



Finance Act 1965

1965 CHAPTER 25

PART III

CAPITAL GAINS.

Supplemental.

43 Residence and location of assets.

- (1) In this Part of this Act " resident " and " ordinarily resident " have the same meanings as in the Income Tax Acts.
- (2) Subject to section 20(2) of this Act an individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the period (or the sum of the periods) for which he is resident in the United Kingdom in that year of assessment exceeds six months.
- (3) For the purposes of this Part of this Act—
 - (a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property,
 - (b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property,
 - (c) subject to the following provisions of this subsection, a debt, secured or unsecured, is situated in the United Kingdom if and only if the creditor is resident in the United Kingdom,
 - (d) shares or securities issued by any municipal or governmental authority, or by any body created by such an authority, are situated in the country of that authority,

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- (e) subject to paragraph (d) above, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated,
- (f) a ship or aircraft is situated in the United Kingdom if and only if the owner is then resident in the United Kingdom, and an interest or right in or over a ship or aircraft is situated in the United Kingdom if and only if the person entitled to the interest or right is resident in the United Kingdom,
- (g) the situation of good-will as a trade, business or professional asset is at the place where the trade, business or profession is carried on,
- (h) patents, trade-marks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade-mark or design are situated in the United Kingdom if they, or any rights derived from them, are exercisable in the United Kingdom,
- (i) a judgment debt is situated where the judgment is recorded.

44 Valuation.

- (1) Subject to the following subsections, in this Part of this Act " market value " in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market.
- (2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time :

Provided that where capital gains tax is chargeable, or an allowable loss accrues, in consequence of death and the market value of any property on the date of death taken into account for the purposes of that tax or loss has been depreciated by reason of the death the estimate of the market value shall take that depreciation into account.

- (3) Subject to paragraph 22(3) of Schedule 6 to this Act the market value of shares or securities quoted on the London Stock Exchange shall, except where in consequence of special circumstances prices so quoted are by themselves not a proper measure of market value, be as follows—
 - (a) the lower of the two prices shown in the quotations for the shares or securities in the Stock Exchange Official Daily List on the relevant date plus one-quarter of the difference between those two figures, or
 - (b) halfway between the highest and lowest prices at which bargains, other than bargains done at special prices, were recorded in the shares or securities for the relevant date,

choosing the amount under paragraph (a) if less than that under paragraph (b), or if no such bargains were recorded for the relevant date, and choosing the amount under paragraph (b) if less than that under paragraph (a):

Provided that—

- (i) this subsection shall not apply to shares or securities for which some other stock exchange in the United Kingdom affords a more active market; and
- (ii) if the London Stock Exchange is closed on the relevant date the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value.

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- (4) Subject to paragraph 22(3) of Schedule 6 to this Act in this Part of this Act " market value " in relation to any rights of unit holders in any unit trust scheme (as defined in section 26(1) of the Prevention of Fraud (Investments) Act 1958 or section 22 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940) the buying and selling prices of which are published daily by the managers of the scheme shall mean an amount equal to the buying price (that is the lower price) so published on the relevant date, or if none were published on that date, on the latest date before.
- (5) In relation to an asset of a kind the sale of which is subject to restrictions imposed under the Exchange Control Act 1947 such that part of what is paid by the purchaser is not retainable by the seller the market value, as arrived at under subsection (1), subsection (3) or subsection (4) of this section, shall be subject to such adjustment as is appropriate having regard to the difference between the amount payable by a purchaser and the amount receivable by a seller.
- (6) If and so far as the question in dispute on any appeal against an assessment to tax (whether capital gains tax or corporation tax) on chargeable gains, or against a decision on a claim under this Part of this Act is a question of the value of any land, or of a lease of land then—
- (a) if the land is in England or Wales the question shall be determined on a reference to the Lands Tribunal, and
 - (b) if the land is in Northern Ireland the question shall be determined on a reference to the Lands Tribunal for Northern Ireland.
- (7) In relation to land and leases of land in Scotland for any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland :
- Provided that until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland, this subsection shall have effect as if for the reference to the Lands Tribunal for Scotland there were substituted a reference to a person selected from the panel of referees appointed under Part I of the Finance (1909-1910) Act 1910.
- (8) If and so far as any such appeal involves the question of the value of any shares or securities in a company resident in the United Kingdom, other than shares or securities dealt in on a stock exchange in the United Kingdom, that question shall be determined by the General Commissioners having jurisdiction in an appeal from an assessment to income tax or corporation tax made on the company, but subject to section 11(4) of the Income Tax Management Act 1964 (under which the assumption of jurisdiction by Commissioners cannot be questioned after the proceedings are finished).

45 Interpretation and other supplemental provisions.

- (1) In this Part of this Act, unless the context otherwise requires.—
- " the Board " means the Commissioners of Inland Revenue ;
 - " branch or agency " means any factorship, agency, receivership, branch or management, but does not include any person within the exemptions in section 373 of the Income Tax Act 1952 (general agents and brokers), and
 - " principal " means, in relation to the branch or agency, the person, by whatever name called, managing or in charge of the branch or agency ;
 - " allowable loss " has the meaning given by section 23 of this Act;
 - " chargeable gain " has the meaning given by section 22(10) of this Act;

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" class ", in relation to shares or securities, means a class of shares or securities of any one company ;

" company " includes any body corporate or unincorporated association but does not include a partnership ;

" control " shall be construed in accordance with paragraph 3 of Schedule 18 to this Act;

" lease "—

(a) in relation to land, includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined,

(b) in relation to any description of property other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, property, and " lessor ", " lessee " and " rent " shall be construed accordingly.

" legatee " includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a donatio mortis causa shall be treated as a testamentary disposition and shall not be treated as a gift;

" part disposal " has the meaning given by section 22(2) of this Act;

" personal representatives " has the meaning assigned to it by section 423(4) of the Income Tax Act 1952 ;

" settled property " means, subject to subsection (8) below, any property held in trust other than property to which section 22(5) of this Act applies ;

" shares " includes stock, and shares or debentures comprised in any letter of allotment or similar instrument shall be treated as issued unless the right to the shares or debentures thereby conferred remains provisional until accepted and there has been no acceptance;

" trade " has the same meaning as in the Income Tax Acts ;

" trading stock " has the meaning given by section 143(4) of the Income Tax Act 1952 as extended by section 35(5) of the Finance Act 1960 ;

" wasting asset " has the meaning given by paragraph 9 of Schedule 6 to this Act and paragraph 1 of Schedule 8 to this Act;

" year of assessment " means, in relation to capital gains tax, a year beginning on 6th April and ending on 5th April in the following calendar year, and "1965-66" and so on indicate years of assessment as in the Income Tax Acts.

- (2) References in this Part of this Act to Part X of the Income Tax Act 1952 shall be construed as if they were references contained in the Income Tax Acts.
- (3) References in this Part of this Act to a married woman living with her husband should be construed in accordance with section 361(1)(2) of the Income Tax Act 1952.
- (4) A hire-purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to that person shall be treated for the purposes of this Part of this Act, both in relation to that person and in relation to the person from whom he obtains the use and enjoyment of the asset, as if it amounted to an entire disposal of the asset to that person at the beginning of the period for which he obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by way of repayment or discharge of

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- tax or otherwise, as may be required where the period for which that person has the use and enjoyment of the asset terminates without the property in the asset passing to him.
- (5) In the case of a disposal within paragraph (a), (b) (c) or (d) of section 22(3) of this Act the time of the disposal shall be the time when the capital sum is received as described in that subsection.
- (6) For the purposes of section 20(7) of this Act, there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the United Kingdom and section 24 of the Finance Act 1953 (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom) shall apply as it would apply for purposes of section 132(3) of the Income Tax Act 1952 if the gain were income arising from possessions out of the United Kingdom.
- (7) Where two or more persons carry on a trade or business in partnership—
- (a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Scotland as well as elsewhere in the United Kingdom, be assessed and charged on them separately, and
 - (b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such, and
 - (c) section 147 of the Income Tax Act 1952 (residence of partnerships) shall apply in relation to tax chargeable in pursuance of this Part of this Act as it applies in relation to income tax.
- (8) This Part of this Act shall apply in relation to any unit trust scheme (as defined in section 26(1) of the Prevention of Fraud (Investments) Act 1958 or section 22 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940) as if the scheme were a company, as if the rights of the unit holders were shares in the company, and in the case of an authorised unit trust scheme within the meaning of section 71 of the Finance Act 1960 as if the company were resident and ordinarily resident in the United Kingdom.
- (9) Any provision in this Part of this Act introducing the assumption that assets are sold and immediately re-acquired shall not imply that any expenditure is incurred as incidental to the sale or re-acquisition.
- (10) Any reference in any Act passed before this Act and, unless the contrary is expressly provided, in any Act passed with or after this Act, to duties leviable on death shall not include a reference to capital gains tax and references to profits or gains in the Income Tax Acts shall not include references to chargeable gains.
- (11) Section 512 of the Income Tax Act 1952 (which overrides exemptions under local Acts and other special exemptions) shall apply in relation to tax chargeable in pursuance of this Part of this Act as it applies in relation to income tax.
- (12) Schedule 10 to this Act (administration) shall have effect for the purposes of this Act.