



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—
 - [^{F1}(a) taken into account in the making of a balancing charge under the Capital Allowances Act but excluding Part 10 of that Act,
 - (b) brought into account as the disposal value of plant or machinery under Part 2 of that Act, or
 - (c) brought into account as the disposal value of an asset representing qualifying expenditure under Part 6 of that 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.

^{F2}(4)

Textual Amendments

- F1** S. 37(2)(a)-(c) substituted for s. 37(2)(a)(b) (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 77](#)
- F2** S. 37(4) repealed (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\), art. 1\(2\), Sch. para. 48\(2\)](#)

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 excluded by [Finance Act 2002 \(c. 23\), Sch. 26 paras. 45H\(5A\), 45HZA\(4\)](#) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [S.I. 2006/3269, arts. 1, 17\(4\), 18](#))
- C4** 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\(2\)\(e\)\(5\)](#)
- C5** S. 37(1) modified (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 133\(5\)\(a\)](#)

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 [^{F3}or stamp duty land tax]) 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

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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.
- (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.

Textual Amendments

F3 Words in s. 38(2) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 18 para. 5](#)

Modifications etc. (not altering text)

C6 S. 38 restricted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [s. 173\(4\)\(d\)](#) (with [s. 173\(1\)](#))

C7 S. 38(1)(a)(b) restricted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), [s. 198\(2\)](#), [Sch. 9 para. 4\(2\)](#) (with [s. 38\(2\)](#)); [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

C8 S. 38(1)(c) applied by [Finance Act 1996 \(c. 8\)](#), [s. 92\(5D\)](#) (as inserted (with effect in accordance with [s. 79\(3\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 23 para. 5\(3\)](#))

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 [^{F4}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 [^{F4}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 [^{F4}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 ^{M1}Finance Act 1981 or under Schedule 5 to the ^{M2}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

F4 Word in s. 39(1)(2) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 46\(3\)\(a\)](#), [Sch. 7 para. 7](#)

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Modifications etc. (not altering text)

- C9** 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)
- C10** S. 39 excluded by [Finance Act 2002 \(c. 23\)](#), [Sch. 26 paras. 45H\(5A\), 45HZA\(4\)](#) (as inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [S.I. 2006/3269](#), arts. 1, 17(4), 18)
- C11** S. 39(1) modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 133\(5\)\(b\)](#)

Marginal Citations

- M1** [1981 c. 35](#).
- M2** [1983 c. 28](#).

40 Interest charged to capital.

(1) Where—

- (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.

[^{F5}(4) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) this section does not have effect in relation to interest referable to an accounting period ending on or after 1st April 1996.]

Textual Amendments

- F5** S. 40(4) added (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 25 para. 60\(2\)](#)

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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—
 - [^{F6}(a) by a transfer by way of sale in relation to which an election under section 569 of the Capital Allowances Act was made, or
 - (b) by a transfer to which section 268 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—
 - [^{F7}(a) any allowance under the Capital Allowances Act,]
 - (b) any relief given under section 30 of the Taxes Act [^{F8}or any deduction under section 315 of ITTOIA 2005] (expenditure on sea walls), and
 - (c) any deduction in computing [^{F9}profits] allowable under section 91 of the Taxes Act [^{F10}or section 170 of ITTOIA 2005] (cemeteries).
- (5) In this section “renewals allowance” means a deduction allowable in computing the [^{F9}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 [^{F11}plant or machinery] in relation to expenditure on which allowances or charges have been made under [^{F12}Part 2 of the Capital Allowances Act, and neither Chapter 15 (assets provided or used only partly for qualifying activity) nor Chapter 16 (partial depreciation subsidies) of that Part] applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the [^{F13}qualifying expenditure] incurred, or treated as incurred, under that Part on the provision of the [^{F11}plant or machinery] by the person making the disposal and

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the disposal value required to be brought into account in respect of the [^{F11}plant or machinery].

[^{F14}(8) Where there is a disposal of an asset acquired in circumstances in which—

- (a) section 140A applies, or
- (b) section 171 applies or would apply but for subsection (2) of that section,

this section has effect in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in such circumstances.

This does not affect the consideration for which an asset is deemed under section 140A or 171 to be acquired.]

Textual Amendments

- F6** S. 41(3)(a)(b) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 78\(1\)](#)
- F7** S. 41(4)(a) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 78\(2\)](#)
- F8** Words in s. 41(4)(b) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 430\(a\)](#) (with Sch. 2)
- F9** Word in s. 41(4)(5) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3)(a), [Sch. 7 para. 7](#)
- F10** Words in s. 41(4)(c) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 430\(b\)](#) (with Sch. 2)
- F11** Words in s. 41(7) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 78\(3\)\(a\)](#)
- F12** Words in s. 41(7) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 78\(3\)\(b\)](#)
- F13** Words in s. 41(7) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 78\(3\)\(c\)](#)
- F14** S. 41(8) added (with effect in accordance with Sch. 29 para. 12(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 12\(1\)](#) (with Sch. 29 para. 46(5))

Modifications etc. (not altering text)

- C12** S. 41 modified (16.7.1992) by [1992 c. 48](#), s. 77, [Sch. 17 paras. 6\(2\)\(5\),7](#)
- C13** 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.
- C14** S. 41(8) modified (15.1.2001) by [Transport Act 2000 \(c. 38\)](#), s. 275(1), [Sch. 26 para. 10\(1\)](#) (with [Sch. 26 para. 10\(2\)](#)); [S.I. 2000/3376](#), art. 2

[^{F15}41A Restriction of losses: long funding leases of plant or machinery

- (1) This section applies where a person disposes of an asset—
 - (a) which includes plant or machinery which is a fixture for the purposes of Chapter 6A of Part 2 of the Capital Allowances Act, and
 - (b) which he has used for the purpose of leasing under one or more long funding leases.
- (2) In the computation of the amount of a loss accruing to the person on the disposal there shall be excluded from the sums allowable as a deduction by virtue of section 38(1) (a) and (b) (acquisition and enhancement costs) an amount determined in accordance with subsection (3) or (4).
- (3) Where the person has used the plant or machinery for the purpose of leasing under one long funding lease, the amount is equal to the fall in value of the plant or machinery during the period of the lease.

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- (4) Where the person has used the plant or machinery for the purpose of leasing under more than one long funding lease, the amount is equal to the sum of the fall in value of the plant or machinery during the period of each lease.
- (5) In this section, references to the fall in value of plant or machinery during the period of a lease are references to the amount (if any) by which—
- (a) the market value of the plant or machinery at the commencement of the term of the lease,
exceeds
 - (b) its market value at the termination of the lease.
- (6) For the purposes of this section, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases)—
- “commencement”, in relation to the term of a lease,
“long funding lease”,
“market value”,
“the term”, in relation to a lease,
“termination”.]

Textual Amendments

F15 S. 41A inserted (with effect in accordance with Sch. 9 para. 5(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 9 para. 5\(1\)](#)

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
 - (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

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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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