



# 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*

#### **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.

*Status: Point in time view as at 01/04/2010. This version of this provision has been superseded.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Section 39 is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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Finance Act 1983, in so far as it is not withdrawn and relates to shares issued before 19th March 1986, in determining whether any sums are excluded by virtue of subsection (1) or (2) above from the sums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.

[<sup>F2</sup>(4) If—

- (a) because section 759(4) or (6) of ITA 2007 applies, the person charged to tax under Chapter 3 of Part 13 of that Act (transactions in land) is a person other than the person (“A”) by whom the gain was realised, and
- (b) the income tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of A.]

[<sup>F3</sup>(5) If—

- (a) because section 821(3) or (5) of CTA 2010 applies, the company charged to tax under Part 18 of that Act (transactions in land) is not the person (“B”) by whom the gain was realised, and
- (b) the corporation tax has been paid,

for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of B.]

#### 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](#)
- F2** S. 39(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 300](#) (with [Sch. 2](#))
- F3** S. 39(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. 229](#) (with [Sch. 2](#))

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

- C1** 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)
- C2** S. 39 excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), ss. [670\(7\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))
- C3** S. 39 excluded (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), ss. [672\(4\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))
- C4** S. 39 extended (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), ss. [1157\(2\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))
- C5** 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.

**Status:**

Point in time view as at 01/04/2010. This version of this provision has been superseded.

**Changes to legislation:**

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