



Finance Act 1998

1998 CHAPTER 36

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

TAXATION OF CHARGEABLE GAINS

Non-residents etc.

127 Charge to CGT on temporary non-residents.

- (1) After section 10 of the ^{M1}Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

“10A Temporary non-residents.

- (1) This section applies in the case of any individual (“the taxpayer”) if—
- (a) he satisfies the residence requirements for any year of assessment (“the year of return”);
 - (b) he did not satisfy those requirements for one or more years of assessment immediately preceding the year of return but there are years of assessment before that year for which he did satisfy those requirements;
 - (c) there are fewer than five years of assessment falling between the year of departure and the year of return; and
 - (d) four out of the seven years of assessment immediately preceding the year of departure are also years of assessment for each of which he satisfied those requirements.

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- (2) Subject to the following provisions of this section and section 86A, the taxpayer shall be chargeable to capital gains tax as if—
- (a) all the chargeable gains and losses which (apart from this subsection) would have accrued to him in an intervening year,
 - (b) all the chargeable gains which under section 13 or 86 would be treated as having accrued to him in an intervening year if he had been resident in the United Kingdom throughout that intervening year, and
 - (c) any losses which by virtue of section 13(8) would have been allowable in his case in any intervening year if he had been resident in the United Kingdom throughout that intervening year,
- were gains or, as the case may be, losses accruing to the taxpayer in the year of return.
- (3) Subject to subsection (4) below, the gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any gain or loss accruing on the disposal by the taxpayer of any asset if—
- (a) that asset was acquired by the taxpayer at a time in the year of departure or any intervening year when he was neither resident nor ordinarily resident in the United Kingdom;
 - (b) that asset was so acquired otherwise than by means of a relevant disposal which by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued;
 - (c) that asset is not an interest created by or arising under a settlement; and
 - (d) the amount or value of the consideration for the acquisition of that asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).
- (4) Where—
- (a) any chargeable gain that has accrued or would have accrued on the disposal of any asset (“the first asset”) is a gain falling (apart from this section) to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or any part of another asset, and
 - (b) the other asset is an asset falling within paragraphs (a) to (d) of subsection (3) above but the first asset is not,
- subsection (3) above shall not exclude that gain from the gains which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return.
- (5) The gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any chargeable gain or allowable loss accruing to the taxpayer in an intervening year which, in the taxpayer’s case, has fallen to be brought into account for that year by virtue of section 10 or 16(3).
- (6) The reference in subsection (2)(c) above to losses allowable in an individual’s case in an intervening year is a reference to only so much of the aggregate of the losses that would have been available in accordance with subsection (8)

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of section 13 for reducing gains accruing by virtue of that section to that individual in that year as does not exceed the amount of the gains that would have accrued to him in that year if it had been a year throughout which he was resident in the United Kingdom.

(7) Where this section applies in the case of any individual, nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made shall prevent any such assessment for the year of departure from being made in the taxpayer's case at any time before the end of two years after the 31st January next following the year of return.

(8) In this section—

“intervening year” means any year of assessment which, in a case where the conditions in paragraphs (a) to (d) of subsection (1) above are satisfied, falls between the year of departure and the year of return;

“relevant disposal”, means a disposal of an asset acquired by the person making the disposal at a time when that person was resident or ordinarily resident in the United Kingdom; and

“the year of departure” means the last year of assessment before the year of return for which the taxpayer satisfied the residence requirements.

(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment if that year of assessment is one during any part of which he is resident in the United Kingdom or during which he is ordinarily resident in the United Kingdom.

(10) This section is without prejudice to any right to claim relief in accordance with any double taxation relief arrangements.”

(2) In section 9(3) of that Act (exclusion from charge of persons temporarily resident), for “section 10(1)” there shall be substituted “sections 10(1) and 10A ”.

(3) In section 96 of that Act (payments by and to companies), after subsection (9) there shall be inserted the following subsections—

“(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment which in his case is an intervening year for the purposes of section 10A.

(9B) If—

(a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and

(b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,

nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).”

(4) This section has effect—

(a) in any case in which the year of departure is the year 1998-99 or a subsequent year of assessment; and

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- (b) in any case in which the year of departure is the year 1997-98 and the taxpayer was resident or ordinarily resident in the United Kingdom at a time in that year on or after 17th March 1998.

Marginal Citations

M1 1992 c. 12.

128 Disposal of interests in a settlement.

- (1) In section 76 of the ^{M2}Taxation of Chargeable Gains Act 1992 (disposal of interests in settled property)—
- (a) in subsection (1), at the beginning there shall be inserted “Subject to subsection (1A) below”;
 - (b) after that subsection there shall be inserted the subsections set out in subsection (2) below; and
 - (c) after subsection (2) there shall be inserted the subsection set out in subsection (3) below.
- (2) The subsections inserted after subsection (1) are as follows—
- “(1A) Subject to subsection (3) below, subsection (1) above does not apply if—
- (a) the settlement falls within subsection (1B) below; or
 - (b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.
- (1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—
- (a) were not resident or ordinarily resident in the United Kingdom; or
 - (b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.”

(3) The subsection inserted after subsection (2) is as follows—

“(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.”

(4) This section has effect in relation to any disposal on or after 6th March 1998.

Marginal Citations

M2 1992 c. 12.

129 Attribution of gains to settlor in section 10A cases.

- (1) After section 86 of the ^{M3}Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

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“86A Attribution of gains to settlor in section 10A cases.

- (1) Subsection (2) below applies in the case of a person who is a settlor in relation to any settlement (“the relevant settlement”) where—
 - (a) by virtue of section 10A, amounts falling within section 86(1)(e) for any intervening year or years would (apart from this section) be treated as accruing to the settlor in the year of return; and
 - (b) there is an excess of the relevant chargeable amounts for the non-residence period over the amount of the section 87 pool at the end of the year of departure.
- (2) Only so much (if any) of—
 - (a) the amount falling within section 86(1)(e) for the intervening year, or
 - (b) if there is more than one intervening year, the aggregate of the amounts falling within section 86(1)(e) for those years,as exceeds the amount of the excess mentioned in subsection (1)(b) above shall fall in accordance with section 10A to be attributed to the settlor for the year of return.
- (3) In subsection (1) above, the reference to the relevant chargeable amounts for the non-residence period is (subject to subsection (5) below) a reference to the aggregate of the amounts on which beneficiaries of the relevant settlement are charged to tax under section 87 or 89(2) for the intervening year or years in respect of any capital payments received by them.
- (4) In subsection (1) above, the reference to the section 87 pool at the end of the year of departure is (subject to subsection (5) below) a reference to the amount (if any) which, in accordance with subsection (2) of that section, fell in relation to the relevant settlement to be carried forward from the year of departure to be included in the amount of the trust gains for the year of assessment immediately following the year of departure.
- (5) Where the property comprised in the relevant settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment or amount carried forward in accordance with section 87(2) as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account for the purposes of subsections (3) and (4) above.
- (6) Where any reduction falls to be made by virtue of subsection (2) above in any amount to be attributed in accordance with section 10A to any settlor for any year of assessment, the reduction to be treated as made for that year in accordance with section 87(3) in the case of the settlement in question shall not be made until—
 - (a) the reduction (if any) falling to be made by virtue of that subsection has been made in the case of every settlor to whom any amount is so attributed; and
 - (b) effect has been given to any reduction required to be made under subsection (7) below.
- (7) Where in the case of any settlement there is (after the making of any reduction or reductions in accordance with subsection (2) above) any amount or amounts

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falling in accordance with section 10A to be attributed for any year of assessment to settlors of the settlement, the amount or (as the case may be) aggregate amount falling in accordance with that section to be so attributed shall be applied in reducing the amount carried forward to that year in accordance with section 87(2).

- (8) Where an amount or aggregate amount has been applied, in accordance with subsection (7) above, in reducing the amount which in the case of any settlement is carried forward to any year in accordance with section 87(2), that amount (or, as the case may be, so much of it as does not exceed the amount which it is applied in reducing) shall be deducted from the amount used for that year for making the reduction under section 87(3) in the case of that settlement.
- (9) Expressions used in this section and section 10A have the same meanings in this section as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in subsection (5) above to property originating from the settlor as it applies for the purposes of that Schedule.”
- (2) In section 97(1) to (5), (7) and (8) of that Act (interpretation of sections 87 to 96), for the words “sections 87”, wherever occurring, there shall be substituted “ sections 86A ”.
- (3) This section has effect where the year of departure is the year 1997-98 or any subsequent year of assessment.

Marginal Citations

M3 1992 c. 12.

130 Charge on beneficiaries of settlements with non-resident settlors.

- (1) In subsection (1) of section 87 of the ^{M4}Taxation of Chargeable Gains Act 1992 (charge on beneficiaries of a non-resident settlement if the settlor is or has been domiciled and resident in the United Kingdom), the words from “if the settlor” to the end of the subsection shall be omitted.
- (2) In subsection (1) of section 88 of that Act (charge on beneficiaries of a settlement treated as resident outside the United Kingdom if the settlor is or has been domiciled and resident in the United Kingdom)—
- (a) the word “and” shall be inserted at the end of paragraph (a); and
 - (b) paragraph (c) and the word “and” immediately preceding it shall be omitted.
- (3) Subject to subsection (4) below, the preceding provisions of this section apply for the year 1998-99 and subsequent years of assessment and shall be deemed to have applied for the year 1997-98.
- (4) Where section 87 of that Act applies for any year of assessment in relation to any settlement in relation to which it would not have applied for that year but for subsection (1) or (2) above—
- (a) gains and losses accruing to the trustees of the settlement before 17th March 1998, and
 - (b) capital payments received before that date,

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shall be disregarded for the purposes of that section.

Marginal Citations

M4 1992 c. 12.

131 Charge on settlors of settlements for grandchildren.

- (1) In paragraph 2 of Schedule 5 to the ^{M5}Taxation of Chargeable Gains Act 1992 (test whether settlor has interest)—
- (a) after sub-paragraph (3)(d) there shall be inserted the following paragraphs—
 - “(da) any grandchild of the settlor or of the settlor’s spouse;
 - “(db) the spouse of any such grandchild;”
 - (b) in sub-paragraph (3)(e), for “(d)” there shall be substituted “(db)”.
- (2) For sub-paragraph (7) of that paragraph, there shall be substituted the following sub-paragraph—
- “(7) In this paragraph—
“child” includes a stepchild; and
“grandchild” means a child of a child.”
- (3) Schedule 22 to this Act (which makes transitional provision and consequential amendments in connection with the provisions of this section) shall have effect.
- (4) The preceding provisions of this section and Schedule 22 to this Act apply for the year 1998-99 and subsequent years of assessment and shall be deemed to have applied for the year 1997-98.

Marginal Citations

M5 1992 c. 12.

132 Charge on settlors of pre-19th March 1991 settlements.

- (1) In paragraph 9 of Schedule 5 to the ^{M6}Taxation of Chargeable Gains Act 1992 (which sets out when a settlement is a qualifying settlement for the purposes of the attribution of gains to the settlor), after sub-paragraph (1) there shall be inserted the following sub-paragraphs—
- “(1A) Subject to sub-paragraph (1B) below, a settlement created before 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—
- (a) the year 1999-00, and
 - (b) subsequent years of assessment.
- (1B) Where a settlement created before 19th March 1991 is a protected settlement immediately after the beginning of 6th April 1999, that settlement shall be treated as a qualifying settlement for the purposes of section 86 and this Schedule in a year of assessment mentioned in sub-paragraph (1A)(a) or (b) above only if—

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- (a) any of the five conditions set out in subsections (3) to (6A) below becomes fulfilled as regards the settlement in that year; or
 - (b) any of those five conditions became so fulfilled in any previous year of assessment ending after 19th March 1991.”
- (2) Sub-paragraph (2) of that paragraph shall not have effect for the purpose of determining whether any settlement is a qualifying settlement in the year 1999-00 or any subsequent year of assessment.
- (3) After sub-paragraph (6) of that paragraph there shall be inserted the following sub-paragraph—
- “(6A) The fifth condition is that the settlement ceases to be a protected settlement at any time on or after 6th April 1999.”
- (4) After sub-paragraph (10) of that paragraph there shall be inserted the following sub-paragraphs—
- “(10A) Subject to sub-paragraph (10B) below, a settlement is a protected settlement at any time in a year of assessment if at that time the beneficiaries of that settlement are confined to persons falling within some or all of the following descriptions, that is to say—
- (a) children of a settlor or of a spouse of a settlor who are under the age of eighteen at that time or who were under that age at the end of the immediately preceding year of assessment;
 - (b) unborn children of a settlor, of a spouse of a settlor, or of a future spouse of a settlor;
 - (c) future spouses of any children or future children of a settlor, a spouse of a settlor or any future spouse of a settlor;
 - (d) a future spouse of a settlor;
 - (e) persons outside the defined categories.
- (10B) For the purposes of sub-paragraph (10A) above a person is outside the defined categories at any time if, and only if, there is no settlor by reference to whom he is at that time a defined person in relation to the settlement for the purposes of paragraph 2(1) above.
- (10C) For the purposes of sub-paragraph (10A) above a person is a beneficiary of a settlement if—
- (a) there are any circumstances whatever in which relevant property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;
 - (b) there are any circumstances whatever in which relevant income which arises or may arise under the settlement is or will or may become applicable for his benefit or payable to him;
 - (c) he enjoys a benefit directly or indirectly from any relevant property comprised in the settlement or any relevant income arising under the settlement.
- (10D) In sub-paragraph (10C) above—
- “relevant property” means property originating from a settlor; and
 - “relevant income” means income originating from a settlor.”

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- (5) In construing section 86(1)(e) of the ^{M7}Taxation of Chargeable Gains Act 1992 (which specifies the amount by reference to which a charge arises under that section) as regards a particular year of assessment and in relation to a settlement created before 19th March 1991 which—
- (a) is a qualifying settlement in the year 1999-00, but
 - (b) was not a qualifying settlement in any earlier year of assessment,
- no account shall be taken of disposals made before 6th April 1999 (whether for the purpose of arriving at gains or for the purpose of arriving at losses).
- (6) Schedule 23 (which makes transitional provision in connection with the coming into force of this section) shall have effect.

Marginal Citations

M6 1992 c. 12.

M7 1992 c. 12.

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