surrendered policies shall be left out of account under the said subsection (8).
- (10) If the terms of a policy are varied after 19th March 1968 in such a way that the value of the policy is greater than it would have been if no variation had been made—
- (a) the relief given by subsection (7) above shall apply only to such part of any gift as can justly be attributed to the value the policy would have had if not varied, and
  - (b) the policy shall be brought into subsection (8) above at that value, and the fraction in that subsection shall be applied to the said part of the gift.
- (11) Where by virtue of subsection (8) or subsection (10) above, or of both of those subsections, the relief given by subsection (7) above applies only to a part of any gift, the part of the gift to which the relief does not apply shall in accordance with subsection (1) above be property in which the deceased had an interest and shall be aggregated under section 4 of the Finance Act 1894 accordingly.
- (12) The provisions of this section shall apply to a contract for a deferred annuity becoming payable on the death of the deceased as if it were a policy of assurance on the life of the deceased.

- (13) For the purposes of this section—
- (a) the value of a policy is the amount or value, as at the death, of the sums payable or other benefits arising under the policy, whether or not the policy continues on foot until the death, except that the value of a policy which has been surrendered at a time before the death is the value at that time of the consideration for the surrender;
  - (b) a policy is related to the death if it is a policy on the life of the deceased, if property comprised in a gift of, or of rights under, the policy passes on the death, and if that property would, if this section had not been enacted, have been property in which the deceased never had an interest.

### **39 Discretionary trusts**

- (1) This section has effect, in the case of a death after 19th March 1968, for all the purposes of the enactments relating to estate duty, and in particular for the purposes of section 2(1)(b) of the Finance Act 1894 (property in which the deceased or any other person had an interest ceasing on the death of the deceased).
- (2) If a discretionary trust is limited to determine on a death then, for the purposes of estate duty leviable on that death, the persons eligible under the discretionary trust to receive the whole or any part of the income of any property shall together be treated as having an interest in the property limited to cease on the death, and as having an interest in the property which is different from any interest which those persons or any of them may have otherwise than under the discretionary trust.
- (3) Subsection (2) above applies whether or not there is a discretion or power to accumulate all or any part of the income and accordingly where only one person is eligible to receive all or any part of the income, but there is such discretion or power, he shall be treated as having an interest in the property.
- (4) Subsections (2) and (3) above shall not apply to a statutory or other trust for the maintenance of a person under the age of 21 limited to determine on his attaining the age of 21, or at any earlier time, as being a trust which is also limited to determine on his death (that is to say on his death before attaining that age or before that time).
- (5) Where in accordance with the preceding provisions of this section any persons are to be treated as having an interest in property, that interest shall be an interest in possession in any period if income of the property arising in that period was or could have been distributed to them or any of them, and references to an interest becoming an interest in possession shall be construed accordingly.
- (6) Where in accordance with the preceding provisions of this section any persons are to be treated as having an interest in property, the value of the benefit accruing or arising from the cesser of the interest shall—
  - (a) if the whole of the income of the property was or could have been given to the persons having the interest, or any of them, be the principal value of the property, and
  - (b) if less than the whole of the income of the property was or could have been given to the persons having the interest, or any of them, be the principal value of an addition to the property equal to that lesser amount of income.
- (7) References in this section to a trust limited to determine on a death include references to a trust limited to cease in the alternative on the happening of some other event or

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the expiration of some period, and "discretionary trust" includes a trust under which the disposition of any of the trust income is at the discretion of the trustees or of any other person.

*Betterment levy*

**40 Minerals: betterment levy, income tax and corporation tax**

- (1) This section has effect as respects the power of making regulations under section 74 of the Land Commission Act 1967 (power to adapt betterment levy for minerals by regulations requiring affirmative resolution of House of Commons) and has effect without prejudice to the generality of that section.
- (2) The amount, rate and incidence of betterment levy in respect of mining leases (as defined by the regulations) may be altered by the regulations so that—
  - (a) betterment levy is charged from time to time by reference to the actual amount of the rents, royalties and other payments (including premiums) which are received or become receivable under the lease,
  - (b) the rate may be less than that prescribed under section 28 of the Land Commission Act 1967,
  - (c) the person chargeable in respect of any payment is, or is ascertained by reference to, the person entitled to the payment,

and the regulations may contain such transitional or other consequential provisions, including provisions making exceptions or modifications in Part III of the said Act of 1967, as may appear to the Minister making the regulations to be necessary or expedient.
- (3) The regulations shall, as respects every mining lease, confer a right of election as respects the application to the mining lease of all provisions made in accordance with subsection (2) above so that—
  - (a) in the case of a mining lease granted on or after 6th April 1968, an election may be made in accordance with the regulations excluding the application of those provisions ;
  - (b) in the case of a mining lease granted before that date, no such provisions shall apply unless an election is made in accordance with the regulations.
- (4) Where betterment levy is directly charged on any payment which is charged to tax under section 180 of the Income Tax Act 1952 (mining rents and royalties), the amount of betterment levy so charged shall be treated—
  - (a) for the purposes of section 181 of that Act (management expenses of owner of mineral rights) as a sum disbursed as an expense of management in the year of assessment for which the tax is charged, and
  - (b) for the purposes of section 54(4) of the Finance Act 1965 (corresponding provision for corporation tax) as a sum so disbursed in the accounting period in which the payment falls to be taken into account for corporation tax.
- (5) Where betterment levy is directly charged on a payment which is charged to tax under Case VIII of Schedule D, the amount of betterment levy so charged shall for the purposes of Case VIII be treated as a payment made by the landlord in respect of management of the property in the year of assessment in which he becomes entitled to the payment:



Provided that where the amount of the payment is reduced under section 22 of the Finance Act 1963 (treatment of premiums and other payments as rent) the amount of the betterment levy charged thereon shall be treated for the purposes of this subsection as reduced in the same proportion.

- (6) Paragraph 1 of Schedule 15 to the Finance Act 1967 (premiums, etc., under leases: allowance of betterment levy) shall not apply to betterment levy which is directly charged on any payment.
- (7) For the purposes of this section betterment levy is " directly charged " on a payment if it is charged in accordance with regulations made in accordance with subsection (2) above.
- (8) This section—
  - (a) so far as it relates to betterment levy, applies as respects any payment made before or after the passing of this Act, and shall be construed as one with Part III of the Land Commission Act 1967,
  - (b) so far as it relates to income tax, has effect for the year 1967-68 and subsequent years of assessment, and shall be construed as one with the Income Tax Acts,
  - (c) so far as it relates to corporation tax, has effect for any accounting period ending after 5th April 1967, and shall be construed as one with the Corporation Tax Acts,

and there shall be made all such adjustments, whether by way of discharge or repayment of tax or the making of assessments, as are required to give effect to this subsection.

- (9) The Land Commission shall afford to any officer of the Board such information as he may require for the purposes of this section.