



Finance Act 1991

1991 CHAPTER 31

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

CAPITAL GAINS

Settlements

83 Trustees ceasing to be resident in U.K

- (1) This section applies if the trustees of a settlement become at any time (the relevant time) neither resident nor ordinarily resident in the United Kingdom.
- (2) The trustees shall be deemed for all purposes of the Capital Gains Tax Act 1979—
 - (a) to have disposed of the defined assets immediately before the relevant time, and
 - (b) immediately to have reacquired them, at their market value at that time.
- (3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.
- (4) If immediately after the relevant time—
 - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
 - (b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall not be defined assets.
- (5) Assets shall not be defined assets if—

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- (a) they are of a description specified in any double taxation relief arrangements, and
 - (b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (6) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply where the trustees—
- (a) have disposed of the old assets, or their interest in them, before the relevant time, and
 - (b) acquire the new assets, or their interest in them, after that time,
- unless the new assets are excepted from this subsection by subsection (7) below.
- (7) If at the time when the new assets are acquired—
- (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
 - (b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,
- the assets falling within paragraph (b) above shall be excepted from subsection (6) above.
- (8) In this section—
- “double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979);
- “the old assets” and “the new assets” have the same meanings as in section 115 of the Capital Gains Tax Act 1979.
- (9) This section applies where the relevant time falls on or after 19th March 1991.

84 Death of trustee: special rules

- (1) Subsection (2) below applies where—
- (a) section 83 above applies as a result of the death of a trustee of the settlement, and
 - (b) within the period of six months beginning with the death, the trustees of the settlement become resident and ordinarily resident in the United Kingdom.
- (2) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
 - (b) fall within subsection (3) or (4) below.
- (3) Assets fall within this subsection if they were disposed of by the trustees in the period which—
- (a) begins with the death, and
 - (b) ends when the trustees become resident and ordinarily resident in the United Kingdom.
- (4) Assets fall within this subsection if—
- (a) they are of a description specified in any double taxation relief arrangements,

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- (b) they constitute settled property of the settlement at the time immediately after the trustees become resident and ordinarily resident in the United Kingdom, and
 - (c) were the trustees to dispose of them at that time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) Subsection (6) below applies where—
- (a) at any time (whether occurring before or on or after 19th March 1991) the trustees of a settlement become resident and ordinarily resident in the United Kingdom as a result of the death of a trustee of the settlement, and
 - (b) section 83 above applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of six months beginning with the death.
- (6) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
 - (b) fall within subsection (7) below.
- (7) Assets fall within this subsection if—
- (a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and
 - (b) they acquired them as a result of a disposal in respect of which relief is given under section 126 of the Capital Gains Tax Act 1979 or in relation to which section 147A(3) of that Act applies.
- (8) In this section “double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979).

85 Past trustees: liability for tax

- (1) This section applies where—
- (a) section 83 above applies as regards the trustees of a settlement (the migrating trustees), and
 - (b) any capital gains tax which is payable by the migrating trustees by virtue of section 83(2) above is not paid within six months from the time when it became payable.
- (2) The Board may, at any time before the end of the period of three years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—
- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;
 - (b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;
 - (c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within thirty days of the service of the notice.

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- (3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—
 - (a) he ceased to be a trustee of the settlement before the end of the relevant period, and
 - (b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating trustees.
- (5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (6) For the purposes of this section—
 - (a) where the relevant time (within the meaning of section 83 above) falls within the period of twelve months beginning with 19th March 1991, the relevant period is the period beginning with that date and ending with that time;
 - (b) in any other case, the relevant period is the period of twelve months ending with the relevant time.

86 Trustees ceasing to be liable to U.K. tax

- (1) This section applies if the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the time concerned) trustees who fall to be regarded for the purposes of any double taxation relief arrangements—
 - (a) as resident in a territory outside the United Kingdom, and
 - (b) as not liable in the United Kingdom to tax on gains accruing on disposals of assets (relevant assets) which constitute settled property of the settlement and fall within descriptions specified in the arrangements.
- (2) The trustees shall be deemed for all purposes of the Capital Gains Tax Act 1979—
 - (a) to have disposed of their relevant assets immediately before the time concerned, and
 - (b) immediately to have reacquired them, at their market value at that time.
- (3) In this section “double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979).
- (4) This section applies where the time concerned falls on or after 19th March 1991.

87 Acquisition by dual resident trustees

- (1) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply where—
 - (a) the new assets are, or the interest in them is, acquired by the trustees of a settlement,

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- (b) at the time of the acquisition the trustees are resident and ordinarily resident in the United Kingdom and fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
 - (c) the assets are of a description specified in the arrangements, and
 - (d) were the trustees to dispose of the assets immediately after the acquisition, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (2) In this section—
- “double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979);
 - “the new assets” has the same meaning as in section 115 of the Capital Gains Tax Act 1979.
- (3) This section applies where the new assets are, or the interest in them is, acquired on or after 19th March 1991.

88 Disposal of settled interest

- (1) Subject to subsections (3) and (8) below, subsection (2) below applies where—
- (a) section 83 above applies as regards the trustees of a settlement,
 - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that section 88(1) of the Finance Act 1981 prevents section 58(1) of the Capital Gains Tax Act 1979 applying, and
 - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time.
- (2) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
- (a) disposed of it immediately before the relevant time, and
 - (b) immediately reacquired it,
- at its market value at that time.
- (3) Subsection (2) above shall not apply if section 86 above applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell before the time when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it.
- (4) Subsection (6) below applies where—
- (a) section 83 above applies as regards the trustees of a settlement,
 - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that section 88(1) of the Finance Act 1981 prevents section 58(1) of the Capital Gains Tax Act 1979 applying,
 - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time, and
 - (d) section 86 above applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell in the relevant period.

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- (5) The relevant period is the period which—
 - (a) begins when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it, and
 - (b) ends with the relevant time.
- (6) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
 - (a) disposed of it immediately before the time found under subsection (7) below, and
 - (b) immediately reacquired it, at its market value at that time.
- (7) The time is—
 - (a) the time concerned (where there is only one such time), or
 - (b) the earliest time concerned (where there is more than one because section 86 above applied more than once).
- (8) Subsection (2) above shall not apply where subsection (6) above applies.

89 Non-resident settlements where settlor has an interest

- (1) Schedule 16 to this Act (which relates to certain settlements in which the settlor has an interest) shall have effect; and accordingly the amendments in subsections (2) and (3) below shall have effect.
- (2) In section 80 of the Finance Act 1981 (gains of non-resident settlements chargeable on beneficiaries) the following subsection shall be inserted after subsection (2)—

“(2A) Where as regards the same settlement and for the same year of assessment—

 - (a) chargeable gains, whether of one amount or of two or more amounts, are treated as accruing by virtue of paragraph 2 of Schedule 16 to the Finance Act 1991 (gains of non-resident settlements chargeable on settlor), and
 - (b) an amount falls to be computed under subsection (2) above, the amount so computed shall be treated as reduced by the amount, or aggregate of the amounts, mentioned in paragraph (a) above.”
- (3) In Schedule 10 to the Finance Act 1988 (settlor chargeable instead of trustees in certain circumstances) in paragraph 5 (right of recovery) the following sub-paragraph shall be inserted after sub-paragraph (2)—

“(3) In a case where—

 - (a) gains are treated as accruing to a person in a year under paragraph 2 of Schedule 16 to the Finance Act 1991, and
 - (b) gains are treated as accruing to the same person under paragraph 1 above in the same year,

sub-paragraph (2) above shall have effect subject to paragraph 2(b) of that Schedule (gains treated as forming highest part of chargeable gains).”

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90 Settlements: beneficiaries charged on capital payments

Schedule 17 to this Act (which relates to settlements whose beneficiaries are charged to tax in respect of capital payments) shall have effect.

91 Settlements: further provisions about beneficiaries

Schedule 18 to this Act (which contains further provisions about beneficiaries under settlements) shall have effect.

92 Settlements with foreign element: miscellaneous

- (1) Section 126C of the Capital Gains Tax Act 1979 (relief for gifts of business assets: emigration of controlling trustees) shall cease to have effect.
- (2) In section 79 of the Finance Act 1981 (emigration of donee) in subsection (1)(a) for the words from “or the” to “any disposal” there shall be substituted “or under section 147A of that Act in respect of a disposal to an individual”.
- (3) In section 88 of the Finance Act 1981 (disposal of interests in non-resident settlements) subsections (2) to (6) shall cease to have effect.
- (4) In section 58 of the Finance Act 1986 (gifts into dual resident trusts) subsection (5) shall cease to have effect.
- (5) Subsections (1) and (3) above apply where the trustees become neither resident nor ordinarily resident in the United Kingdom on or after 19th March 1991.
- (6) Subsection (2) above applies where the transferee becomes neither resident nor ordinarily resident in the United Kingdom on or after 19th March 1991.
- (7) Subsection (4) above applies where the time subsequent to the relevant disposal, and referred to in section 58(5)(b) of the Finance Act 1986, falls on or after 19th March 1991.

Private residence

93 Meaning of permitted area

- (1) In section 101 of the Capital Gains Tax Act 1979 (relief on disposal of private residence) in subsections (2) and (3) for the words “one acre” there shall be substituted the words “0.5 of a hectare”.
- (2) This section shall apply in relation to disposals on or after 19th March 1991.

94 Amount of relief

- (1) In section 102 of the Capital Gains Tax Act 1979 (amount of relief on disposal of private residence) in subsections (1) and (2)(a) for “twenty-four months” there shall be substituted “thirty-six months”.
- (2) In that section, the following subsections shall be inserted after subsection (4)—
 - “(5) Where at any time the number of months specified in subsections (1) and (2) (a) above is thirty-six, the Treasury may by order amend those subsections

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by substituting references to twenty-four for the references to thirty-six in relation to disposals on or after such date as is specified in the order.

- (6) Subsection (5) above shall also have effect as if “thirty-six” (in both places) read “twenty-four” and as if “twenty-four” read “thirty-six”.
- (7) Any power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) In section 80 of the Finance Act 1980 (amount of relief on disposal of private residence let as residential accommodation) in subsection (1)(b) for “£20,000” there shall be substituted “£40,000”.
- (4) Subsections (1) and (3) above shall apply in relation to disposals on or after 19th March 1991.

Miscellaneous

95 Housing for Wales

- (1) In section 342 of the Income and Corporation Taxes Act 1970 (disposals of land between Housing Corporation and housing associations) and section 342A of that Act (disposals by Housing Corporation and certain housing associations) the words “or Housing for Wales” in each place where they occur (which were inserted by the Housing Act 1988 consequentially on the establishment of Housing for Wales) shall be omitted and those sections shall instead be amended as follows.
- (2) In section 342, the words from “Where” to “that party” shall become subsection (1) and the remaining words shall become subsection (2).
- (3) In subsection (2) of that section, for “In this section” there shall be substituted “In subsection (1) above”.
- (4) In that section, there shall be inserted at the end—
 - “(3) This section shall also have effect with the substitution of the words “Housing for Wales” for the words “the Housing Corporation” and “the Corporation”, in each place where they occur.”
- (5) In section 342A, after subsection (1) there shall be inserted—
 - “(1A) Subsection (1) above shall also have effect with the substitution of the words “Housing for Wales” for the words “the Housing Corporation” and “the Corporation”, in each place where they occur.”
- (6) This section shall be deemed to have come into force on 1st December 1988.

96 Scottish Homes

- (1) In section 342 of the Income and Corporation Taxes Act 1970, there shall be inserted at the end—
 - “(4) This section shall also have effect with the substitution of the words “Scottish Homes” for the words “the Housing Corporation” and “the Corporation”, in each place where they occur.”

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(2) In section 342A of that Act, after subsection (1A) there shall be inserted—

“(1B) Subsection (1) above shall also have effect with the substitution of the words “Scottish Homes” for the words “the Housing Corporation” and “the Corporation”, in each place where they occur.”

(3) This section shall be deemed to have come into force on 1st December 1988.

97 Foreign assets: delayed remittances

(1) In section 13 of the Capital Gains Tax Act 1979 (foreign assets: delayed remittances) in subsection (3)(b) for “income arose” there shall be substituted “assets were situated at the time of the disposal”.

(2) This section shall apply in relation to disposals on or after 19th March 1991.

98 Corporate bonds

(1) Section 64 of the Finance Act 1984 shall be amended as follows.

(2) In subsection (2) (which defines “corporate bond” for the purposes of section 64 of the Finance Act 1984 and accordingly for the purposes of certain other enactments including, by virtue of section 64(1) of the Capital Gains Tax Act 1979, that Act), in paragraph (b) the words from “as defined” to “1973” shall be omitted.

(3) After that subsection there shall be inserted—

“(2A) In subsection (2)(b) above “normal commercial loan” has the meaning which would be given by sub-paragraph (5) of paragraph 1 of Schedule 18 to the Taxes Act 1988 if for paragraph (a)(i) to (iii) of that sub-paragraph there were substituted the words “corporate bonds (within the meaning of section 64 of the Finance Act 1984)”.

(4) This section shall have effect—

(a) so far as concerns the application of section 64 for the purposes of section 136A of the Capital Gains Tax Act 1979, in relation to claims on or after 19th March 1991, and

(b) so far as concerns any other application of section 64, in relation to disposals on or after that date (and, in relation to such disposals, shall be regarded as always having had effect).

99 Indexation

(1) In section 68 of the Finance Act 1985 (modification of indexation allowance) in subsection (7A) there shall be added after paragraph (h) the words “; and
(i) paragraph 2(1) of Schedule 12 to the Finance Act 1990.”

(2) In Schedule 19 to the Finance Act 1985 (indexation) in paragraph 16(3) after “under” there shall be inserted “Chapter II of Part IV of the Finance Act 1981 or”.

(3) Subsection (1) above shall be deemed to have come into force on 26th July 1990.

(4) Subsection (2) above shall apply in relation to disposals on or after 19th March 1991.

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100 Relief on certain business etc. disposals by persons over 55 or who retire under that age for ill health

- (1) Sections 69 and 70 of, and Schedule 20 to, the Finance Act 1985 (which give relief on certain disposals by persons over 60 or who retire under that age on grounds of ill health) shall be amended in accordance with the following provisions of this section.
- (2) The words “the age of 55” shall be substituted for the words “the age of 60” wherever occurring in—
 - (a) section 69(1)(a) and (b), (4)(b) and (6)(b);
 - (b) section 70(1)(a) and (b), (2)(c), (4)(c) and (5)(c); and
 - (c) paragraph 5(2) and (4) of Schedule 20.
- (3) In paragraph 13(1) of Schedule 20—
 - (a) in paragraph (a) (full relief up to the appropriate percentage of £125,000) for “£125,000” there shall be substituted “£150,000”; and
 - (b) in paragraph (b) (half relief on the excess, up to the appropriate percentage of £500,000) for “£125,000” and “£500,000” there shall be substituted “£150,000” and “£600,000” respectively.
- (4) The amendments made by this section shall apply in relation to disposals on or after 19th March 1991.

101 Amendments of rebasing provisions

- (1) Schedule 9 to the Finance Act 1988 (deferred charges on gains before 31st March 1982) shall be amended as follows.
- (2) In paragraph 1(b) (reduction of gain) after “within paragraph” there shall be inserted “2A or”.
- (3) In sub-paragraph (1) of paragraph 2 (charges rolled-over or held-over) for “sub-paragraph (2)” there shall be substituted “sub-paragraphs (2) to (2B)”.
- (4) After sub-paragraph (2) of that paragraph there shall be inserted—

“(2A) Where the disposal takes place on or after 19th March 1991, this Schedule does not apply if the amount of the deduction would have been less had relief by virtue of a previous application of this Schedule been duly claimed.

(2B) Where—

 - (a) the asset was acquired on or after 19th March 1991,
 - (b) the deduction is partly attributable to a claim by virtue of section 117(3) of the Capital Gains Tax Act 1979 (roll-over into non-depreciating asset instead of into depreciating asset), and
 - (c) the claim applies to the asset,

this Schedule does not apply by virtue of this paragraph.”
- (5) After paragraph 2 there shall be inserted—

“2A (1) This paragraph applies where this Schedule would have applied on a disposal but for paragraph 2(2B) above.

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- (2) This Schedule applies on the disposal if paragraph 3 below would have applied had—
- (a) section 117(2) of the Capital Gains Tax Act 1979 (postponement of charge where depreciating asset acquired as replacement for business asset) continued to apply to the gain carried forward as a result of the claim by virtue of section 117(3) of that Act, and
 - (b) the time of the disposal been the time when that gain was treated as accruing by virtue of section 117(2) of that Act.”
- (6) In sub-paragraph (1) of paragraph 3 (postponed charges) for “sub-paragraph (3)” there shall be substituted “sub-paragraphs (3) and (4)”.
- (7) In sub-paragraph (2)(e) of that paragraph the words from “(postponement” to “asset)” shall be omitted.
- (8) After sub-paragraph (3) of that paragraph there shall be inserted—
- “(4) Where a gain is treated as accruing in consequence of an event occurring on or after 19th March 1991, this Schedule does not apply if—
 - (a) the gain is attributable (whether directly or indirectly and whether in whole or part) to the disposal of an asset on or after 6th April 1988, or
 - (b) the amount of the gain would have been less had relief by virtue of a previous application of this Schedule been duly claimed.”
- (9) In sub-paragraph (1)(a) of paragraph 8 for “which ends when” there shall be substituted “in which”.
- (10) Subsection (9) above shall apply in relation to claims made on or after 19th March 1991.

102 Traded options: closing purchases

- (1) This section applies where, on or after the day on which this Act is passed, a person (“the grantor”) who has granted a traded option (“the original option”) closes it out by acquiring a traded option of the same description (“the second option”).
- (2) Any disposal by the grantor involved in closing out the original option shall be disregarded for the purposes of capital gains tax or, as the case may be, corporation tax on chargeable gains.
- (3) The incidental costs to the grantor of making the disposal constituted by the grant of the original option shall be treated for the purposes of Chapter II of Part II of the Capital Gains Tax Act 1979 (computation of gains and losses) as increased by an amount equal to the aggregate of—
- (a) the amount or value of the consideration, in money or money’s worth, given by him or on his behalf wholly and exclusively for the acquisition of the second option, and
 - (b) the incidental costs to him of that acquisition.
- (4) In this section “traded option” has the meaning given by section 137(9)(b) of the Capital Gains Tax Act 1979.