



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART VII

#### OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

##### *Charities and gifts of non-business assets etc.*

#### 256 Charities.

- (1) Subject to <sup>F1</sup>... [<sup>F2</sup>the following provisions of this section], a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.
- (2) If property held on charitable trusts ceases to be subject to charitable trusts—
- (a) the trustees shall be treated as if they had disposed of, and immediately reacquired, the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to a charity, and
  - (b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to a charity,
- and an assessment to capital gains tax chargeable by virtue of paragraph (b) above may be made at any time not more than 3 years after the end of the year of assessment in which the property ceases to be subject to charitable trusts.
- [<sup>F3</sup>(3) Subsection (4) below applies if a charitable trust has a non-exempt amount under section 540 of ITA 2007 for a year of assessment.
- [ Subsection (4) below also applies if a charitable company has a non-exempt amount <sup>F4</sup>(3A) under section 493 of CTA 2010 for an accounting period.]
- [<sup>F5</sup>(4) Gains accruing—
- (a) to the charitable trust in the year of assessment, or
  - (b) to the charitable company in the accounting period,

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are treated as being, and always having been, chargeable gains so far as they are attributed to the non-exempt amount under section 256A (in the case of a charitable trust) or section 256C (in the case of a charitable company).]

- (5) For restrictions on exemptions under Part 10 of ITA 2007 (special rules about charitable trusts etc) see section 539 of that Act.]

<sup>F6</sup>(6) . . . . .

- [<sup>F7</sup>(7) For restrictions on exemptions under Part 11 of CTA 2010 (charitable companies etc) see section 492 of that Act.

<sup>F8</sup>(8) . . . . . ]

#### Textual Amendments

- F1** Words in s. 256(1) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 254\(2\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F2** Words in s. 256(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 326(2)** (with [Sch. 2](#))
- F3** S. 256(3)-(5) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 326(3)** (with [Sch. 2](#))
- F4** S. 256(3A) inserted (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. 254(3)** (with [Sch. 2](#))
- F5** S. 256(4) 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. 254(4)** (with [Sch. 2](#))
- F6** S. 256(6) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of [Finance Act 2010 \(c. 13\)](#), **Sch. 6 paras. 13(3)**, 34(2); S.I. 2012/736, art. 9
- F7** S. 256(7)(8) inserted (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. 254(5)** (with [Sch. 2](#))
- F8** S. 256(8) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of [Finance Act 2010 \(c. 13\)](#), **Sch. 6 paras. 13(3)**, 34(2); S.I. 2012/736, art. 9

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

- C1** S. 256(4) excluded (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 515(7)**, 1184(1) (with [Sch. 2](#))

### [<sup>F9</sup>256A Attributing gains to the non-exempt amount]<sup>F10</sup>: charitable trusts]

- (1) This section applies if a charitable trust has a non-exempt amount under section 540 of ITA 2007 for a year of assessment.
- (2) Attributable gains of the charitable trust for the year of assessment may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.
- (3) The non-exempt amount can be used up (in whole or in part) by—
  - (a) attributable gains being attributed to it under this section, or
  - (b) attributable income being attributed to it under section 541 of ITA 2007.
- (4) The whole of the non-exempt amount must be used up by—
  - (a) attributable gains being attributed to the whole of it under this section,

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- (b) attributable income being attributed to the whole of it under section 541 of ITA 2007, or
  - (c) a combination of attributable gains being attributed to some of it under this section and attributable income being attributed to the rest of it under section 541 of ITA 2007.
- (5) See section 256B for the way in which gains are to be attributed to the non-exempt amount under this section.
- (6) In this section and section 256B a charitable trust's “attributable income”, and “attributable gains”, for a tax year have the same meaning as in Part 10 of ITA 2007 (see section 540 of that Act).

#### Textual Amendments

- F9** Ss. 256A, 256B inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 327](#) (with [Sch. 2](#))
- F10** Words in s. 256A heading inserted (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. 255](#) (with [Sch. 2](#))

### **256B** How gains are attributed to the non-exempt amount<sup>[F11: charitable trusts]</sup>

- (1) This section is about the ways in which attributable gains can be attributed to a non-exempt amount under section 256A.
- (2) The trustees of the charitable trust may specify the attributable gains that are to be attributed to the non-exempt amount.
- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.
- (4) Subsection (6) applies if—
- (a) an officer of Revenue and Customs requires the trustees of a charitable trust to make a specification under this section, and
  - (b) the trustees have not given notice under subsection (3) of the specification before the end of the required period.
- (5) The required period is 30 days beginning with the day on which the officer made the requirement.
- (6) An officer of Revenue and Customs may determine the attributable gains that are to be attributed to the non-exempt amount.]

#### Textual Amendments

- F9** Ss. 256A, 256B inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 327](#) (with [Sch. 2](#))
- F11** Words in s. 256B title inserted (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. 256](#) (with [Sch. 2](#))

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## **[<sup>F12</sup>256C] Attributing gains to the non-exempt amount: charitable companies**

- (1) This section applies if a charitable company has a non-exempt amount under section 493 of CTA 2010 for an accounting period.
- (2) Attributable gains of the charitable company for the period may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.
- (3) The non-exempt amount can be used up (in whole or in part) by—
  - (a) attributable gains being attributed to it under this section, or
  - (b) attributable income being attributed to it under section 494 of CTA 2010.
- (4) The whole of the non-exempt amount must be used up by—
  - (a) attributable gains being attributed to the whole of it under this section,
  - (b) attributable income being attributed to the whole of it under section 494 of CTA 2010, or
  - (c) a combination of attributable gains being attributed to some of it under this section and attributable income being attributed to the rest of it under section 494 of CTA 2010.
- (5) In this section and section 256D a charitable company's “attributable income” and “attributable gains” for an accounting period have the same meaning as in Part 11 of CTA 2010 (see section 493 of that Act).

<sup>F13</sup>(6) . . . . .

### **Textual Amendments**

**F12** Ss. 256C, 256D inserted (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. 257](#) (with [Sch. 2](#))

**F13** S. 256C(6) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 13\(4\)](#), 34(2); S.I. 2012/736, art. 9

## **256D How gains are attributed to the non-exempt amount: charitable companies**

- (1) This section is about the ways in which attributable gains can be attributed to a non-exempt amount under section 256C.
- (2) The charitable company may specify the attributable gains that are to be attributed to the non-exempt amount.
- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.
- (4) Subsection (6) applies if—
  - (a) an officer of Revenue and Customs requires a charitable company to make a specification under this section, and
  - (b) the charitable company has not given notice under subsection (3) of the specification before the end of the required period.
- (5) The required period is 30 days beginning with the day on which the officer made the requirement.

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- (6) An officer of Revenue and Customs may determine the attributable gains that are to be attributed to the non-exempt amount.

<sup>F14</sup>(7) . . . . . ]

#### Textual Amendments

**F12** Ss. 256C, 256D inserted (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. 257** (with **Sch. 2**)

**F14** S. 256D(7) omitted (with effect in accordance with S.I. 2012/736, art. 9) by virtue of Finance Act 2010 (c. 13), **Sch. 6 paras. 13(5), 34(2)**; S.I. 2012/736, art. 9

### 257 Gifts to charities etc.

- (1) Subsection (2) below shall apply where a disposal of an asset is made otherwise than under a bargain at arm's length—

- (a) to a charity [<sup>F15</sup>or a registered club], or
- (b) to any bodies mentioned in Schedule 3 to the <sup>M1</sup>Inheritance Tax Act 1984 (gifts for national purposes, etc)

[<sup>F16</sup>and the disposal is not one in relation to which section 151A(1) has effect.]

- (2) Sections 17(1) and 258(3) shall not apply; but if the disposal is by way of gift (including a gift in settlement) or for a consideration not exceeding the sums allowable as a deduction under section 38, then—

- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
- (b) where, after the disposal, the asset is disposed of by the person who acquired it under the disposal, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the person making the later disposal.

[<sup>F17</sup>(2A) Subsection (2B) applies if relief is available under Chapter 3 of Part 8 of ITA 2007 or [<sup>F18</sup>as a result of Chapter 3 of Part 6 of CTA 2010] (gifts of shares, securities and real property to charities) in relation to the disposal of a qualifying investment to a charity (whether or not a claim for relief is actually made).

- (2B) The consideration for which the charity's acquisition of the qualifying investment is treated by virtue of subsection (2) above as having been made—

- [<sup>F19</sup>(a) is reduced by the relievable amount within the meaning of Chapter 3 of Part 8 of ITA 2007 if relief in relation to the disposal is available only under that Chapter,
- (b) is reduced by the relievable amount within the meaning of Chapter 3 of Part 6 of CTA 2010 if relief in relation to the disposal is available only as a result of that Chapter,
- (c) is reduced by the relievable amount within the meaning of Chapter 3 of Part 8 of ITA 2007 if relief in relation to the disposal is available both under that Chapter and as a result of Chapter 3 of Part 6 of CTA 2010 because of section 442 of ITA 2007 and section 214 of CTA 2010, or]
- (d) is reduced to nil if that consideration is less than the amount referred to in paragraph (a), (b) or (c) (as the case may be).

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(2C) In subsections (2A) and (2B)—

“qualifying investment” has the same meaning as in Chapter 3 of Part 8 of ITA 2007 (see section 432 of that Act),

F20  
 .....  
 F20  
 ..... ]

(3) Where—

- (a) otherwise than on the termination of a life interest (within the meaning of section 72) by the death of the person entitled thereto, any assets or parts of any assets forming part of settled property are, under section 71, deemed to be disposed of and reacquired by the trustee, and
- (b) the person becoming entitled as mentioned in section 71(1) is a charity, [F21a registered club] or a body mentioned in Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes, etc),

then, if no consideration is received by any person for or in connection with any transaction by virtue of which the charity[F22, registered club] or other body becomes so entitled, the disposal and reacquisition of the assets to which the charity[F22, registered club] or other body becomes so entitled shall, notwithstanding section 71, be treated for the purposes of this Act as made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

(4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146(2) of the 1979 Act applied where the person who acquired the asset on that disposal disposes of the asset after the coming into force of this section.

[F23(5) For the purposes of this section “registered club” has the same meaning as in Chapter 9 of Part 13 of CTA 2010.]

#### Textual Amendments

- F15** Words in s. 257(1)(a) inserted (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. 258(2)** (with [Sch. 2](#))
- F16** Words in s. 257(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 72(5)
- F17** S. 257(2A)-(2C) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 328** (with [Sch. 2](#))
- F18** Words in s. 257(2A) 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. 258(3)** (with [Sch. 2](#))
- F19** S. 257(2B)(a)-(c) 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. 258(4)** (with [Sch. 2](#))
- F20** Words in s. 257(2C) repealed (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. 258\(5\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F21** Words in s. 257(3) inserted (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. 258(6)(a)** (with [Sch. 2](#))
- F22** Words in s. 257(3) inserted (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. 258(6)(b)** (with [Sch. 2](#))
- F23** S. 257(5) inserted (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. 258(7)** (with [Sch. 2](#))

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

- C2** S. 257 applied (with modifications) (with effect in accordance with s. 58(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 18 para. 9(3)(b)**

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### Marginal Citations

M1 1984 c. 51.

## [<sup>F24</sup>257A Tainted charity donations

- (1) Section 257 does not apply in relation to—
  - (a) a tainted donation made by a person, or
  - (b) any associated donation.
- (2) For the purposes of this section—
  - (a) “tainted donation” means a tainted donation within the meaning of Chapter 8 of Part 13 of ITA 2007 (tainted charity donations: removal of income tax reliefs etc) or Part 21C of CTA 2010 (tainted charity donations: removal of corporation tax relief), and
  - (b) “associated donation” means an associated donation within the meaning of section 809ZM of ITA 2010 or section 939F of CTA 2010.]

### Textual Amendments

**F24** S. 257A inserted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 3](#)

## 258 Works of art etc.

<sup>F25</sup>(1) .....

[<sup>F26</sup>(1A) A gain is not a chargeable gain if it accrues on a disposal made in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation).]

- (2) A gain shall not be a chargeable gain if it accrues on the disposal of an asset [<sup>F27</sup>which is property which has been or could be designated under section 31 of the Inheritance Tax Act 1984 (“the 1984 Act”) (designation and undertakings)] and—
  - (a) the disposal is by way of sale by private treaty to a body mentioned in Schedule 3 to [<sup>F28</sup>the 1984 Act] (museums, etc.), or is to such a body otherwise than by sale, or
  - (b) the disposal is to the Board in pursuance of section 230 of the 1984 Act <sup>F29</sup>... (acceptance of property in satisfaction of tax).
- (3) Subsection (4) below shall have effect in respect of the disposal of any asset which is property which has been or could be designated under section 31 of the 1984 Act, being—
  - (a) a disposal by way of gift, including a gift in settlement, or
  - (b) a disposal of settled property by the trustee on an occasion when, under section 71(1), the trustee is deemed to dispose of and immediately reacquire settled property (other than any disposal on which by virtue of section 73 no chargeable gain or allowable loss accrues to the trustee),

if the requisite undertaking described in section 31 of the 1984 Act (maintenance, preservation and access) is given by such person as the Board think appropriate in the circumstances of the case.

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(4) The person making a disposal to which subsection (3) above applies and the person acquiring the asset on the disposal shall be treated for all the purposes of this Act as if the asset was acquired from the one making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(5) If—

- (a) there is a sale of the asset and inheritance tax is chargeable under section 32 of the 1984 Act (or would be chargeable if an inheritance tax undertaking as well as an undertaking under this section had been given), or
- (b) the Board are satisfied that at any time during the period for which any such undertaking was given it has not been observed in a material respect,

the person selling that asset or, as the case may be, the owner of the asset shall be treated for the purposes of this Act as having sold the asset for a consideration equal to its market value, and, in the case of a failure to comply with the undertaking, having immediately reacquired it for a consideration equal to its market value.

(6) The period for which an undertaking under this section is given shall be until the person beneficially entitled to the asset dies or it is disposed of, whether by sale or gift or otherwise; and if the asset subject to the undertaking is disposed of—

- (a) otherwise than on sale, and
- (b) without a further undertaking being given under this section,

subsection (5) above shall apply as if the asset had been sold to an individual.

References in this subsection to a disposal shall be construed without regard to any provision of this Act under which an asset is deemed to be disposed of.

(7) Where under subsection (5) above a person is treated as having sold for a consideration equal to its market value any asset within section 31(1)(c), (d) or (e) of the 1984 Act, he shall also be treated as having sold and immediately reacquired for a consideration equal to its market value any asset associated with it; but the Board may direct that the preceding provisions of this subsection shall not have effect in any case in which it appears to them that the entity consisting of the asset and any assets associated with it has not been materially affected.

For the purposes of this subsection 2 or more assets are associated with each other if one of them is a building falling within section 31(1)(c) of the 1984 Act and the other or others such land or objects as, in relation to that building, fall within section 31(1) (d) or (e) of the 1984 Act.

(8) If in pursuance of subsection (5) above a person is treated as having on any occasion sold an asset and inheritance tax becomes chargeable on the same occasion, then, in determining the value of the asset for the purposes of that tax, an allowance shall be made for the capital gains tax chargeable on any chargeable gain accruing on that occasion.

[<sup>F30</sup>(8A) Section 35A of the 1984 Act (variation of undertakings) shall have effect in relation to an undertaking given under this section as it has effect in relation to an undertaking given under section 30 of that Act.]

(9) In this section “inheritance tax undertaking” means an undertaking under Chapter II of Part II or section 78 of, or Schedule 5 to, the 1984 Act.



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### Textual Amendments

- F25** S. 258(1) repealed (with effect in accordance with Sch. 27 Pt. IV of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. IV](#)
- F26** S. 258(1A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 14 para. 34](#)
- F27** Words in s. 258(2) substituted (with effect in accordance with art. 12(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), [12\(1\)\(a\)](#)
- F28** Words in s. 258(2)(a) substituted (with effect in accordance with art. 12(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), [12\(1\)\(b\)](#)
- F29** Words in s. 258(2)(b) omitted (with effect in accordance with art. 12(2) of the amending S.I.) by virtue of [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), [12\(1\)\(c\)](#)
- F30** S. 258(8A) inserted (with effect in accordance with Sch. 25 para. 9(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 25 para. 9\(1\)](#)

## 259 Gifts to housing associations.

(1) Subsection (2) below shall apply where—

- (a) a disposal of an estate or interest in land in the United Kingdom is made to a [<sup>F31</sup>relevant housing provider] otherwise than under a bargain at arm's length, and
- (b) a claim for relief under this section is made by the transferor and the [<sup>F32</sup>relevant housing provider].

(2) Section 17(1) shall not apply; but if the disposal is by way of gift or for a consideration not exceeding the sums allowable as a deduction under section 38, then—

- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
- (b) where, after the disposal, the estate or interest is disposed of by the [<sup>F33</sup>relevant housing provider], its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the [<sup>F33</sup>relevant housing provider].

[<sup>F34</sup>(3) In this section “relevant housing provider” means—

- (a) a non-profit registered provider of social housing,
- (b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996,
- (c) a body registered in the register maintained under [<sup>F35</sup>section 20(1) of the Housing (Scotland) Act 2010], or
- (d) a registered housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992.]

(4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146A(2) of the 1979 Act applied where the association which acquired the estate or interest in land on that disposal disposes of it after the coming into force of this section.

### Textual Amendments

- F31** Words in s. 259(1)(a) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), [Sch. 9 para. 19\(2\)](#); S.I. 2010/862, art. 2 (with Sch.)

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- F32** Words in s. 259(1)(b) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(3\)](#); S.I. 2010/862, art. 2 (with Sch.)
- F33** Words in s. 259(2)(b) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(3\)](#); S.I. 2010/862, art. 2 (with Sch.)
- F34** S. 259(3) substituted (1.4.2010) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 9 para. 19\(4\)](#); S.I. 2010/862, art. 2 (with Sch.)
- F35** Words in s. 259(3)(c) substituted (1.4.2012) by [The Housing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2012 \(S.I. 2012/700\), art. 1\(3\), Sch. para. 4\(4\)](#)

## 260 Gifts on which inheritance tax is chargeable etc.

- (1) If—
- (a) an individual or the trustees of a settlement (“the transferor”) make a disposal within subsection (2) below of an asset,
  - (b) the asset is acquired by an individual or the trustees of a settlement (“the transferee”), and
  - (c) a claim for relief under this section is made by the transferor and the transferee or, where the trustees of a settlement are the transferee, by the transferor alone,
- then, subject to subsection (6) below and <sup>F36</sup>sections 169<sup>F37</sup>, 169B, 169C<sup>F38</sup>, 261 and 261ZA], subsection (3) below shall apply in relation to the disposal.
- (2) A disposal is within this subsection if it is made otherwise than under a bargain at arm’s length and—
- (a) is a chargeable transfer within the meaning of the <sup>M2</sup>Inheritance Tax Act 1984 (or would be but for section 19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act),
  - (b) is an exempt transfer by virtue of—
    - (i) section 24 of that Act (transfers to political parties),
    - <sup>F39</sup>(ii) . . . . .
    - (iii) section 27 of that Act (transfers to maintenance funds for historic buildings etc.), or
    - (iv) section 30 of that Act (transfers of designated property),
  - (c) is a disposition to which section 57A of that Act applies and by which the property disposed of becomes held on trusts of the kind referred to in subsection (1)(b) of that section (maintenance funds for historic buildings etc.),
  - (d) by virtue of subsection (4) of section 71 of that Act (accumulation and maintenance trusts) does not constitute an occasion on which inheritance tax is chargeable under that section,
  - <sup>F40</sup>(da) by virtue of subsection (2) of section 71B of that Act (trusts for bereaved minors) does not constitute an occasion on which inheritance tax is chargeable under that section,
  - (db) by virtue of subsection (2) of section 71E of that Act (age 18-to-25 trusts) does not constitute an occasion on which inheritance tax is charged under that section,]
  - (e) by virtue of section 78(1) of that Act (transfers of works of art etc.) does not constitute an occasion on which tax is chargeable under Chapter III of Part III of that Act, or
  - (f) is a disposal of an asset comprised in a settlement where, as a result of the asset or part of it becoming comprised in another settlement, there is no charge,

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or a reduced charge, to inheritance tax by virtue of paragraph 9, 16 or 17 of Schedule 4 to that Act (transfers to maintenance funds for historic buildings etc.).

- (3) Where this subsection applies in relation to a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
  - (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset in question,

shall each be reduced by an amount equal to the held-over gain on the disposal.

- (4) Subject to subsection (5) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from this section.

- (5) In any case where—

- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of any provision of this Act) for a disposal in respect of which a claim for relief is made under this section, and
- (b) that actual consideration exceeds the sums allowable as a deduction under section 38,

the held-over gain on the disposal shall be reduced by the excess referred to in paragraph (b) above <sup>F41</sup>...

- (6) Subsection (3) above does not apply in relation to a disposal of assets within section 115(1) on which a gain is deemed to accrue by virtue of section 116(10)(b).

[<sup>F42</sup>(6ZA) Subsections (6ZB) and (6ZC) apply in any case where—

- (a) the disposal is a [<sup>F43</sup>direct or indirect disposal of UK land which meets the non-residence condition], and
- (b) the transferee is resident in the United Kingdom.

(6ZB) Subsections (3) and (4) have effect in relation to the disposal as if the reference to “chargeable gain” were [<sup>F44</sup>a reference to “so much of any gain accruing on the disposal as falls to be dealt with as mentioned in subsection (6ZD)(a) or (b)”].

(6ZC) Subsection (5) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to [<sup>F45</sup>“so much of the gain mentioned in subsection (6ZB)] which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”].

[<sup>F46</sup>(6ZD) For the purposes of subsections (6ZA) to (6ZC) a disposal is a “direct or indirect disposal of UK land which meets the non-residence condition” if it is—

- (a) a disposal on which a gain accrues that falls to be dealt with by section 1A(3) because the asset disposed of is within paragraph (b) or (c) of that subsection, or
- (b) a disposal on which a gain accrues that falls to be dealt with by section 1A(1) in accordance with section 1G(2) because the asset disposed of is within section 1A(3)(b) or (c).]

<sup>F47</sup>(6A) .....

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<sup>F48</sup>(6B) .....

- (7) In the case of a disposal within subsection (2)(a) above [<sup>F49</sup>(whether or not subsection (3) above applies in relation to it)] there shall be allowed as a deduction in computing the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—
- (a) the inheritance tax attributable to the value of the asset; and
  - (b) the amount of the chargeable gain as computed apart from this subsection.
- (8) Where an amount of inheritance tax is varied after it has been taken into account under subsection (7) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.
- (9) Where subsection (3) above applies in relation to a disposal which is deemed to occur by virtue of section 71(1) or 72(1), subsection (5) above shall not apply.
- (10) Where a disposal is partly within subsection (2) above, or is a disposal within paragraph (f) of that subsection on which there is a reduced charge such as is mentioned in that paragraph, the preceding provisions of this section shall have effect in relation to an appropriate part of the disposal.

#### Textual Amendments

- F36** Words in s. 260(1) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **s. 90(2)**
- F37** Words in s. 260(1) inserted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 21 para. 5(2)**
- F38** Words in s. 260(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), **Sch. 7 para. 31(2)**
- F39** S. 260(2)(b)(ii) repealed (with effect in accordance with Sch. 27 Pt. IV of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 27 Pt. IV**
- F40** S. 260(2)(da)(db) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 20 paras. 29(2), 32**
- F41** Words in s. 260(5) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 27 Pt. III(31)**
- F42** S. 260(6ZA)-(6ZC) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), **Sch. 7 para. 31(3)**
- F43** Words in s. 260(6ZA)(a) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 76(2)**
- F44** Words in s. 260(6ZB) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 76(3)**
- F45** Words in s. 260(6ZC) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 76(4)**
- F46** S. 260(6ZD) inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 76(5)**
- F47** S. 260(6A) repealed (with effect in accordance with Sch. 21 para. 10(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 21 para. 5(3)**, **Sch. 42 Pt. 2(14)**
- F48** S. 260(6B) repealed (with effect in accordance with Sch. 21 para. 10(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 21 para. 5(4)**, **Sch. 42 Pt. 2(14)**
- F49** Words in s. 260(7) inserted (with effect in accordance with Sch. 21 para. 10(9) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 21 para. 5(5)**

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

- C3** S. 260 modified by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85Z3 (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), regs. 1(1), 21)

#### Marginal Citations

- M2** 1984 c. 51.

### 261 Section 260 relief: gifts to non-residents.

- (1) [<sup>F50</sup>Subject to section 261ZA, section 260(3)] shall not apply where the transferee is [<sup>F51</sup>not resident] in the United Kingdom.
- (2) Section 260(3) shall not apply where the transferee is an individual who—
- though resident <sup>F52</sup>... in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
  - by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

#### Textual Amendments

- F50** Words in s. 261(1) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 32](#)
- F51** Words in s. 261(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 104\(2\)](#)
- F52** Words in s. 261(2)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 104\(3\)](#)

### [<sup>F53</sup>261Z] Gifts of [<sup>F54</sup>direct or indirect interests in UK land] to non-residents

- (1) This section applies where the disposal in relation to which a claim could be made under section 260 is a disposal [<sup>F55</sup>of an asset within section 1A(3)(b) or (c)] to a transferee who is not resident in the United Kingdom and, ignoring section 260—
- a gain would accrue to the transferor on the disposal, and
  - [<sup>F56</sup>(b) on the assumption that the disposal is a direct or indirect disposal of UK land which meets the non-residence condition (whether or not that is the case), that gain would be a relevant gain (see subsections (6) and (7)).]
- (2) Section 260(3) has effect in relation to the disposal as if it read—
- “(3) Where this subsection applies in relation to a disposal, the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, shall be reduced by an amount equal to the held-over gain on the disposal.”
- (3) Where the disposal is a [<sup>F57</sup>direct or indirect disposal of UK land which meets the non-residence condition]—

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- (a) section 260(3), as modified by subsection (2) of this section, and section 260(4) have effect in relation to the disposal as if the references to “chargeable gain” were references to [<sup>F58</sup>“relevant gain”], and
  - (b) section 260(5) has effect in relation to the disposal as if the reference to “the excess referred to in paragraph (b) above” were a reference to [<sup>F59</sup>“the relevant gain] which, ignoring this section and section 17(1), would accrue to the transferor on the disposal”.
- (4) Where a claim for relief is made under section 260 in relation to the disposal mentioned in subsection (1), on a subsequent disposal by the transferee of the whole or part of [<sup>F60</sup>the asset within section 1A(3)(b) or (c)] which is the subject of the disposal mentioned in subsection (1), the whole or a corresponding part of the held-over gain (see section 260(4))—
- (a) is deemed to accrue to the transferee (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as [<sup>F61</sup>a relevant gain] accruing on [<sup>F62</sup>a direct or indirect disposal of UK land which meets the non-residence condition].
- (5) Where the subsequent disposal mentioned in subsection (4) is a disposal within section 260(2)(a), subsection (7) of that section has effect in relation to the disposal as if—
- (a) the reference to “the chargeable gain accruing to the transferee on the disposal of the asset” were a reference to the chargeable gain accruing on the disposal as computed apart from subsection (4), and
  - (b) the reference in section 260(7)(b) to “the chargeable gain” were a reference to—
    - (i) the chargeable gain (or, where the disposal is [<sup>F63</sup>a direct or indirect disposal of UK land which meets the non-residence condition], [<sup>F64</sup>the relevant gain]) accruing on the disposal, and
    - (ii) the held-over gain deemed to accrue under subsection (4).
- [<sup>F65</sup>(6) For the purposes of this section, a disposal is a “direct or indirect disposal of UK land which meets the non-residence condition” if it is—
- (a) a disposal on which a gain accrues that falls to be dealt with by section 1A(3) because the asset disposed of is within paragraph (b) or (c) of that subsection, or
  - (b) a disposal on which a gain accrues that falls to be dealt with by section 1A(1) in accordance with section 1G(2) because the asset disposed of is within section 1A(3)(b) or (c).
- (7) For the purposes of this section, a “relevant gain” means so much of any chargeable gain accruing on a disposal as falls to be dealt with as mentioned in subsection (6) (a) or (b).]

#### Textual Amendments

- F53** S. 261ZA inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 33](#)
- F54** Words in s. 261ZA heading substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 77\(7\)](#)

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- F55** Words in s. 261ZA(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. 77(2)(a)**
- F56** S. 261ZA(1)(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. 77(2)(b)**
- F57** Words in s. 261ZA(3) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 77(3)(a)**
- F58** Words in s. 261ZA(3)(a) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 77(3)(b)**
- F59** Words in s. 261ZA(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. 77(3)(c)**
- F60** Words in s. 261ZA(4) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 77(4)(a)**
- F61** Words in s. 261ZA(4)(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. 77(4)(b)(i)**
- F62** Words in s. 261ZA(4)(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. 77(4)(b)(ii)**
- F63** Words in s. 261ZA(5)(b)(i) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 77(5)(a)**
- F64** Words in s. 261ZA(5)(b)(i) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 77(5)(b)**
- F65** S. 261ZA(6)(7) substituted for s. 261ZA(6) (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 1 para. 77(6)**

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