



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VIII

TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

Chargeable gains

345 Computation of chargeable gains.

- (1) ^{M1}Subject to the provisions of this section and sections 400 and 435, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting any allowable losses accruing to the company in the period and, so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period, any allowable losses previously accruing to the company while it has been within the charge to corporation tax.
- (2) ^{M2}Except as otherwise provided by the Corporation Tax Acts, the total amount of the chargeable gains to be included in respect of chargeable gains in a company's total profits for any accounting period shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions—
 - (a) as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person's gain; or
 - (b) as to the time when any such amount is to be treated as accruing,
being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.
- (3) ^{M3}Subject to subsection (4) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts; but—

Status: Point in time view as at 01/02/1991.

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- (a) this subsection shall not affect the references to income tax in section 33(2) of the 1979 Act (exclusion of expenditure by reference to hypothetical income tax); and
 - (b) in so far as those enactments operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.
- (4)^{M4}The 1979 Act as extended by this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax.
- (5)^{M5}Where assets of a company are vested in a liquidator under section 145 of the ^{M6}Insolvency Act 1986 or Article 498 of the ^{M7}Companies (Northern Ireland) Order 1986 or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

Modifications etc. (not altering text)

- C1** S. 345 modified (6.1.1992) by [British Technology Group Act 1991 \(c. 66, SIF 64\), s. 12\(2\)](#); S.I. [1991/2721, art.2](#)
- C2** See Insolvency (Northern Ireland) Order 1989 Art.381(2) and Sch.9 para.60 (S.I.1989 No.2405—not reproduced) for change from a day to be appointed.

Marginal Citations

- M1** Source-1970 s.265(1)
- M2** Source-1970 s.265(2)
- M3** Source-1970 s.265(3)(a), (C); 1979(C) Sch.7
- M4** Source-1970 s.265(4); 1979(C) Sch.7
- M5** Source-1970 s.265(5)
- M6** [1986 c. 45.](#)
- M7** [S.I. 1986/1032 \(N.I. 6\)](#)

346 Capital distribution of chargeable gains: recovery of tax from shareholder.

- ^{M8}(1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—
- (a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or
 - (b) the distribution constitutes such a disposal of assets;
- and that person is referred to below as “the shareholder”.
- (2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any

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of the tax assessed on the company for that period is not paid within six months from the date determined under subsection (3) below, the shareholder may by an assessment made within two years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

- (a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and
 - (b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (3) The date referred to in subsection (2) above is whichever is the later of—
- (a) the date when the tax becomes due and payable by the company; and
 - (b) the date when the assessment was made on the company.
- (4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.
- (5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.
- (6) With respect to chargeable gains accruing in accounting periods ending on or before the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purposes of this section, this section shall have effect—
- (a) with the substitution for the words in subsection (3) after “above” of the words “is the date when the tax becomes payable by the company”; and
 - (b) with the omission of the words in subsection (4) from “together” to the end of the subsection.
- (7) In this section “capital distribution” has the same meaning as in section 72(5)(b) of the 1979 Act and “connected with” shall be construed in accordance with section 839.

Marginal Citations

M8 Source-1970 s.266; 1979(C) Sch.7; 1987 (No.2) Sch.6 1

347 Tax on one member of group recoverable from another member.

^{M9}(1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within six months from the date determined under subsection (2) below by the company, then, if the tax so assessed included any amount in respect of chargeable gains—

- (a) a company which was at the time when the gain accrued the principal company of the group; and
- (b) any other company which in any part of the period of two years ending with that time was a member of that group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset;

may at any time within two years from the date determined under subsection (2) below be assessed and charged (in the name of the company to whom the chargeable gain

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accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.

- (2) The date referred to in subsection (1) above is whichever is the later of—
- (a) the date when the tax becomes due and payable by the company; and
 - (b) the date when the assessment is made on the company.
- (3) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—
- (a) from the company to which the chargeable gain accrued, or
 - (b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,
- and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.
- (4) Any reference in subsection (3) above to an amount of tax includes a reference to any interest paid under section 87A of the Management Act on that amount.
- (5) Section 272 of the 1970 Act shall apply for the interpretation of this section as it applies for the interpretation of sections 273 to 281 of that Act.
- (6) In relation to any chargeable gains accruing in accounting periods ending on or before the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purposes of this section, this section shall have effect—
- (a) with the substitution for the words in subsection (2) after “above” of the words “ is the date when the tax becomes payable by the company ”; and
 - (b) with the omission of subsection (4).

Marginal Citations

M9 Source-1970 s.277; 1987 (No.2) Sch.6 3

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