



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### [<sup>F1</sup>PART 1

#### CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

#### CHAPTER 3

#### ATTRIBUTION OF GAINS OF NON-UK RESIDENT CLOSE COMPANIES

#### *[<sup>F1</sup>Gains of non-UK resident companies not otherwise chargeable*

#### Textual Amendments

- F1** Pt. 1 substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\), Sch. 1 para. 2](#)

### 3 Gains attributed to UK resident individuals etc

- (1) This section applies if—
- a chargeable gain accrues at any time to a non-UK resident close company,
  - the gain is connected to avoidance (see section 3A),
  - the gain is not connected to a foreign trade or other economically significant foreign activities (see section 3A), and
  - apart from this section, some or all of the gain would not be chargeable to corporation tax on the company.
- (2) So much of the gain as would not otherwise be so chargeable is apportioned among participators, or indirect participators, in the company—
- who are resident in the United Kingdom at that time, or
  - who are trustees of a settlement and are not resident in the United Kingdom at that time.

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***Changes to legislation:** Taxation of Chargeable Gains Act 1992, Cross Heading: Gains of non-UK resident companies not otherwise chargeable is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (3) The proportion of the amount of the gain to be apportioned to each person corresponds to the extent of the person's interest in the company as a participator or indirect participator.
- (4) The amount apportioned to each person is treated as a chargeable gain accruing to the person.
- (5) No apportionment of any part of a gain is made to an individual if—
  - (a) the gain accrues in a tax year which, as respects the individual, is a split year, and
  - (b) the gain accrues in the overseas part of the year.
- (6) No apportionment of any part of a gain is made to a person if the total amount that would, apart from this subsection, be apportioned to—
  - (a) the person, and
  - (b) persons connected to the person,
 is 25% or less of the amount of the gain falling to be apportioned.
- (7) A person (“P”) is an “indirect participator” in a company (“A”) if—
  - (a) another company (“B”) which is a non-UK resident close company is a participator in A, and
  - (b) P is a participator in B or P is a participator in a third non-UK resident close company which is participator in B,
 and so on through any number of non-UK resident close companies that are participators in other non-UK resident close companies.
- (8) P's interest as an indirect participator in A in the case of any gain is determined by—
  - (a) apportioning the gain among the participators in A according to the extent of their respective interests as participators, and
  - (b) then further apportioning the gain apportioned to B among the participators in B according to the extent of their respective interests as participators, and so on through other companies.
- (9) So far as it would go to reduce or extinguish chargeable gains accruing, as a result of this section, to a person in a chargeable period, this section applies to a loss accruing to the company on the disposal of an asset in that period as it would apply if there had been a gain.
- (10) But—
  - (a) this only applies in relation to that person, and
  - (b) this section does not otherwise apply in relation to losses accruing to the company.
- (11) In this section “a non-UK resident close company” means 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.

### **3A Gains connected to avoidance or foreign activities etc**

- (1) A gain accruing to a company on the disposal of an asset is taken to be “connected to avoidance” unless it is shown that neither—
  - (a) the disposal of the asset by the company, nor

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- (b) the acquisition or holding of the asset by the company, formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax.
- (2) A gain is “connected to a foreign trade” if it accrues on the disposal of an asset used only—
- (a) for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (b) for the purposes of the foreign part of a trade carried on by the company partly within, and partly outside, the United Kingdom,
- and the reference here to the foreign part of a trade is to the part of the trade carried on outside the United Kingdom.
- (3) For this purpose an asset is to be regarded as used only for the purposes of a trade carried on by the company wholly outside the United Kingdom if—
- (a) the asset is accommodation, or an interest or right in accommodation, situated outside the United Kingdom, and
  - (b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.
- (4) Each of the following is a “relevant period”—
- (a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or
  - (b) if the company has beneficially owned the accommodation (or interest or right) for more than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company had that beneficial ownership.
- (5) The reference in this section to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but as if—
- (a) sections 266, 268 and 268A were omitted, and
  - (b) the reference to an accounting period in section 267(1) were to a relevant period.
- (6) A gain accruing on the disposal of an asset is “connected to other economically significant foreign activities” if—
- (a) the asset is used only for the purposes of activities carried on by the company wholly or mainly outside the United Kingdom,
  - (b) the activities consist of the provision of goods or services on a commercial basis, and
  - (c) the activities also satisfy the staff, premises and economic value test.
- (7) Activities satisfy the staff, premises and economic value test if they involve—
- (a) the use of employees, agents or contractors of the company in numbers, and with competence and authority, commensurate with the size and nature of the activities,
  - (b) the use of premises and equipment commensurate with the size and nature of the activities, and
  - (c) the addition of economic value by the company to the persons to whom the goods or services are provided commensurate with the size and nature of the activities.

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(8) This section applies for the purposes of section 3(1)(b) and (c).

### **3B Participators and their interests**

- (1) “Participator” has the meaning given by section 454 of CTA 2010.
- (2) Any reference to a person's interest as a participator in a company is to the interest in it represented by all the factors by reference to which the person is a participator.
- (3) Any reference to the extent of a person's interest as a participator in a company is to such proportion of the interests as participators of all of the company's participators as, on a just and reasonable basis, is represented by that interest.
- (4) If—
- (a) the interest of a person in a company is wholly or partly represented by an interest under a settlement (“the beneficial interest”), and
  - (b) the beneficial interest is the factor (or one of them) by reference to which the person would, apart from this subsection, have an interest as a participator in the company,
- that interest as a participator is, so far as represented by the beneficial interest, to be treated instead as the interest of the trustees of the settlement.
- (5) If—
- (a) exempt assets of a pension scheme are taken into account in ascertaining a person's interest as a participator in a company, and
  - (b) if those assets were ignored, an amount in respect of a gain accruing to the company would not be apportioned to the person as a result of section 3,
- no amount in the respect of the gain is to be apportioned to the person as a result of that section.
- (6) For this purpose—
- (a) “assets of a pension scheme” means assets held for the purposes of a fund or scheme to which section 271(1)(c) or (1A) applies, and
  - (b) those assets are “exempt” if, at the time when the gain accrues, a disposal of those assets would be exempt from tax as a result of either of those provisions.
- (7) This section applies for the purposes of section 3.]

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [1997 c. 16 Sch. 12 para. 12\(7\)](#)[1314](#)
- Act applied by [2002 c. 23 Sch. 16 para. 48\(1\)\(2\)](#)
- Act construed as one with reg. 37 by [S.I. 2006/575 reg. 37\(2\)](#)
- Act construed as one with reg. 38 by [S.I. 2006/575 reg. 38\(3\)](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 4(10)(11) inserted by [2016 c. 11 s. 15\(4\)](#)
- s. 4(10) words inserted by [2016 c. 24 s. 83\(11\)](#)
- s. 35(3)(d)(xviii) added by [2008 c. 17 Sch. 7 para. 9](#)
- s. 35(3)(d)(xviii) inserted by [2008 c. 18 Sch. 13 para. 46](#)
- s. 35(3)(d)(xviii) repealed by [S.I. 2008/3002 Sch. 1 para. 42](#)[Sch. 3](#) (This amendment comes into force on the day 2008 c. 4, s. 5 comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by [S.I. 2008/3068](#), art. 2(1)(b))
- s. 104(4)(b)(i) words substituted by [S.I. 1989/469](#), reg. 27(2) (as amended) by [S.I. 1997/1716 reg. 13\(1\)\(b\)](#)
- s. 107(11) words substituted by [S.I. 1989/469](#), reg. 27(2A) (as amended) by [S.I. 1997/1716 reg. 13\(2\)\(b\)](#)
- s. 169S(4A) inserted by [2015 c. 11 s. 43\(2\)](#)
- s. 587B inserted by [2000 c. 17 s. 43\(1\)](#)
- Sch. 5C para. 3(1) modified by [S.I. 2004/2199 reg. 7\(1\)](#)
- Sch. 5C para. 3(6) modified by [S.I. 2004/2199 reg. 7\(2\)](#)
- Sch. 5C para. 5(1) modified by [S.I. 2004/2199 reg. 7\(3\)](#)
- Sch. 5C para. 3 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 5 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 6 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 3(1)(f) words substituted by [2007 c. 3 Sch. 1 para. 347](#)