



# Finance Act 1988

## 1988 CHAPTER 39

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER IV

#### CAPITAL GAINS

##### *Unification of rates of tax on income and capital gains*

#### **98 Rates of capital gains tax.**

- (1) Subject to the provisions of this section and sections 99 and 100 below, the rate of capital gains tax in respect of gains accruing to a person in a year of assessment shall be equivalent to the basic rate of income tax for the year.
- (2) If income tax is chargeable at the higher rate in respect of any part of the income of an individual for a year of assessment, the rate of capital gains tax in respect of gains accruing to him in the year shall be equivalent to the higher rate.
- (3) If no income tax is chargeable at the higher rate in respect of the income of an individual for a year of assessment, but the amount on which he is chargeable to capital gains tax exceeds the unused part of his basic rate band, the rate of capital gains tax on the excess shall be equivalent to the higher rate of income tax for the year.
- (4) The reference in subsection (3) above to the unused part of an individual's basic rate band is a reference to the amount by which the basic rate limit exceeds his total income (as reduced by any deductions made in accordance with the Income Tax Acts).

#### **99 Husband and wife.**

- (1) Where —

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- (a) gains accrue to a woman in a year of assessment during which she is a married woman living with her husband, and
  - (b) if her chargeable amount were added to, and constituted the highest part of, her husband's chargeable amount for the year, capital gains tax would be chargeable on it or any part of it at a rate equivalent to the higher rate of income tax for the year,
- the rate of capital gains tax on her chargeable amount or that part of it shall be equivalent to the higher rate.
- (2) For the purposes of this section a person's chargeable amount for a year of assessment is the amount on which he is (or would apart from section 45 of the <sup>M1</sup>Capital Gains Tax Act 1979 be) chargeable to capital gains tax for the year.
  - (3) In relation to a year of assessment for which an application under section 45(2) of the Capital Gains Tax Act 1979 (separate assessment) has effect, the amounts of tax payable by the husband and by the wife shall be determined by—
    - (a) aggregating the amounts that would be payable by each of them apart from this subsection, and
    - (b) dividing that aggregate between them in proportion to their chargeable amounts for the year.
  - (4) This section shall apply in relation to a part of a year of assessment, being a part beginning with 6th April, as it applies in relation to a whole year (except that references to a husband's chargeable amount are references to his chargeable amount for the whole year).
  - (5) This section shall have effect for the years 1988-89 and 1989-90 only.

**Marginal Citations**

**M1** 1979 c. 14.

**100 Accumulation and discretionary settlements.**

- (1) The rate of capital gains tax in respect of gains accruing to trustees of an accumulation or discretionary settlement in a year of assessment shall be equivalent to the sum of the basic and additional rates of income tax for the year.
- (2) For the purposes of subsection (1) above a trust is an accumulation or discretionary settlement where—
  - (a) all or any part of the income arising to the trustees in the year of assessment is income to which section 686 of the Taxes Act 1988 (liability to income tax at the additional rate) applies, or
  - (b) all the income arising to the trustees in the year of assessment is treated as the income of the settlor, but that section would apply to it if it were not so treated, or
  - (c) all the income arising to the trustees in the year of assessment is applied in defraying expenses of the trustees in that year, but that section would apply to it if it were not so applied, or
  - (d) no income arises to the trustees in the year of assessment, but that section would apply if there were income arising to the trustees and none of it were

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treated as the income of the settlor or applied as mentioned in paragraph (c) above.

## 101 Underwriters.

In subsection (2) of section 142 of the <sup>M2</sup>Capital Gains Tax Act 1979 (which provides for capital gains tax to be assessed and charged on the trustees of premiums trust funds of underwriters) for the words “subsection (3)” there shall be substituted the words “subsections (2A) and (3)”; and after subsection (2) there shall be inserted—

“(2A) Tax assessed by virtue of subsection (2) above for a year of assessment shall be assessed at a rate equivalent to the basic rate of income tax for the year; and if an assessment to tax at a higher rate is subsequently made on an underwriting member in respect of the same gains, an appropriate credit shall be given for the tax assessed on the trustees.”

### Marginal Citations

M2 1979 c. 14.

## 102 Other special cases.

- (1) References in section 98 above to income tax chargeable at the higher rate include references to tax chargeable by virtue of section 683(1) or 684(1) of the Taxes Act 1988 (settlements) in respect of excess liability (that is, liability to income tax over what it would be if all income tax were charged at the basic rate to the exclusion of any higher rate); and where for any year of assessment income is treated by virtue of either of those provisions as the income of a person for the purposes of excess liability then, whether or not he is chargeable to tax otherwise than at the basic rate, it shall also be treated as his income for the purposes of section 98(4) above.
- (2) Where for any year of assessment—
  - <sup>F1</sup>(a) .....
  - (b) by virtue of section 549(2) of that Act (gains under life policy or life annuity contract) a deduction of an amount is made from a person’s total income for those purposes,
  - (c) by virtue of section 683(1) or 684(1) of that Act an amount of a person’s income is treated as not being his income for those purposes, or
  - (d) by virtue of section 699(1) of that Act (income accruing before death) the residuary income of an estate is treated as reduced so as to reduce a person’s income by any amount for the purposes of excess liability,section 98(4) above shall have effect as if his income for the year were reduced by that amount.
- (3) Where by virtue of section 547(1)(a) of that Act (gains from insurance policies etc.) a person’s total income for a year of assessment is deemed to include any amount or amounts—
  - (a) section 98(4) above shall have effect as if his total income included not the whole of the amount or amounts concerned but only the appropriate fraction within the meaning of section 550(3), and

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- (b) if relief is given under section 550 of that Act and the calculation required by section 550(2)(b) does not involve the higher rate of income tax, section 98(2) and (3) above shall have effect as if no income tax were chargeable at the higher rate in respect of his income.
- (4) Nothing in subsection (1) above shall be taken to reduce, and nothing in subsections (2) and (3) above shall be taken to increase, the amount of the deduction which a person is entitled to make from his total income by virtue of any provision of Chapter 1 of Part VII of the Taxes Act 1988 which limits any allowance by reference to the level of his total income.

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**Textual Amendments**

- F1** [S. 102\(2\)\(a\)](#) repealed(for accounting periods beginning after 31.03.1989) by [Finance Act 1989 \(c. 26, SIF 63:1\)](#), s. 187(1), [Sch. 17 Pt. V](#) Note 6.

**103 Commencement of sections 98 to 102.**

Subject to section 99(5) above, sections 98 to 102 above shall have effect for the year 1988-89 and subsequent years of assessment.

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