



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART I

CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

Residence etc.

9 Residence, including temporary residence

- (1) In this Act “resident” and “ordinarily resident” have the same meanings as in the Income Tax Acts.
- (2) Section 207 of the Taxes Act (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.
- (3) Subject to section 10(1), an individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the period (or the sum of the periods) for which he is resident in the United Kingdom in that year of assessment exceeds 6 months.

10 Non-resident with United Kingdom branch or agency

- (1) Subject to any exceptions provided by this Act, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment in which he is not resident and not ordinarily resident in the United Kingdom but is carrying on a trade in the United Kingdom through a branch or agency, and shall be so chargeable on chargeable gains accruing on the disposal—
 - (a) of assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time when the capital gain accrued, or
 - (b) of assets situated in the United Kingdom and used or held for the purposes of the branch or agency at or before that time, or assets acquired for use by or for the purposes of the branch or agency.

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- (2) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency.
- (3) For the purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade or vocation there through a branch or agency shall be, or include, such chargeable gains accruing on the disposal of assets situated in the United Kingdom as are by this section made chargeable to capital gains tax in the case of an individual not resident or ordinarily resident in the United Kingdom.
- (4) This section shall not apply to a person who, by virtue of Part XVIII of the Taxes Act (double taxation relief agreements), is exempt from income tax or corporation tax chargeable for the chargeable period in respect of the profits or gains of the branch or agency.
- (5) This section shall apply as if references in subsections (1) and (2) above to a trade included references to a profession or vocation, but subsection (1) shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.
- (6) In this Act, unless the context otherwise requires, “branch or agency” means any factorship, agency, receivership, branch or management, but does not include any person within the exemptions in section 82 of the Management Act (general agents and brokers).

11 Visiting forces, agents-general etc

- (1) A period during which a member of a visiting force to whom section 323(1) of the Taxes Act applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of capital gains tax either as a period of residence in the United Kingdom or as creating a change in his residence or domicile.

This subsection shall be construed as one with subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly.

- (2) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from capital gains tax as that to which the head of a mission so resident is entitled under the Diplomatic Privileges Act 1964.
- (3) Any person having or exercising any employment to which section 320(2) of the Taxes Act (staff of Agents-General etc.) applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.
- (4) Subsections (2) and (3) above shall be construed as one with section 320 of the Taxes Act.

12 Foreign assets of person with foreign domicile

- (1) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, capital gains tax shall not be charged in respect of gains accruing to them from the disposal of assets situated outside the United Kingdom (that is, chargeable

gains accruing in the year 1965-66 or a later year of assessment) except that the tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those chargeable gains, any such amounts being treated as gains accruing when they are received in the United Kingdom.

- (2) For the purposes of this section there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the United Kingdom, and subsections (6) to (9) of section 65 of the Taxes Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom) shall apply as they would apply for the purposes of subsection (5) of that section if the gain were income arising from possessions out of the United Kingdom.

13 Attribution of gains to members of non-resident companies

- (1) This section applies as respects chargeable gains accruing to a company—
- (a) which is not resident in the United Kingdom, and
 - (b) which would be a close company if it were resident in the United Kingdom.
- (2) Subject to this section, every person who at the time when the chargeable gain accrues to the company is resident or ordinarily resident in the United Kingdom, who, if an individual, is domiciled in the United Kingdom, and who holds shares in the company, shall be treated for the purposes of this Act as if a part of the chargeable gain had accrued to him.
- (3) That part shall be equal to the proportion of the assets of the company to which that person would be entitled on a liquidation of the company at the time when the chargeable gain accrues to the company.
- (4) If the part of a chargeable gain attributable to a person under subsection (2) above is less than one-twentieth, that subsection shall not apply to that person.
- (5) This section shall not apply in relation to—
- (a) any amount in respect of the chargeable gain which is distributed, whether by way of dividend or distribution of capital or on the dissolution of the company, to persons holding shares in the company, or creditors of the company, within 2 years from the time when the chargeable gain accrued to the company, or
 - (b) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used, and used only, for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
 - (c) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1), where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
 - (d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section 10(3).
- (6) Subsection (5)(a) above shall not prevent the making of an assessment in pursuance of this section but if, by virtue of that paragraph, this section is excluded, all such adjustments, whether by way of repayment or discharge of tax or otherwise, shall be made as will give effect to the provisions of that paragraph.

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- (7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as not reimbursed by the company) shall be allowable as a deduction in the computation under this Act of a gain accruing on the disposal by him of the shares by reference to which the tax was paid.
- (8) So far as it would go to reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person; and subject to the preceding provisions of this subsection this section shall not apply in relation to a loss accruing to the company.
- (9) If the person owning any of the shares in the company at the time when the chargeable gain accrues to the company is itself a company which is not resident in the United Kingdom but which would be a close company if it were resident in the United Kingdom, an amount equal to the amount apportioned under subsection (3) above out of the chargeable gain to the shares so owned shall be apportioned among the issued shares of the second-mentioned company, and the holders of those shares shall be treated in accordance with subsection (2) above, and so on through any number of companies.
- (10) The persons treated by this section as if a part of a chargeable gain accruing to a company had accrued to them shall include trustees owning shares in the company if when the gain accrues to the company the trustees are neither resident nor ordinarily resident in the United Kingdom.
- (11) If any tax payable by any person by virtue of subsection (2) above is paid by the company to which the chargeable gain accrues, or in a case under subsection (9) above is paid by any such other company, the amount so paid shall not for the purposes of income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

14 Non-resident groups of companies

- (1) This section has effect for the purposes of section 13.
- (2) Sections 171 to 174 and 175(1) shall apply in relation to non-resident companies which are members of a non-resident group of companies, as they apply in relation to companies resident in the United Kingdom which are members of a group of companies.
- (3) Sections 178 to 180 shall apply for the purposes of section 13 as if for any reference therein to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the United Kingdom.
- (4) For the purposes of this section —
 - (a) a “non-resident group” of companies—
 - (i) in the case of a group, none of the members of which are resident in the United Kingdom, means that group, and
 - (ii) in the case of a group, 2 or more members of which are not resident in the United Kingdom, means the members which are not resident in the United Kingdom;

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- (b) “group” shall be construed in accordance with section 170 without subsections (2)(a), (9) and (12) to (14).