



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART I

#### CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

##### *General*

#### **1 The charge to tax.**

- (1) Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets.
- (2) Companies shall be chargeable to corporation tax in respect of chargeable gains accruing to them in accordance with section 6 of the Taxes Act and the other provisions of the Corporation Tax Acts.
- (3) Without prejudice to subsection (2), capital gains tax shall be charged for all years of assessment in accordance with the following provisions of this Act.

##### *Capital gains tax*

#### **2 Persons and gains chargeable to capital gains tax, and allowable losses.**

- (1) Subject to any exceptions provided by this Act, and without prejudice to sections 10 and 276, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment during any part of which he is resident in the United Kingdom, or during which he is ordinarily resident in the United Kingdom.
- (2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting—
  - (a) any allowable losses accruing to that person in that year of assessment, and
  - (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing

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to that person in any previous year of assessment (not earlier than the year 1965-66).

- (3) Except as provided by section 62, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains accruing in any earlier year of assessment, and relief shall not be given under this Act more than once in respect of any loss or part of a loss, and shall not be given under this Act if and so far as relief has been or may be given in respect of it under the Income Tax Acts.
- [<sup>F1</sup>(4) Where any amount is treated by virtue of any of sections 77, 86, 87 and 89(2) (read, where applicable, with section 10A) as an amount of chargeable gains accruing to any person in any year of assessment—
- (a) that amount shall be disregarded for the purposes of subsection (2) above; and
  - (b) the amount on which that person shall be charged to capital gains tax for that year (instead of being the amount given by that subsection) shall be the sum of the amounts specified in subsection (5) below.
- (5) Those amounts are—
- (a) the amount which after—
    - (i) making any deductions for which subsection (2) provides, and
    - (ii) applying any reduction in respect of taper relief under section 2A,
 is the amount given for the year of assessment by the application of that subsection in accordance with subsection (4)(a) above;
  - [<sup>F2</sup>(aa) every amount which is treated by virtue of sections 77 and 86 as an amount of chargeable gains accruing to the person in question for that year, reduced as follows—
    - (i) first, by making the deductions for which subsection (2) provides in respect of any allowable losses accruing to that person;
    - (ii) then, where taper relief would be deductible by the trustees of the settlement in question but for section 77(1)(b)(i) or 86(1)(e)(ii), by applying reductions in respect of taper relief under section 2A at the rates that would be applicable in the case of the trustees;
 and]
  - (b) every amount which is treated by virtue of sections <sup>F3</sup>... 87 and 89(2) (read, where applicable, with section 10A) as an amount of chargeable gains accruing to the person in question in that year.]
- [<sup>F4</sup>(6) Allowable losses must (notwithstanding section 2A(6)) be deducted under paragraph (a)(i) of subsection (5) above before any may be deducted under paragraph (aa)(i) of that subsection.
- (7) Where in any year of assessment—
- (a) there are amounts treated as accruing to a person by virtue of section 77 or 86,
  - (b) two or more of those amounts, or elements of them—
    - (i) relate to different settlements, and
    - (ii) attract taper relief (by virtue of subsection (5)(aa)(ii) above) at the same rate, or are not eligible for taper relief, and
  - (c) losses are deductible from the amounts or elements mentioned in paragraph (b) above (“the equal-tapered amounts”) but are not enough to exhaust them all,

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the deduction applicable to each of the equal-tapered amounts shall be the appropriate proportion of the aggregate of those losses.

The “appropriate proportion” is that given by dividing the equal-tapered amount in question by the total of the equal-tapered amounts.

- (8) The references to section 86 in subsection (5)(aa) above (in the opening words) and subsection (7)(a) above include references to that section read with section 10A.]

#### Textual Amendments

- F1** S. 2(4)(5) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 2](#)
- F2** S. 2(5)(aa) substituted for word following s. 2(5)(a) (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 2\(2\)](#)
- F3** Words in s. 2(5)(b) repealed (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 2\(3\)](#), [Sch. 40 Pt. 3\(4\)](#)
- F4** S. 2(6)-(8) inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 2\(4\)](#)

#### [<sup>F5</sup>2A Taper relief.

- (1) This section applies where, for any year of assessment—
- there is, in any person’s case, an excess of the total amount referred to in subsection (2) of section 2 over the amounts falling to be deducted from that amount in accordance with that subsection; and
  - the excess is or includes an amount representing the whole or a part of any chargeable gain that is eligible for taper relief.
- (2) The amount on which capital gains tax is taken to be charged by virtue of section 2(2) shall be reduced to the amount computed by—
- applying taper relief to so much of every chargeable gain eligible for that relief as is represented in the excess;
  - aggregating the results; and
  - adding to the aggregate of the results so much of every chargeable gain not eligible for taper relief as is represented in the excess.
- (3) Subject to the following provisions of this Act, a chargeable gain is eligible for taper relief if—
- it is a gain on the disposal of a business asset with a qualifying holding period of at least one year; or
  - it is a gain on the disposal of a non-business asset with a qualifying holding period of at least three years.
- (4) Where taper relief falls to be applied to the whole or any part of a gain on the disposal of a business or non-business asset, that relief shall be applied by multiplying the amount of that gain or part of a gain by the percentage given by the table in subsection (5) below for the number of whole years in the qualifying holding period of that asset.
- (5) That table is as follows—

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[ <sup>F6</sup> Gains on disposals of business assets]		Gains on disposals of non-business assets	
[ <sup>F7</sup> Number of whole years in qualifying holding period	Percentage of gain chargeable	Number of whole years in qualifying holding period	Percentage of gain chargeable
1	50	—	—
2 or more	25]	—	—
		3	95
		4	90
		5	85
		6	80
		7	75
		8	70
		9	65
		10 or more	60

(6) The extent to which the whole or any part of a gain on the disposal of a business or non-business asset is to be treated as represented in the excess mentioned in subsection (1) above shall be determined by treating deductions made in accordance with section 2(2) (a) and (b) as set against chargeable gains in such order as results in the largest reduction under this section of the amount charged to capital gains tax under section 2.

(7) Schedule A1 shall have effect for the purposes of this section.

- [<sup>F8</sup>(8) The qualifying holding period of an asset for the purposes of this section is—
- (a) in the case of a business asset, the period after 5th April 1998 for which the asset had been held at the time of its disposal;
  - (b) in the case of a non-business asset where—
    - (i) the time which, for the purposes of paragraph 2 of Schedule A1, is the time when the asset is taken to have been acquired by the person making the disposal is a time before 17th March 1998, and
    - (ii) there is no period which by virtue of paragraph <sup>F9</sup>... 12 of that Schedule does not count for the purposes of taper relief, the period mentioned in paragraph (a) plus one year;
  - (c) in the case of any other non-business asset, the period mentioned in paragraph (a).

This subsection is subject to paragraph 2(4) of Schedule A1 and paragraph 3 of Schedule 5BA.]]

#### Textual Amendments

- F5** S. 2A inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 121\(1\)](#)

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- F6** Words in s. 2A(5) substituted (with application in accordance with s. 66(4) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 66\(2\)](#)
- F7** Words in s. 2A(5) substituted (with application in accordance with s. 46(2) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 46\(1\)](#)
- F8** S. 2A(8) substituted for s. 2A(8)(9) (with application in accordance with s. 66(4) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 66\(3\)](#)
- F9** Words in s. 2A(8)(b)(ii) repealed (with effect in accordance with Sch. 10 paras. 2, 4, 7, Sch. 40 Pt. 3(3) Note of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 40 Pt. 3\(3\)](#)

### 3 Annual exempt amount.

- (1) An individual shall not be chargeable to capital gains tax in respect of so much of his taxable amount for any year of assessment as does not exceed the exempt amount for the year.
- (2) Subject to subsection (3) below, the exempt amount for any year of assessment shall be £5,500.
- (3) If the retail prices index for the month of [<sup>F10</sup>September] preceding a year of assessment is higher than it was for the previous [<sup>F10</sup>September], then, unless Parliament otherwise determines, subsection (2) above shall have effect for that year as if for the amount specified in that subsection as it applied for the previous year (whether by virtue of this subsection or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index and, if the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple.
- (4) The Treasury shall, before each year of assessment, make an order specifying the amount which by virtue of this section is the exempt amount for that year.
- [<sup>F11</sup>(5) For the purposes of this section an individual's taxable amount for any year of assessment is the amount which, after—
  - (a) making every deduction for which section 2(2) provides,
  - (b) applying any reduction in respect of taper relief under section 2A, and
  - (c) adding any amounts falling to be added by virtue of section 2(5)(b),is (apart from this section) the amount for that year on which that individual is chargeable to capital gains tax in accordance with section 2.
- (5A) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment is equal to or less than the exempt amount for that year, no deduction shall be made for that year in respect of—
  - (a) any allowable losses carried forward from a previous year; or
  - (b) any allowable losses carried back from a subsequent year in which the individual dies.
- (5B) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment exceeds the exempt amount for the year, the deductions made for that year in respect of allowable losses falling within subsection (5A)(a) or (b) above shall not be greater than the excess.
- (5C) In subsections (5A) and (5B) above the references, in relation to any individual's case, to the adjusted net gains for any year are references to the amount given in his case by—

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- (a) taking the amount for that year from which the deductions for which section 2(2)(a) and (b) provides are to be made;
  - (b) deducting only the amounts falling to be deducted in accordance with section 2(2)(a); and
  - (c) in a year in which any amount falls to be brought into account by virtue of section 2(5)(b), adding whichever is the smaller of the exempt amount for that year and the amount falling to be so brought into account.]
- (6) Where in a year of assessment—
- (a) the amount of chargeable gains accruing to an individual does not exceed the exempt amount for the year, and
  - (b) the aggregate amount or value of the consideration for all the disposals of assets made by him (other than disposals gains accruing on which are not chargeable gains) does not exceed an amount equal to twice the exempt amount for the year,
- a statement to the effect of paragraphs (a) and (b) above shall, unless the inspector otherwise requires, be sufficient compliance with any notice under section 8 of the Management Act requiring the individual to make a return of the chargeable gains accruing to him in that year.
- (7) For the year of assessment in which an individual dies and for the next 2 following years, subsections (1) to (6) above shall apply to his personal representatives as they apply to an individual.
- [<sup>F12</sup>(7A) As they apply by virtue of subsection (7) above—
- (a) subsection (5A) has effect with the omission of paragraph (b), and
  - (b) subsection (5B) has effect with the omission of the words “or (b)”.]
- (8) Schedule 1 shall have effect as respects the application of this section to trustees.

#### Textual Amendments

- F10** Words in s. 3(3) substituted (27.7.1993 with effect for the years 1994-95 and subsequent years as mentioned in s. 83(2)) by [1993 c. 34, s. 83\(1\)](#)
- F11** S. 3(5)(5A)(5B)(5C) substituted for s. 3(5) (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 21 para. 3](#)
- F12** S. 3(7A) inserted (retrospectively) by [Finance Act 2003 \(c. 14\), Sch. 28 paras. 3\(4\), 8](#)

#### Modifications etc. (not altering text)

- C1** S. 3 amended (for the year 1993-1994) by [S.I. 1993/760, art. 2](#)  
 S. 3 modified (for the year 1993-1994) by [1993 c. 34, s. 82](#)
- C2** S. 3(2) sum amended (for the year 1994-95) by [Finance Act 1994 \(c. 9\), s. 90](#)
- C3** S. 3(2) sum amended (for the year 1996-97) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1995 \(S.I. 1995/3033\), art. 2](#)
- C4** S. 3(2) sum amended (for the year 1997-98) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1996 \(S.I. 1996/2957\), art. 2](#)
- C5** S. 3(2) sum amended (for the year 1998-99) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1998 \(S.I. 1998/757\), art. 2](#)
- C6** S. 3(2) sum amended (for the year 1999-2000) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 1999 \(S.I. 1999/591\), art. 2](#)
- C7** S. 3(2) sum amended (for the year 2000-01) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2000 \(S.I. 2000/808\), art. 2](#)

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- C8** S. 3(2) sum amended (for the year 2001-02) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2001 \(S.I. 2001/636\)](#), **art. 2**
- C9** S. 3(2) sum amended (for the year 2002-03) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2002 \(S.I. 2002/702\)](#), **art. 2**
- C10** S. 3(2) sum amended (for the year 2003-04) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2003 \(S.I. 2003/842\)](#), **art. 2**
- C11** S. 3(3) excluded (for the year 1994-95) by [Finance Act 1994 \(c. 9\)](#), **s. 90**

#### 4 Rates of capital gains tax.

(1) Subject to the provisions of this section <sup>F13</sup>... , the rate of capital gains tax in respect of gains accruing to a person in a year of assessment shall be equivalent to the [<sup>F14</sup>lower rate] of income tax for the year.

[<sup>F15</sup>(1AA) The rate of capital gains tax in respect of gains accruing to—

- (a) the trustees of a settlement, or
- (b) the personal representatives of a deceased person,

in a year of assessment shall be equivalent to the rate which for that year is [<sup>F16</sup>the rate applicable to trusts under section 686 of the Taxes Act].]

[<sup>F17</sup>(1AB) If (after allowing for any deductions in accordance with the Income Tax Acts) an individual has no income for a year of assessment or his total income for the year is less than the starting rate limit, then—

- (a) if the amount on which he is chargeable to capital gains tax does not exceed the unused part of his starting rate band, the rate of capital gains tax in respect of gains accruing to him in the year shall be equivalent to the starting rate;
- (b) if the amount on which he is chargeable to capital gains tax exceeds the unused part of his starting rate band, the rate of capital gains tax in respect of such gains accruing to him in the year as correspond to the unused part shall be equivalent to the starting rate.

(1AC) The references in subsection (1AB) above to the unused part of an individual's starting rate band are to the amount by which the starting rate limit exceeds his total income (as reduced by any deductions made in accordance with the Income Tax Acts).]

<sup>F18</sup>(1A) .....

<sup>F18</sup>(1B) .....

(2) If income tax is chargeable at the higher rate [<sup>F19</sup>or the Schedule F upper rate] in respect of any part of the income of an individual for a year of assessment, the rate of capital gains tax in respect of gains accruing to him in the year shall be equivalent to the higher rate.

(3) If no income tax is chargeable at the higher rate [<sup>F20</sup>or the Schedule F upper rate] in respect of the income of an individual for a year of assessment, but the amount on which he is chargeable to capital gains tax exceeds the unused part of his basic rate band, the rate of capital gains tax on the excess shall be equivalent to the higher rate of income tax for the year.

<sup>F21</sup>(3A) .....

<sup>F21</sup>(3B) .....

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- (4) The reference in subsection (3) above to the unused part of an individual’s basic rate band is a reference to the amount by which <sup>F22</sup>... the basic rate limit exceeds his total income (as reduced by any deductions made in accordance with the Income Tax Acts).

**Textual Amendments**

- F13** Words in s. 4(1) repealed (with effect in accordance with s. 120(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. III\(29\)](#)
- F14** Words in s. 4(1) substituted (with effect in accordance with s. 26(6) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 26\(2\)](#)
- F15** S. 4(1AA) inserted (with application in accordance with s. 120(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 120\(1\)](#)
- F16** Words in s. 4(1AA) substituted (with effect in accordance with s. 26(6) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 26\(3\)](#)
- F17** S. 4(1AB)(1AC) inserted (with effect in accordance with s. 37(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 37\(1\)](#)
- F18** S. 4(1A)(1B) repealed (with effect in accordance with s. 26(6) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 26\(4\)](#), [Sch. 20 Pt. III\(1\)](#)
- F19** Words in s. 4(2) inserted (with effect in accordance with Sch. 4 para. 24(6) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 4 para. 24\(2\)](#)
- F20** Words in s. 4(3) inserted (with effect in accordance with Sch. 4 para. 24(6) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 4 para. 24\(3\)](#)
- F21** S. 4(3A)(3B) repealed (with effect in accordance with s. 26(6) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 26\(4\)](#), [Sch. 20 Pt. III\(1\)](#)
- F22** Words in s. 4(4) repealed (with effect in accordance with s. 26(6) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 26\(5\)](#), [Sch. 20 Pt. III\(1\)](#)

<sup>F23</sup>**5 Accumulation and discretionary settlements.**

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**Textual Amendments**

- F23** S. 5 repealed (with effect in accordance with s. 120(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. III\(29\)](#)

**6 Other special cases.**

<sup>F24</sup>(1) .....

- (2) Where for any year of assessment—
  - (a) by virtue of section 549(2) of the Taxes Act (gains under life policy or life annuity contract) a deduction of an amount is made from a person’s total income for the purposes of excess liability, or
  - <sup>F25</sup>(b) .....
  - (c) by virtue of section 699(1) of that Act (income accruing before death) the residuary income of an estate is treated as reduced so as to reduce a person’s income by any amount for those purposes,
 section 4(4) shall have effect as if his income for the year were reduced by that amount.



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- (3) Where by virtue of section 547(1)(a) of the Taxes Act (gains from insurance policies etc.) a person's total income for a year of assessment is deemed to include any amount or amounts—
- (a) section 4(4) shall have effect as if his total income included not the whole of the amount or amounts concerned but only the appropriate fraction within the meaning of section 550(3) of that Act, and
  - (b) if relief is given under section 550 of that Act and the calculation required by section 550(2)(b) does not involve the higher rate of income tax, section 4(2) and (3) shall have effect as if no income tax were chargeable at the higher rate [<sup>F26</sup>or the Schedule F upper rate] in respect of his income.
- (4) Nothing in subsection (1) above shall be taken to reduce, and nothing in subsections (2) and (3) above shall be taken to increase, the amount of the deduction which a person is entitled to make from his total income by virtue of any provision of Chapter I of Part VII of the Taxes Act which limits any allowance by reference to the level of his total income.

#### Textual Amendments

- F24** S. 6(1) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 29 Pt. VIII\(8\)](#)
- F25** S. 6(2)(b) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 29 Pt. VIII\(8\)](#)
- F26** Words in s. 6(3)(b) inserted (with effect in accordance with Sch. 4 para. 25(2) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 4 para. 25\(1\)](#)

#### <sup>F27</sup> Time for payment of tax.

.....

#### Textual Amendments

- F27** S. 7 repealed (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 115(12), [Sch. 29 Pt. VIII\(14\)](#)

### Corporation tax

## 8 Company's total profits to include chargeable gains.

- (1) Subject to the provisions of this section and section 400 of the Taxes Act, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting—
- (a) any allowable losses accruing to the company in the period, and
  - (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period, any allowable losses previously accruing to the company while it has been within the charge to corporation tax.

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- (2) For the purposes of corporation tax in respect of chargeable gains, “allowable loss” does not include a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it.
- (3) Except as otherwise provided by this Act or any other provision of the Corporation Tax Acts, the total amount of the chargeable gains to be included in respect of chargeable gains in a company’s total profits for any accounting period shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions—
- (a) as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person’s gain; or
  - (b) as to the time when any such amount is to be treated as accruing,
- being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.
- (4) Subject to subsection (5) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts; but—
- (a) this subsection shall not affect the references to income tax in section 39(2); and
  - (b) in so far as those enactments operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.
- (5) This Act as it has effect in accordance with this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving 2 individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax.
- (6) Where assets of a company are vested in a liquidator under section 145 of the <sup>M1</sup>Insolvency Act 1986 or Article 123 of the <sup>M2</sup>Insolvency (Northern Ireland) Order 1989 or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

#### **Marginal Citations**

**M1** 1986 c. 45.

**M2** S.I.1989/2405 (N.I.19).

*Status: Point in time view as at 27/03/2003.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part I is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Residence etc.*

## **9 Residence, including temporary residence.**

- (1) In this Act “resident” and “ordinarily resident” have the same meanings as in the Income Tax Acts.
- (2) Section 207 of the Taxes Act (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.
- (3) Subject to <sup>F28</sup>sections 10(1) and 10A], an individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the period (or the sum of the periods) for which he is resident in the United Kingdom in that year of assessment exceeds 6 months.
- <sup>F29</sup>(4) The question whether for the purposes of subsection (3) above an individual is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence there shall be decided without regard to any living accommodation available in the United Kingdom for his use.]

#### **Textual Amendments**

- F28** Words in s. 9(3) substituted (with effect in accordance with s. 127(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 127\(2\)](#)
- F29** S. 9(4) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment as mentioned in s. 208(4)) by [1993 c. 34, s. 208\(2\)\(4\)](#)

## **10 Non-resident with United Kingdom branch or agency.**

- (1) Subject to any exceptions provided by this Act, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment in which he is not resident and not ordinarily resident in the United Kingdom but is carrying on a trade in the United Kingdom through a branch or agency, and shall be so chargeable on chargeable gains accruing on the disposal—
  - (a) of assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time when the capital gain accrued, or
  - (b) of assets situated in the United Kingdom and used or held for the purposes of the branch or agency at or before that time, or assets acquired for use by or for the purposes of the branch or agency.
- (2) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency.
- (3) For the purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade or vocation there through a branch or agency shall be, or include, such chargeable gains accruing on the disposal of assets situated in the United Kingdom as are by this section made chargeable to capital gains tax in the case of an individual not resident or ordinarily resident in the United Kingdom.

*Status: Point in time view as at 27/03/2003.*

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- (4) This section shall not apply to a person who, by virtue of Part XVIII of the Taxes Act (double taxation relief agreements), is exempt from income tax or corporation tax chargeable for the chargeable period in respect of the profits or gains of the branch or agency.
- (5) This section shall apply as if references in subsections (1) and (2) above to a trade included references to a profession or vocation, but subsection (1) shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.
- (6) In this Act, unless the context otherwise requires, “branch or agency” means any factorship, agency, receivership, branch or management, but does not include any person within the exemptions in section 82 of the Management Act (general agents and brokers).

**Modifications etc. (not altering text)**

**C12** S. 10 extended (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 79\(5\)](#)

**[<sup>F30</sup>10A Temporary non-residents.**

- (1) This section applies in the case of any individual (“the taxpayer”) if—
  - (a) he satisfies the residence requirements for any year of assessment (“the year of return”);
  - (b) he did not satisfy those requirements for one or more years of assessment immediately preceding the year of return but there are years of assessment before that year for which he did satisfy those requirements;
  - (c) there are fewer than five years of assessment falling between the year of departure and the year of return; and
  - (d) four out of the seven years of assessment immediately preceding the year of departure are also years of assessment for each of which he satisfied those requirements.
- (2) Subject to the following provisions of this section and section 86A, the taxpayer shall be chargeable to capital gains tax as if—
  - (a) all the chargeable gains and losses which (apart from this subsection) would have accrued to him in an intervening year,
  - (b) all the chargeable gains which under section 13 or 86 would be treated as having accrued to him in an intervening year if he had been resident in the United Kingdom throughout that intervening year, and
  - (c) any losses which by virtue of section 13(8) would have been allowable in his case in any intervening year if he had been resident in the United Kingdom throughout that intervening year,

were gains or, as the case may be, losses accruing to the taxpayer in the year of return.
- (3) Subject to subsection (4) below, the gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any gain or loss accruing on the disposal by the taxpayer of any asset if—

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- (a) that asset was acquired by the taxpayer at a time in the year of departure or any intervening year when he was neither resident nor ordinarily resident in the United Kingdom;
  - (b) that asset was so acquired otherwise than by means of a relevant disposal which by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued;
  - (c) that asset is not an interest created by or arising under a settlement; and
  - (d) the amount or value of the consideration for the acquisition of that asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).
- (4) Where—
- (a) any chargeable gain that has accrued or would have accrued on the disposal of any asset (“the first asset”) is a gain falling (apart from this section) to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or any part of another asset, and
  - (b) the other asset is an asset falling within paragraphs (a) to (d) of subsection (3) above but the first asset is not,
- subsection (3) above shall not exclude that gain from the gains which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return.
- (5) The gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any chargeable gain or allowable loss accruing to the taxpayer in an intervening year which, in the taxpayer’s case, has fallen to be brought into account for that year by virtue of section 10 or 16(3).
- (6) The reference in subsection (2)(c) above to losses allowable in an individual’s case in an intervening year is a reference to only so much of the aggregate of the losses that would have been available in accordance with subsection (8) of section 13 for reducing gains accruing by virtue of that section to that individual in that year as does not exceed the amount of the gains that would have accrued to him in that year if it had been a year throughout which he was resident in the United Kingdom.
- (7) Where this section applies in the case of any individual, nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made shall prevent any such assessment for the year of departure from being made in the taxpayer’s case at any time before the end of two years after the 31st January next following the year of return.
- (8) In this section—
- “intervening year” means any year of assessment which, in a case where the conditions in paragraphs (a) to (d) of subsection (1) above are satisfied, falls between the year of departure and the year of return;
  - “relevant disposal”, means a disposal of an asset acquired by the person making the disposal at a time when that person was resident or ordinarily resident in the United Kingdom; and
  - “the year of departure” means the last year of assessment before the year of return for which the taxpayer satisfied the residence requirements.
- (9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment if that year of assessment is one during any part of which he is

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resident in the United Kingdom or during which he is ordinarily resident in the United Kingdom.

- (10) This section is without prejudice to any right to claim relief in accordance with any double taxation relief arrangements.]

#### Textual Amendments

**F30** S. 10A inserted (with effect in accordance with s. 127(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 127\(1\)](#)

## 11 Visiting forces, agents-general etc.

- (1) A period during which a member of a visiting force to whom section 323(1) of the Taxes Act applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of capital gains tax either as a period of residence in the United Kingdom or as creating a change in his residence or domicile.

This subsection shall be construed as one with subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly.

- (2) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from capital gains tax as that to which the head of a mission so resident is entitled under the <sup>M3</sup>Diplomatic Privileges Act 1964.
- (3) Any person having or exercising any employment to which section 320(2) of the Taxes Act (staff of Agents-General etc.) applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.
- (4) Subsections (2) and (3) above shall be construed as one with section 320 of the Taxes Act.

#### Marginal Citations

**M3** 1964 c. 81.

## 12 Foreign assets of person with foreign domicile.

- (1) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, capital gains tax shall not be charged in respect of gains accruing to them from the disposal of assets situated outside the United Kingdom (that is, chargeable gains accruing in the year 1965-66 or a later year of assessment) except that the tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those chargeable gains, any such amounts being treated as gains accruing when they are received in the United Kingdom.
- (2) For the purposes of this section there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the United Kingdom, and subsections (6) to (9) of section 65 of the Taxes Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom)

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shall apply as they would apply for the purposes of subsection (5) of that section if the gain were income arising from possessions out of the United Kingdom.

### 13 Attribution of gains to members of non-resident companies.

- (1) This section applies as respects chargeable gains accruing to a company—
  - (a) which is not resident in the United Kingdom, and
  - (b) which would be a close company if it were resident in the United Kingdom.
- (2) Subject to this section, every person who at the time when the chargeable gain accrues to the company is resident or ordinarily resident in the United Kingdom, who, if an individual, is domiciled in the United Kingdom, and who [<sup>F31</sup>is a participator] in the company, shall be treated for the purposes of this Act as if a part of the chargeable gain had accrued to him.

[<sup>F32</sup>(3) That part shall be equal to the proportion of the gain that corresponds to the extent of the participator's interest as a participator in the company.

- (4) Subsection (2) above shall not apply in the case of any participator in the company to which the gain accrues where the aggregate amount falling under that subsection to be apportioned to him and to persons connected with him does not exceed [<sup>F33</sup>one tenth] of the gain.]

- (5) This section shall not apply in relation to—

- <sup>F34</sup>(a) .....
- [<sup>F35</sup>(b) a chargeable gain accruing on the disposal of an asset used, and used only—
  - (i) for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (ii) for the purposes of the part carried on outside the United Kingdom of a trade carried on by the company partly within and partly outside the United Kingdom,]
- (c) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1), where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
- (d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section 10(3).

[<sup>F36</sup>(5A) Where—

- (a) an amount of tax is paid by a person in pursuance of subsection (2) above, and
- (b) an amount in respect of the chargeable gain is distributed (either by way of dividend or distribution of capital or on the dissolution of the company) before the end of the period specified in subsection (5B) below,

the amount of tax (so far as neither reimbursed by the company nor applied as a deduction under subsection (7) below) shall be applied for reducing or extinguishing any liability of that person to income tax, capital gains tax or corporation tax in respect of the distribution.

- (5B) The period referred to in subsection (5A)(b) above is the period of three years from—
  - (a) the end of the period of account of the company in which the chargeable gain accrued, or

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(b) the end of the period of twelve months beginning with the date on which the chargeable gain accrued,

whichever is earlier.

<sup>F37</sup> .....

<sup>F38</sup>(6) .....

(7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as [<sup>F39</sup>neither reimbursed by the company nor applied under subsection (5A) above for reducing any liability to tax]) shall be allowable as a deduction in the computation under this Act of a gain accruing on the disposal by him of [<sup>F40</sup>any asset representing his interest as a participator in the company].

[<sup>F41</sup>(7A) In ascertaining for the purposes of subsection (5A) or (7) above the amount of capital gains tax or income tax chargeable on any person for any year on or in respect of any chargeable gain or distribution—

(a) any such distribution as is mentioned in subsection (5A)(b) above and falls to be treated as income of that person for that year shall be regarded as forming the highest part of the income on which he is chargeable to tax for the year;

(b) any gain accruing in that year on the disposal by that person of any asset representing his interest as a participator in the company shall be regarded as forming the highest part of the gains on which he is chargeable to tax for that year;

(c) where any such distribution as is mentioned in subsection (5A)(b) above falls to be treated as a disposal on which a gain accrues on which that person is so chargeable, that gain shall be regarded as forming the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (b) above; and

(d) any gain treated as accruing to that person in that year by virtue of subsection (2) above shall be regarded as the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (c) above.]

(8) So far as it would go to reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person; and subject to the preceding provisions of this subsection this section shall not apply in relation to a loss accruing to the company.

(9) If [<sup>F42</sup>a person who is a participator in the company] at the time when the chargeable gain accrues to the company is itself a company which is not resident in the United Kingdom but which would be a close company if it were resident in the United Kingdom, an amount equal to the amount apportioned under subsection (3) above out of the chargeable gain [<sup>F43</sup>to the participating company's interest as a participator in the company to which the gain accrues shall be further apportioned among the participators in the participating company according to the extent of their respective interests as participators, and subsection (2) above shall apply to them accordingly in relation to the amounts further apportioned, and so on through any number of companies].

(10) The persons treated by this section as if a part of a chargeable gain accruing to a company had accrued to them shall include trustees [<sup>F44</sup>who are participators in the company, or in any company amongst the participators in which the gain is apportioned



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under subsection (9) above,] if when the gain accrues to the company the trustees are neither resident nor ordinarily resident in the United Kingdom.

[<sup>F45</sup>(10A) A gain which is treated as accruing to any person by virtue of this section shall not be eligible for taper relief.]

[<sup>F46</sup>(10B) A chargeable gain that would be treated as accruing to a person under subsection (2) above shall not be so treated if—

- (a) it would be so treated only if assets that are assets of a pension scheme were taken into account in ascertaining that person's interest as a participator in the company, and
- (b) at the time the gain accrues a gain arising on a disposal of those assets would be exempt from tax by virtue of section 271(1)(b), (c), (d), (g) or (h) or (2).

In paragraph (a) above “assets of a pension scheme” means assets held for the purposes of a fund or scheme to which any of the provisions mentioned in paragraph (b) above applies.]

(11) If any tax payable by any person by virtue of subsection (2) above is paid by the company to which the chargeable gain accrues, or in a case under subsection (9) above is paid by any such other company, the amount so paid shall not for the purposes of income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

[<sup>F47</sup>(11A) For the purposes of this section the amount of the gain or loss accruing at any time to a company that is not resident in the United Kingdom shall be computed (where it is not the case) as if that company were within the charge to corporation tax on capital gains.]

[<sup>F48</sup>(12) In this section “participator”, in relation to a company, has the meaning given by section 417(1) of the Taxes Act for the purposes of Part XI of that Act (close companies).

(13) In this section—

- (a) references to a person's interest as a participator in a company are references to the interest in the company which is represented by all the factors by reference to which he falls to be treated as such a participator; and
- (b) references to the extent of such an interest are references to the proportion of the interests as participators of all the participators in the company (including any who are not resident or ordinarily resident in the United Kingdom) which on a just and reasonable apportionment is represented by that interest.

(14) For the purposes of this section, where—

- (a) the interest of any person in a company is wholly or partly represented by an interest which he has under any settlement (“his beneficial interest”), and
- (b) his beneficial interest is the factor, or one of the factors, by reference to which that person would be treated (apart from this subsection) as having an interest as a participator in that company,

the interest as a participator in that company which would be that person's shall be deemed, to the extent that it is represented by his beneficial interest, to be an interest of the trustees of the settlement (and not of that person), and references in this section, in relation to a company, to a participator shall be construed accordingly.

(15) Any appeal under section 31 of the Management Act involving any question as to the extent for the purposes of this section of a person's interest as a participator in a company shall be to the Special Commissioners.]

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### Textual Amendments

- F31** Words in s. 13(2) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(2\)](#)
- F32** S. 13(3)(4) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(3\)](#)
- F33** Words in s. 13(4) substituted (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 80\(2\)](#) (with Sch. 3)
- F34** S. 13(5)(a) repealed (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(4\), Sch. 41 Pt. V\(30\)](#)
- F35** S. 13(5)(b) substituted (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 80\(3\)](#) (with Sch. 3)
- F36** S. 13(5A)(5B) substituted for s. 13(5A) (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 80\(4\)](#) (with Sch. 3)
- F37** Words in s. 13(5B) repealed (24.7.2002) by [Finance Act 2002 \(c. 23\), Sch. 40 Pt. 3\(16\)](#)
- F38** S. 13(6) repealed (with effect in accordance with Sch. 41 Pt. 5(30) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 41 Pt. V\(30\)](#)
- F39** Words in s. 13(7) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(5\)\(a\)](#)
- F40** Words in s. 13(7) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(5\)\(b\)](#)
- F41** S. 13(7A) inserted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(6\)](#)
- F42** Words in s. 13(9) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(7\)\(a\)](#)
- F43** Words in s. 13(9) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(7\)\(b\)](#)
- F44** Words in s. 13(10) substituted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(8\)](#)
- F45** S. 13(10A) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 21 para. 4](#)
- F46** S. 13(10B) inserted (with application in accordance with s. 80(6) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 80\(5\)](#) (with Sch. 3)
- F47** S. 13(11A) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 122\(4\)](#)
- F48** S. 13(12)-(15) inserted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 174\(9\)](#)

## 14 Non-resident groups of companies.

(1) This section has effect for the purposes of section 13.

[<sup>F49</sup>(2) The following provisions—

- (a) section 41(8),
- (b) section 171 (except subsections (1)(b) and (1A)),
- (c) section 173 (with the omission of the words “to which this section applies” in subsections (1)(a) and (2)(a) and “such” in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),
- (d) section 174(4) (with the substitution of “ at a time when both were members of the group” for “in a transfer to which section 171(1) applied”), and

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- (e) section 175(1) (with the omission of the words “to which this section applies”),  
shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to companies which are members of a group of companies.]
- (3) [<sup>F50</sup>Section 179 (except subsections (1)(b) and (1A))] shall apply for the purposes of section 13 as if for any reference therein to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the United Kingdom.
- (4) For the purposes of this section —
- (a) a “non-resident group” of companies—
- (i) in the case of a group, none of the members of which are resident in the United Kingdom, means that group, and
- (ii) in the case of a group, 2 or more members of which are not resident in the United Kingdom, means the members which are not resident in the United Kingdom;
- (b) “group” shall be construed in accordance with section 170 <sup>F51</sup> ... .

#### Textual Amendments

- F49** S. 14(2) substituted (with effect in accordance with Sch. 29 para. 16(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 16(2)** (with Sch. 29 para. 46(5))
- F50** Words in s. 14(3) substituted (with effect in accordance with Sch. 29 para. 16(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 16(3)** (with Sch. 29 para. 46(5))
- F51** Words in s. 14(4)(b) repealed (with effect in accordance with Sch. 29 para. 16(5), Sch. 40 Pt. 2(12) Note 2 of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 16(4), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

**Status:**

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**Changes to legislation:**

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