



# Capital Gains Tax Act 1979 (repealed 6.3.1992)

## 1979 CHAPTER 14

### PART I

#### GENERAL

##### *The foreign element*

#### **10 Double taxation relief.**

- (1) For the purpose of giving relief from double taxation in relation to capital gains tax and tax on chargeable gains charged under the law of any country outside the United Kingdom, in Chapters I and II of Part XVIII of [<sup>F1</sup>the Taxes Act 1988], as they apply for the purposes of income tax, for references to income there shall be substituted references to capital gains and for references to income tax there shall be substituted references to capital gains tax meaning, as the context may require, tax charged under the law of the United Kingdom or tax charged under the law of a country outside the United Kingdom.
- (2) Any arrangements set out in an order made under section 347 of the <sup>M1</sup> Income Tax Act 1952 before 5th August 1965 (the date of the passing of the Finance Act 1965) shall so far as they provide (in whatever terms) for relief from tax chargeable in the United Kingdom on capital gains have effect in relation to capital gains tax.
- (3) So far as by virtue of this section capital gains tax charged under the law of a country outside the United Kingdom may be brought into account under the said Chapters I and II as applied by this section, that tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those Chapters as they apply apart from this section.
- (4) Section [<sup>F2</sup>816] of [<sup>F2</sup>the Taxes Act 1988] (disclosure of information for purposes of double taxation) shall apply in relation to capital gains tax as it applies in relation to income tax.

*Status: Point in time view as at 25/07/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Capital Gains Tax Act 1979 (repealed 6.3.1992), Cross Heading: The foreign element. (See end of Document for details)*

#### Textual Amendments

- F1** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 15(a)**
- F2** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 paras. 15** and 32

#### Marginal Citations

- M1** [1952 c. 10.](#)

### 11 Allowance for foreign tax.

Subject to section 10 above, the tax chargeable under the law of any country outside the United Kingdom on the disposal of an asset which is borne by the person making the disposal shall be allowable as a deduction in the computation under Chapter II of Part II of this Act.

### 12 Non-resident with United Kingdom branch or agency.

- (1) Subject to any exceptions provided by this Act, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment in which he is not resident and not ordinarily resident in the United Kingdom but is carrying on a trade in the United Kingdom through a branch or agency, and shall be so chargeable on chargeable gains accruing on the disposal—
- 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
  - 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.

[<sup>F3</sup>(1A) 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.]

- (2) This section shall not apply to a person who, by virtue of Part XVIII of [<sup>F4</sup>the Taxes Act 1988](double taxation agreements), is exempt from income tax chargeable for the year of assessment in respect of the profits or gains of the branch or agency.

[<sup>F5</sup>(2A) This section shall apply as if references to a trade included references to a profession or vocation.]

- (3) 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 <sup>M2</sup>Taxes Management Act 1970 (general agents and brokers).

#### Textual Amendments

- F3** By [Finance Act 1989 \(c. 26, SIF 63:2\)](#), **s. 128(2)** it is provided that [s. 12\(1A\)](#) is inserted for 1989–90 and subsequent years
- F4** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 paras. 15** and 32
- F5** By [Finance Act 1989 \(c. 26, SIF 63:2\)](#), **s. 126(2)** it is provided that [s. 12\(2A\)](#) is inserted for 1989–90 and subsequent years

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

- C1** See—Finance Act 1973 (c. 51, SIF 63:1), **s. 38**; Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 761(2)(3)(4)**; Finance Act 1989 (c. 26, SIF 63:2), **s. 131**
- C2** See Finance Act 1989 (c. 26, SIF 63:2), **s. 127** et seq.
- C3** See—Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 715(8)**; Finance Act 1988 (c. 39, SIF 63:1, 2), **s. 105(5)**

#### **Marginal Citations**

- M2** 1970 c. 9.

### **13 Foreign assets: delayed remittances.**

- (1) Subsection (2) below applies where—
- (a) chargeable gains accrue from the disposal of assets situated outside the United Kingdom, and
  - (b) the person charged or chargeable makes a claim and shows that the conditions set out in subsection (3) below are, so far as applicable, satisfied as respects those gains (“the qualifying gains”).
- (2) For the purposes of capital gains tax—
- (a) the amount of the qualifying gains shall be deducted from the amounts on which the claimant is assessed to capital gains tax for the year in which the qualifying gains accrued to the claimant, but
  - (b) the amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the conditions set out in subsection (3) below cease to be satisfied.
- (3) The said conditions are—
- (a) that the claimant was unable to transfer the qualifying gains to the United Kingdom, and
  - (b) that that inability was due to the laws of the territory where the [<sup>F6</sup>assets were situated at the time of the disposal], or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory, and
  - (c) that the inability was not due to any want of reasonable endeavours on the part of the claimant.
- (4) Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 1 of the <sup>M3</sup>Overseas Investment and Export Guarantees Act 1972 or section 11 of the <sup>M4</sup>Export Guarantees and Overseas Investment Act 1978 any payment is made by the Exports Credits Guarantee Department in respect of any gains which cannot be transferred to the United Kingdom, then, to the extent of the payment, the gains shall be treated as gains with respect to which the conditions mentioned in subsection (3) above are not satisfied (and accordingly cannot cease to be satisfied).
- (5) No claim under this section shall be made in respect of any chargeable gain more than six years after the end of the year of assessment in which that gain accrues.
- (6) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.

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#### Textual Amendments

**F6** Words in s. 13(3)(b) substituted by Finance Act 1991 (c. 31, SIF 63:2), s. 97(1)(2).

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

**C4** See Finance Act 1988 (c. 39, SIF 63:1, 2), s. 104(3) for changes in respect of married couples from 1990–91

#### Marginal Citations

**M3** 1972 c. 40.

**M4** 1978 c. 18.

### 14 Foreign assets of person with foreign domicile.

- (1) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, capital gains tax shall not be charged in respect of gains accruing to them from the disposal of assets situated outside the United Kingdom (that is chargeable gains accruing in the year 1965–66 or a later year of assessment) except that the tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those chargeable gains, any such amounts being treated as gains accruing when they are received in the United Kingdom.
- (2) For the purposes of this section there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the United Kingdom, and subsections [F7(6) to (9) of section 65] of [F7the Taxes Act 1988] (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom) shall apply as they would apply for the purposes of subsection [F7(5) of that section] if the gain were income arising from possessions out of the United Kingdom.

#### Textual Amendments

**F7** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 paras. 15 and 32

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

**C5** See— Finance Act 1973 (c. 51, SIF 63:1), s. 38; Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 761(5)

### 15 Non-resident company.

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

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- (3) That part shall be equal to the proportion of the assets of the company to which that person would be entitled on a liquidation of the company at the time when the chargeable gain accrues to the company.
- (4) If the part of a chargeable gain attributable to a person under subsection (2) above is less than one-twentieth, the said subsection (2) shall not apply to that person.
- (5) This section shall not apply in relation to—
  - (a) any amount in respect of the chargeable gain which is distributed, whether by way of dividend or distribution of capital or on the dissolution of the company, to persons holding shares in the company, or creditors of the company, within two years from the time when the chargeable gain accrued to the company, or
  - (b) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used, and used only, for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (c) a chargeable gain accruing on the disposal of currency or of a debt within section 135(1) below (foreign currency bank accounts), where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section [F8 11(2)(b)] of [F8 the Taxes Act 1988] (gains corresponding to those charged under section 12 above).
- (6) Subsection (5)(a) above shall not prevent the making of an assessment in pursuance of this section but if, by virtue of that paragraph, this section is excluded all such adjustments, whether by way of repayment or discharge of tax or otherwise, shall be made as will give effect to the provisions of that paragraph.
- (7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as not reimbursed by the company) shall be allowable as a deduction in the computation under this Act of a gain accruing on the disposal by him of the shares by reference to which the tax was paid.
- (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 the person owning any of the shares 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 to the shares so owned shall be apportioned among the issued shares of the second-mentioned company, and the holders of those shares shall be treated in accordance with subsection (2) above, and so on through any number of companies.
- (10) 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

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income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

**Textual Amendments**

**F8** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 paras. 15** and 32

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

**C6** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **s. 762(1)**

**C7** See— [Taxes Management Act 1970 \(c. 9, SIF 63:1\)](#), **s. 28**[Finance Act 1981 \(c. 35, SIF 63:2\)](#), **s. 85**

**C8** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **s. 109** and Sch. 10 para. 8

**16 Non-resident group of companies.**

- (1) This section has effect for the purposes of section 15 above.
- (2) Sections 273 to 275 and 276(1) of [<sup>F9</sup>the Taxes Act 1970] 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 resident in the United Kingdom which are members of a group of companies.
- (3) Sections 278 and 279 of [<sup>F9</sup>the Taxes Act 1970] shall apply for the said purposes 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, two 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 subsections (1) (without paragraph (a), (3) and (4) of section 272 of [<sup>F9</sup>the Taxes Act 1970]).

**Textual Amendments**

**F9** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 15(b)**

**17** <sup>F10</sup>.....

**Textual Amendments**

**F10** [S. 17](#) repealed by [Finance Act 1981 \(c. 35, SIF 63:2\)](#), **ss. 80(8), 139** and Sch. 19 Pt. VIII in relation to chargeable gains accruing to trustees after 5 April 1981

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## 18 Residence etc. and location of assets.

- (1) In this Act “resident” and “ordinarily resident” have the same meanings as in the Income Tax Acts.
- (2) Section 207 of [<sup>F11</sup>the Taxes Act 1988] (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.
- (3) Subject to section 12(1) above, an individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the period (or the sum of the periods) for which he is resident in the United Kingdom in that year of assessment exceeds six months.
- (4) For the purposes of this Act—
  - (a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property,
  - (b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property,
  - (c) subject to the following provisions of this subsection, a debt, secured or unsecured, is situated in the United Kingdom if and only if the creditor is resident in the United Kingdom,
  - (d) shares or securities issued by any municipal or governmental authority, or by any body created by such an authority, are situated in the country of that authority,
  - (e) subject to paragraph (d) above, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated,
  - (f) a ship or aircraft is situated in the United Kingdom if and only if the owner is then resident in the United Kingdom, and an interest or right in or over a ship or aircraft is situated in the United Kingdom if and only if the person entitled to the interest or right is resident in the United Kingdom,
  - (g) the situation of good-will as a trade, business or professional asset is at the place where the trade, business or profession is carried on,
  - [<sup>F12</sup>(ha) patents, trade marks, service marks and registered designs are situated where they are registered, and if registered in more than one register, where each register is situated, and rights or licences to use a patent, trade mark, service mark or registered design are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom,
  - (hb) copyright, design right and franchises, and rights or licences to use any copyright work or design in which design right subsists, are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom,]
  - (i) a judgment debt is situated where the judgment is recorded.
  - [<sup>F13</sup>(j) a debt which—
    - (i) is owed by a bank, and
    - (ii) is not in sterling, and
    - (iii) is represented by a sum standing to the credit of an account in the bank of an individual who is not domiciled in the United Kingdom,

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is situated in the United Kingdom if and only if that individual is resident in the United Kingdom and the branch or other place of business of the bank at which the account is maintained is itself situated in the United Kingdom.]

[<sup>F14</sup>(5) A period during which a member of a visiting force to whom section 323(1) of the Taxes Act 1988 applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of capital gains tax either as a period of residence in the United Kingdom or as creating a change in his residence or domicile.

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

- (6) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from capital gains tax as that to which the head of a mission so resident is entitled under the Diplomatic Privileges Act 1964.
- (7) Any person having or exercising any employment to which section 320(2) of the Taxes Act 1988 applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.
- (8) Subsections (6) and (7) above shall be construed as one with section 320 of the Taxes Act 1988.]

#### Textual Amendments

- F11** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 15(a)**
- F12** [S. 18\(4\)\(ha\)\(hb\)](#) substituted for [s. 18\(4\)\(h\)](#) by [Copyright, Designs and Patents Act 1988 \(c. 48\)](#), **Sch. 7 para. 26**
- F13** [S. 18\(4\)\(j\)](#) added by [Finance Act 1984 \(c. 43\)](#), **s. 69** (deemed to have come into force on 6 April 1983)
- F14** [S. 18\(5\)–\(8\)](#) inserted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 16**

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

- C9** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **s. 723(8)**



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