



# Finance Act 1962

## 1962 CHAPTER 44

### PART II

#### INCOME TAX AND PROFITS TAX

### CHAPTER II

#### CHARGE ON GAINS FROM ACQUISITION AND DISPOSAL OF ASSETS

#### 12 General operation of charge

- (1) Subject to the provisions of this section, any acquisition of an interest or right in or over assets (whether it continues after or ceases on the acquisition), or any disposal of such an interest or right (whether it subsists before or is created by the disposal), shall be deemed for purposes of Case VII to be an acquisition or a disposal of the assets, and (except in so far as the context otherwise requires) the expression "acquire" and the expression "dispose of" shall be construed accordingly.
- (2) For purposes of Case VII, where a contract is made to acquire or dispose of an asset (including an asset not in existence or not ascertained at the time of the contract), the contract shall be deemed to be the acquisition or disposal of the asset (for the consideration provided for by the contract), and the conveyance or transfer of an asset or of an interest or right in or over an asset in pursuance of a contract previously made shall not be deemed to be an acquisition or disposal of the asset.
- (3) Subject to subsection (4) below and to the Ninth Schedule to this Act, a person's acquisition of any asset, and the disposal of it to him, shall for purposes of Case VII be deemed to be for a consideration equal to the market value of the asset or of the interest or right in or over it received by him—
  - (a) where he acquires the asset otherwise than by way of a bargain made at arm's length, and in particular where he acquires it by way of gift, or by way of distribution from a company in respect of shares in the company; or

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- (b) where he acquires the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other services rendered or to be rendered by him or another; or
  - (c) where he acquires the asset as trustee for creditors of the person making the disposal.
- (4) Where, on a person's acquisition of an asset, the asset or the interest or right in or over it received by him falls to be taken into account for purposes of tax as a receipt of an income nature (whether as his receipt or another's), or would fall to be so taken into account if he (or, as the case may be, that other) were chargeable to tax in respect of the whole of his income, his acquisition shall for purposes of Case VII be deemed to be for a consideration equal to the amount or value attributed to the asset for that purpose.
- (5) In relation to assets held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee (or for two or more persons jointly so entitled), this Chapter shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).
- (6) In relation to settled property, the trustees of the settlement shall for purposes of Case VII be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the United Kingdom unless the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom:

Provided that a body corporate carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business, shall be treated in relation to that trust as not resident in the United Kingdom if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his death) domiciled, resident or ordinarily resident in the United Kingdom.

For the purposes of this subsection, where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the Settled Land Act, 1925, is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

- (7) Subsection (6) above shall apply in relation to property forming part of the estate of a deceased person and to his personal representatives as it applies in relation to settled property and to trustees of a settlement, but personal representatives shall not be chargeable to tax in respect of an acquisition and disposal by reference to the vesting of the property of the deceased in them.
- (8) A person acquiring assets as legatee shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to that acquisition, except as provided by section fourteen of this Act; nor, in the case of settled property, shall a person be

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chargeable under Case VTI in respect of any acquisition and disposal of a beneficial interest under the settlement.

- (9) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for purposes of Case VII as involving any acquisition or disposal of the asset; and, without prejudice to the generality of the foregoing, this Chapter shall have effect in relation to any right to money secured on land (including periodical payments issuing out of land, where the right to the payments is not incident to an estate or interest in the land), as it has effect in relation to assets other than land, and not as it has effect in relation to land.
- (10) Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated for purposes of Case VII as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver, receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.
- (11) Except as provided by section thirteen of this Act, a person disposing of land by letting it for a term of less than twenty-one years shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to that disposal, unless the letting is accompanied by another letting or agreement for another letting such that the combined terms amount to twenty-one years or over, or by an agreement to dispose of the land otherwise than by letting it.