



# Finance Act 1981

## 1981 CHAPTER 35

### PART IV

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

### CHAPTER V

#### CAPITAL GAINS

#### **78 Extension of general relief for gifts**

- (1) Section 79 of the Finance Act 1980 (general relief for gifts) shall apply in relation to a disposal to the trustees of a settlement as it applies in relation to a disposal to an individual; but a claim for relief under that section in respect of a disposal to the trustees of a settlement shall be made by the transferor alone (instead of by the transferor and the transferee).
- (2) In subsection (3)(a) of that section for the words " section 19(3)" there shall be substituted the words " any provision ".
- (3) In subsection (4) of that section, after the words " to an individual" there shall be inserted the words " or by an individual to the trustees of a settlement ".
- (4) This section applies to disposals after 5th April 1981.

#### **79 Emigration of donee**

- (1) If—
  - (a) relief under section 79 of the Finance Act 1980 is given in respect of a disposal made after 5th April 1981 (" the relevant disposal "), and
  - (b) at a time when he has not disposed of the asset in question, the transferee becomes neither resident nor ordinarily resident in the United Kingdom,

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then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of the said section 79) on the relevant disposal.

- (2) For the purposes of subsection (1) above the transferee shall be taken to have disposed of an asset before the time there referred to only if he has made a disposal or disposals in connection with which the whole of the held-over gain on the relevant disposal was represented by reductions made in accordance with subsection (1)(b) of the said section 79 ; and where he has made a disposal in connection with which part of that gain was so represented, the amount of the chargeable gain deemed by virtue of this section to accrue to him shall be correspondingly reduced.
- (3) The disposals by the transferee that are to be taken into account under subsection (2) above shall not include any disposal to which section 44 of the Capital Gains Tax Act 1979 (disposals between spouses) applies; but where any such disposal is made by the transferee, disposals by his spouse shall be taken into account under subsection (2) above as if they had been made by him.
- (4) Where the relevant disposal was made to an individual, subsection (1) above shall not apply by reason of his becoming neither resident nor ordinarily resident more than six years after the end of the year of assessment in which the relevant disposal was made.
- (5) Subsection (1) above shall not apply where the relevant disposal was made to an individual and—
  - (a) the reason for his becoming neither resident nor ordinarily resident in the United Kingdom is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and
  - (b) he again becomes resident or ordinarily resident in the United Kingdom within the period of three years from the time when he ceases to be so, without having meanwhile disposed of the asset in question;and accordingly no assessment shall be made by virtue of subsection (1) above before the end of the said period of three years in any case where the condition in paragraph (a) above is, and the condition of paragraph (b) above may be, satisfied.
- (6) For the purposes of subsection (5) above a person shall be taken to have disposed of an asset if he has made a disposal in connection with which the whole or part of the held-over gain on the relevant disposal would, had he been resident in the United Kingdom, have been represented by a reduction made in accordance with section 79(1)(b) of the Finance Act 1980; and subsection (3) above shall have effect for the purposes of this subsection as it has effect for the purposes of subsection (2) above.
- (7) Where an amount of tax assessed on a transferee by virtue of subsection (1) above is not paid within the period of twelve months beginning with the date when the tax becomes payable then, subject to subsection (8) below, the transferor may be assessed and charged (in the name of the transferee) to all or any part of that tax.
- (8) No assessment shall be made under subsection (7) above more than six years after the end of the year of assessment in which the relevant disposal was made.
- (9) Where the transferor pays an amount of tax in pursuance of subsection (7) above, he shall be entitled to recover a corresponding sum from the transferee.

- (10) Gains on disposals made after a chargeable gain has under this section been deemed to accrue by reference to a held-over gain shall be computed without any reduction under section 79(1 MM of the Finance Act 1980 in respect of that held-over gain.

## **80 Gains of non-resident settlements**

- (1) This section applies to a settlement for any year of assessment (beginning on or after 6th April 1981) during which the trustees are at no time resident or ordinarily resident in the United Kingdom if the settlor or one of the settlors is at any time during that year, or was when he made his settlement, domiciled and either resident or ordinarily resident in the United Kingdom.
- (2) There shall be computed in respect of every year of assessment for which this section applies the amount on which the trustees would have been chargeable to tax under section 4(1) of the Capital Gains Tax Act 1979 if they had been resident or ordinarily resident in the United Kingdom in the year; and that amount, together with the corresponding amount in respect of any earlier such year so far as not already treated under subsection (3) or section 81(2) below as chargeable gains accruing to beneficiaries under the settlement, is in this section and sections 81 and 82 below referred to as the trust gains for the year.
- (3) Subject to the following provisions of this section, the trust gains for a year of assessment shall be treated as chargeable gains accruing in that year to beneficiaries of the settlement who receive capital payments from the trustees in that year or have received such payments in any earlier year.
- (4) The attribution of chargeable gains to beneficiaries under subsection (3) above shall be made in proportion to, but shall not exceed, the amounts of the capital payments received by them.
- (5) A capital payment shall be left out of account for the purposes of subsections (3) and (4) above to the extent that chargeable gains have by reason of the payment been treated as accruing to the recipient in an earlier year.
- (6) A beneficiary shall not be charged to tax on chargeable gains treated by virtue of subsection (3) above as accruing to him in any year unless he is domiciled in the United Kingdom at some time in that year.
- (7) For the purposes of this section a settlement arising under a will or intestacy shall be treated as made by the testator or intestate at the time of his death.
- (8) Section 17 of the Capital Gains Tax Act 1979 shall not apply as respects chargeable gains accruing to the trustees of a settlement after 5th April 1981; and the references in subsections (3) and (4) above to capital payments received by beneficiaries do not include references to any payment received before 10th March 1981, or any payment received on or after that date so far as it represents a chargeable gain which accrued to the trustees before 6th April 1981.

## **81 Migrant settlements**

- (1) Where a period of one or more years of assessment for which section 80 above applies to a settlement (in this section referred to as a "non-resident period") succeeds a period of one or more years of assessment in each of which the trustees were at some time resident or ordinarily resident in the United Kingdom (in this section referred to as a

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" resident period"), a capital payment received by a beneficiary in the resident period shall be disregarded for the purposes of section 80 if it was not made in anticipation of a disposal made by the trustees in the non-resident period.

(2) Where—

- (a) a non-resident period is succeeded by a resident period, and
- (b) the trust gains for the last year of the non-resident period are not (or not wholly) treated as chargeable gains accruing in that year to beneficiaries,

then, subject to subsection (3) below, those trust gains (or the outstanding part of them) shall be treated as chargeable gains accruing in the first year of the resident period to beneficiaries of the settlement who receive capital payments from the trustees in that year; and so on for the second and subsequent years until the amount treated as accruing to beneficiaries is equal to the amount of the trust gains for the last year of the nonresident period.

(3) Subsections (4) and (6) of section 80 above shall apply in relation to subsection (2) above as they apply in relation to subsection (3) of that section.

## **82 Transfers between settlements**

(1) If in a year of assessment for which section 80 or 81(2) above applies to a settlement (" the transferor settlement ") the trustees transfer all or part of the settled property to the trustees of another settlement (" the transferee settlement") then, subject to the following provisions—

- (a) if section 80 applies to the transferee settlement for the year, its trust gains for the year shall be treated as increased by an amount equal to the outstanding trust gains for the year of the transferor settlement or, where part only of the settled property is transferred, to a proportionate part of those trust gains;
- (b) if section 81(2) applies to the transferee settlement for the year (otherwise than by virtue of paragraph (c) below), the trust gains referred to in section 81(2) shall be treated as increased by the amount mentioned in paragraph (a) above;
- (c) if (apart from this paragraph) neither section 80 nor section 81(2) above applies to the transferee settlement for the year, section 81(2) shall apply to it as if the year were the first year of a resident period succeeding a non-resident period and the trust gains referred to in section 81(2) were equal to the amount mentioned in paragraph (a) above.

(2) Subject to subsection (3) below, the reference in subsection (1)(a) above to the outstanding trust gains for the year of the transferor settlement is a reference to the amount of its trust gains for the year so far as they are not treated under section 80(3) above as chargeable gains accruing to beneficiaries in that year.

(3) Where section 81(2) above applies to the transferor settlement for the year, the reference in subsection (1)(a) above to the outstanding trust gains of the settlement is a reference to the trust gains referred to in section 81(2) so far as not treated as chargeable gains accruing to beneficiaries in that or an earlier year.

(4) This section shall not apply to a transfer so far as it is made for consideration in money or money's worth.

### **83 Provisions supplementary to sections 80 to 82**

- (1) In sections 80 to 82 above " capital payment" means any payment which is not chargeable to income tax on the beneficiary or, in the case of a beneficiary who is neither resident nor ordinarily resident in the United Kingdom, any payment received otherwise than as income.
- (2) In subsection (1) above references to a payment include references to the transfer of an asset and the conferring of any other benefit, and to any occasion on which settled property becomes property to which section 46 of the Capital Gains Tax Act 1979 applies.
- (3) The fact that the whole or part of a benefit is by virtue of section 45 (2) (b) above treated as the recipient's income for a year of assessment after that in which it is received—
  - (a) shall not prevent the benefit or that part of it being treated for the purposes of sections 80 to 82 above as a capital payment in relation to any year of assessment earlier than that in which it is treated as his income; but
  - (b) shall preclude its being treated for those purposes as a capital payment in relation to that or any later year of assessment.
- (4) For the purposes of sections 80 to 82 above the amount of a capital payment made by way of loan, and of any other capital payment which is not an outright payment of money, shall be taken to be equal to the value of the benefit conferred by it.
- (5) For the purposes of sections 80 to 82 above a capital payment shall be regarded as received by a beneficiary from the trustees of a settlement if—
  - (a) he receives it from them directly or indirectly, or
  - (b) it is directly or indirectly applied by them in payment of any debt of his or is otherwise paid or applied for his benefit, or
  - (c) it is received by a third person at the beneficiary's direction.
- (6) Section 29(3) of the Capital Gains Tax Act 1979 (losses accruing to non-residents not to be allowable losses) shall not prevent losses accruing to trustees in a year of assessment for which section 80 above or section 17 of that Act applied to the settlement from being allowed as a deduction from chargeable gains accruing in any later year beginning after 5th April 1981 (so far as they have not previously been set against gains for the purposes of a computation under either of those sections or otherwise).

### **84 Power to obtain information for purposes of sections 80 to 82**

- (1) The Board may by notice in writing require any person to furnish them within such time as they may direct, not being less than twenty-eight days, with such particulars as they think necessary for the purposes of sections 80 to 82 above.
- (2) Subsections (2) to (4) of section 481 of the Taxes Act shall have effect in relation to subsection (1) above as they have effect in relation to section 481(1), but in their application by virtue of this subsection—
  - (a) references to Chapter III of Part XVII of the Taxes Act shall be construed as references to sections 80 to 82 above; and
  - (b) the expressions " settlement" and " settlor " have the same meanings as in those sections.

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## **85 Non-resident trustees and non-resident companies**

- (1) The persons treated by section 15 of the Capital Gains Tax Act 1979 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.
- (2) This section applies to gains accruing to a company on or after 10th March 1981.

## **86 Transfers into settlement**

- (1) In section 53 of the Capital Gains Tax Act 1979 (which provides that a gift in settlement is a disposal of the entire property settled notwithstanding that the donor is a beneficiary or trustee) for the words "gift in" and "donor" there shall be substituted the words "transfer into" and "transferor" respectively.
- (2) This section shall be deemed to have come into force on 10th March 1981.

## **87 Appointments to persons under disability**

- (1) In section 54 of the Capital Gains Tax Act 1979 (deemed disposal for market value when a person becomes absolutely entitled to settled property) after subsection (2) there shall be added—
  - “(3) References in this section to the case where a person becomes absolutely entitled to settled property as against the trustee shall be taken to include references to the case where a person would become so entitled but for being an infant or other person under disability.”
- (2) In section 56(1) of that Act (death of life tenant) after the word "becomes" there shall be inserted the words "(or would but for a disability become)".
- (3) This section applies where the occasion concerned occurs on or after 10th March 1981.

## **88 Disposal of interests in non-resident settlements**

- (1) Subsection (1) of section 58 of the Capital Gains Tax Act 1979 shall not apply to the disposal of an interest in settled property, other than one treated under subsection (2) of that section as made in consideration of obtaining the settled property, if at the time of the disposal the trustees are neither resident nor ordinarily resident in the United Kingdom.
- (2) If—
  - (a) a gain accrues to a person ("the transferor") on the disposal by him of an interest in settled property but, by reason of section 58(1) of the Capital Gains Tax Act 1979, it is not a chargeable gain, and
  - (b) at any time after the disposal the trustees of the settlement become neither resident nor ordinarily resident in the United Kingdom,
 then, subject to subsection (3) below, a chargeable gain shall be deemed to have accrued to the trustees immediately before that time, and its amount shall be equal to that of the gain which accrued to the transferor.
- (3) Subsection (2) above shall not apply if, before the end of the year in which they become neither resident nor ordinarily resident, the trustees have disposed of all the assets

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which, when the transferor disposed of his interest, constituted the settled property in which the interest subsisted; and where under that subsection a chargeable gain is deemed to accrue to the trustees at any time its amount shall not exceed the market value at that time of such of those assets as have not been disposed of by the trustees before the end of that year.

- (4) For the purposes of subsection (3) above the trustees shall be regarded as not having disposed of an asset if and to the extent that they retain part of it, an interest in or right over it, or property derived from it.
- (5) Where an amount of tax assessed on trustees by virtue of this section is not paid within the period of twelve months beginning with the date when the tax becomes payable, the transferor may be assessed and charged (in the name of the trustees) to all or any part of that tax ; but no assessment may be made under this subsection after the end of the period of six years beginning with the date when the transferor disposed of his interest.
- (6) Where the transferor pays an amount of tax in pursuance of subsection (5) above, he shall be entitled to recover a corresponding sum from the trustees.
- (7) This section applies to disposals on or after 10th March 1981.

## **89 Trusts for the disabled**

- (1) Paragraph 5 of Schedule 1 to the Capital Gains Tax Act 1979 (which extends to certain trusts for the disabled the £3,000 exemption given to individuals by section 5) shall be amended as follows.
- (2) In sub-paragraph (1) for the words from "any of the property" to "that person" there shall be substituted the words—
  - “(a) not less than half of the property which is applied is applied for the benefit of that person, and
  - (b) that person is entitled to not less than half of the income arising from the property, or no such income may be applied for the benefit of any other person.”
- (3) After sub-paragraph (1) there shall be inserted—
  - “(1A) The trusts on which settled property is held shall not be treated as falling outside sub-paragraph (1) above by reason only of the powers conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement) ; and the reference in that sub-paragraph to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as a reference to the period during which the income is held on trust for him.
  - (1B) In relation to a settlement which is one of two or more qualifying settlements comprised in a group, this paragraph shall have effect as if for the references in section 5 of this Act to £3,000 there were substituted references to £300 or, if it is more, to such amount as results from dividing £3,000 by the number of settlements in the group.
  - (1C) For the purposes of sub-paragraph (1B) above—

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- (a) a qualifying settlement is any settlement (other than an excluded settlement) which is made on or after 10th March 1981 and to the trustees of which this paragraph applies for the year of assessment; and
- (b) all qualifying settlements in relation to which the same person is the settlor constitute a group.

(1D) If, in consequence of two or more persons being settlors in relation to it, a settlement is comprised in two or more groups comprising different numbers of settlements, sub-paragraph (1B) above shall apply to it as if the number by which the amount of £3,000 is to be divided were the number of settlements in the largest group.”

(4) At the end of sub-paragraph (2) there shall be added the words " ; and " settlor " and " excluded settlement" have the same meanings as in paragraph 6 below " .

(5) After sub-paragraph (2) there shall be added—

“(3) An inspector may by notice in writing require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than twenty-eight days) with such particulars as he thinks necessary for the purposes of this paragraph.”

(6) This section has effect for the year 1981-82 and subsequent years of assessment.

## 90 Market value

(1) After section 29 of the Capital Gains Tax Act 1979 there shall be inserted—

### “29A Disposals and acquisitions treated as made at market value.

- (1) Subject to the provisions of this Act, a person's acquisition or disposal of an asset shall for the purposes of this Act be deemed to be for a consideration equal to the market value of the asset—
  - (a) where he acquires or, as the case may be, disposes of the asset otherwise than by way of a bargain made at arm's length, and in particular where he acquires or disposes of it by way of gift or on a transfer into settlement by a settlor or by way of distribution from a company in respect of shares in the company, or
  - (b) where he acquires or, as the case may be, disposes of 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 service rendered or to be rendered by him or another.
- (2) Except in the case specified in subsection (4) below, subsection (1) above shall not apply to the acquisition of an asset if—
  - (a) there is no corresponding disposal of it, or the corresponding disposal is made by an excluded person, and
  - (b) there is no consideration in money or money's worth or the consideration is of an amount or value lower than the market value of the asset.



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- (3) Where in the case of an acquisition within subsection (2) above there is a corresponding disposal by an excluded person, subsection (1) above shall not apply to that disposal.
- (4) The exception referred to in subsection (2) above is the acquisition by an individual of tangible movable property or currency in circumstances where there is a corresponding disposal by an individual who is neither resident nor ordinarily resident in the United Kingdom; and for this purpose "tangible movable property" does not include commodities of a kind dealt with on a terminal market, or a mere right in or over any property.
- (5) In this section "excluded person" means—
- (a) a person who is neither resident nor ordinarily resident in the United Kingdom; or
  - (b) a person who is wholly exempt from tax in respect of chargeable gains, or would be so exempt on making a claim for exemption; or
  - (c) a charity; or
  - (d) a registered friendly society; or
  - (e) a person making the disposal for the purposes of—
    - (i) a fund to which section 218 or 226(6) of the Taxes Act or section 36 of the Finance Act 1980 applies, or
    - (ii) an exempt approved scheme or statutory scheme as defined in Chapter II of Part II of the Finance Act 1970."
- (2) In section 32 of the Capital Gains Tax Act 1979 (allowance of expenditure in computation of gains) after subsection (4) there shall be added—
- “(5) Where—
- (a) a person acquires an asset for no consideration in money or money's worth or for a consideration of an amount or value lower than the market value of the asset, and is not treated under any provision of this Act as acquiring it for a consideration other than the actual consideration, and
  - (b) there is a corresponding disposal of the asset by a person who is neither resident nor ordinarily resident in the United Kingdom, and
  - (c) a charge to income tax, corporation tax or capital gains tax arises in respect of the acquisition,
- the sums allowable under this section as a deduction in the computation made on the first-mentioned person's disposal of the asset shall include a sum equal to the amount in respect of which the charge arises.
- (6) The condition in paragraph (c) of subsection (5) above shall be taken to be satisfied where under section 80(3) of the Finance Act 1981 chargeable gains are treated as accruing to a person in any year by reason of his acquisition of an asset in that or an earlier year; and the reference in subsection (5) above to the amount in respect of which the charge arises shall be taken to be a reference to the amount of the gains treated as accruing to him.”.
- (3) Subsection (3) of section 19 of the Capital Gains Tax Act 1979 (which is superseded by this section) shall cease to have effect; and—
- (a) for the references to that subsection (or to a paragraph of it) in sections 49(5), 62(2), 90(3), 126(6), 146(2) and 149(2) of that Act and in section 47(1)(b)(ii)

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of the Finance Act 1980 there shall be substituted references to section 29A(1) of the said Act of 1979 ; and

- (b) in section 62(5) of that Act for the words " the amount of the consideration for the acquisition being" there shall be substituted the words " where the amount of the consideration for the acquisition is " .

- (4) This section has effect in relation to acquisitions and disposals on or after 10th March 1981.

## **91 Consideration on reorganisation of share capital etc.**

- (1) In section 79 of the Capital Gains Tax Act 1979 at the end of subsection (1) there shall be added—

“Provided also that, in the case of a reorganisation on or after 10th March 1981, any consideration given for the new holding or any part of it otherwise than by way of a bargain made at arm's length shall be disregarded to the extent that its amount or value exceeds the relevant increase in value; and for this purpose "the relevant increase in value " means the amount by which the market value of the new holding immediately after the reorganisation exceeds the market value of the original shares immediately before the reorganisation.”.

- (2) In consequence of subsection (1) above—

- (a) in section 89(2) of the Capital Gains Tax Act 1979, for the word " proviso " there shall be substituted the word " provisos "; and
- (b) in section 37(12) of the Finance Act 1980, in the definition of " new consideration ", for the words " the proviso" there shall be substituted the words " the first proviso " .