



# Capital Gains Tax Act 1979 (repealed 6.3.1992)

## 1979 CHAPTER 14

### PART V

#### LAND

##### *Private residences*

#### **101 Relief on disposal of private residence.**

- (1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—
  - (a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or
  - (b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.
- (2) In this section “the permitted area” means, subject to subsections (3) and (4) below, an area (inclusive of the site of the dwelling-house) of [<sup>F1</sup>0.5 of a hectare].
- (3) In any particular case the permitted area shall be such area, larger than [<sup>F1</sup>0.5 of a hectare], as the Commissioners concerned may determine if satisfied that, regard being had to the size and character of the dwelling-house, that larger area is required for the reasonable enjoyment of it (or of the part in question) as a residence.
- (4) Where part of the land occupied with a residence is and part is not within subsection (1) above, then (up to the permitted area) that part shall be taken to be within subsection (1) above which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.
- (5) So far as it is necessary for the purposes of this section to determine which of two or more residences is an individual’s main residence for any period—

*Status: Point in time view as at 25/07/1991.*

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- (a) the individual may conclude that question by notice in writing to the inspector given within two years from the beginning of that period, or given by the end of the year 1966-67, if that is later, but subject to a right to vary that notice by a further notice in writing to the inspector as respects any period beginning not earlier than two years before the giving of the further notice,
- (b) subject to paragraph (a) above, the question shall be concluded by the determination of the inspector, which may be as respects either the whole or specified parts of the period of ownership in question,
- and notice of any determination of the inspector under paragraph (b) above shall be given to the individual who may appeal to the General Commissioners or the Special Commissioners against that determination within thirty days of service of the notice.
- (6) In the case of a man and his wife living with him—
- (a) there can only be one residence or main residence for both, so long as living together, and, where a notice under subsection (5)(a) above affects both the husband and the wife, it must be given by both, and
- (b) any notice under subsection (5)(b) above which affects a residence owned by the husband and a residence owned by the wife shall be given to each and either may appeal under that subsection.
- (7) In this section, and sections 102 to 105 below, “the period of ownership” where the individual has had different interests at different times shall be taken to begin from the first acquisition taken into account in arriving at the expenditure which under Chapter II of Part II of this Act is allowable as a deduction in computing under that Chapter the amount of the gain to which this section applies, and in the case of a man and his wife living with him—
- (a) if the one disposes of, or of his or her interest in, the dwelling-house or part of a dwelling-house which is their only or main residence to the other, and in particular if it passes on death to the other as legatee, the other’s period of ownership shall begin with the beginning of the period of ownership of the one making the disposal, and
- (b) if paragraph (a) above applies, but the dwelling-house or part of a dwelling-house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was his only or main residence as if it was also that of the other.
- (8) If at any time [<sup>F2</sup>(being a time after 30th July 1978)] during an individual’s period of ownership of a dwelling-house or part of a dwelling-house he—
- (a) resides in living accommodation which is for him job-related within the meaning of [<sup>F3</sup>section 356 of the Taxes Act 1988], and
- (b) intends in due course to occupy the dwelling-house or part of a dwelling-house as his only or main residence,
- this section, and sections 102 to 105 below, shall apply as if the dwelling-house or part of a dwelling-house were at that time occupied by him as a residence.
- [<sup>F4</sup>(8A) Section 356(3)(b) and (5) of the Taxes Act 1988 shall apply for the purposes of subsection (8) above only in relation to residence on or after 6th April 1983 in living accommodation which is job-related within the meaning of that section.]
- (9) Apportionments of consideration shall be made wherever required by this section or sections 102 to 105 below and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

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#### Textual Amendments

- F1** Words in s. 101(2)(3) substituted by Finance Act 1991 (c. 31, SIF 63:2), s. 93(1)(2) in relation to disposals on or after 19th March 1991.
- F2** Words repealed by Finance Act 1988 (c. 39, SIF 63:1, 2), s. 148 and Sch. 14 Pt. VII in relation to disposals on or after 6th April 1988
- F3** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 para. 32
- F4** S. 101(8A) inserted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 para. 21

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

- C1** See Finance Act 1984 (c. 43, SIF 63:2), s. 50(1) and Sch. 11 para. 5
- C2** See Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 776(9)

## 102 Amount of relief.

- (1) No part of a gain to which section 101 above applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last [<sup>F5</sup>thirty-six months] of that period.
- (2) Where subsection (1) above does not apply, a fraction of the gain shall not be a chargeable gain, and that fraction shall be—
  - (a) the length of the part or parts of the period of ownership during which the dwelling-house or the part of the dwelling-house was the individual's only or main residence, but inclusive of the last [<sup>F5</sup>thirty-six months] of the period of ownership in any event, divided by
  - (b) the length of the period of ownership.
- (3) For the purposes of subsections (1) and (2) above—
  - (a) a period of absence not exceeding three years (or periods of absence which together did not exceed three years), and in addition
  - (b) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the United Kingdom, and in addition
  - (c) any period of absence not exceeding four years (or periods of absence which together did not exceed four years) throughout which the individual was prevented from residing in the dwelling-house or part of the dwelling-house in consequence of the situation of his place of work or in consequence of any condition imposed by his employer requiring him to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of his duties,

shall be treated as if in that period of absence the dwelling-house or the part of the dwelling-house was the individual's only or main residence if both before and after the period there was a time when the dwelling-house was the individual's only or main residence.

In this subsection “period of absence” means a period during which the dwelling-house or the part of the dwelling-house was not the individual's only or main residence and throughout which he had no residence or main residence eligible for relief under this section.

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- (4) In this section “period of ownership” does not include any period before 6th April 1965.
- [<sup>F6</sup>(5) Where at any time the number of months specified in subsections (1) and (2)(a) above is thirty-six, the Treasury may by order amend those subsections by substituting references to twenty-four for the references to thirty-six in relation to disposals on or after such date as is specified in the order.
- (6) Subsection (5) above shall also have effect as if “thirty-six” (in both places) read “twenty-four” and as if “twenty-four” read “thirty-six”.
- (7) Any power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.]

#### Textual Amendments

- F5** Words in s. 102(1)(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:2), s. 94(1)(4) in relation to disposals on or after 19th March 1991.
- F6** S. 102(5)-(7) inserted by Finance Act 1991 (c. 31, SIF 63:2), s. 94(2).

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

- C3** Where Finance Act 1988 (c. 39, SIF 63;1, 2), s. 96 and Sch. 8 para. 8 apply (rebasings to 1982), words “6th April 1965” replaced by “31st March 1982”

### 103 Amount of relief: further provisions.

- (1) If the gain accrues from the disposal of a dwelling-house or part of a dwelling-house part of which is used exclusively for the purposes of a trade or business, or of a profession or vocation, the gain shall be apportioned and section 102 above shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.
- (2) If at any time in the period of ownership there is a change in what is occupied as the individual’s residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling-house for the purpose of a trade or business, or of a profession or vocation, or for any other purpose, the relief given by section 102 above may be adjusted in such manner as the Commissioners concerned may consider to be just and reasonable.
- (3) Section 102 above shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.

### 104 Private residence occupied under terms of settlement.

Sections 101 to 103 above shall also apply in relation to a gain accruing to a trustee on a disposal of settled property being an asset within section 101(1) above where during the period of ownership of the trustee the dwelling-house or part of the dwelling-house

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mentioned in that subsection has been the only or main residence of a person entitled to occupy it under the terms of the settlement, and in those sections as so applied—

- (a) references to the individual shall be taken as references to the trustee except in relation to the occupation of the dwelling-house or part of the dwelling-house, and
- (b) the notice which may be given to the inspector under section 101(5)(a) above shall be a joint notice by the trustee and the person entitled to occupy the dwelling-house or part of the dwelling-house.

### **105 Private residence occupied by dependent relative.**

- (1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in, a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, the sole residence of a dependent relative of the individual, provided rent-free and without any other consideration.
- (2) If the individual so claims, such relief shall be given in respect of it and its garden or grounds as would be given under sections 101 to 103 above if the dwelling-house (or part of the dwelling-house) had been the individual's only or main residence in the period of residence by the dependent relative, and shall be so given in addition to any relief available under those sections apart from this section.
- (3) Not more than one dwelling-house (or part of a dwelling-house) may qualify for relief as being the residence of a dependent relative of the claimant at any one time nor, in the case of a man and his wife living with him, as being the residence of a dependent relative of the claimant or of the claimant's husband or wife at any one time.
- (4) The Inspector, before allowing a claim, may require the claimant to show that the giving of the relief claimed will not under section (3) above preclude the giving of relief to the claimant's wife or husband or that a claim to any such relief has been relinquished.
- (5) In this section "dependent relative" means, in relation to an individual—
  - (a) any relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or
  - (b) his or his wife's mother who, whether or not incapacitated, is either widowed, or living apart from her husband, or a single woman in consequence of dissolution or annulment of marriage.
- (6) If the individual mentioned in subsection (5) above is a woman the references in that subsection to the individual's wife shall be construed as references to the individual's husband.

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

**C4** See Finance Act 1988 (c. 39, SIF 63;1, 2), s. 111 in respect of disposals on or after 6th April 1988

**Status:**

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**Changes to legislation:**

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