



Finance Act 1965

1965 CHAPTER 25

PART III

CAPITAL GAINS.

Chargeable gains.

22 Disposal of assets and computation of gains.

- (1) All forms of property shall be assets for the purposes of this Part of this Act, whether situated in the United Kingdom or not, including—
 - (a) options, debts and incorporeal property generally, and
 - (b) any currency other than sterling, and
 - (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.
- (2) For the purposes of this Part of this Act—
 - (a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and
 - (b) there is a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and generally, there is a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.
- (3) Subject to subsection (6) of this section, and to the exceptions in this Part of this Act, there is for the purposes of this Part of this Act a disposal of assets by their owner where any capital sum is derived from assets notwithstanding that no asset is acquired by the person paying the capital sum, and this subsection applies in particular to—
 - (a) capital sums received by way of compensation for any kind of damage or injury to assets or for the loss, destruction or dissipation of assets or for any depreciation or risk of depreciation of an asset,

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (b) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, assets,
 - (c) capital sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights, and
 - (d) capital sums received as consideration for use or exploitation of assets.
- (4) Subject to the provisions of this Part of this Act, a person's acquisition of an asset and the disposal of it to him shall for the purposes of this Part of this Act be deemed to be for a consideration equal to the market value of the asset—
- (a) where he acquires the asset otherwise than by way of a bargain made at arm's length and in particular where he acquires it by way of gift or by way of distribution from a company in respect of shares in the company, or
 - (b) where he acquires 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, or
 - (c) where he acquires the asset as trustee for creditors of the person making the disposal.
- (5) In relation to assets held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for two or more persons who are or would be jointly so entitled), this Part of this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).
- (6) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of this Part of this Act as involving any acquisition or disposal of the asset.
- (7) Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance his dealings with it shall be treated for the purposes of this Part of this Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.
- (8) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.
- (9) The amount of the gains accruing on the disposal of assets shall be computed in accordance with Part I of Schedule 6. to this Act, and subject to the further provisions in Schedules 7. and 8 to this Act, and in this section " capital sum " means any money

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

or money's worth which is not excluded from the consideration taken into account in the computation under the said Part I of Schedule 6 to this Act.

- (10) Every gain accruing after 6th April 1965 shall, except so far as otherwise expressly provided by this Part of this Act, be a chargeable gain, but subject to the provisions of Part II of Schedule 6 to this Act (which restricts the amount of chargeable gains accruing on the disposal of assets owned on 6th April 1965).

23 Losses.

- (1) Except as otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.
- (2) Except as otherwise expressly provided, all the provisions of this Part of this Act which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain, and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss, and part not; and references in this Part of this Act to an allowable loss shall be construed accordingly.
- (3) Subject to the provisions of this Part of this Act and, in particular, to paragraph 14 of Schedule 7, the occasion of the entire loss, destruction, dissipation or extinction of an asset shall, for the purposes of this Part of this Act, constitute a disposal of the asset whether or not any capital sum by way of compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.
- (4) If, on a claim by the owner of an asset, the inspector is satisfied that the value of an asset has become negligible, he may allow the claim and thereupon this Part of this Act shall have effect as if the claimant had sold, and immediately re-acquired, the asset for a consideration of an amount equal to the value specified in the claim.
- (5) For the purposes of the two last foregoing subsections a building and any permanent or semi-permanent structure in the nature of a building, may be regarded as an asset separate from the land on which it is situated, but where either of those subsections applies in accordance with this subsection, the person deemed to make the disposal of the building shall be treated as if he had also sold, and immediately re-acquired, the site of the building or structure (including in the site any land occupied for purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time.
- (6) A loss accruing to a person in a year of assessment during no part of which he is resident or ordinarily resident in the United Kingdom shall not be an allowable loss for the purposes of this Part of this Act unless, under section 20(2) of this Act, he would be chargeable to capital gains tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.
- (7) Except as provided by the next following section, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains accruing in any earlier year of assessment, and relief shall not be given under this Part of this Act more than once in respect of any loss or part of a loss, and shall not be given under this Part of this Act if and so far as relief has been or may be given in respect of it under the Income Tax Acts.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

24 Death.

- (1) On the death of an individual all the assets of which he was competent to dispose shall for the purposes of this Part of this Act be deemed to be disposed of by him at the date of death, and acquired by the personal representatives or other person on whom they devolve, for a consideration equal to their market value at that date.
- (2) Subject to section 34 of this Act, the gains which accrue in consequence of subsection (1) of this section, together with any gains accruing to the deceased by reason of the disposal by him of any asset by way of donatio mortis causa, shall be aggregated and only so much of that aggregate as exceeds five thousand pounds shall constitute chargeable gains.

In arriving at the aggregate—

 - (a) the respective amounts of the gains shall be computed in accordance with the provisions of this Act (other than this section) fixing the amount of chargeable gains, and
 - (b) any allowable loss accruing in consequence of subsection (1) of this section, or in consequence of any donatio mortis causa, shall be deducted,

and the provisions of this subsection shall not affect the computation of the amount of any allowable loss.
- (3) For the purposes of section 20(4) of this Act chargeable gains under subsection (2) of this section shall be included in the gains accruing to the deceased in the year of assessment in which the death occurs.
- (4) For the purposes of the said section 20(4) and of the next following subsection allowable losses sustained in consequence of subsection (1) of this section shall be included in the losses sustained by the deceased in the year of assessment in which the death occurs so far as those losses have not been taken into account under subsection (2) of this section.
- (5) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the three years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.
- (6) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Part of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence, and domicile at the date of death.
- (7) On a person acquiring any asset as legatee—
 - (a) no chargeable gain shall accrue to the personal representatives, and
 - (b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.
- (8) Allowable losses which accrue to the personal representatives of a deceased person in the period of three years from the death, may, so far as they cannot otherwise be deducted from chargeable gains, be deducted from chargeable gains accruing to the deceased in the year of assessment in which the death occurs, or in the preceding three years of assessment, taking chargeable gains accruing in a later year before those accruing in an earlier year.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (9) In this section references to assets of which a deceased person was competent to dispose are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England.
- (10) For the purposes of this section in its application to Scotland, where the deceased person was an heir of entail in possession of an entailed estate, whether sui iuris or not, or a proper liferenter of an estate, he shall be deemed to have been a person competent to dispose of such estate.
- (11) If not more than two years after a death any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will, or under the law relating to intestacies, or otherwise, are varied by a deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposal for the purposes of this Part of this Act.

25 Settled property.

- (1) In relation to settled property, the trustees of the settlement shall for the purposes of this Part of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the United Kingdom unless the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom:

Provided that a person carrying on a business which consists of or includes the management of trusts, and acting as trustees of a trust in the course of that business, shall be treated in relation to that trust as not resident in the United Kingdom if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his death) domiciled, resident or ordinarily resident in the United Kingdom.

- (2) A gift in settlement, whether revocable or irrevocable, is a disposal of the entire property thereby becoming settled property notwithstanding that the donor has some interest as a beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.
- (3) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 22(5) of this Act, for a consideration equal to their market value.
- (4) On the termination at any time after 6th April 1965 of a life interest in possession in all or any part of settled property, all the assets forming part of the settled property, except any which at that time cease to be settled property, shall be deemed for the purposes of this Part of this Act at that time to be disposed of and immediately reacquired by the trustee for a consideration equal to their market value.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

(5) If, in the case of the death of any individual, no relief is given under subsection (2) of the last foregoing section, or relief is so given in respect of an aggregate sum which is less than the amount available for relief under the said subsection (2), then that amount or, as the case may be, the difference between that amount and the aggregate sum in respect of which relief is so given shall be available for giving relief under this subsection, and—

- (a) any gains which accrue to the trustees of a settlement on the disposal of settled property deemed to be effected at the date of the death in accordance with subsection (3) or subsection (4) of this section on the termination of a life interest by the death, or otherwise in consequence of the death, shall be aggregated and only so much of that aggregate as exceeds the amount so available for giving relief under this subsection shall constitute chargeable gains,
- (b) if subsection (6) below has operated to prevent subsection (4) applying on the date of the death paragraph (a) above shall apply to gains accruing on the disposal of the settled property deemed to be effected on the next occasion (if any) when subsection (4) applies,
- (c) in arriving at the aggregate—
 - (i) the respective amounts of the gains shall be computed in accordance with the provisions of this Act (other than this subsection) fixing the amount of chargeable gains, and
 - (ii) any allowable loss which accrues on the disposal shall be deducted, and the provisions of this subsection shall not affect the computation of the amount of any allowable loss,
- (d) if this subsection applies in relation to chargeable gains accruing to more than one body of trustees on the same death, the amount available for relief under this subsection shall be apportioned between those bodies of trustees according to the respective values of the settled property which those trustees are deemed respectively to have disposed of,

and the references in this subsection to the amount available for relief under subsection (2) of the last foregoing section are references to five thousand pounds, or as the case may be to that amount as reduced (or extinguished) under section 34 of this Act.

(6) If on any occasion subsection (4) of this section is applied in relation to a settlement the interval between that occasion and the next occasion on which it applies shall not be less than fifteen years, but where this subsection has operated to prevent the application of the said subsection (4), the said subsection (4) shall apply in relation to the settlement at the end of fifteen years from the occasion on which it last applied as if a life interest in possession in the settled property had terminated at the end of those fifteen years.

(7) If during the subsistence of a settlement there is a period of more than fifteen years throughout which there is no life interest in possession in the settled property, then at the end of the first fifteen years of that period, and of each succeeding fifteen years of that period, subsections (4) and (6) of this section shall apply as if a life interest in possession in the settled property had then terminated:

Provided that this subsection shall not apply to settled property if it and the income from it is wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the property was

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

settled, not being persons all or most of whom are, in the terms of paragraph 21 of Schedule 7 to this Act, connected persons.

- (8) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, any allowable loss which has accrued to the trustee in respect of property which is, or is represented by, the property to which that person so becomes entitled (including any allowable loss carried forward to the year of assessment in which that occasion falls), being £ loss which cannot be deducted from chargeable gains accruing to the trustee in that year, but before that occasion, shall be treated as if it were an allowable loss accruing at that time to the person becoming so entitled, instead of to the trustee.
- (9) If tax assessed on the trustees, or any one trustee, of a settlement in respect of a chargeable gain accruing to the trustees is not paid within six months from the date when it becomes payable by the trustees or trustee, and before or after the expiration of that period of six months the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, that person may at any time within two years from the time when the tax became payable be assessed and charged (in the name of the trustees) to an amount of capital gains tax not exceeding tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.
- (10) In this section " life interest " in relation to a settlement—
- (a) includes a right under the settlement to the income of, or the use or occupation of, settled property for the life of another or for any other period which will or may terminate before all the settled property becomes property to which some person is absolutely entitled as against the trustee,
 - (b) does not include any right which is contingent on the exercise of the discretion of the trustee or the discretion of some other person, and
 - (c) does not include an annuity, notwithstanding that the annuity is payable out of or charged on settled property or the income of settled property.
- (11) For the purposes of this section, where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the Settled Land Act 1925 is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.
- (12) If there is a life interest in a part of the settled property and, where that is a life interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the life interest subsists shall while it subsists be treated for the purposes of subsections (4), (5), (6) and (7) of this section as being settled property under a separate settlement.
- (13) Subsection (7) of this section shall apply in relation to a settlement subsisting on 6th April 1965 as follows—
- (a) in the case of a settlement created on or after 6th April 1950, any period before 6th April 1965 shall be taken into account as it would if falling after that date, and
 - (b) in the case of a settlement created before 6th April 1950 the time taken into account for the purposes of the said subsection (7) shall begin with the

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

fifteenth anniversary of the date of creation of the settlement (whether it is the first or any subsequent fifteenth anniversary) falling in the period of fifteen years from 6th April 1950 to 5th April 1965,

but subsection (4) of this section shall not be applied by virtue of this subsection (taken together with subsection (7)) on a date falling before 7th April 1967.

26 Estate duty.

- (1) In determining the value of an estate for the purposes of estate duty allowance shall be made for capital gains tax chargeable on chargeable gains accruing on the death in consequence of the provisions of section 24(1) (as well as of any amount of capital gains tax owed by the deceased).
- (2) In estimating the principal value of any settled property passing on a death, whether it continues to be settled property or not, an allowance shall be made for any capital gains tax chargeable in consequence of the death in respect of the settled property, so far as that tax falls to be paid out of the property so passing or to be borne by any person to whom the property so passes for any beneficial interest in possession.
- (3) Where the principal value of an asset passing on a death falls, for the purposes of estate duty leviable on the death, to be ascertained under section 7(5) of the Finance Act 1894 (under which the asset's principal value is to be what it would have fetched if sold in the open market) and for the purposes of—
 - (a) a conclusive assessment to capital gains tax chargeable in consequence of the death, or
 - (b) a conclusive decision on a claim for an allowable loss accruing in consequence of the death,the market value of the asset on the date of death has been fixed, the market value so fixed shall be taken to be the principal value of the asset for the purposes of the said section 7(5).
- (4) Subsection (3) of this section shall not apply where the way in which the principal value of an asset is to be ascertained under the said section 7(5) of the Finance Act 1894 is modified by any provision in the enactments relating to estate duty which has no corresponding provision in this Part of this Act.
- (5) If in an appeal against an assessment to capital gains tax chargeable in consequence of a death, or in an appeal against a decision on a claim for an allowable loss accruing in consequence of a death, the value fixed for the purposes of the assessment, or of the decision on the claim, as the market value of an asset on the date of the death is being or can be questioned, any person who would be entitled to be a party to proceedings questioning that market value in connection with estate duty on the death shall be entitled to be a party to the appeal so far as the proceedings relate to that question.
- (6) For the purposes of this section an assessment to capital gains tax, and a decision on a claim for an allowable loss, is conclusive when it can no longer be varied either on appeal or by the decision of a court, but if, after it has become conclusive, an assessment to capital gains tax chargeable in consequence of the death is made which is based on a revision of the market value fixed by the assessment or decision which has become conclusive, subsection (3) of this section shall apply by reference to that revised market value, instead of the market value fixed by the assessment or decision which has become conclusive, unless, before the making of the second-mentioned assessment, a certificate has been issued under section 11 of the Finance Act 1894

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

discharging from any further claim for estate duty leviable on the death the asset in question, or the Board are precluded for any other reason from re-opening the question of the value for estate duty purposes of that asset.

- (7) In this section references to an appeal against an assessment or against a decision on a claim include references to proceedings on a case stated by the Commissioners or other person hearing the appeal.
- (8) In this section references to capital gains tax chargeable in consequence of a death are references to capital gains tax chargeable on gains—
- (a) accruing on the disposal of assets deemed under this Part of this Act to be disposed of by the deceased on his death, or
 - (b) accruing to a trustee on the disposal of settled property deemed to be effected in accordance with section 25(3) of this Act,
- and a corresponding construction shall be given to references to allowable losses accruing in consequence of a death.
- (9) In this section references to capital gains tax chargeable in consequence of a death also include references—
- (a) to capital gains tax chargeable on gains accruing to a trustee on a disposal of settled property deemed to be effected in accordance with section 25(4) of this Act on the termination of a life interest on a death, or
 - (b) to capital gains tax on gains which would have so accrued but for the provisions of subsection (6) of the said section 25 by virtue of which the said subsection (4), instead of applying on the termination of the life interest, is to apply at the end of fifteen years from the occasion on which it last applied:

Provided that the allowance to be made under subsection (2) of this section in a case under paragraph (b) above shall be the amount of the capital gains tax which would have been so chargeable discounted at a yearly rate of interest of five per cent. for the period from the date of termination of the life interest to the end of the said fifteen year period.

- (10) This section shall be construed as one with Part I of the Finance Act 1894.