



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART VI

COMPANIES, OIL, INSURANCE ETC.

### CHAPTER I

COMPANIES

*Recovery of tax otherwise than from tax-payer company*

#### **189 Capital distribution of chargeable gains: recovery of tax from shareholder.**

- (1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—
  - (a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or
  - (b) the distribution constitutes such a disposal of assets;and that person is referred to below as “the shareholder”.
- (2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—
  - (a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

*Status: Point in time view as at 12/02/2019.*

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- (b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (3) The date referred to in subsection (2) above is whichever is the later of—
  - (a) the date when the tax becomes due and payable by the company; and
  - (b) the date when the assessment was made on the company.
- (4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.
- (5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.
- (6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may be order appoint this section shall have effect—
  - (a) with the substitution for the words in subsection (3) after “above” of the words “is the date when the tax becomes payable by the company”; and
  - (b) with the omission of the words in subsection (4) from “together” to the end of the subsection.
- (7) In this section “capital distribution” has the same meaning as in section 122.

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

**C1** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), Sch. 3 paras. 1, **4(1)**

**Commencement Information**

**II** S. 189: 30.9.1993 appointed for the purposes of s. 189 by [S.I. 1992/3066](#), **art. 2(2)(d)**

**[<sup>F1</sup>190 Tax recoverable from another group company or controlling director.**

- (1) This section applies where—
  - (a) a chargeable gain has accrued to a company (“the taxpayer company”),
  - (b) the condition in subsection (2) below is met, and
  - (c) the whole or part of the corporation tax assessed on the company for the accounting period in which the gain accrued (“the relevant accounting period”) is unpaid at the end of the period of six months after it became payable.
- (2) The condition referred to in subsection (1)(b) above is—
  - (a) that the taxpayer company is resident in the United Kingdom at the time when the gain accrued, or
  - [<sup>F2</sup>(b) that the gain is chargeable to corporation tax as a result of section 2B(3) or (4).]
- (3) The following persons may, by notice under this section, be required to pay the unpaid tax—
  - (a) if the taxpayer company was a member of a group at the time when the gain accrued—

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- (i) a company which was at that time the principal company of the group, and
    - (ii) any other company which in any part of the period of twelve months ending with that time was a member of that group and owned the asset disposed of, or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset; and
  - (b) if the [<sup>F3</sup>taxpayer company was not resident in the United Kingdom at the time when the gain accrued], any person who is, or during the period of twelve months ending with the time when the gain accrued was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.
- (4) The Board may serve a notice on a person within subsection (3) above requiring him, within 30 days of the service of the notice, to pay—
- (a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the relevant accounting period, or
  - (b) if less, an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.
- (5) The notice must state—
- (a) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid,
  - (b) the date when it first became payable, and
  - (c) the amount required to be paid by the person on whom the notice is served.
- (6) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (7) Any notice under this section must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined.
- (8) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (7) above shall be taken to be the date on which the determination was made.
- (9) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in subsection (7) above shall be taken to be the latest of—
- (a) the last date on which notice of enquiry may be given into the return containing the self-assessment;
  - (b) if notice of enquiry is given, 30 days after the enquiry is completed;
  - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion;
  - (d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;

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- (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.
- (10) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (7) above shall be taken to be—
- (a) where there is no appeal against the assessment, the date when the tax becomes due and payable;
- (b) where there is such an appeal, the date on which the appeal is finally determined.
- (11) A person who has paid an amount in pursuance of a notice under this section may recover that amount from the taxpayer company.
- (12) A payment in pursuance of a notice under this section is not allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (13) In this section—
- [<sup>F4</sup>“director”, in relation to a company, has the meaning given by section 67(1) and (2) of ITEPA 2003 and includes any person falling within section 452(1) of CTA 2010;]
- “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with [<sup>F5</sup>sections 450 and 451 of CTA 2010]);
- “group” and “principal company” have the meaning which would be given by section 170 if in that section for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.]

#### Textual Amendments

- F1** S. 190 substituted for ss. 190, 191 (with effect in accordance with Sch. 29 para. 9(3) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 9\(1\)](#) (with [Sch. 29 paras. 9\(4\), 46\(5\)](#))
- F2** S. 190(2)(b) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 69\(2\)](#)
- F3** Words in s. 190(3)(b) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 69\(3\)](#)
- F4** Words in s. 190(13) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 246\(a\)](#) (with [Sch. 2](#))
- F5** Words in s. 190(13) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 246\(b\)](#) (with [Sch. 2](#))

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

- C1** Ss. 170-192 restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 4\(1\)](#)

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