



# 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 [<sup>F1</sup>section 2 of CTA 2009] and the other provisions of the Corporation Tax Acts[<sup>F2</sup>, subject to the exception in subsection (2A)].

[<sup>F3</sup>(2A) But companies are chargeable to capital gains tax, and not corporation tax, in respect of chargeable gains accruing to them to the extent that those [<sup>F4</sup>gains are—

- (a) ATED-related gains in respect of which the companies are chargeable to capital gains tax under section 2B, or
- (b) NRCGT gains in respect of which the companies are chargeable to capital gains tax under section 14D or 188D.]]

- (3) Without prejudice to [<sup>F5</sup>subsections (2) and (2A)], capital gains tax shall be charged for all years of assessment in accordance with the following provisions of this Act.

#### **Textual Amendments**

**F1** Words in s. 1(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 359](#) (with [Sch. 2 Pts. 1, 2](#))

**F2** Words in s. 1(2) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 25 para. 2\(2\)](#)

*Status: Point in time view as at 15/09/2016.*

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- F3** S. 1(2A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 2\(3\)](#)
- F4** Words in s. 1(2A) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 2](#)
- F5** Words in s. 1(3) substituted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 2\(4\)](#)

### *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 [<sup>F6</sup>if the residence condition is met].

[<sup>F7</sup>(1A) The residence condition is—

- (a) in the case of an individual, that the individual is resident in the United Kingdom for the year in question,
- (b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is resident in the United Kingdom,
- (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is resident in the United Kingdom during any part of the year in question, and
- (d) in any other case, that the person is resident in the United Kingdom when the gain accrues.]

[<sup>F8</sup>(1B) If the year is a split year as respects an individual, the individual is not chargeable to capital gains tax in respect of any chargeable gains accruing to the individual in the overseas part of that year.

(1C) But subsection (1B)—

- (a) does not apply to chargeable gains in respect of which the individual would have been chargeable to capital gains tax under section 10, had the individual been not resident in the UK for the year, and
- (b) is without prejudice to section 10A.]

- (2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment [<sup>F9</sup>or, where subsection (1B) applies, the UK part of that year], after deducting—

- (a) any allowable losses accruing to that person in that year of assessment [<sup>F10</sup>or that part (as the case may be)], 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 to that person in any previous year of assessment (not earlier than the year 1965-66).

[<sup>F11</sup>(2A) Where subsection (1B) applies, the amounts that may be deducted under subsection (2)

- (a) include any allowable NRCGT losses accruing to the person in the overseas part of the tax year concerned (see section 14B(4)).

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- (2B) The amounts that may be deducted under subsection (2)(b) include any allowable NRCGT losses (other than group losses, as defined in section 188E(4)) accruing to the person in a tax year (“year P”) previous to the year mentioned in subsection (2) (a) (so far as those losses have not been allowed as a deduction from chargeable gains accruing in year P or any previous year).]
- (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>F12</sup>(4) If chargeable gains are treated by virtue of section 87 or 89(2) as accruing to a person in a tax year (“the relevant deemed gains”)—
- (a) subsection (2) has effect as if the relevant deemed gains had not accrued, and
  - (b) the amount on which the person is charged to capital gains tax for that year is the sum of—
    - (i) the amount given by subsection (2) as it has effect by virtue of paragraph (a), and
    - (ii) the amount of the relevant deemed gains.
- (5) In subsection (4) the reference to section 87 or 89(2) is to that section read, where appropriate, with section 10A.]
- [<sup>F13</sup>(7) Where in any year of assessment—
- (a) there are amounts treated as accruing to a person by virtue of section <sup>F14</sup>... 86,
  - (b) two or more of those amounts, or elements of them—
    - (i) relate to different settlements, <sup>F15</sup>...
    - <sup>F15</sup>(ii) .....
  - (c) losses are deductible from the amounts or elements mentioned in paragraph (b) above <sup>F16</sup>... but are not enough to exhaust them all,
- the deduction applicable to each of the <sup>F17</sup>... amounts shall be the appropriate proportion of the aggregate of those losses.
- The “appropriate proportion” is that given by dividing the <sup>F17</sup>... amount in question by the total of the <sup>F17</sup>... amounts.
- [ Nothing in this section applies in relation to an ATED-related gain chargeable to, or
- <sup>F18</sup>(7A) an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B.]
- [ Except where otherwise specified (see subsections (2A) and (2B)), nothing in this
- <sup>F19</sup>(7B) section applies in relation to an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D or 188D.]
- <sup>F20</sup>(8) .....

#### Textual Amendments

- F6** Words in s. 2(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 75\(2\)](#)
- F7** S. 2(1A) inserted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 75\(3\)](#)

*Status: Point in time view as at 15/09/2016.*

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- F8** S. 2(1B)(1C) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 93\(2\)](#)
- F9** Words in s. 2(2) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 93\(3\)\(a\)](#)
- F10** Words in s. 2(2)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 93\(3\)\(b\)](#)
- F11** S. 2(2A)(2B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 3\(2\)](#)
- F12** S. 2(4)(5) substituted for s. 2(4)-(6) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(2\)](#)
- F13** 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\(4\)](#)
- F14** Words in s. 2(7)(a) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 2](#)
- F15** S. 2(7)(b)(ii) and preceding word omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(3\)\(a\)](#)
- F16** Words in s. 2(7)(c) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(3\)\(b\)](#)
- F17** Words in s. 2(7) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(3\)\(c\)](#)
- F18** S. 2(7A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 3](#)
- F19** S. 2(7B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 3\(3\)](#)
- F20** S. 2(8) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 24\(4\)](#)

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

- C1** S. 2(1) applied (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [22\(1\)\(a\)](#)
- C2** S. 2(1) extended by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 850](#) (as inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\)](#), [21](#))
- C3** S. 2(2)-(2B) excluded (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 20\(11\)](#)

#### **<sup>F21</sup>2A Taper relief.**

.....

#### **Textual Amendments**

- F21** S. 2A omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 25](#)

#### **[<sup>F22</sup>2B Persons chargeable to capital gains tax on ATED-related gains**

- (1) A person (other than an excluded person) (“P”) is chargeable to capital gains tax in respect of any ATED-related chargeable gain accruing to P in a tax year on a relevant high value disposal.

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- (2) A person is “excluded” if the person is an individual, the trustees of a settlement or the personal representatives of a deceased person and—
  - (a) the gain accrues on a disposal of any partnership assets and the person is a member of the partnership, or
  - (b) the gain accrues on a disposal of any property held for the purposes of a relevant collective investment scheme and the person is a participant in relation to the scheme.
- (3) Capital gains tax is charged on the total amount of ATED-related chargeable gains accruing to P in the tax year on relevant high value disposals, after deducting ring-fenced ATED-related allowable losses in relation to that year.
- (4) Subsections (5) to (7) apply in relation to an ATED-related allowable loss accruing to P in a tax year on a relevant high value disposal.
- (5) The loss is not allowable as a deduction from ATED-related chargeable gains accruing in any earlier tax year on relevant high value disposals.
- (6) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.
- (7) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.
- (8) The only deductions which can be made from ATED-related chargeable gains are those permitted by this section.
- (9) See section 57A and Schedule 4ZZA for how to compute—
  - (a) the ATED-related gain or loss accruing on a relevant high value disposal, and
  - (b) the gain or loss accruing on a relevant high value disposal which is not ATED-related.
- (10) In this section—
  - “participant”, in relation to a relevant collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000;
  - “relevant collective investment scheme” means a collective investment scheme within the meaning of Part 17 of that Act (see section 235 of that Act) other than—
    - (a) a unit trust scheme within the meaning of that Part (see section 237(1) of that Act), or
    - (b) an open-ended investment company within the meaning of that Part (see section 236(1) of that Act);
  - “ring-fenced ATED-related allowable losses”, in relation to a tax year, means—
    - (a) any ATED-related allowable losses accruing to P in the tax year on relevant high value disposals, and
    - (b) so far as they have not been allowed as a deduction [<sup>F23</sup>from chargeable gains accruing in any previous tax year,] any ATED-related allowable losses accruing to P in any previous tax year (not earlier than the tax year 2013-14) on such disposals.

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### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

**F23** Words in s. 2B(10) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 4](#)

### Modifications etc. (not altering text)

**C4** S. 2B(3) excluded (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 20\(12\)](#)

## 2C “Relevant high value disposal”

- (1) A disposal on which a gain or loss accrues to P is a “relevant high value disposal” if conditions A to D are met.
- (2) Condition A is that the disposal is of the whole or part of a chargeable interest (“the disposed of interest”).
- (3) Condition B is that the disposed of interest has, at any time during the relevant ownership period, been or formed part of a single-dwelling interest.
- (4) Condition C is that—
  - (a) P, or
  - (b) if the disposed of interest is a partnership asset, the responsible partners, or
  - (c) if the disposed of interest is held for the purposes of a relevant collective investment scheme, the person who has day-to-day control over the management of the property subject to the scheme,
 has or have been within the charge to annual tax on enveloped dwellings with respect to that single-dwelling interest on one or more days in the relevant ownership period which are not relievable days in relation to the interest.
- (5) Condition D is that the amount or value of the consideration for the disposal exceeds the threshold amount (see section 2D).
- (6) In this section and section 2D—
 

“chargeable interest” has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act (chargeable interest));

“dwelling” has the same meaning as in that Part (see section 112 of that Act);

“relevant collective investment scheme” has the same meaning as in section 2B;

“the relevant ownership period” means the period which begins—

  - (a) if an election has been made under paragraph 5 of Schedule 4ZZA, with the day on which P acquired the chargeable interest or, if later, 31 March 1982, and
  - (b) in any other case, with the day on which P acquired the chargeable interest or, if later, [<sup>F24</sup>6 April in the relevant year],

and ends with the day before the day on which the disposal occurs;

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[<sup>F25</sup>“the relevant year” means—

- (a) in Case 1 in paragraph 2 of Schedule 4ZZA, 2013;
- (b) in Case 2 in that paragraph, 2015;
- (c) in Case 3 in that paragraph, 2016;]

“relievable day” means a day which is “relievable” by virtue of any of the provisions mentioned in section 132 of the Finance Act 2013 (ATED: effect of reliefs) and in respect of which a claim has been made under section 106(3) of that Act;

“the responsible partners” has the same meaning as in section 96 of that Act;

“single-dwelling interest” has the same meaning as in Part 3 of that Act; and a reference to being “within the charge” to annual tax on enveloped dwellings with respect to a single-dwelling interest is to be read in accordance with section 170(2) of that Act.

(7) For the purposes of Condition C—

- (a) Part 3 of the Finance Act 2013 applies, in relation to any part of the relevant ownership period falling before 1 April 2013, as if section 94(8)(a) of that Act (first chargeable period for ATED) read “the period beginning with 31 March 1982 and ending with 31 March 1983”, and
- (b) when determining whether any day falling before [<sup>F26</sup>1 April in the relevant year] is a relievable day, the definition of “relievable day” in subsection (6) above is to read as if the words “and in respect of which a claim has been made under section 106(3) of that Act” were omitted.

#### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

**F24** Words in s. 2C(6) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 2\(2\)](#)

**F25** Words in s. 2C(6) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 2\(3\)](#)

**F26** Words in s. 2C(7)(b) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 2\(4\)](#)

## 2D “The threshold amount”

(1) This section applies to determine “the threshold amount” in relation to a disposal which meets Conditions A to C in section 2C (“the current disposal”).

(2) If—

- (a) the current disposal is not a part disposal of an asset, and
- (b) P has not made any relevant related disposals,

the threshold amount is [<sup>F27</sup>£500,000], subject to subsection (5) (joint interests).

(3) If paragraphs (a) and (b) of subsection (2) do not both apply, the threshold amount is the relevant fraction of [<sup>F28</sup>£500,000], subject to subsection (5) (joint interests).

(4) “The relevant fraction” is—

C TMV

where—

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“C” is the amount or value of the consideration for the current disposal;

“TMV” is what would be the market value, at the time of the current disposal, of a notional asset comprising—

- (a) the disposed of interest (see section 2C(2)),
- (b) if the current disposal is a part disposal, any part of the chargeable interest held by P that remains undisposed of immediately following that part disposal,
- (c) any chargeable interest (or part of a chargeable interest) which was the subject of a relevant related disposal, and
- (d) any chargeable interest (or part of a chargeable interest) held by P at the time of the current disposal which, if P had disposed of it at that time, would have been the subject of a relevant related disposal.

(5) If the disposed of interest is a share of the whole of—

- (a) a chargeable interest, or
- (b) a part of a chargeable interest,

subsections (2) and (3) have effect as if the references to [F29“£500,000”] were to the joint share fraction of that amount.

(6) The joint share fraction is the fraction of the whole of the chargeable interest or part represented by the disposed of interest.

(7) “Relevant related disposal”, in relation to the current disposal, means any disposal by P which—

- (a) meets Conditions A to C in section 2C in circumstances where the single-dwelling interest referred to in Condition C is—
  - (i) the single-dwelling interest by virtue of which Condition C is met in relation to the current disposal, or
  - (ii) another single-dwelling interest in the same dwelling as that interest, and
- (b) was made in the period of 6 years ending with the day on which the current disposal occurs, but not before 6 April 2013.

#### **Textual Amendments**

- F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)
- F27** Sum in s. 2D(2) substituted (with effect in relation to disposals occurring on or after 6 April 2016 in accordance with Sch. 8 para. 4(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 4\(2\)](#)
- F28** Sum in s. 2D(3) substituted (with effect in relation to disposals occurring on or after 6 April 2016 in accordance with Sch. 8 para. 4(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 4\(3\)](#)
- F29** Sum in s. 2D(5) substituted (with effect in relation to disposals occurring on or after 6 April 2016 in accordance with Sch. 8 para. 4(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 4\(4\)](#)

## **2E Restriction of losses**

(1) This section applies where (ignoring this section)—

- (a) a disposal would be a relevant high value disposal, but for a failure to meet condition D in section 2C,



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- (b) if it were a relevant high value disposal, an ATED-related loss would accrue to a person (other than an excluded person) in a tax year on the disposal, and
  - (c) the total of the sums allowable as a deduction under section 38 in relation to the disposal exceeds the threshold amount in relation to the disposal.
- (2) For the purposes of this Act—
- (a) the disposal is to be treated as a relevant high value disposal (and section 57A and Schedule 4ZZA apply accordingly), and
  - (b) the ATED-related loss which accrues on the disposal is to be restricted to the amount which would have been that loss had the consideration for the disposal been £1 greater than the threshold amount in relation to the disposal.
- (3) In a case where paragraph 2 of Schedule 4ZZA applies (calculation of gains or losses on disposals of assets held on 5 April 2013 [<sup>F30</sup>etc]), the reference in subsection (1) (c) to the disposal is to be read as a reference to the notional disposal referred to in paragraph 3(2) of that Schedule (disposal on which notional [<sup>F31</sup>post-commencement] gain or loss accrues).
- (4) Nothing in subsection (2)(b) restricts any loss which is not ATED-related, or affects any gain (whether or not ATED-related), accruing on the relevant high value disposal.
- (5) In this section—
- “excluded” has the meaning given by section 2B(2);
  - “the threshold amount” has the meaning given by section 2D.

#### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

**F30** Word in s. 2E(3) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 5\(a\)](#)

**F31** Word in s. 2E(3) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [Sch. 8 para. 5\(b\)](#)

## 2F Tapering relief for gains

- (1) This section applies to an ATED-related gain which accrues on a relevant high value disposal and is chargeable to capital gains tax by virtue of section 2B.
- (2) There is excluded from the gain so much of it as exceeds five-thirds of the difference between—
- (a) the amount or value of the consideration, and
  - (b) the threshold amount (within the meaning of section 2D) in relation to the disposal.
- (3) But where the relevant fraction is less than 1, subsection (2) has effect as if the amount determined under that subsection were the relevant fraction of that amount.
- (4) “The relevant fraction”—
- (a) in a case where the ATED-related gain is determined in accordance with paragraph 3 of Schedule 4ZZA, has the meaning given by paragraph 3(4) of that Schedule, and

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- (b) in a case where the ATED-related gain is determined in accordance with paragraph 6 of that Schedule, has the same meaning as in paragraph 6(5)(a) of that Schedule.
- (5) Nothing in this section restricts any gain which is not ATED-related, or affects any loss (whether or not ATED-related), accruing on the relevant high value disposal.]

#### Textual Amendments

**F22** Ss. 2B-2F inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 4](#)

### 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.
- [<sup>F32</sup>(1A) Subsection (1) does not apply to an individual for a tax year if section 809B of ITA 2007 (claim for remittance basis to apply) applies to the individual for that year.]
- [<sup>F33</sup>(2) The exempt amount for a tax year is [<sup>F34</sup>£11,100].]
- [<sup>F35</sup>(3) If there is a relevant increase in [<sup>F36</sup>CPI] in relation to a tax year—
- (a) the exempt amount is to be increased in accordance with Steps 1 and 2, and
  - (b) subsection (2) has effect from then on (for that and subsequent tax years) as if it referred to the increased amount,
- unless Parliament otherwise determines.
- (3A) There is a relevant increase in [<sup>F37</sup>CPI] in relation to a tax year if the [<sup>F38</sup>consumer prices index] for the September before the start of the tax year is higher than it was for the previous September.
- (3B) Steps 1 and 2 are—
- Step 1* Increase the exempt amount for the previous tax year by the same percentage as the percentage of the relevant increase in [<sup>F39</sup>CPI].
- Step 2* If the result of Step 1 is not a multiple of £100, round it up to the nearest multiple of £100.
- (4) If there is a relevant increase in [<sup>F40</sup>CPI] in relation to a tax year, the Treasury must before the start of that tax year make an order showing the amount arrived at as a result of Steps 1 and 2.]
- [<sup>F41</sup>(5) For the purposes of this section an individual's taxable amount for any year of assessment [<sup>F42</sup>is (what would apart from this section be) the total of the amounts for that year on which that individual is chargeable to capital gains tax in accordance with either (or both) of—
- (a) section 2 (gains, other than ATED-related gains and NRCGT gains, chargeable to capital gains tax), and
  - (b) section 14D (NRCGT gains chargeable to capital gains tax).]

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- (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.

- [<sup>F43</sup>(5BA) In this section, “adjusted net gains”, in relation to a tax year and an individual, means—
- (a) if the residence condition is met (see section 2(1A)) and the year is not a split year as respects the individual, the section 2 adjusted net gains;
  - (b) if the residence condition is not met, the section 14D adjusted net gains;
  - (c) if the residence condition is met and the year is a split year as respects the individual, the total of the section 2 adjusted net gains (if any) and the section 14D adjusted net gains (if any).]

- (5C) [<sup>F44</sup>In subsection (5BA) “section 2 adjusted net gains”, in relation to an individual and a tax year, means the amount given in the individual's case by—]

- (a) taking the amount for that year from which the deductions for which section 2(2)(a) and (b) provides are to be made;

- [<sup>F45</sup>(aa) if section 16ZB (certain chargeable gains charged on remittance basis) applies for that year, deducting the amount of the relevant gains (within the meaning of that section),]

- (b) deducting [<sup>F46</sup>(from the amount mentioned in paragraph (a), as reduced under paragraph (aa))] only the amounts falling to be deducted in accordance with section 2(2)(a); and

- (c) [<sup>F47</sup>if section 2(4) applies for that year,], adding whichever is the smaller of the exempt amount for that year and the amount [<sup>F48</sup>mentioned in section 2(4) (b)(ii)].]

- [<sup>F49</sup>(5D) In subsection (5BA) “section 14D adjusted net gains”, in relation to an individual and a tax year, means the amount given in the individual's case by—

- (a) taking the amount from which the deductions provided for by paragraphs (a) and (b) of subsection (2) of section 14D are to be made, and

- (b) deducting only the amounts falling to be deducted in accordance with paragraph (a) of that subsection.]

<sup>F50</sup>(6) .....

- (7) For the year of assessment in which an individual dies and for the next 2 following years, [<sup>F51</sup>subsections (1) to [<sup>F52</sup>(5D)]] above shall apply to his personal representatives as they apply to an individual.

- [<sup>F53</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.

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### Textual Amendments

- F32** S. 3(1A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 56\(2\)](#)
- F33** S. 3(2) substituted (with effect in accordance with s. 8(4) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 8\(2\)](#)
- F34** Sum in s. 3(2) substituted (for the tax year 2015-16) by [Finance Act 2014 \(c. 26\)](#), [s. 9\(1\)](#)
- F35** S. 3(3)(3A)(3B)(4) substituted for s. 3(3)(4) (with effect in accordance with s. 8(6) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 8\(3\)](#)
- F36** Word in s. 3(3) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F37** Words in s. 3(3A) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F38** Words in s. 3(3A) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(b\)](#)
- F39** Words in s. 3(3B) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F40** Words in s. 3(4) substituted (for the tax year 2013-14 and subsequent tax years in accordance with s. 34(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(3\)\(a\)](#)
- F41** 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](#)
- F42** Words in s. 3(5) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(2\)](#)
- F43** S. 3(5BA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(3\)](#)
- F44** Words in s. 3(5C) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(4\)](#)
- F45** S. 3(5C)(aa) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 56\(3\)\(a\)](#)
- F46** Words in s. 3(5C)(b) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 56\(3\)\(b\)](#)
- F47** Words in s. 3(5C)(c) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 26\(3\)\(a\)](#)
- F48** Words in s. 3(5C)(c) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 26\(3\)\(b\)](#)
- F49** S. 3(5D) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(5\)](#)
- F50** S. 3(6) repealed (with application in accordance with Sch. 28 para.7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 3\(2\)](#), [Sch. 43 Pt. 3\(7\)](#)
- F51** Words in s. 3(7) substituted (with application in accordance with Sch. 28 para.7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 3\(3\)](#)
- F52** Word in s. 3(7) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 5\(6\)](#)
- F53** S. 3(7A) inserted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 3\(4\), 8](#)

### Modifications etc. (not altering text)

- C5** 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](#)
- C6** S. 3 excluded (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 109\(2\)\(b\)](#)
- C7** S. 3(2) sum amended (for the year 1994-95) by [Finance Act 1994 \(c. 9\)](#), [s. 90](#)
- C8** 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](#)

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- C9 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](#)
- C10 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](#)
- C11 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](#)
- C12 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](#)
- C13 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](#)
- C14 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](#)
- C15 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](#)
- C16 S. 3(2) sum amended (for the year 2005-06) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2005 \(S.I. 2005/721\)](#), [art. 2](#)
- C17 S. 3(2) sum amended (for the year 2007-08) by [The Capital Gains Tax \(Annual Exempt Amount\) Order 2007 \(S.I. 2007/942\)](#), [art. 2](#)
- C18 S. 3(3) excluded (for the tax year 2011-12) by [Finance Act 2011 \(c. 11\)](#), [s. 8\(5\)](#)
- C19 S. 3(3) excluded (for the tax year 2012-13) by [Finance Act 2012 \(c. 14\)](#), [s. 34\(6\)](#)
- C20 S. 3(3) excluded (for the tax year 2014-15) by [Finance Act 2014 \(c. 26\)](#), [s. 8\(2\)](#)
- C21 S. 3(3) excluded (for the tax year 2015-16) by [Finance Act 2014 \(c. 26\)](#), [s. 9\(2\)](#)

### **[<sup>F54</sup>3A Reporting limits**

- (1) Where in the case of an individual—
  - (a) the amount of chargeable gains accruing to him in any year of assessment [<sup>F55</sup>or, if that year is a split year as respects the individual, the UK part of that year] does not exceed the exempt amount for that year, and
  - (b) the aggregate amount or value of the consideration for all chargeable disposals of assets made by him in that year [<sup>F56</sup>or, as the case may be, that part of the year] does not exceed four times the exempt amount for that year,a statement to that effect is sufficient compliance with so much of any notice under section 8 of the Management Act as requires information for the purposes of establishing the amount in which he is chargeable to capital gains tax for that year.
- (2) For the purposes of subsection (1)(a) above—
  - <sup>F57</sup>(a) .....
  - (b) the amount of chargeable gains accruing to an individual in a year of assessment [<sup>F58</sup>(or the UK part of such a year)] for which [<sup>F59</sup>a deduction falls to be made in respect of allowable losses is the amount before the deduction].
- (3) For the purposes of subsection (1)(b) above a “chargeable disposal” is any disposal other than—
  - (a) a disposal on which any gain accruing is not a chargeable gain, or
  - (b) a disposal the consideration for which is treated by virtue of section 58 [<sup>F60</sup>(spouses and civil partners)] as being such that neither a gain nor a loss would accrue.
- (4) Subsection (1) above applies to personal representatives (for the year of assessment in which the individual in question dies and for the next 2 following years) as it applies to an individual.

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(5) Subsection (1) above applies to the trustees of a settlement in accordance with Schedule 1.

[ Subsection (1) does not apply to an individual for a tax year if—

- <sup>F61</sup>(5A) (a) section 809B of ITA 2007 (claim for remittance basis to apply), or  
 (b) section 16ZB below (certain chargeable gains charged on remittance basis),  
 applies to the individual for that year.]

(6) In this section “exempt amount” has the meaning given by section 3 (read, where appropriate, with Schedule 1).]

#### Textual Amendments

- F54** S. 3A inserted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 1](#)
- F55** Words in s. 3A(1)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 94\(2\)\(a\)](#)
- F56** Words in s. 3A(1)(b) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 94\(2\)\(b\)](#)
- F57** S. 3A(2)(a) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 27\(a\)](#)
- F58** Words in s. 3A(2)(b) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 94\(3\)](#)
- F59** Words in s. 3A(2)(b) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 27\(b\)](#)
- F60** Words in s. 3A(3)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [106](#)
- F61** S. 3A(5A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 57](#)

#### <sup>F62</sup> Rates of capital gains tax

(1) This section makes provision about the rates at which capital gains tax is charged, but is subject to section 169N (rate in case of claim for entrepreneurs' relief) [<sup>F63</sup>and section 169VC (rate in case of claim for investors' relief)].

(2) Subject to the following provisions of this section [<sup>F64</sup>and section 4BA], the rate of capital gains tax

- <sup>F65</sup>(a) in respect of upper rate gains accruing to a person in a tax year, is 18%, and  
 (b) in respect of gains accruing to a person in a tax year which are not upper rate gains, is 10%].

<sup>F66</sup>(2A) In this section “upper rate gains” means—

- (a) residential property gains (see section 4BB),  
 (b) NRCGT gains (see section 14D), and  
 (c) carried interest gains (see subsections (12) and (13)).]

<sup>F67</sup>(3) The rate of capital gains tax in respect of gains accruing in a tax year to the trustees of a settlement or the personal representatives of a deceased person—

- (a) in respect of upper rate gains, is 28%, and  
 (b) in respect of gains which are not upper rate gains, is 20%.]

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- [<sup>F68</sup>(3A) The rate of capital gains tax in respect of gains chargeable under section 2B accruing to a person in a tax year is 28%.]
- [<sup>F69</sup>(3B) The rate of capital gains tax is 20% in respect of—
- (a) gains chargeable under section 14D accruing to a company in a tax year, and
  - (b) gains chargeable under section 188D accruing in a tax year to the relevant body of an NRCGT group (as defined in that section).]
- (4) If income tax is chargeable at the higher rate[<sup>F70</sup>, the Scottish higher rate] or the dividend upper rate in respect of any part of the income of an individual for a tax year, the rate of capital gains tax
- [<sup>F71</sup>(a) in respect of upper rate gains accruing to the individual in the tax year, is 28%, and
- (b) in respect of gains accruing to the individual in the tax year which are not upper rate gains, is 20%].
- (5) If no income tax is chargeable at the higher rate[<sup>F70</sup>, the Scottish higher rate] or the dividend upper rate in respect of the income of an individual for a tax year, but the amount on which the individual is chargeable to capital gains tax exceeds the unused part of the individual's basic rate band, the rate of capital gains tax on the excess is [<sup>F72</sup>(subject to section 4BA) 20%].
- [<sup>F73</sup>(6) Subsection (6A) applies for the purposes of subsection (5) where—
- (a) there is an excess as mentioned in that subsection (“the higher-rate excess”), and
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year includes any special rate gains, that is, gains which are—
    - (i) chargeable to capital gains tax at the rate in section 169N(3), or
    - (ii) chargeable to capital gains tax at the rate in section 169VC(2).
- (6A) Where this subsection applies—
- (a) if the total amount of the special rate gains exceeds the unused part of the individual's basic rate band, the higher-rate excess is to be treated as reduced by the amount by which the special rate gains exceed that unused part;
  - (b) if not, the higher-rate excess is to be treated as consisting of gains other than the special rate gains.]
- (7) [<sup>F74</sup>Any reference in this section] to the unused part of an individual's basic rate band is a reference to the amount by which the basic rate limit exceeds the individual's Step 3 income.
- (8) For the purposes of this section, “the Step 3 income” of an individual means the individual's net income less allowances deducted at Step 3 of the calculation in section 23 of ITA 2007 for the purpose of calculating the individual's income tax liability.
- (9) Section 989 of ITA 2007 (the definitions) applies for the purposes of this section [<sup>F75</sup>and section 4BA] as it applies for income tax purposes.
- [<sup>F76</sup>(12) In subsection (2A)(c) “carried interest gains” means—
- (a) gains treated as accruing under section 103KA(2) or (3), and
  - (b) gains accruing to an individual as a result of carried interest arising to the individual where—

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- (i) the individual performs investment management services directly or indirectly in respect of an investment scheme under arrangements not involving a partnership,
  - (ii) the carried interest arises to the individual under the arrangements, and
  - (iii) the carried interest does not constitute a co-investment repayment or return.
- (13) For the purposes of subsection (12)(b)—
- (a) “carried interest”, in relation to any arrangements, has the same meaning as in section 809EZB of ITA 2007 (see sections 809EZC and 809EZD of that Act);
  - (b) carried interest “arises” to an individual if it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007;
  - (c) “arrangements”, “investment management services” and “investment scheme” have the same meanings as in that Chapter (see sections 809EZA(6) and 809EZE of that Act);
  - (d) “co-investment repayment or return” has the same meaning as in section 103KA.]]

#### Textual Amendments

- F62** Ss. 4, 4A substituted (with effect in accordance with Sch. 1 para. 12 of the amending Act) for s. 4 by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 2](#) (with [Sch. 1 para. 18](#))
- F63** Words in s. 4(1) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(2\)](#)
- F64** Words in s. 4(2) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(3\)\(a\)](#)
- F65** Words in s. 4(2) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(3\)\(b\)](#)
- F66** S. 4(2A) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(4\)](#)
- F67** S. 4(3) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(5\)](#)
- F68** S. 4(3A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 5](#)
- F69** S. 4(3B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 6](#)
- F70** Words in s. 4(4)(5) inserted (with effect in accordance with Sch. 38 para. 15(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 38 para. 15\(2\)](#)
- F71** Words in s. 4(4) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(6\)](#)
- F72** Words in s. 4(5) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(7\)](#)
- F73** S. 4(6)(6A) substituted for s. 4(6) (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(8\)](#)
- F74** Words in s. 4(7) substituted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(9\)](#)
- F75** Words in s. 4(9) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(10\)](#)
- F76** S. 4(12)(13) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(12\)](#)



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#### [<sup>F62</sup>4A Section 4: special cases

- (1) Subsection (2) applies if for a tax year—
  - (a) a person is entitled, by virtue of section 539 of ITTOIA 2005 (gains from contracts for life insurance etc), to relief by reference to the amount of a deficiency, or
  - (b) the residuary income of an estate is treated, by virtue of section 669(1) and (2) of that Act (reduction in residuary income: inheritance tax on accrued income), as reduced so as to reduce a person's income by any amount for the purposes of extra liability.
- (2) Section 4(7) is to have effect as if the person's Step 3 income for the year were reduced by the amount of the deficiency mentioned in subsection (1)(a) or the amount mentioned in subsection (1)(b) (as the case may be).
- (3) Subsections (4) and (5) apply if, by virtue of section 465 of ITTOIA 2005 (gains from contracts for life insurance etc), a person's total income for a tax year is deemed to include any amount or amounts.
- (4) Section 4(7) is to have effect as if the person's Step 3 income for the year included not the whole of the amount or amounts concerned but only the annual equivalent within the meaning of section 536(1) of that Act or the total annual equivalent within the meaning of section 537 of that Act (as the case may be).
- (5) If—
  - (a) relief is given under section 535 of that Act, and
  - (b) the calculation under section 536(1) or 537 of that Act (as the case may be) does not involve the higher rate of income tax,section 4(4) and (5) [<sup>F77</sup>and section 4BA(1)] are to have effect as if no income tax were chargeable at the higher rate [<sup>F78</sup>, the Scottish higher rate] or the dividend upper rate in respect of the person's income.]

#### Textual Amendments

- F62** Ss. 4, 4A substituted (with effect in accordance with Sch. 1 para. 12 of the amending Act) for s. 4 by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 2](#) (with [Sch. 1 para. 18](#))
- F77** Words in s. 4A(5) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(13\)](#)
- F78** Words in s. 4A(5) inserted (with effect in accordance with Sch. 38 para. 15(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 38 para. 15\(3\)](#)

#### [<sup>F79</sup>4B Deduction of losses etc in most beneficial way

- (1) Where it is necessary to determine—
  - (a) from which chargeable gains an allowable loss accruing to a person is to be deducted, or
  - (b) which allowable losses are to be deducted from any chargeable gains accruing to a person,(including in a case falling within subsection (2)), the losses concerned may be used in whichever way is most beneficial to that person.

*Status: Point in time view as at 15/09/2016.*

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- (2) Where the gains accruing to a person in a tax year are (apart from this section) chargeable to capital gains tax at different rates, the exempt amount under section 3 may be used in respect of those gains in whichever way is most beneficial to that person.
- (3) This section is subject to any enactment which contains a limitation on the gains from which allowable losses may be deducted.]

#### **Textual Amendments**

**F79** S. 4B substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 7](#)

#### **[<sup>F80</sup>4BA Rates, and use of unused basic rate band, in certain cases**

- (1) This section applies where an individual is chargeable to capital gains tax in respect of gains accruing in a tax year and—
  - (a) no income tax is chargeable at the higher rate, the Welsh higher rate or the dividend upper rate in respect of the income of the individual for the tax year,
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year (“the chargeable gains amount”) exceeds the unused part of the individual's basic rate band, and
  - (c) all or part of the chargeable gains amount consists of upper rate gains.
- (2) In the following provisions of this section “the available gains” means the gains on which the individual is chargeable to capital gains tax for the tax year, excluding any special rate gains.
- (3) The available gains not used by the individual under subsection (4) are to be charged to capital gains tax—
  - (a) to the extent that they consist of upper rate gains, at the rate in section 4(4)(a);
  - (b) to the extent that they consist of gains which are not upper rate gains, at the rate in section 4(5).
- (4) The individual may, subject to subsection (5) (which limits the overall amount that can be used under this subsection)—
  - (a) use any of the available gains that are upper rate gains to be charged at the rate in section 4(2)(a);
  - (b) use any of the available gains that are not upper rate gains to be charged at the rate in section 4(2)(b).
- (5) The total amount of gains used under subsection (4) must equal the qualifying amount.
- (6) The “qualifying amount” is the unused part of the individual's basic rate band less the total amount of any special rate gains.
- (7) If special rate gains are included in the chargeable gains amount, subsection (4) applies only if the unused part of the individual's basic rate band exceeds the total amount of the special rate gains.
- (8) In this section—
 

“upper rate gains” has the same meaning as in section 4;

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“special rate gains” has the same meaning as in section 4(6);  
“the unused part of the individual's basic rate band” has the same meaning as in section 4.

**Textual Amendments**

**F80** Ss. 4BA, 4BB inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(14\)](#) (with s. 83(18)(19))

**4BB Residential property gain or loss**

- (1) For the purposes of the charge to capital gains tax, a residential property gain or loss is a gain or loss which accrues on the disposal of a residential property interest.
- (2) But a residential property gain or loss does not accrue on a non-resident CGT disposal.
- (3) In this Act “disposal of a residential property interest” means—
  - (a) a disposal of a UK residential property interest, or
  - (b) a disposal of a non-UK residential property interest.
- (4) Schedule B1 gives the meaning in this Act of “disposal of a UK residential property interest”.
- (5) Schedule BA1 gives the meaning in this Act of “disposal of a non-UK residential property interest”.
- (6) See section 57C and Schedule 4ZZC for how to compute—
  - (a) the residential property gain or loss accruing on the disposal of a residential property interest, and
  - (b) the gain or loss accruing on the disposal of a residential property interest which is not a residential property gain or loss.]

**Textual Amendments**

**F80** Ss. 4BA, 4BB inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 83\(14\)](#) (with s. 83(18)(19))

**F815 Accumulation and discretionary settlements.**

.....

**Textual Amendments**

**F81** 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\(29\)](#)

**F826 Other special cases.**

.....

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**Textual Amendments**

**F82** S. 6 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 3](#)

**F83<sup>7</sup> Time for payment of tax.**

.....

**Textual Amendments**

**F83** 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 [<sup>F84</sup>Chapter 7 of Part 4 of CTA 2010], 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 [<sup>F85</sup>period—
    - (i) any allowable losses previously accruing to the company while it has been within the charge to corporation tax, and
    - (ii) any allowable NRCGT losses previously accruing to the company.]
- (2) For the purposes of corporation tax in respect of chargeable gains, “allowable loss” [<sup>F86</sup>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.]

<sup>F87</sup>(2A) .....

<sup>F87</sup>(2B) .....

<sup>F87</sup>(2C) .....

- (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.

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- (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.
- [<sup>F88</sup>(4A) Nothing in this section applies in relation to an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B.]
- [<sup>F89</sup>(4B) Subject to subsection (1)(b)(ii), nothing in this section applies in relation to an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D or 188D.]
- (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).

#### Textual Amendments

- F84** Words in s. 8(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 226](#) (with [Sch. 2](#))
- F85** Words in s. 8(1)(b) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 8\(2\)](#)
- F86** Words in s. 8(2) substituted (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 27\(2\)\(a\)](#)
- F87** S. 8(2A)-(2C) repealed (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 27(2)(b), [Sch. 27 Pt. 2\(2\)](#)
- F88** S. 8(4A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 6](#)
- F89** S. 8(4B) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 8\(3\)](#)

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

- C22** S. 8(1) modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 133\(3\)](#)

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**Marginal Citations**

- M1** 1986 c. 45.
- M2** S.I.1989/2405 (N.I.19).

*Residence etc.*

**<sup>F90</sup> Residence, including temporary residence.**

.....

**Textual Amendments**

- F90** S. 9 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 148\(2\)](#)

**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 [<sup>F91</sup>if the residence condition is not met (see section 2(1A)) but the person] 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.
- <sup>F92</sup>(3) .....
- (4) This section shall not apply to a person who, by virtue of [<sup>F93</sup>Part 2 of TIOPA 2010 (double taxation relief)], is exempt from income tax <sup>F94</sup>... 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).

**Textual Amendments**

- F91** Words in s. 10(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 76](#)

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- F92** S. 10(3) repealed (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 2\(2\)\(a\), Sch. 43 Pt. 3\(6\)](#)
- F93** Words in s. 10(4) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 41 \(with Sch. 9 paras. 1-9, 22\)](#)
- F94** Words in s. 10(4) repealed (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 2\(2\)\(b\), Sch. 43 Pt. 3\(6\)](#)

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

- C23** 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\(5\)](#)
- C24** S. 10 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 22\(1\)\(b\)\(3\)](#)
- C25** S. 10 extended by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), reg. 850 \(as inserted \(with effect in accordance with reg. 1\(2\) of the amending S.I.\) by S.I. 2010/294, regs. 1\(1\), 21\)](#)

**[<sup>F95</sup>10A Temporary non-residents.**

- (1) This section applies if an individual (“the taxpayer”) is temporarily non-resident.
- (2) The taxpayer is chargeable to capital gains tax as if gains and losses within subsection (3) were chargeable gains or, as the case may be, losses accruing to the taxpayer in the period of return.
- (3) The gains and losses within this subsection are—
  - (a) chargeable gains and losses that accrued to the taxpayer in the temporary period of non-residence,
  - (b) chargeable gains that would be treated under section 13 as having accrued to the taxpayer in that period if the residence assumption were made,
  - (c) losses that would be allowable in the taxpayer's case under section 13(8) in that period if that assumption were made, and
  - (d) chargeable gains that would be treated under section 86 as having accrued to the taxpayer in a tax year falling wholly in that period if the taxpayer had been resident in the United Kingdom for that year.
- (4) The residence assumption is—
  - (a) that the taxpayer had been resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, or
  - (b) if that tax year was a split year as respects the taxpayer, that the gain or loss had accrued to the company in the UK part of it.
- (5) But—
  - (a) a gain is not within subsection (3) if, ignoring this section, the taxpayer is chargeable to capital gains tax in respect of it (and could not cease to be so chargeable by making a claim under section 6 of TIOPA 2010), and
  - (b) a loss is not within subsection (3) if the test in paragraph (a) would be met if it were a gain.
- (6) Subsection (2) is subject to sections 10AA and 86A.
- (7) To determine the losses mentioned in subsection (3)(c)—

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- (a) calculate separately, for each tax year falling wholly or partly in the temporary period of non-residence, the portion of sum A that does not exceed sum B, and
  - (b) add up all those portions.
- (8) For the purposes of subsection (7)—
- “sum A” is the aggregate of the losses that were not available in accordance with section 13(8) for reducing gains accruing to the taxpayer by virtue of section 13 in the relevant tax year, but would have been available if the residence assumption had been made, and
- “sum B” is the amount of the gains that did not accrue to the taxpayer by virtue of section 13 in that tax year but would have so accrued if that assumption had been made.
- (9) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the taxpayer for the year of return, any foreign chargeable gains falling within subsection (3) by virtue of paragraph (a) of that subsection that were remitted to the United Kingdom at any time in the temporary period of non-residence are to be treated as remitted to the United Kingdom in the period of return.
- (10) Part 4 of Schedule 45 to the Finance Act 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (11) In this section—
- “foreign chargeable gains” has the meaning given by section 12(4);
- “remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007;
- “the year of return” means the tax year that consists of or includes the period of return.

#### **Textual Amendments**

**F95** Ss. 10A, 10AA substituted for s. 10A (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 119](#)

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

- C26** S. 10A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 23](#)
- C27** S. 10A applied (with modifications) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85P (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), [regs. 1\(1\), 21](#))
- C28** S. 10A (as it has effect where the year of departure as defined in Finance Act 2013 (c. 29), Sch. 45 Pt. 4 is the tax year 2012-13 or an earlier tax year) amended (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 9](#)

### **10AA Section 10A: supplementary**

- (1) Section 10A(2) does not apply to a gain or loss accruing on the disposal by the taxpayer of an asset if—



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- (a) the asset was acquired by the taxpayer in the temporary period of non-residence,
  - (b) it was so acquired otherwise than by means of a relevant disposal that 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) the 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 the 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), 153(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).
- (2) “Relevant disposal” means a disposal of an asset acquired by the person making the disposal at a time when that person was resident in the United Kingdom and was not Treaty non-resident.
- (3) Subsection (1) does not apply if—
- (a) the gain is one that (ignoring section 10A) would fall 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 part of another asset, and
  - (b) that other asset meets the requirements of paragraphs (a) to (d) of subsection (1), but the asset in respect of which the gain actually accrued or would actually accrue does not.
- (4) Nothing in any double taxation relief arrangements is to be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any chargeable gains treated under section 10A as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).
- (5) Nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made prevents any assessment for the year of departure from being made in the taxpayer's case at any time before the end of the second anniversary of the 31 January next following the year of return (as defined in section 10A).]

#### Textual Amendments

**F95** Ss. 10A, 10AA substituted for s. 10A (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 119](#)

### [<sup>F96</sup>10B Non-resident company with United Kingdom permanent establishment

- (1) Subject to any exceptions provided by this Act, the chargeable profits for the purposes of corporation tax of a company not resident in the United Kingdom but carrying on a trade in the United Kingdom through a permanent establishment there include chargeable gains accruing to the company on the disposal of—
- (a) assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time the gain accrued, or
  - (b) assets situated in the United Kingdom and used or held for the purposes of the permanent establishment at or before the time the gain accrued or acquired for use by or for the purposes of the permanent establishment.

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- (2) Subsection (1) does not apply unless the disposal is made at a time when the company is carrying on a trade in the United Kingdom through a permanent establishment there.
- (3) This section does not apply to a company that, by virtue of [<sup>F97</sup>Part 2 of TIOPA 2010 (double taxation relief)], is exempt from corporation tax for the chargeable period in respect of the profits of the permanent establishment.

[ This section applies to an overseas life insurance company in the case of its long-term  
<sup>F98</sup>(3A) business with the omission from subsection (1)(b) of the words “situated in the United Kingdom and”.]

[<sup>F99</sup>(4) In this section—

- (a) references to a trade include an office, and  
 (b) references to carrying on a trade include holding an office.]]

#### Textual Amendments

- F96** S. 10B inserted (with effect in accordance with s. 149(6) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 149\(4\)](#)
- F97** Words in s. 10B(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 42](#) (with [Sch. 9 paras. 1-9, 22](#))
- F98** S. 10B(3A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 73](#)
- F99** S. 10B(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 360](#) (with [Sch. 2 Pts. 1, 2](#))

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

- C29** S. 10B applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 22\(1\)\(c\)\(4\)](#)
- C30** S. 10B extended by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), reg. 85O](#) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294, regs. 1\(1\), 21](#))

#### [<sup>F100</sup>11 Visiting forces and official agents

- (1) If section 833 of ITA 2007 (visiting forces and staff of designated allied headquarters) applies to an individual throughout a period, the period is not treated for capital gains tax purposes as—
- (a) a period of residence in the United Kingdom, or  
 (b) creating a change of the individual's residence or domicile.
- (2) If an individual is entitled to immunity from income tax by virtue of section 841 of ITA 2007 (which provides immunity from income tax for official agents of Commonwealth countries or the Republic of Ireland etc), the individual is 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.
- (3) “A member of the staff of a mission” is to be read in accordance with the Diplomatic Privileges Act 1964.]

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### Textual Amendments

**F100** S. 11 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 297](#) (with [Sch. 2](#))

### [<sup>F101</sup>12 Non-UK domiciled individuals to whom remittance basis applies

[<sup>F102</sup>(1) This section applies to foreign chargeable gains accruing to an individual in a tax year (“the foreign chargeable gains”) if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.]

[<sup>F103</sup>(1A) But it does not apply to foreign chargeable gains accruing to an individual in the overseas part of a split year as respects that individual, regardless of the part of the year (the overseas part or the UK part) in which the foreign chargeable gains are remitted.]

(2) Chargeable gains are treated as accruing to the individual in any tax year in which any of the foreign chargeable gains are remitted to the United Kingdom.

[<sup>F104</sup>(2A) If that tax year is a split year as respects the individual, the chargeable gains are treated as accruing to the individual in the part of the year (the overseas part or the UK part) in which the foreign chargeable gains are so remitted.]

(3) The amount of chargeable gains treated as accruing is equal to the full amount of the foreign chargeable gains so remitted in that year [<sup>F105</sup>or, where applicable, that part of the year].

(4) In this section “foreign chargeable gains” means chargeable gains accruing from the disposal of an asset which is situated outside the United Kingdom.

(5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.]

### Textual Amendments

**F101** S. 12 substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 60](#) (with [Sch. 7 para. 84\(1\)\(2\)](#))

**F102** S. 12(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 17](#) (with [Sch. 46 para. 26](#))

**F103** S. 12(1A) inserted (with effect in accordance with s. 59(3) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 59\(2\)](#)

**F104** S. 12(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 95\(2\)](#)

**F105** Words in s. 12(3) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 95\(3\)](#)

### Modifications etc. (not altering text)

**C31** S. 12 applied by [Income Tax Act 2007 \(c. 3\)](#), [s. 809F\(4\)\(6\)](#) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#))

**C32** S. 12 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)](#)

*Status: Point in time view as at 15/09/2016.*

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### 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.
- [<sup>F106</sup>(1A) But this section does not apply if the gain is
- [<sup>F107</sup>(a) an ATED-related gain chargeable to capital gains tax by virtue of section 2B (capital gains tax on ATED-related gains), or
  - (b) an NRCGT gain chargeable to capital gains tax by virtue of section 14D or 188D (capital gains tax on NRCGT gains).]]
- (2) Subject to this section, every person who at the time when the chargeable gain accrues to the company is resident <sup>F108</sup>... in the United Kingdom [<sup>F109</sup>and][<sup>F110</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>F111</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.
- [<sup>F112</sup>(3A) Subsection (2) does not apply in the case of a participator who is an individual if—
- (a) the tax year in which the chargeable gain accrues to the company is a split year as respects the participator, and
  - (b) the chargeable gain accrues to the company in the overseas part of that year.]
- (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>F113</sup>one quarter] of the gain.]
- (5) This section shall not apply in relation to—
- <sup>F114</sup>(a) .....
  - [<sup>F115</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,] or
  - <sup>F116</sup>(c) .....
  - [<sup>F117</sup>(ca) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of economically significant activities carried on by the company wholly or mainly outside the United Kingdom, or
  - (cb) a chargeable gain accruing to the company on a disposal of an asset where it is shown that neither—
    - (i) the disposal of the asset by the company, nor
    - (ii) the acquisition or holding of the asset by the company,
 formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax, or]
  - (d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section [<sup>F118</sup>10B].
- [<sup>F119</sup>(5A) Where—

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- (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
  - (b) the end of the period of twelve months beginning with the date on which the chargeable gain accrued,
- whichever is earlier.

<sup>F120</sup> .....

<sup>F121</sup>(6) .....

- (7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as [<sup>F122</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>F123</sup>any asset representing his interest as a participator in the company].

[<sup>F124</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;

<sup>F125</sup>(b) .....

<sup>F125</sup>(c) .....

<sup>F125</sup>(d) .....

- (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>F126</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>F127</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].

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- (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 [<sup>F128</sup>the trustees of a settlement who are participators][<sup>F129</sup>in the company, or in any company amongst the participators in which the gain is apportioned under subsection (9) above,] if when the gain accrues to the company the trustees are [<sup>F130</sup>not resident] in the United Kingdom.

<sup>F131</sup>(10A) . . . . .

[<sup>F132</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 [<sup>F133</sup>section 271(1)(c) or (1A)].

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>F134</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>F135</sup>(12) In this section “participator”, in relation to a company, has the meaning given by [<sup>F136</sup>section 454 of CTA 2010].

(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 <sup>F137</sup>... 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.

<sup>F138</sup>(15) . . . . . ]

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## Textual Amendments

- F106** S. 13(1A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 25 para. 7](#)
- F107** Words in s. 13(1A) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 10](#)
- F108** Words in s. 13(2) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 77\(2\)](#)
- F109** Word in s. 13(2) substituted (with effect in accordance with Sch. 7 para. 105 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 103](#)
- F110** 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\(2\)](#)
- F111** 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\(3\)](#)
- F112** S. 13(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 96](#)
- F113** Words in s. 13(4) substituted (with effect in accordance with s. 62(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 62\(2\)](#)
- F114** 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\(30\)](#)
- F115** 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](#))
- F116** S. 13(5)(c) omitted (with effect in accordance with s. 34(6) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [s. 35\(2\)](#)
- F117** S. 13(5)(ca)(cb) inserted (with effect in accordance with s. 62(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 62\(3\)](#)
- F118** Word in s. 13(5)(d) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 2\(3\)](#)
- F119** 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](#))
- F120** Words in s. 13(5B) repealed (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(16\)](#)
- F121** 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\(30\)](#)
- F122** 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\(5\)\(a\)](#)
- F123** 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\(5\)\(b\)](#)
- F124** S. 13(7A) inserted (with effect in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(6\)](#)
- F125** S. 13(7A)(b)-(d) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 4](#)
- F126** 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\(7\)\(a\)](#)
- F127** 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\(7\)\(b\)](#)
- F128** Words in s. 13(10) substituted (with effect in accordance with Sch. 12 para. 8(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 8\(1\)](#)
- F129** 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\(8\)](#)
- F130** Words in s. 13(10) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 77\(3\)](#)

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- F131** S. 13(10A) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 28](#)
- F132** 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](#))
- F133** Words in s. 13(10B)(b) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [s. 284\(1\)](#), [Sch. 35 para. 39](#) (with [Sch. 36](#))
- F134** 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\(4\)](#)
- F135** 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\(9\)](#)
- F136** Words in s. 13(12) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 227](#) (with [Sch. 2](#))
- F137** Words in s. 13(13)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 77\(4\)](#)
- F138** S. 13(15) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 178](#)

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

- C33** S. 13 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [24](#)

**[<sup>F139</sup>13A Section 13(5): interpretation**

- (1) For the purposes of section 13(5)(b) a disposal of an asset is to be regarded as a disposal of an asset used for the purposes of a trade carried on wholly outside the United Kingdom by a company if—
  - (a) the asset is accommodation, or an interest or right in accommodation, which is situated outside the United Kingdom, and
  - (b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.
- (2) For the purposes of subsection (1)(b) each of the following is “a relevant period”—
  - (a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or
  - (b) if the company has been the beneficial owner of the accommodation (or interest or right) for a period longer than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company has been the beneficial owner of the accommodation (or interest or right).
- (3) The reference in subsection (1)(b) to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but—
  - (a) as if sections 266, 268 and 268A were omitted, and
  - (b) as if, in section 267(1), the reference to an accounting period were a reference to a relevant period as defined by subsection (2) above.
- (4) For the purposes of section 13(5)(ca) activities carried on by a company are “economically significant activities” if they are activities which consist of the provision by the company of goods or services to others on a commercial basis and involve—
  - (a) the use of staff in numbers, and with competence and authority,



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- (b) the use of premises and equipment, and
- (c) the addition of economic value, by the company, to those to whom the goods or services are provided,

commensurate with the size and nature of those activities.

(5) In subsection (4) “staff” means employees, agents or contractors of the company.]

#### Textual Amendments

**F139** S. 13A inserted (with effect in accordance with s. 62(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 62\(4\)](#)

## 14 Non-resident groups of companies.

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

[<sup>F140</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
- (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>F141</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>F142</sup>...

#### Textual Amendments

**F140** 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\(5\)](#))

**F141** 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\(5\)](#))

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**F142** 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\(5\)](#))

**[<sup>F143</sup>14A Section 13: non-UK domiciled individuals**

- (1) This section applies if—
  - (a) by virtue of section 13, part of a chargeable gain that accrues to a company on the disposal of an asset is treated as accruing to an individual in a tax year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) The part of the chargeable gain treated as accruing to the individual (“the deemed chargeable gain”) is a foreign chargeable gain within the meaning of section 12 if (and only if) the asset is situated outside the United Kingdom.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
  - (a) treat any consideration obtained by the company on the disposal of the asset as deriving from the deemed chargeable gain, and
  - (b) unless the consideration so obtained is of an amount [<sup>F144</sup>at least] equal to the market value of the asset, treat the asset as deriving from the deemed chargeable gain.
- (4) If—
  - (a) the deemed chargeable gain is a foreign chargeable gain (within the meaning of section 12),
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year mentioned in subsection (1), and
  - (c) any of the deemed chargeable gain is remitted to the United Kingdom in a tax year after that year,

the chargeable gain treated under section 12(2) as accruing may not be reduced or extinguished under section 13(8).]

**Textual Amendments**

**F143** S. 14A inserted (with effect in accordance with Sch. 7 para. 105 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 104](#)

**F144** Words in s. 14A(3)(b) inserted (with effect in accordance with Sch. 27 para. 15(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 27 para. 12](#)

*[<sup>F145</sup>UK residential property: non-resident CGT*

**Textual Amendments**

**F145** Ss. 14B-14H and cross-heading inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 11](#)

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## 14B Meaning of “non-resident CGT disposal”

(1) For the purposes of this Act a disposal made by a person is a “non-resident CGT disposal” if—

- (a) it is a disposal of a UK residential property interest [<sup>F146</sup>(within the meaning given by Schedule B1)], and
- (b) condition A or B is met.

But see also [<sup>F147</sup>subsections (5) and (6)].

(2) Condition A is—

- (a) in the case of an individual, that the individual is not resident in the United Kingdom for the tax year in question (see subsection (3)),
- (b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is not resident in the United Kingdom,
- (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is not resident in the United Kingdom during any part of the tax year in question, and
- (d) in any other case, that the person is not resident in the United Kingdom at the relevant time.

(3) In subsection (2)—

- (a) “the tax year in question” means the tax year in which any gain on the disposal accrues (or would accrue were there to be such a gain);
- (b) “the relevant time” means the time at which any gain on the disposal accrues (or would accrue were there to be such a gain).

(4) Condition B is that—

- (a) the person is an individual, and
- (b) any gain accruing to the individual on the disposal would accrue in the overseas part of a tax year which is a split year as respects the individual.

(5) A disposal by a person of a UK residential property interest is not a non-resident CGT disposal so far as any chargeable gains accruing to the person on the disposal—

- (a) would be gains in respect of which the person would be chargeable to capital gains tax—
  - (i) under section 10(1) (non-resident with UK branch or agency), or
  - (ii) under section 2 as a result of subsection (1C) of that section (corresponding provision relating to the overseas part of a split year),or
- (b) would be gains forming part of the person's chargeable profits for corporation tax purposes by virtue of section 10B (non-resident company with UK permanent establishment).

[ A disposal of a UK residential property interest is not a non-resident CGT disposal <sup>F148</sup>(6) if section 356OC(1) of CTA 2010 (gains etc on certain disposals treated as trading profits for corporation tax purposes) or section 517C of ITA 2007 (gains etc on certain disposals treated as trading profits for income tax purposes) applies in relation to it.]

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#### Textual Amendments

- F146** Words in s. 14B(1)(a) inserted (with effect in accordance with s. 83(17) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 11 para. 2](#)
- F147** Words in s. 14B(1) substituted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(6\)\(a\)](#) (with savings in 2017 c. 32, s. 39(1)(2))
- F148** S. 14B(6) inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(6\)\(b\)](#) (with savings in 2017 c. 32, s. 39(1)(2))

#### <sup>F149</sup>14C Meaning of “disposal of a UK residential property interest”

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#### Textual Amendments

- F149** S. 14C omitted (with effect in accordance with s. 83(17) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 11 para. 3](#)

#### 14D Persons chargeable to capital gains tax on NRCGT gains

- (1) A person is chargeable to capital gains tax in respect of any chargeable NRCGT gain accruing to the person in the tax year on a non-resident CGT disposal.

See also section 188D(1).

- (2) Capital gains tax is charged on the total amount of chargeable NRCGT gains accruing to the person in the tax year, after deducting—
- (a) any allowable losses accruing to the person in the tax year on disposals of UK residential property interests, and
  - (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous tax year, any allowable losses accruing to the person in any previous tax year (not earlier than the tax year 1965-66) on disposals of UK residential property interests.

- (3) In subsection (2), the reference to chargeable NRCGT gains does not include any such gains which accrue to a member of an NRCGT group.

- (4) The only deductions that can be made from chargeable NRCGT gains to which subsection (2) applies are those permitted by this section.

This is subject to section 62(2AA) (carry-back of losses accruing in year of death).

- (5) See section 57B and Schedule 4ZZB for how to determine—
- (a) whether an NRCGT gain (or loss) accrues on a non-resident CGT disposal, and
  - (b) the amount of any NRCGT gain (or loss) so accruing.

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

- C34** S. 14D(2) excluded (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 20\(13\)](#)

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#### **14E Further provision about use of NRCGT losses**

- (1) Subsections (2) to (4) apply in relation to an allowable NRCGT loss accruing to a person in a tax year on a non-resident CGT disposal.
- (2) The loss is not allowable as a deduction from chargeable gains accruing in any earlier tax year.  

This is subject to section 62(2) and (2AA) (carry-back of losses accruing in year of death).
- (3) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.
- (4) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.

#### **14F Persons not chargeable under section 14D if a claim is made**

- (1) A person is not chargeable to capital gains tax under section 14D in respect of a chargeable NRCGT gain accruing to the person on a non-resident CGT disposal if the person—
  - (a) is an eligible person in relation to the disposal, and
  - (b) makes a claim under this section with respect to the disposal.
- (2) A diversely-held company which makes a non-resident CGT disposal is an eligible person in relation to the disposal.
- (3) A scheme (see subsection (7)) which makes a non-resident CGT disposal is an eligible person in relation to the disposal if condition A or B is met.
- (4) Condition A is that the scheme is a widely-marketed scheme throughout the relevant ownership period.
- (5) Condition B is that—
  - (a) an investor in the scheme is an offshore fund, an open-ended investment company or an authorised unit trust (“the feeder fund”),
  - (b) the scheme is a widely-marketed scheme throughout the alternative period, after taking into account—
    - (i) the scheme documents relating to the feeder fund, and
    - (ii) the intended investors in the feeder fund, and
  - (c) the scheme and the feeder fund have the same manager.
- (6) A company carrying on life assurance business (as defined in section 56 of the Finance Act 2012) which makes a non-resident CGT disposal is an eligible person if immediately before the time of the disposal the interest in UK land which is the subject of that disposal is held for the purpose of providing benefits to policyholders in the course of that business.
- (7) In this section “scheme” means any of the following—
  - (a) a unit trust scheme;
  - (b) a company which is an open-ended investment company incorporated by virtue of regulations under section 262 of the Financial Services and Markets Act 2000;

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- (c) a company incorporated under the law of a territory outside the United Kingdom which is, under that law, the equivalent of an open-ended investment company.
- (8) In this section “the relevant ownership period”, in relation to a scheme, means—
- (a) the period beginning with the day on which the scheme acquired the interest in UK land which (or part of which) is the subject of the non-resident CGT disposal and ending with the day on which that disposal occurs, or
  - (b) if shorter, the period of 5 years ending with the day on which that disposal occurs.
- (9) For the purposes of subsection (5), the “alternative period”, in relation to a scheme, is the shorter of—
- (a) the relevant ownership period, and
  - (b) the period beginning when the feeder fund first became an investor in the scheme and ending with the date of the disposal.
- (10) In this section—
- “diversely-held company” means a company which is not a closely-held company;
  - “interest in UK land” has the same meaning as in Schedule B1;
  - “open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act).
- (11) In Schedule C1—
- (a) Part 1 sets out the rules for determining whether or not a company is a closely-held company;
  - (b) Part 2 sets out how to determine whether or not a scheme is a widely-marketed scheme at any time.

#### **14G Section 14F: divided companies**

- (1) This section applies where a company which makes a non-resident CGT disposal—
- (a) is a divided company, and
  - (b) would, without this section, be an eligible person for the purposes of section 14F in relation to the disposal.
- (2) In determining for the purposes of section 14F whether or not the company is an eligible company in relation to the disposal, the company is to be treated as if it were a closely-held company if the conditions in subsection (3) are met.
- (3) The conditions are that—
- (a) the gain or loss accruing on the disposal is primarily or wholly attributable to a particular division of the company, and
  - (b) if that division were a separate company, that separate company would be a closely-held company.
- (4) For the purposes of this section a company is a “divided company” if, under the law under which the company is formed, under the company's articles of association or other document regulating the company or under arrangements entered into by or in relation to the company—

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- (a) some or all of the assets of the company are available primarily, or only, to meet particular liabilities of the company, and
  - (b) some or all of the members of the company, and some or all of its creditors, have rights primarily, or only, in relation to particular assets of the company.
- (5) References in this section to a “division” of a divided company are to an identifiable part of the company that carries on distinct business activities and to which particular assets and liabilities of the company are primarily or wholly attributable.

#### **14H Section 14F: arrangements for avoiding tax**

- (1) Subsection (2) applies where—
- (a) arrangements are entered into, and
  - (b) the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 14D as a result of a person not being an eligible person in relation to the disposal by virtue of subsection (2) (diversely-held companies) or, as the case may be, subsection (3) (widely-marketed schemes) of section 14F (persons not chargeable under section 14D if a claim is made).
- (2) The arrangements (or that part of the arrangements) are to be disregarded in determining whether or not the company is an eligible person by virtue of that subsection.
- (3) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

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