



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART II U.K.

#### GENERAL PROVISIONS RELATING TO COMPUTATION OF GAINS AND ACQUISITIONS AND DISPOSALS OF ASSETS

### CHAPTER I U.K.

#### INTRODUCTORY

#### 15 Computation of gains. U.K.

- (1) The amount of the gains accruing on the disposal of assets shall be computed in accordance with this Part, subject to the other provisions of this Act.
- (2) Every gain shall, except as otherwise expressly provided, be a chargeable gain.

#### 16 Computation of losses. U.K.

- (1) Subject to [<sup>F1</sup>sections 261B, 261D and 263ZA] and except as otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.
- (2) Except as otherwise expressly provided, all the provisions of this Act which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain, and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss, and part not; and references in this Act to an allowable loss shall be construed accordingly.

[<sup>F2</sup>(2A) A loss accruing to a person in a year of assessment shall not be an allowable loss for the purposes of this Act unless, in relation to that year, he gives a notice to an officer of the Board quantifying the amount of that loss; and sections 42 and 43 of the Management Act shall apply in relation to such a notice as if it were a claim for relief.]

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- (3) A loss accruing to a person in a year of assessment during no part of which he is resident or ordinarily resident in the United Kingdom shall not be an allowable loss for the purposes of this Act unless, under section 10 [<sup>F3</sup>or 10B], he would be chargeable to tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.

<sup>F4</sup>(4) .....

#### Textual Amendments

- F1** Words in s. 16(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 298](#) (with [Sch. 2](#))
- F2** S. 16(2A) inserted (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 113\(1\)](#)
- F3** Words in s. 16(3) inserted (with effect in accordance with Sch. 4 para. 10(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 4 para. 7\(2\)](#)
- F4** S. 16(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 7 para. 61](#)

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

- C1** S. 16 excluded (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\(1\), 42\(2\)](#)

#### [<sup>F5</sup>16ZA Losses: non-UK domiciled individuals **U.K.**

- (1) In this section “the relevant tax year”, in relation to an individual, means the first tax year for which—
- (a) section 809B of ITA 2007 (claim for remittance basis) applies to the individual, and
  - (b) the individual is not domiciled in the United Kingdom.
- (2) An individual may make an election under this section for the relevant tax year (in which case sections 16ZB and 16ZC have effect in relation to the individual for the relevant tax year and all subsequent tax years).
- (3) If an individual does not make such an election, foreign losses accruing to the individual in—
- (a) the relevant tax year, or
  - (b) any subsequent tax year except one in which the individual is domiciled in the United Kingdom,
- are not allowable losses.
- (4) Sections 42 and 43 of the Management Act (procedure and time limit for making claims), except section 42(1A) of that Act, apply in relation to an election under this section as they apply in relation to a claim for relief.
- (5) An election under this section is irrevocable.
- (6) In this section “foreign loss” means a loss accruing from the disposal of an asset situated outside the United Kingdom.

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### Textual Amendments

**F5** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 62**

## **16ZB Individual who has made election under section 16ZA: foreign chargeable gains remitted in tax year after tax year in which accrue **U.K.****

- (1) This section applies to an individual for a tax year (“the applicable tax year”) if—
  - (a) the individual has made an election under section 16ZA,
  - (b) foreign chargeable gains accrued to the individual in or after the relevant tax year (within the meaning of section 16ZA) but before the applicable tax year, and
  - (c) by reason of the remission of any of the foreign chargeable gains to the United Kingdom, chargeable gains are treated under section 12 as accruing to the individual in the applicable tax year (“the relevant gains”).
- (2) Section 2(2) or (4) has effect for the applicable tax year as if the relevant gains had not accrued.
- (3) The amount on which the individual is charged to capital gains tax for the applicable tax year is (instead of the amount given by section 2(2) or (4)(b), as reduced under section 3) the sum of—
  - (a) the adjusted taxable amount, and
  - (b) the amount of the relevant gains.
- (4) “The adjusted taxable amount” is—
  - (a) if section 3(1) (annual exempt amount) does not apply to the individual for the applicable tax year, the amount given by section 2(2) or (4)(b) as it has effect by virtue of subsection (2), and
  - (b) otherwise, so much of that amount as exceeds the exempt amount for the applicable tax year (within the meaning of section 3).
- (5) In subsection (1) “foreign chargeable gains” has the meaning given by section 12(4).
- (6) For the purposes of subsection (1)(c) foreign chargeable gains are remitted to the United Kingdom if they are regarded as so remitted for the purposes of section 12.

### Textual Amendments

**F5** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 62**

## **16ZC Individual who has made election under section 16ZA and to whom remittance basis applies **U.K.****

- (1) This section applies to an individual for a tax year if—
  - (a) the individual has made an election under section 16ZA for the tax year or any earlier tax year,
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the tax year, and

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(c) the individual is not domiciled in the United Kingdom in the tax year.

(2) The following steps apply for the purpose of calculating the amount on which the individual is to be charged to capital gains tax for the tax year.

*Step 1*

Deduct any relevant allowable losses from the chargeable gains referred to in subsection (3) in the order in which they appear there (starting with paragraph (a) of that subsection).

If allowable losses are deductible from the chargeable gains referred to in subsection (3)(b) but are not enough to exhaust them all—

- (a) those chargeable gains are to be ordered according to the day on which they accrued,
- (b) the losses are to be deducted from those gains in reverse chronological order (starting with the last chargeable gain to accrue), and
- (c) if allowable losses are deductible from chargeable gains that accrued on a particular day but are not enough to exhaust all of the chargeable gains that accrued on that day, the amount deducted from each of those chargeable gains is the appropriate proportion of the losses.

In paragraph (c) “the appropriate proportion”, in relation to a chargeable gain, is the amount of that gain divided by the total amount of the chargeable gains that accrued on the day in question.

*Step 2*

Treat the amount referred to in section 2(2) or (4)(a) or 16ZB(3)(a) as being equal to—

- (a) the amount it would be if there were no relevant allowable losses, minus
- (b) the total amount deducted under Step 1 from chargeable gains within subsection (3)(a) or (c).

(3) The chargeable gains are—

- (a) foreign chargeable gains accruing to the individual in the tax year, to the extent that they are remitted to the United Kingdom in that year,
- (b) foreign chargeable gains accruing to the individual in that year, to the extent that they are not so remitted in that year, and
- (c) chargeable gains accruing to the individual in that year (other than foreign chargeable gains).

(4) Chargeable gains treated as accruing under section 87 or 89(2) (read, where appropriate, with section 10A) are not within any paragraph of subsection (3).

(5) Chargeable gains treated as accruing under section 12 are not within subsection (3)(c).

(6) For the purposes of subsection (3) foreign chargeable gains are remitted to the United Kingdom if they are regarded as so remitted for the purposes of section 12.

(7) In this section—

“relevant allowable losses” means the allowable losses that section 2(2) provides may be deducted from chargeable gains accruing to the individual in the tax year, and

“foreign chargeable gains” has the meaning given by section 12(4).

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### Textual Amendments

- F5** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 62**

## 16ZD Section 16ZC: supplementary **U.K.**

- (1) This section applies if section 16ZC applies to an individual for a tax year.
- (2) Any allowable loss deducted under step 1 of section 16ZC(2) is to be regarded (for the purposes of section 2(2)(b)) as allowed as a deduction from chargeable gains accruing to the individual in the tax year.
- (3) If a deduction is made under step 1 of section 16ZC(2) from a foreign chargeable gain within section 16ZC(3)(b), the amount of the foreign chargeable gain is reduced by the amount deducted.]

### Textual Amendments

- F5** Ss. 16ZA-16ZD inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 62**

## [<sup>F6</sup>16A Restrictions on allowable losses **U.K.**

- (1) For the purposes of this Act, “allowable loss” does not include a loss accruing to a person if—
  - (a) it accrues to the person directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
  - (b) the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage.
- (2) For the purposes of subsection (1)—
 

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

“tax advantage” means—

  - (a) relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) the avoidance or reduction of a charge to tax or an assessment to tax, or
  - (d) the avoidance of a possible assessment to tax,

and for the purposes of this definition “tax” means capital gains tax, corporation tax or income tax.
- (3) For the purposes of subsection (1) it does not matter—
  - (a) whether the loss accrues at a time when there are no chargeable gains from which it could otherwise have been deducted, or
  - (b) whether the tax advantage is secured for the person to whom the loss accrues or for any other person.]

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### Textual Amendments

- F6** S. 16A inserted (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 27\(3\)](#)

## 17 Disposals and acquisitions treated as made at market value. **U.K.**

- (1) Subject to the provisions of this Act, a person's acquisition or disposal of an asset shall for the purposes of this Act be deemed to be for a consideration equal to the market value of the asset—
- (a) where he acquires or, as the case may be, disposes of the asset otherwise than by way of a bargain made at arm's length, and in particular where he acquires or disposes of it by way of gift or on a transfer into settlement by a settlor or by way of distribution from a company in respect of shares in the company, or
  - (b) where he acquires or, as the case may be, disposes of the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another.
- (2) Subsection (1) shall not apply to the acquisition of an asset if—
- (a) there is no corresponding disposal of it, and
  - (b) there is no consideration in money or money's worth or the consideration is of an amount or value lower than the market value of the asset.

### Modifications etc. (not altering text)

- C2** S. 17 excluded (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 7\(4\)](#)
- C3** S. 17 excluded (with saving) (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 11\(2\)](#)
- C4** S. 17 excluded (15.1.2001) by [Transport Act 2000 \(c. 38\), s. 275\(1\), Sch. 26 para. 24\(1\)](#) (with [Sch. 26 para. 24\(2\)](#)); S.I. 2000/3376, art. 2
- C5** S. 17 excluded (15.1.2001) by [Transport Act 2000 \(c. 38\), s. 275\(1\), Sch. 26 para. 31\(1\)](#) (with [Sch. 26 para. 31\(2\)](#)); S.I. 2000/3376, art. 2
- C6** S. 17 restricted (E.W.S.) (24.7.2005) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 10 para. 25](#); S.I. 2005/1909, art. 2, Sch.
- C7** S. 17 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\), Sch. 13 para. 39\(1\)](#)
- C8** S. 17 excluded (8.9.2008 for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 7 para. 7\(2\)](#); S.I. 2008/2358, arts. 2(1), 3(1)
- C9** S. 17(1) excluded (3.1.1995) by [The Ports \(Northern Ireland\) Order 1994 \(S.I. 1994/2809 \(N.I. 16\)\), arts. 1\(2\), 18\(4\)](#)
- C10** S. 17(1) excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), ss. 653\(3\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2, Sch. 2 para. 94](#))

## 18 Transactions between connected persons. **U.K.**

- (1) This section shall apply where a person acquires an asset and the person making the disposal is connected with him.

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- (2) Without prejudice to the generality of section 17(1) the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.
- (3) Subject to subsection (4) below, if on the disposal a loss accrues to the person making the disposal, it shall not be deductible except from a chargeable gain accruing to him on some other disposal of an asset to the person acquiring the asset mentioned in subsection (1) above, being a disposal made at a time when they are connected persons.
- (4) Subsection (3) above shall not apply to a disposal by way of gift in settlement if the gift and the income from it is wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.
- (5) Where the asset mentioned in subsection (1) above is an option to enter into a sale or other transaction given by the person making the disposal a loss accruing to the person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person who is not connected with him.
- (6) Subject to subsection (7) below, in a case where the asset mentioned in subsection (1) above is subject to any right or restriction enforceable by the person making the disposal, or by a person connected with him, then (where the amount of the consideration for the acquisition is, in accordance with subsection (2) above, deemed to be equal to the market value of the asset) that market value shall be—
  - (a) what its market value would be if not subject to the right or restriction, minus—
  - (b) the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less.
- (7) If the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or is an option or other right to acquire the asset or, in the case of incorporeal property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, the market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.
- (8) Subsections (6) and (7) above shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

## 19 Deemed consideration in certain cases where assets disposed of in a series of transactions. **U.K.**

- (1) For the purposes of this Act, in any case where—
  - (a) by way of 2 or more material transactions which are linked (a series of linked transactions), one person disposes of assets to another person with whom he is connected or to 2 or more other persons with each of whom he is connected, and

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- (b) the original market value of the assets disposed of by any of the transactions in the series, as determined under section 20, is less than the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series, as so determined,

then, subject to subsection (2) below, the disposal effected by any linked transaction in the series in respect of which the condition in paragraph (b) above is fulfilled shall be deemed to be for a consideration equal to the appropriate portion referred to in that paragraph.

- (2) Where the disposal effected by a material transaction is one to which section 58 applies, nothing in subsection (1) above shall affect the amount which, for the purposes of this Act, is the consideration for that disposal.
- (3) Subject to subsection (5) below, any reference in this section to a material transaction is a reference to a transaction by way of gift or otherwise; and, for the purposes of this section, 2 or more material transactions are linked if they occur within the period of 6 years ending on the date of the last of them.
- (4) This section shall apply or, as the case may be, shall again apply—
- (a) when a second material transaction causes a series of linked transactions to come into being; and
  - (b) whenever, on the occurrence of a further material transaction, an existing series is extended by the inclusion of that transaction (whether or not an earlier transaction ceases to form part of the series);

and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to this section on each such occasion.

- (5) Where a member of a group of companies disposes of an asset to another member of the group in circumstances such that, by virtue of section 171, both companies are treated, so far as relates to corporation tax on chargeable gains, as if the consideration for the disposal were of such an amount as would secure that neither a gain nor a loss would accrue, the transaction by which that disposal is effected is not a material transaction; and a disposal in these circumstances is in this section referred to as an “inter-group transfer”.
- (6) In any case where—
- (a) a company (“company A”) disposes of an asset by way of a material transaction, and
  - (b) company A acquired the asset after 19th March 1985 by way of an inter-group transfer, and
  - (c) the disposal by company A is to a person who is connected with another company (“company B”) which at some time after 19th March 1985 disposed of the asset by way of an inter-group transfer, and
  - (d) either the disposal by way of inter-group transfer which is referred to in paragraph (c) above was the occasion of the acquisition referred to in paragraph (b) above or, between that disposal and that acquisition, there has been no disposal of the asset which was not an inter-group transfer,

then, for the purpose of determining whether subsection (1) above applies in relation to a series of linked transactions, the disposal by company A shall be treated as having been made by company B; but any increase in the consideration for that disposal resulting from the application of subsection (1) above shall have effect with respect to company A.



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## 20 **Original market value and aggregate market value for purposes of section 19. U.K.**

- (1) This section has effect for determining the original market value of assets and the aggregate market value of assets as mentioned in subsection (1)(b) of section 19.
- (2) Expressions used in this section have the same meaning as in that section.
- (3) Where there is a series of linked transactions, the original market value of the assets disposed of by each transaction in the series shall be determined as follows—
  - (a) if at the time in question the transaction is the most recent in the series, the original market value of the assets disposed of by that transaction is the market value which, apart from section 19, would be deemed to be the consideration for that transaction for the purposes of this Act; and
  - (b) in the case of any other transaction in the series, the original market value of the assets disposed of by that transaction is the value which, prior to the occurrence of the most recent transaction in the series, was or would have been deemed for the purposes of this Act to be the consideration for the transaction concerned (whether by virtue of the previous operation of section 19, or by virtue of any other provision of this Act).
- (4) Subject to subsections (6) to (9) below, in relation to any transaction in a series of linked transactions—
  - (a) any reference in this section or section 19 to the aggregate market value of the assets disposed of by all the transactions in the series is a reference to what would have been the market value of all those assets for the purposes of this Act if, considering all the assets together, they had been disposed of by one disposal occurring at the time of the transaction concerned; and
  - (b) any reference in section 19 to the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series is a reference to that portion of the market value determined in accordance with paragraph (a) above which it is reasonable to apportion to those of the assets which were actually disposed of by the transaction concerned.
- (5) The reference in subsection (4)(a) above to considering all the assets together includes a reference not only to considering them as a group or holding or collection of assets retaining their separate identities but also (if it gives a higher market value) to considering them as brought together, physically or in law, so as to constitute either a single asset or a number of assets which are distinct from those which were comprised in each of the transactions concerned.
- (6) If any of the assets disposed of by all the transactions in a series of linked transactions were acquired after the time of the first of those transactions, then, in the application of subsections (4) and (5) above in relation to each of the transactions in the series—
  - (a) no account shall be taken of any assets which were acquired after the time of that transaction unless they were acquired by way of an inter-group transfer; and
  - (b) subject to subsection (7) below, the number of assets of which account is to be taken shall be limited to the maximum number which were held by the person making the disposal at any time in the period beginning immediately before the first of the transactions in the series and ending immediately before the last.

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- (7) If, before the first of the transactions referred to in paragraph (b) of subsection (6) above, the person concerned (being a company) disposed of any assets by way of an inter-group transfer, the maximum number of assets referred to in that paragraph shall be determined as if the inter-group transfer had occurred after that first transaction.
- (8) In the application of subsection (6) above in a case where the assets disposed of are securities, the assets disposed of by any of the transactions in a series of linked transactions shall be identified with assets acquired on an earlier date rather than with assets acquired on a later date.
- (9) In subsection (8) above “securities” includes any assets which are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

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