



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 18

#### TRANSACTIONS IN LAND

##### *Introduction*

#### **815 Introduction to Part**

- (1) This Part has effect for the purpose of preventing the avoidance of corporation tax by companies concerned with land or the development of land.
- (2) This Part—
  - (a) applies the charge to corporation tax on income in some circumstances to gains of a capital nature obtained from disposing of land (see section 818), and
  - (b) provides for the calculation of the amount charged (see section 822).

#### **816 Meaning of disposing of land**

- (1) For the purposes of this Part land is disposed of if the property in the land or control over the land is effectively disposed of—
  - (a) by one or more transactions, or
  - (b) by any arrangement or scheme.
- (2) It does not matter for the purposes of subsection (1) if the transactions, arrangement or scheme concern—
  - (a) the land, or
  - (b) property deriving its value from the land (see section 833(2)).
- (3) See also—
  - section 823 (transactions, arrangements, sales and realisations relevant for this Part), and
  - section 824 (tracing value).

*Status: Point in time view as at 17/07/2012.*

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## **817 Priority of other tax provisions**

This Part has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

*Charge to tax on gains from transactions in land*

## **818 Charge to tax on gains from transactions in land**

- (1) The charge to corporation tax on income applies to a gain to which section 819 (gains obtained from land disposals in some circumstances) applies.
- (2) The charge applies for the accounting period of the company chargeable in which the gain is realised.
- (3) As to which company that is, see section 821.
- (4) For exemptions from the charge, see—  
section 827 (gain attributable to period before intention to develop formed), and  
section 828 (disposals of shares in companies holding land as trading stock).

## **819 Gains obtained from land disposals in some circumstances**

- (1) This section applies to a gain if—
  - (a) any of the conditions specified in subsection (2) is met as respects land,
  - (b) the gain is a gain of a capital nature obtained from the disposal of all or part of the land,
  - (c) all or part of the land is situated in the United Kingdom, and
  - (d) a person within section 820(1)(a), (b) or (c) obtains the gain.
- (2) The conditions are that—
  - (a) the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
  - (b) any property deriving its value from the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
  - (c) the land is held as trading stock, and
  - (d) the land is developed with the sole or main object of realising a gain from disposing of all or part of the land when developed.
- (3) It does not matter for the purposes of this section whether the person within section 820(1)(a), (b) or (c) obtains the gain for that person or another person.
- (4) For the purposes of this section, if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a gain to another person (“B”), A obtains B's gain for B.
- (5) For the meaning of “another person”, see section 825.

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## **820 Person obtaining gain**

- (1) The persons referred to in section 819(1)(d) are—
  - (a) the person acquiring, holding or developing the land,
  - (b) a person connected with a person within paragraph (a), and
  - (c) a person who is a party to, or concerned in, an arrangement or scheme within subsection (2).
- (2) An arrangement or scheme is within this subsection if—
  - (a) it is effected as respects all or part of the land, and
  - (b) it enables a gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (3) For the purposes of this section any number of transactions may be regarded as constituting a single arrangement or scheme if—
  - (a) a common purpose can be discerned in them, or
  - (b) there is other sufficient evidence of a common purpose.

## **821 Company chargeable**

- (1) The general rule is that the company chargeable to tax as a result of this Part is the company that realises the gain.
- (2) But that rule is subject to subsections (3) and (5).
- (3) If all or any part of the gain accruing to a person (“A”) is derived from value provided directly or indirectly by another person (“B”) which is a company, B is chargeable.
- (4) Subsection (3) applies whether or not the value is put at the disposal of A.
- (5) If all or any part of the gain accruing to a person (“C”) is derived from an opportunity of realising a gain provided directly or indirectly by another person (“D”) which is a company, D is chargeable.
- (6) For the meaning of “another person”, see section 825.

## **822 Method of calculating gain**

- (1) Subsections (3) to (5) apply for calculating a gain for the purposes of this Part.
- (2) But, except so far as those subsections make provision, such method is to be used for those purposes as is just and reasonable in the circumstances.
- (3) The method must—
  - (a) take into account the value of what is obtained for disposing of the land, and
  - (b) allow only such expenses as are attributable to the land disposed of.
- (4) If a freehold is acquired and on disposal the reversion is retained, account may be taken of the way in which trading profits are calculated in such a case.
- (5) Account may be taken of the adjustments to be made in calculating trading profits under section 136 of CTA 2009 (lease premiums etc: reduction of receipts).

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- (6) In this section “trading profits” means the profits under Part 3 of CTA 2009 (trading income) of a company dealing in land.
- (7) In the application of this section in Scotland—
  - “freehold” means the interest of the owner, and
  - “reversion” means the interest of the landlord in property subject to a lease.
- (8) See also section 826 (valuations and apportionments).

*Further provisions relevant to the charge*

**823 Transactions, arrangements, sales and realisations relevant for Part**

- (1) For the purposes of this Part, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion when tax is charged as a result of this Part.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

**824 Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.
- (2) Value may be traced through any number of companies, partnerships and trusts.

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- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

#### **825 Meaning of “another person”**

- (1) For the purposes of this Part references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

#### **826 Valuations and apportionments**

- (1) All such valuations are to be made as are appropriate to give effect to this Part.
- (2) For the purposes of this Part, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

#### *Exemptions*

#### **827 Gain attributable to period before intention to develop formed**

- (1) This section applies if—
  - (a) income is treated as arising because the condition mentioned in section 819(2)(d) is met (land developed with sole or main object of realising a gain from its disposal when developed), and
  - (b) part of the income is fairly attributable to a period before the intention to develop was formed.
- (2) No liability to corporation tax arises as a result of this Part in respect of that part of the income.
- (3) In applying this section account must be taken of the treatment under Part 3 of CTA 2009 (trading income) of a company which appropriates land as trading stock.

#### **828 Disposals of shares in companies holding land as trading stock**

- (1) No liability to corporation tax arises as a result of this Part in respect of a gain on property deriving value from land if—
  - (a) the gain is obtained by the holder of shares,
  - (b) the gain arises as a result of the holder of shares falling within section 820(1)(a) or (b) (persons acquiring, holding or developing land and connected persons), and
  - (c) the circumstances are such as are mentioned in subsections (2) and (3).

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- (2) The gain arises on a disposal of shares in—
  - (a) a company which holds that land as trading stock, or
  - (b) a company which directly or indirectly owns at least 90% of the ordinary share capital of another company which itself holds that land as trading stock.
- (3) All the land so held is disposed of—
  - (a) in the normal course of its trade by the company which holds it, and
  - (b) so as to procure that all opportunity of profit in respect of the land arises to that company.
- (4) This section does not affect any liability as a result of any person falling within section 820(1)(c) (parties to arrangements and schemes, etc).

#### *Recovery of tax*

### **829 Cases where consideration receivable by person not assessed**

- (1) This section applies if a company (“A”) is assessed to tax under this Part in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the company assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.

### **830 Certificates of tax paid etc**

- (1) For the purposes of section 829(3), an officer of Revenue and Customs must, if required to do so, produce a certificate specifying—
  - (a) the amount of income in respect of which tax has been paid, and
  - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.

#### *Clearances and power to obtain information*

### **831 Clearance procedure**

- (1) This section applies if a company considers that the condition mentioned in section 819(2)(a), (b) or (d) may be met as respects a gain of a capital nature which it—
  - (a) has obtained from the disposal of land, or
  - (b) would obtain from a proposed disposal of land.
- (2) The company may provide the Commissioners for Her Majesty's Revenue and Customs with written particulars showing how the gain has arisen or would arise.

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- (3) The Commissioners must notify the company whether or not they are satisfied that, in the circumstances described in the particulars, it will not, or would not, be liable to tax on the gain as a result of this Part.
- (4) The notification must be given before the end of the period of 30 days beginning with the day after that on which the particulars are received.
- (5) A company notified by the Commissioners under this section that they are so satisfied is not liable to corporation tax on the gain as a result of this Part.
- (6) A notification under this section about the Commissioners' decision concerning a gain is void if the particulars given under this section about the gain do not make a full and accurate disclosure of all facts and considerations relating to it which are material to the decision.

### **832 Power to obtain information**

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Part.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
  - (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
  - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Part, although in the person's opinion no liability to corporation tax arises as a result of this Part, and
  - (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsections (5) and (6).
- (5) In relation to anything done by a relevant lawyer on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the relevant lawyer may not be compelled under this section to do more than—
  - (a) state that the relevant lawyer was acting on behalf of a client, and
  - (b) give the name and address of the client.
- (6) A relevant lawyer is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) just because of giving professional advice to a client about it.
- (7) In this section “relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on the grounds of confidentiality of communication.

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### *Interpretation*

#### **833 Interpretation of Part**

- (1) In this Part “capital”, in relation to a gain, means that the gain does not fall to be included in any calculation of income for purposes of the Tax Acts otherwise than as a result of this Part or Chapter 3 of Part 13 of ITA 2007 (transactions in land).
- (2) In this Part references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.
- (3) In this Part—
  - “company” includes any body corporate, and
  - “share” includes stock.



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