



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART I

CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

f¹UK residential property: non-resident CGT

Textual Amendments

- F1** Ss. 14B-14H and cross-heading inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 11](#)

14B Meaning of “non-resident CGT disposal”

(1) For the purposes of this Act a disposal made by a person is a “non-resident CGT disposal” if—

- (a) it is a disposal of a UK residential property interest, and
- (b) condition A or B is met.

But see also subsection (5).

(2) Condition A is—

- (a) in the case of an individual, that the individual is not resident in the United Kingdom for the tax year in question (see subsection (3)),
- (b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is not resident in the United Kingdom,
- (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is not resident in the United Kingdom during any part of the tax year in question, and
- (d) in any other case, that the person is not resident in the United Kingdom at the relevant time.

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- (3) In subsection (2)—
- (a) “the tax year in question” means the tax year in which any gain on the disposal accrues (or would accrue were there to be such a gain);
 - (b) “the relevant time” means the time at which any gain on the disposal accrues (or would accrue were there to be such a gain).
- (4) Condition B is that—
- (a) the person is an individual, and
 - (b) any gain accruing to the individual on the disposal would accrue in the overseas part of a tax year which is a split year as respects the individual.
- (5) A disposal by a person of a UK residential property interest is not a non-resident CGT disposal so far as any chargeable gains accruing to the person on the disposal—
- (a) would be gains in respect of which the person would be chargeable to capital gains tax—
 - (i) under section 10(1) (non-resident with UK branch or agency), or
 - (ii) under section 2 as a result of subsection (1C) of that section (corresponding provision relating to the overseas part of a split year),
 - or
 - (b) would be gains forming part of the person's chargeable profits for corporation tax purposes by virtue of section 10B (non-resident company with UK permanent establishment).

14C Meaning of “disposal of a UK residential property interest”

Schedule B1 gives the meaning in this Act of “disposal of a UK residential property interest”.

14D Persons chargeable to capital gains tax on NRCGT gains

- (1) A person is chargeable to capital gains tax in respect of any chargeable NRCGT gain accruing to the person in the tax year on a non-resident CGT disposal.
- See also section 188D(1).
- (2) Capital gains tax is charged on the total amount of chargeable NRCGT gains accruing to the person in the tax year, after deducting—
- (a) any allowable losses accruing to the person in the tax year on disposals of UK residential property interests, and
 - (b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous tax year, any allowable losses accruing to the person in any previous tax year (not earlier than the tax year 1965-66) on disposals of UK residential property interests.
- (3) In subsection (2), the reference to chargeable NRCGT gains does not include any such gains which accrue to a member of an NRCGT group.
- (4) The only deductions that can be made from chargeable NRCGT gains to which subsection (2) applies are those permitted by this section.
- This is subject to section 62(2AA) (carry-back of losses accruing in year of death).
- (5) See section 57B and Schedule 4ZZB for how to determine—

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- (a) whether an NRCGT gain (or loss) accrues on a non-resident CGT disposal, and
- (b) the amount of any NRCGT gain (or loss) so accruing.

14E Further provision about use of NRCGT losses

- (1) Subsections (2) to (4) apply in relation to an allowable NRCGT loss accruing to a person in a tax year on a non-resident CGT disposal.
- (2) The loss is not allowable as a deduction from chargeable gains accruing in any earlier tax year.

This is subject to section 62(2) and (2AA) (carry-back of losses accruing in year of death).
- (3) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.
- (4) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.

14F Persons not chargeable under section 14D if a claim is made

- (1) A person is not chargeable to capital gains tax under section 14D in respect of a chargeable NRCGT gain accruing to the person on a non-resident CGT disposal if the person—
 - (a) is an eligible person in relation to the disposal, and
 - (b) makes a claim under this section with respect to the disposal.
- (2) A diversely-held company which makes a non-resident CGT disposal is an eligible person in relation to the disposal.
- (3) A scheme (see subsection (7)) which makes a non-resident CGT disposal is an eligible person in relation to the disposal if condition A or B is met.
- (4) Condition A is that the scheme is a widely-marketed scheme throughout the relevant ownership period.
- (5) Condition B is that—
 - (a) an investor in the scheme is an offshore fund, an open-ended investment company or an authorised unit trust (“the feeder fund”),
 - (b) the scheme is a widely-marketed scheme throughout the alternative period, after taking into account—
 - (i) the scheme documents relating to the feeder fund, and
 - (ii) the intended investors in the feeder fund, and
 - (c) the scheme and the feeder fund have the same manager.
- (6) A company carrying on life assurance business (as defined in section 56 of the Finance Act 2012) which makes a non-resident CGT disposal is an eligible person if immediately before the time of the disposal the interest in UK land which is the subject of that disposal is held for the purpose of providing benefits to policyholders in the course of that business.
- (7) In this section “scheme” means any of the following—

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- (a) a unit trust scheme;
 - (b) a company which is an open-ended investment company incorporated by virtue of regulations under section 262 of the Financial Services and Markets Act 2000;
 - (c) a company incorporated under the law of a territory outside the United Kingdom which is, under that law, the equivalent of an open-ended investment company.
- (8) In this section “the relevant ownership period”, in relation to a scheme, means—
- (a) the period beginning with the day on which the scheme acquired the interest in UK land which (or part of which) is the subject of the non-resident CGT disposal and ending with the day on which that disposal occurs, or
 - (b) if shorter, the period of 5 years ending with the day on which that disposal occurs.
- (9) For the purposes of subsection (5), the “alternative period”, in relation to a scheme, is the shorter of—
- (a) the relevant ownership period, and
 - (b) the period beginning when the feeder fund first became an investor in the scheme and ending with the date of the disposal.
- (10) In this section—
- “diversely-held company” means a company which is not a closely-held company;
 - “interest in UK land” has the same meaning as in Schedule B1;
 - “open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act).
- (11) In Schedule C1—
- (a) Part 1 sets out the rules for determining whether or not a company is a closely-held company;
 - (b) Part 2 sets out how to determine whether or not a scheme is a widely-marketed scheme at any time.

14G Section 14F: divided companies

- (1) This section applies where a company which makes a non-resident CGT disposal—
- (a) is a divided company, and
 - (b) would, without this section, be an eligible person for the purposes of section 14F in relation to the disposal.
- (2) In determining for the purposes of section 14F whether or not the company is an eligible company in relation to the disposal, the company is to be treated as if it were a closely-held company if the conditions in subsection (3) are met.
- (3) The conditions are that—
- (a) the gain or loss accruing on the disposal is primarily or wholly attributable to a particular division of the company, and
 - (b) if that division were a separate company, that separate company would be a closely-held company.

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- (4) For the purposes of this section a company is a “divided company” if, under the law under which the company is formed, under the company's articles of association or other document regulating the company or under arrangements entered into by or in relation to the company—
- (a) some or all of the assets of the company are available primarily, or only, to meet particular liabilities of the company, and
 - (b) some or all of the members of the company, and some or all of its creditors, have rights primarily, or only, in relation to particular assets of the company.
- (5) References in this section to a “division” of a divided company are to an identifiable part of the company that carries on distinct business activities and to which particular assets and liabilities of the company are primarily or wholly attributable.

14H Section 14F: arrangements for avoiding tax

- (1) Subsection (2) applies where—
- (a) arrangements are entered into, and
 - (b) the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 14D as a result of a person not being an eligible person in relation to the disposal by virtue of subsection (2) (diversely-held companies) or, as the case may be, subsection (3) (widely-marketed schemes) of section 14F (persons not chargeable under section 14D if a claim is made).
- (2) The arrangements (or that part of the arrangements) are to be disregarded in determining whether or not the company is an eligible person by virtue of that subsection.
- (3) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

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