



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART III

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES ^[F1]ETC]

CHAPTER I

MISCELLANEOUS PROVISIONS

62 **Death: general provisions.**

- (1) For the purposes of this Act the assets of which a deceased person was competent to dispose—
 - (a) shall be deemed to be acquired on his death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death, but
 - (b) shall not be deemed to be disposed of by him on his death (whether or not they were the subject of a testamentary disposition).
 - (2) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.
- ^[F1](2A) Amounts deductible from chargeable gains for any year in accordance with subsection (2) above shall not be so deductible from any such gains so far as they ^[F2]are—
- (a) gains that are treated as accruing by virtue of section 87^[F3], 87K, 87L] or 89(2) (read, where appropriate, with ^[F4]section 1M]), or
 - ^[F5](b) relevant non-resident gains (see subsection (11)).]

Status: Point in time view as at 12/02/2019.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Section 62 is up to date with all changes known to be in force on or before 20 June 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)

[Where [^{F7}relevant non-resident losses (see subsection (11))] are sustained by an ^{F6}(2AA) individual in the year of assessment in which the individual dies, the losses may, so far as they cannot be deducted from chargeable gains accruing to the individual in that year, be deducted from any gains such as are mentioned in subsection (2A)(b) that accrued to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.]

^{F8}(2B)]

- (3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence ^{F9}... and domicile at the date of death.
- (4) On a person acquiring any asset as legatee (as defined in section 64)—
 - (a) no chargeable gain shall accrue to the personal representatives, and
 - (b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.

[^{F10}(4A) The Treasury may by regulations make provision having effect in place of subsection (4)(b) above in a case where there has been a time when the personal representatives—

- (a) held the asset acquired by the legatee, and
- (b) would, if they had disposed of the asset at that time—
 - (i) by way of a bargain at arm's length, and
 - (ii) otherwise than to a legatee,

have been entitled as a result of regulations under section 151 (investments under plans) to relief from capital gains tax in respect of any chargeable gain accruing on the disposal.

- (4B) Provision made by regulations under subsection (4A) above may (in particular) treat a person who acquires an asset as legatee as doing so at a time or for a consideration, or at a time and for a consideration, ascertained as specified by the regulations.]
- (5) Notwithstanding section 17(1) no chargeable gain shall accrue to any person on his making a disposal by way of donatio mortis causa.
- (6) Subject to subsections (7) and (8) below, where within the period of 2 years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions—
 - (a) the variation or disclaimer shall not constitute a disposal for the purposes of this Act, and
 - (b) this section shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.
- (7) Subsection (6) above does not apply to a variation [^{F11}unless the instrument contains a statement by the persons making the instrument to the effect that they intend the subsection to apply to the variation.]

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- (8) Subsection (6) above does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.
- (9) Subsection (6) above applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.
- (10) In this section references to assets of which a deceased person was competent to dispose are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

[^{F12}(11) In this section—

“relevant non-resident gain” means—

- (a) a gain 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 gain 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), and

“relevant non-resident loss” means an allowable loss accruing on a disposal which, had a gain accrued instead, would have been a relevant non-resident gain.]

Textual Amendments

- F1** S. 62(2A)(2B) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 5](#)
- F2** Words in s. 62(2A) substituted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 17\(2\)](#)
- F3** Words in s. 62(2A)(a) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(2\)](#)
- F4** Words in s. 62(2A)(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. 29\(2\)\(a\)](#)
- F5** S. 62(2A)(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. 29\(2\)\(b\)](#) (with [Sch. 1 para. 29\(5\)\(6\)](#))
- F6** S. 62(2AA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 17\(3\)](#)
- F7** Words in s. 62(2AA) substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 29\(3\)](#)
- F8** S. 62(2B) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 29\(3\)](#)
- F9** Words in s. 62(3) 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. 79](#)
- F10** S. 62(4A)(4B) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [s. 27\(3\)](#)
- F11** Words in s. 62(7) substituted (with application in accordance with s. 52(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 52\(1\)](#)
- F12** S. 62(11) inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 29\(4\)](#)

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Modifications etc. (not altering text)

- C1** S. 62 applied (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **34**
- C2** S. 62 applied by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 85W(2) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [S.I. 2010/294](#), regs. 1(1), **21**)

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