



Finance Act 1988

1988 CHAPTER 39

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER IV

CAPITAL GAINS

Company migration

105 Deemed disposal of assets on company ceasing to be resident in U.K.

- (1) This section and section 107 below apply to a company if, at any time (“the relevant time”), the company ceases to be resident in the United Kingdom otherwise than in pursuance of a Treasury consent.
- (2) The company shall be deemed for all purposes of the ^{M1}Capital Gains Tax Act 1979—
 - (a) to have disposed of all its assets, other than assets excepted from this subsection by subsection (4) below, immediately before the relevant time; and
 - (b) immediately to have reacquired them, at their market value at that time.
- (3) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply where the company—
 - (a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and
 - (b) acquires the new assets, or its interest in those assets, after that time, unless the new assets are excepted from this subsection by subsection (4) below.
- (4) If at any time after the relevant time the company carries on a trade in the United Kingdom through a branch or agency—

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- (a) any assets which, immediately after the relevant time, are situated in the United Kingdom and are used in or for the purposes of the trade, or are used or held for the purposes of the branch or agency, shall be excepted from subsection (2) above; and
- (b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (3) above;

and references in this subsection to assets situated in the United Kingdom include references to exploration or exploitation assets and to exploration or exploitation rights.

(5) In this section—

“branch or agency” has the same meaning as in the Capital Gains Tax Act 1979;

“designated area”, “exploration or exploitation activities” and “exploration or exploitation rights” have the same meanings as in section 38 of the ^{M2}Finance Act 1973;

“exploration or exploitation assets” means assets used or intended for use in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

“the old assets” and “the new assets” have the same meanings as in section 115 of the 1979 Act;

“Treasury consent” means a consent under section 765 of the Taxes Act 1988 or section 482 of the Taxes Act 1970 (restrictions on the migration etc. of companies) given for the purposes of subsection (1)(a) of that section;

and a company shall not be regarded for the purposes of this section as ceasing to be resident in the United Kingdom by reason only that it ceases to exist.

- (6) In section 765 of the Taxes Act 1988 and section 482 of the Taxes Act 1970, in subsection (1), paragraphs (a) and (b) shall cease to have effect and in paragraph (c) for the words “so resident” there shall be substituted the words “resident in the United Kingdom”; but nothing in this subsection shall affect the operation of either section in relation to—
 - (a) an application for a Treasury consent made before the date of the coming into force of this section; or
 - (b) such a consent granted on an application so made.

(7) This section and sections 106 and 107 below shall be deemed to have come into force on 15th March 1988.

Marginal Citations

M1 1979 c. 14.

M2 1973 c. 51.

106 Deemed disposal of assets on company ceasing to be liable to U.K. tax.

- (1) This section and section 107 below apply to a company if, at any time (“the relevant time”), the company, while continuing to be resident in the United Kingdom, becomes a company which falls to be regarded for the purposes of any double taxation relief arrangements—
 - (a) as resident in a territory outside the United Kingdom; and

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- (b) as not liable in the United Kingdom to tax on gains arising on disposals of assets of descriptions specified in the arrangements (“prescribed assets”).
- (2) The company shall be deemed for all purposes of the ^{M3}Capital Gains Tax Act 1979—
 - (a) to have disposed of all its prescribed assets immediately before the relevant time; and
 - (b) immediately to have reacquired them,
at their market value at that time.
- (3) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply where the new assets are prescribed assets and the company—
 - (a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and
 - (b) acquires the new assets, or its interest in those assets, after that time.
- (4) In this section—
 - “double taxation relief arrangements” means arrangements having effect by virtue of section 497 of the Taxes Act 1970 or section 788 of the Taxes Act 1988 (as extended, in either case, to capital gains tax by section 10 of the Capital Gains Tax Act 1979);
 - “the old assets” and “the new assets” have the same meanings as in section 115 of the 1979 Act.

Marginal Citations

M3 1979 c. 14.

107 Postponement of charge on deemed disposal.

- (1) If—
 - (a) immediately after the relevant time, a company to which this section applies by virtue of section 105 or 106 above (“the company”) is a 75 per cent. subsidiary of another company (“the principal company”) which is resident in the United Kingdom; and
 - (b) the principal company and the company so elect, by notice in writing given to the inspector within two years after that time,
the Capital Gains Tax Act 1979 shall have effect in accordance with the following provisions.
- (2) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—
 - (a) that disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses; and
 - (b) the whole of that gain shall be treated as not accruing to the company on that disposal but an equivalent amount (“the postponed gain”) shall be brought into account in accordance with subsections (3) and (4) below.
- (3) If at any time within six years after the relevant time the company disposes of any assets (“relevant assets”) the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole or the appropriate proportion

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of the postponed gain so far as not already taken into account under this subsection or subsection (4) below.

In this subsection “the appropriate proportion” means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(4) If at any time after the relevant time—

- (a) the company ceases to be a 75 per cent. subsidiary of the principal company on the disposal by the principal company of ordinary shares of the company;
- (b) after the company has ceased to be such a subsidiary otherwise than on such a disposal, the principal company disposes of such shares; or
- (c) the principal company ceases to be resident in the United Kingdom,

there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole of the postponed gain so far as not already taken into account under this subsection or subsection (3) above.

(5) If at any time—

- (a) the company has allowable losses which have not been allowed as a deduction from chargeable gains; and
- (b) a chargeable gain accrues to the principal company under subsection (3) or (4) above,

then, if and to the extent that the principal company and the company so elect by notice in writing given to the inspector within two years after that time, those losses shall be allowed as a deduction from that gain.

(6) In this section—

“deemed disposal” means a disposal which, by virtue of section 105(2) or, as the case may be, section 106(2) above, is deemed to have been made;

“foreign assets” means any assets of the company which, immediately after the relevant time, are situated outside the United Kingdom and are used in or for the purposes of a trade carried on outside the United Kingdom;

“ordinary share” means a share in the ordinary share capital of the company;

“the relevant time” has the meaning given by section 105(1) or, as the case may be, section 106(1) above.

(7) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital is owned directly by that other company.

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