



Capital Gains Tax Act 1979

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 the Taxes Act, 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 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 518 of the Taxes Act (disclosure of information for purposes of double taxation) shall apply in relation to capital gains tax as it applies in relation to income tax.

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—
 - (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) This section shall not apply to a person who, by virtue of Part XVIII of the Taxes Act (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.
- (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 Taxes Management Act 1970 (general agents and brokers).

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 income arose, 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 Overseas Investment and Export Guarantees Act 1972 or section 11 of the 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.

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 (4) to (7) of section 122 of the Taxes Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom) shall apply as they would apply for the purposes of subsection (3) of the said section 122 if the gain were income arising from possessions out of the United Kingdom.

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.
- (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.

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- (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 246(2)(b) of the Taxes Act (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 income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

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 the Taxes Act 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 the Taxes Act 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 the Taxes Act.

17 Non-resident trust

- (1) This section applies as respects chargeable gains accruing to the trustees of a settlement if the trustees are not resident and not ordinarily resident in the United Kingdom, and if the settlor, or one of the settlors, is domiciled and either resident or ordinarily resident in the United Kingdom, or was domiciled and either resident or ordinarily resident in the United Kingdom when he made his settlement.
- (2) Any beneficiary under the settlement who is domiciled and either resident or ordinarily resident in the United Kingdom during any year of assesment shall be treated for the purposes of this Act as if an apportioned part of the amount, if any, on which the trustees would have been chargeable to capital gains tax under section 4(1) above, if domiciled and either resident or ordinarily resident in the United Kingdom in that year of assesment, had been chargeable gains accruing to the beneficiary in that year of assesment; and for the purposes of this section any such amount shall be apportioned in such manner as is just and reasonable between persons having interests in the settled property, whether the interest be a life interest or an interest in reversion, and so that the chargeable gain is apportioned, as near as may be, according to the respective values of those interests, disregarding in the case of a defeasible interest the possibility of defeasance.
- (3) For the purposes of this section—
 - (a) if in any of the three years ending with that in which the chargeable gain accrues a person has received a payment or payments out of the income of the settled property made in exercise of a discretion he shall be regarded, in relation to that chargeable gain, as having an interest in the settled property of a value equal to that of an annuity of a yearly amount equal to one-third of the total of the payments so received by him in the said three years, and
 - (b) if a person receives at any time after the chargeable gain accrues a capital payment made out of the settled property in exercise of a discretion, being a payment which represents the chargeable gain in whole or part then, except so far as any part of the gain has been attributed under this section to some

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other person who is domiciled and resident or ordinarily resident in the United Kingdom, that person shall, if domiciled and resident or ordinarily resident in the United Kingdom, be treated as if the chargeable gain, or as the case may be the part of the chargeable gain represented by the capital payment, had accrued to him at the time when he received the capital payment.

- (4) In the case of a settlement made before 6th April 1965—
- (a) subsection (2) above shall not apply to a beneficiary whose interest is solely in the income of the settled property, and who cannot, by means of the exercise of any power of appointment or power of revocation or otherwise, obtain for himself, whether with or without the consent of any other person, any part of the capital represented by the settled property, and
 - (b) payment of capital gains tax chargeable on a gain apportioned to a beneficiary in respect of an interest in reversion in any part of the capital represented by the settled property may be postponed until that person becomes absolutely entitled to that part of the settled property, or disposes of the whole or any part of his interest, unless he can, by any means described in paragraph (a) above, obtain for himself any of it at any earlier time,
- and for the purposes of this subsection, property added to a settlement after the settlement is made shall be regarded as property under a separate settlement made at the time when the property is so added.
- (5) In any case in which the amount of any capital gains tax payable by a beneficiary under a settlement in accordance with the provisions of this section is paid by the trustees of the settlement that amount shall not for the purposes of taxation be regarded as a payment to the beneficiary.
- (6) This section shall not apply in relation to a loss accruing to the trustees of the settlement.
- (7) In this section “settlement” and “settlor” have the meanings given by section 454(3) of the Taxes Act and “settled property” shall be construed accordingly.

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 the Taxes Act (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.
- (3) Subject to 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,

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- (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 government 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,
- (h) patents, trade-marks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade-mark or design are situated in the United Kingdom if they, or any rights derived from them, are exercisable in the United Kingdom,
- (i) a judgment debt is situated where the judgment is recorded.