



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 5

#### CHARGEABLE GAINS

##### *Residence, location of assets etc*

### 32 Temporary non-residents

- (1) Section 10A of TCGA 1992 is amended as follows.
- (2) In subsection (3) (certain gains or losses to be excluded from being treated by virtue of subsection (2) as accruing to the taxpayer in year of return)—
  - (a) in paragraph (a), for “he was neither resident nor ordinarily resident in the United Kingdom” substitute—
    - “(i) he was neither resident nor ordinarily resident in the United Kingdom, or
    - (ii) he was resident or ordinarily resident in the United Kingdom but was Treaty non-resident;”;
  - (b) in paragraph (d), after “152(1)(b)” insert “, 153(1)(b)”.
- (3) In subsection (8) (definitions) in the definition of “relevant disposal”, after “United Kingdom” insert “and was not Treaty non-resident”.
- (4) For subsection (9) substitute—

“(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment—

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*Status: This is the original version (as it was originally enacted).*

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- (a) if, during any part of that year of assessment, he is resident in the United Kingdom and not Treaty non-resident, or
  - (b) if he is ordinarily resident in the United Kingdom during that year of assessment, unless he is Treaty non-resident during that year of assessment.
- (9A) For the purposes of this section an individual is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.
- (9B) Where this section applies in the case of any individual in circumstances in which one or more intervening years would, but for his being Treaty non-resident during some or all of that year or those years, not be an intervening year, this section shall have effect in the taxpayer's case—
- (a) as if subsection (2)(a) above did not apply in the case of any amount treated by virtue of section 87 or 89(2) as an amount of chargeable gains accruing to the taxpayer in any such intervening year, and
  - (b) as if any such intervening year were not an intervening year for the purposes of subsections (2)(b) and (c) and (6) above.”.
- (5) After subsection (9B) (as inserted by subsection (4) above) insert—
- “(9C) Nothing in any double taxation relief arrangements shall be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any of the chargeable gains treated by virtue of subsection (2)(a) above as accruing to the taxpayer in the year of return (or as preventing a charge to that tax from arising as a result).”.
- (6) Omit subsection (10) (section to be without prejudice to right to claim relief under double taxation relief arrangements).
- (7) The amendments in subsections (2)(a), (4), (5) and (6) have effect—
- (a) in any case in which the year of departure is, or (on the assumption that the amendment in subsection (4) had always had effect) would be, the year 2005-06 or a subsequent year of assessment; and
  - (b) in any case in which—
    - (i) the year of departure is, or (on that assumption) would be, the year 2004-05, and
    - (ii) at a time in that year on or after 16th March 2005, the taxpayer was resident or ordinarily resident in the United Kingdom and was not Treaty non-resident (within the meaning given by section 10A(9A) of TCGA 1992, as inserted by subsection (4)).
- (8) The amendment in subsection (2)(b) has effect in relation to relevant disposals made on or after 16th March 2005.
- (9) The amendment in subsection (3) has effect for determining whether a disposal of an asset is a relevant disposal for the purposes of section 10A of TCGA 1992 in any case in which the person making the disposal acquired the asset on or after 16th March 2005.

### **33 Trustees both resident and non-resident in a year of assessment**

(1) After section 83 of TCGA 1992 insert—

#### **“83A Trustees both resident and non-resident in a year of assessment**

- (1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—
    - (a) are within the charge to capital gains tax in that year of assessment, but
    - (b) are non-UK resident at the time of the disposal.
  - (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.
  - (3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—
    - (a) if, during any part of that year of assessment, they are resident in the United Kingdom and not Treaty non-resident, or
    - (b) if they are ordinarily resident in the United Kingdom during that year of assessment, unless they are Treaty non-resident during that year of assessment.
  - (4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—
    - (a) they are neither resident nor ordinarily resident in the United Kingdom, or
    - (b) they are resident or ordinarily resident in the United Kingdom but are Treaty non-resident.
  - (5) For the purposes of this section the trustees of a settlement are Treaty non-resident at any time if, at that time, they fall to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.”
- (2) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.

### **34 Location of assets etc**

Schedule 4 (which makes provision in relation to the situation of assets for the purposes of TCGA 1992 and which makes minor amendments in that Act in relation to non-resident companies with United Kingdom permanent establishments) has effect.

#### *Miscellaneous*

### **35 Exercise of options etc**

Schedule 5 (which makes provision, for the purposes of the taxation of chargeable gains, in relation to options) has effect.

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*Status: This is the original version (as it was originally enacted).*

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### **36 Notional transfers within a group**

- (1) Section 171A of TCGA 1992 (notional transfers within a group) is amended as follows.
- (2) After subsection (3) insert—
  - “(3ZA) In a case where B—
    - (a) is not resident in the United Kingdom, but
    - (b) is carrying on a trade in the United Kingdom through a permanent establishment there,the asset or part deemed to be transferred to B by A is to be treated for the purposes of subsections (2)(c) and (3) above as having been acquired by B for use by or for the purposes of the permanent establishment; but that shall not be taken to affect the question whether or not the asset or part is situated in the United Kingdom at any time.”.
- (3) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.