



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART II

#### GENERAL PROVISIONS RELATING TO COMPUTATION OF GAINS AND ACQUISITIONS AND DISPOSALS OF ASSETS

### CHAPTER III

#### COMPUTATION OF GAINS: GENERAL PROVISIONS

#### *Allowable deductions*

#### **37 Consideration chargeable to tax on income.**

- (1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of the Income Tax Acts.
- (2) Subsection (1) above shall not be taken as excluding from the consideration so taken into account any money or money's worth which is—
  - (a) taken into account in the making of a balancing charge under the 1990 Act, including the provisions of the Taxes Act which are to be treated as contained in the 1990 Act but excluding Part III of the 1990 Act, or
  - (b) brought into account as the disposal value of machinery or plant under section 24 of the 1990 Act.
- (3) This section shall not preclude the taking into account in a computation of the gain, as consideration for the disposal of an asset, of the capitalised value of a rentcharge (as in a case where a rentcharge is exchanged for some other asset) or of the capitalised value of a ground annual or feu duty, or of a right of any other description to income

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or to payments in the nature of income over a period, or to a series of payments in the nature of income.

- (4) The reference in subsection (1) above to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of subsection (2) of section 76 of the Taxes Act (expenses of management of insurance companies).

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

- C1** S. 37 extended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by [1993 c. 34, ss. 176\(2\)\(b\), 184\(3\)](#)
- C2** S. 37 excluded (19.3.1997) by [Finance Act 1997 \(c. 16\), Sch. 12 para. 12\(1\)\(2\)\(3\)\(4\), 13, 14](#) (with [Sch. 12 para. 17](#))
- C3** S. 37(1) restricted (16.7.1992, with effect as mentioned in [s. 65\(6\)](#) of the amending Act) by [1992 c. 48, s. 65\(2\)\(e\)\(5\)](#)

**38 Acquisition and disposal costs etc.**

- (1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—
- (a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,
  - (b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
  - (c) the incidental costs to him of making the disposal.
- (2) For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty) together—
- (a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and
  - (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.
- (3) Except as provided by section 40, no payment of interest shall be allowable under this section.

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- (4) Any provision in this Act introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

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

**C4** S. 38 restricted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 173\(4\)\(d\)](#) (with [s. 173\(1\)](#))

**39 Exclusion of expenditure by reference to tax on income.**

- (1) There shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure allowable as a deduction in computing the [<sup>F1</sup>profits] or losses of a trade, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains; and this subsection applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.
- (2) Without prejudice to the provisions of subsection (1) above, there shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade the [<sup>F1</sup>profits] of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the [<sup>F1</sup>profits] or losses of the trade for the purposes of income tax.
- (3) No account shall be taken of any relief under Chapter II of Part IV of the <sup>M1</sup>Finance Act 1981 or under Schedule 5 to the <sup>M2</sup>Finance Act 1983, in so far as it is not withdrawn and relates to shares issued before 19th March 1986, in determining whether any sums are excluded by virtue of subsection (1) or (2) above from the sums allowable as a deduction in the computation of gains or losses for the purposes of this Act.

**Textual Amendments**

**F1** Word in s. 39(1)(2) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 46\(3\)\(a\)](#), [Sch. 7 para. 7](#)

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

**C5** S. 39 extended (27.7.1993 with effect for the years 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by [1993 c. 34](#), [s. 176\(2\)\(b\)](#), [184\(3\)](#)

**Marginal Citations**

**M1** [1981 c. 35](#).

**M2** [1983 c. 28](#).

**40 Interest charged to capital.**

- (1) Where—

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- (a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under section 38 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and
  - (b) that expenditure was defrayed out of borrowed money,
- the sums so allowable under section 38 shall, subject to subsection (2) below, include the amount of any interest on that borrowed money which is referable to a period or part of a period ending on or before the disposal.
- (2) Subsection (1) above has effect subject to section 39 and does not apply to interest which is a charge on income.
- (3) In relation to interest paid in any accounting period ending before 1st April 1981 subsection (1) above shall have effect with the substitution for all following paragraph (b) of—
- “and
- (c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,
- and the sums so allowable under section 38 shall include the amount of that interest charged to capital.”;
- and subsection (2) above shall not apply.

#### **41 Restriction of losses by reference to capital allowances and renewals allowances.**

- (1) Section 39 shall not require the exclusion from the sums allowable as a deduction in the computation of the gain of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made, but the amount of any losses accruing on the disposal of an asset shall be restricted by reference to capital allowances and renewals allowances as follows.
- (2) In the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of it.
- (3) If the person making the disposal acquired the asset—
- (a) by a transfer by way of sale in relation to which an election under section 158 of the 1990 Act was made, or
  - (b) by a transfer to which section 78(2) of that Act applies,
- (being enactments under which a transfer is treated for the purposes of capital allowances as being made at written down value), the preceding provisions of this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except so far as any loss to the transferor was restricted under those provisions) been made to the person making the disposal (that is the transferee); and where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection can be taken into account in relation to the transferor shall also be taken into account in relation to the transferee (that is the person making the disposal), and so on for any series of transfers before the disposal.
- (4) In this section “capital allowance” means—

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- (a) any allowance under the 1990 Act, including the provisions of the Taxes Act which are to be treated as contained in the 1990 Act, other than an allowance under section 33(1) of the Taxes Act (relief for cost of maintenance of agricultural land),
  - (b) any relief given under section 30 of the Taxes Act (expenditure on sea walls), and
  - (c) any deduction in computing [<sup>F2</sup>profits] allowable under section 91 of the Taxes Act (cemeteries).
- (5) In this section “renewals allowance” means a deduction allowable in computing the [<sup>F2</sup>profits] of a trade, profession or vocation for the purpose of income tax by reference to the cost of acquiring an asset for the purposes of the trade, profession or vocation in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.
- (6) The amount of capital allowances to be taken into account under this section in relation to a disposal include any allowances falling to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event.
- (7) Where the disposal is of machinery or plant in relation to expenditure on which allowances or charges have been made under Part II of the 1990 Act, and neither section 79 (assets used only partly for trade purposes) nor section 80 (wear and tear subsidies) of that Act applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the capital expenditure incurred, or treated as incurred, under that Part on the provision of the machinery or plant by the person making the disposal and the disposal value required to be brought into account in respect of the machinery or plant.

#### Textual Amendments

**F2** Word in s. 41(4)(5) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3)(a), [Sch. 7 para. 7](#)

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

**C6** S. 41 modified (16.7.1992) by [1992 c. 48](#), s. 77, [Sch. 17 paras. 6\(2\)\(5\), 7](#)

**C7** S. 41 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 21\(2\)\(5\)\(6\)](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

## 42 Part disposals.

- (1) Where a person disposes of an interest or right in or over an asset, and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums which under paragraphs (a) and (b) of section 38(1) are attributable to the asset shall, both for the purposes of the computation of the gain accruing on the disposal and for the purpose of applying this Part in relation to the property which remains undisposed of, be apportioned.
- (2) The apportionment shall be made by reference—
  - (a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

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- (b) to the market value of the property which remains undisposed of on the other hand (call that market value B),  
 and accordingly the fraction of the said sums allowable as a deduction in the computation of the gain accruing on the disposal shall be—

$$\frac{A}{A + B}$$

and the remainder shall be attributed to the property which remains undisposed of.

- (3) Any apportionment to be made in pursuance of this section shall be made before operating the provisions of section 41 and if, after a part disposal, there is a subsequent disposal of an asset the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to subsection (4) below, be those referable to the sums which under paragraphs (a) and (b) of section 38(1) are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under the provisions of section 41.
- (4) This section shall not be taken as requiring the apportionment of any expenditure which, on the facts, is wholly attributable to what is disposed of, or wholly attributable to what remains undisposed of.
- (5) It is hereby declared that this section, and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain, are to be operated before the operation of, and without regard to, section 58(1), sections 152 to 158 (but without prejudice to section 152(10)), section 171(1) or any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

#### **43 Assets derived from other assets.**

If and so far as, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in the computation of a gain in respect of the other asset under paragraphs (a) and (b) of section 38(1) shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

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