



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART III

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES

### CHAPTER II

SETTLEMENTS

*Migration of settlements, non-resident settlements and dual resident settlements*

#### **96 Payments by and to companies.**

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 87 to 90 [<sup>F1</sup>and Schedule 4C] it shall be treated as received from the trustees.
- (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 87 to 90 [<sup>F1</sup>and Schedule 4C].
- (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person.
- (4) If the company is controlled by 2 or more persons (taking each one separately) at the time the payment is received, then—
  - (a) if one of them is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person;
  - (b) if 2 or more of them are then resident or ordinarily resident in the United Kingdom (“the residents”) it shall be treated as being as many equal capital

*Status: Point in time view as at 21/07/2008. This version of this provision has been superseded.*

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payments as there are residents and each of them shall be treated as receiving one of the payments.

- (5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received <sup>F2</sup>... —
- (a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and
  - (b) each such participator (whatever his residence or ordinary residence) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment,
- but where (by virtue of the preceding provisions of this subsection and apart from this provision) a participator would be treated as receiving less than one-twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of this subsection.
- (6) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
- (7) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (8) below.
- (8) A person falls within this subsection if—
- (a) he is a settlor in relation to the settlement, or
  - (b) he is connected with a person falling within paragraph (a) above.
- (9) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.
- [<sup>F3</sup>(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment which in his case is an intervening year for the purposes of section 10A.
- (9B) If—
- (a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and
  - (b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,
- nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).]
- (10) For the purposes of this section—
- (a) the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act, but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company;
  - (b) “participator” has the meaning given by section 417(1) of the Taxes Act.
- (11) This section shall apply to payments received on or after 19th March 1991.

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#### **Textual Amendments**

- F1** Words in s. 96(1)(2) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 92(4), **Sch. 26 para. 3**
- F2** Words in s. 96(5) omitted (with application in accordance with s. 96(2) of the amending Act) by virtue of [Finance Act 2000 \(c. 17\)](#), **s. 96(1)**
- F3** S. 96(9A)(9B) inserted (with effect in accordance with s. 127(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 127(3)**

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

- C1** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 762(3) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), Sch. 7 para. 93(3))

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