



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER I

COMPANIES

Recovery of tax otherwise than from tax-payer company

189 Capital distribution of chargeable gains: recovery of tax from shareholder

- (1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—
 - (a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or
 - (b) the distribution constitutes such a disposal of assets;and that person is referred to below as “the shareholder”.
- (2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—
 - (a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

- (b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (3) The date referred to in subsection (2) above is whichever is the later of—
 - (a) the date when the tax becomes due and payable by the company; and
 - (b) the date when the assessment was made on the company.
- (4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.
- (5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.
- (6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may by order appoint this section shall have effect—
 - (a) with the substitution for the words in subsection (3) after “above” of the words “is the date when the tax becomes payable by the company”; and
 - (b) with the omission of the words in subsection (4) from “together” to the end of the subsection.
- (7) In this section “capital distribution” has the same meaning as in section 122.

190 Tax on one member of group recoverable from another member

- (1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within 6 months from the date determined under subsection (2) below by the company, then, if the tax so assessed included any amount in respect of chargeable gains—
 - (a) a company which was at the time when the gain accrued the principal company of the group, and
 - (b) any other company which in any part of the period of 2 years ending with that time was a member of that group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset,
 may at any time within 2 years from the date determined under subsection (2) below be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (2) The date referred to in subsection (1) above is whichever is the later of—
 - (a) the date when the tax becomes due and payable by the company; and
 - (b) the date when the assessment is made on the company.
- (3) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—
 - (a) from the company to which the chargeable gain accrued, or
 - (b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.

- (4) Any reference in subsection (3) above to an amount of tax includes a reference to any interest paid under section 87A of the Management Act on that amount.
- (5) Section 170 shall apply for the interpretation of this section as it applies for the interpretation of sections 171 to 181.
- (6) In relation to any chargeable gains accruing in accounting periods ending on or before such day as the Treasury may by order appoint this section shall have effect—
 - (a) with the substitution for the words in subsection (2) after “above” of the words “is the date when the tax becomes payable by the company”; and
 - (b) with the omission of subsection (4).

191 Tax on non-resident company recoverable from another member of group or from controlling director

- (1) This section applies where—
 - (a) a chargeable gain has accrued to a company not resident in the United Kingdom (the tax-payer company) on the disposal of an asset on or after 14th March 1989,
 - (b) the gain forms part of its chargeable profits for corporation tax purposes by virtue of section 10(3), and
 - (c) any of the corporation tax assessed on the company for the accounting period in which the gain accrued is not paid within 6 months from the time when it becomes payable.
- (2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of corporation tax for the accounting period in which the chargeable gain accrued is finally determined, serve on any person to whom subsection (4) below applies a notice—
 - (a) stating the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued and the date when the tax became payable, and
 - (b) requiring that person to pay the relevant amount within 30 days of the service of the notice.
- (3) For the purposes of subsection (2) above the relevant amount is the lesser of—
 - (a) the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued, and
 - (b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.
- (4) This subsection applies to the following persons—

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

- (a) any company which is, or during the period of 12 months ending with the time when the gain accrued, was, a member of the same group as the tax-payer company, and
- (b) any person who is, or during that period was, a controlling director of the tax-payer company or of a company which has, or within that period had, control over the tax-payer company.

This subsection shall have effect in any case where the gain accrued before 13th March 1990 with the substitution of “beginning with 14th March 1989 and” for “of 12 months”.

- (5) 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 tax-payer company.
- (6) 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.
- (7) In this section—

“director”, in relation to a company, has the meaning given by subsection (8) of section 168 of the Taxes Act (read with subsection (9) of that section) and includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);

“controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act);

“group” has the meaning which would be given by section 170 if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.