



Finance Act 1974

1974 CHAPTER 30

PART III

^{F1} CAPITAL GAINS FROM LAND

CHAPTER II

FIRST LETTING OR OCCUPATION OF BUILDING AFTER MATERIAL DEVELOPMENT

45 Charge to tax: first letting or occupation of building after material development.

- (1) *Subject to the provisions of this section and Schedule 9 to this Act, where after 17th December 1973 a chargeable building is first let or occupied to a material extent after the commencement of the relevant development, any person who on the material date has an interest in the relevant land shall be deemed for the purposes of [^{F1}the Capital Gains Tax Act 1979 ^{F1}] and Chapter I of this Part of this Act to have on that date disposed of and immediately reacquired that interest for a consideration equal to its market value^{F2F3}.*
- (2) *For the purposes of this Chapter a chargeable building is first let or occupied to a material extent after the commencement of the relevant development on the first occasion thereafter on which either—*
- (a) *the floor area of the part or parts let under one or more leases granted after the commencement of that development; or*
 - (b) *the floor area of the part or parts occupied as of right otherwise than under any lease so granted (whether or not the occupation began before the commencement of that development); or*
 - (c) *the aggregate of the floor area of the part or parts let as aforesaid and the floor area of the part or parts occupied as aforesaid,*
- is more than 25 per cent. of what was or is the floor area of the whole chargeable building on the date on which the relevant development was or is substantially completed.*

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(3) *Subsection (1) above shall not apply in the case of a chargeable building which was wholly or partly let or occupied before 18th December 1973 if at any time before that date either—*

- (a) *the floor area of the part or parts let under one or more leases granted after the commencement of the relevant development; or*
- (b) *the floor area of the part or parts occupied as of right otherwise than under any lease so granted; or*
- (c) *the aggregate of the floor area of the part or parts let as aforesaid and the floor area of the part or parts occupied as aforesaid,*

was more than 25 per cent. of what was or is the floor area of the whole chargeable building on the date on which the relevant development was or is substantially completed.

For the purposes of this subsection a building or part of a building shall not be treated as let at a particular time unless it was then let under a lease granted by an instrument executed before that time.

(4) *Schedule 9 to this Act shall have effect for supplementing this section.*

Textual Amendments

- F1** [Capital Gains Tax Act 1979 \(c. 14, SIF 63:1\)](#), s. 157(2) and Sch. 7 para. 8 for 1979-80 et seq.
- F2** See 1972 Sch. 16 para. 14A—legal restrictions on distributions not to affect amount of close company's income apportionable to participators so far as attributable to development gains on disposal deemed to have been made by virtue of s. 45(1).
- F3** See also [Development Land Tax Act 1976 \(c. 24\)](#), s. 38—Development Land Tax—termination of liability to first letting charge on developments begun on or after 18 May 1976. [Development Land Tax Act 1976 \(c. 24\)](#), repealed by ss. 93, 98(6) and Sch. 27 Part X.

46 Interpretation, etc.

(1) *In this Chapter—*

“chargeable building” has the meaning given by subsections (3) to (5) below^{F4};
“interest in land” and “land” have the same meaning as in Chapter I of this Part of this Act;

“lease” includes an underlease, sublease or tenancy, and “lessor”, “lessee”, “let” and “rent” shall be construed accordingly;

“material development” has the meaning given by paragraph 6 of Schedule 3 to this Act;

“the material date”, in relation to a chargeable building which after 17th December 1973 is first let or occupied to a material extent after the commencement of the relevant development, means the later of the following dates, namely the date after 17th December 1973 on which the chargeable building was first let or occupied as aforesaid and the date on which the relevant development is substantially completed;

“the relevant development”, in relation to a chargeable building, means the material development from which the building has resulted or of which it has been the subject, so far as that development directly concerns that building^{F4};

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“the relevant land”, in relation to a chargeable building, means the chargeable building and its site (including in the site, subject to subsection (6) below, any land occupied for purposes ancillary to the use of the chargeable building).

- (2) *For the purposes of this Chapter a person shall be treated as occupying land if, but only if, his occupation of it is or, but for any exemption from rates which he enjoys, would be such as to render him or some other person liable to be assessed to rates in respect thereof under the law relating to rating in the part of the United Kingdom in which the land is situated, and references to occupation shall be construed accordingly.*
- (3) *Subject to subsections (4) and (5) below, every separate building in the United Kingdom that has resulted from or been the subject of material development (whenever carried out) shall be a chargeable building for the purposes of this Chapter, except that for those purposes—*
- (a) *a separate building constructed or adapted for use wholly as one or more private dwellings shall not be a chargeable building; and*
 - (b) *a separate building constructed or adapted for use only partly as one or more private dwellings shall be a chargeable building but shall be deemed not to include any part constructed or adapted for use as a private dwelling.*
- (4) *For the purposes of the preceding subsection a building which is physically connected with another building—*
- (a) *shall, although so connected, be treated as a separate building if it is so constructed as to be capable of remaining in position and being used independently of the other building or as to require only minor modification to render it so capable; and*
 - (b) *shall not be treated as other than a separate building merely because it is so connected with the other building at or below ground level or by means of a bridge or similar structure (whether affording access or accommodation or both).*
- (5) *Where—*
- (a) *subsection (1) of section 45 of this Act has operated in the case of a chargeable building or would have so operated if that section had been enacted and come into force before the commencement of the relevant development, and had been so enacted with the omission of subsection (3) and of the words “after 17th December 1973” in subsection (1); and*
 - (b) *after the material date there is carried out in relation to that building further material development which, apart from this subsection, would make the said subsection (1) liable to operate as regards the whole of any chargeable building (“the resulting chargeable building”) consisting of or including the whole or part of the first-mentioned chargeable building; and*
 - (c) *one or more parts, but not the whole, of the resulting chargeable building has or have directly resulted from or been directly the subject of the further material development,*
- then, without prejudice to subsection (3)(a) and (b) above, the resulting chargeable building shall for the purposes of this Chapter be deemed not to include any part which has not directly resulted from or been directly the subject of the further material development.*
- (6) *Where land is occupied for purposes ancillary to the use of two or more chargeable buildings, it shall for the purposes of this Chapter be apportioned between those*

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buildings in a fair and reasonable manner; and so much of the land as is apportioned to any one chargeable building shall for those purposes be taken to form part of the site of that, and of no other, chargeable building.

- (7) *For the purposes of this Chapter “floor area” means gross floor area as ascertained by external measurement; and where different parts of a building are separately let or occupied, floor space used in common shall be apportioned rateably.*
- (8) *In relation to a chargeable building, references in this Chapter to the commencement of the relevant development are references to the date on which that development was begun, determined in accordance with paragraph 9 of Schedule 3 to this Act.*
- (9) *Where a lease of land is granted for a term commencing later than the date of the grant, the land shall for the purposes of this Chapter not be taken to become let under that lease until the commencement of the term.*
- (10) *This Chapter shall be deemed to have come into force on 18th December 1973^{F5}.*

Textual Amendments

- F4** See [Development Land Tax Act 1976 \(c. 24\), s. 38](#)—Development Land Tax—*definition applied*. [Development Land Tax Act 1976 \(c. 24\)](#), *repealed by* [Finance Act 1985 \(c. 54, SIF 63:1\)](#), **ss. 93, 98(6)** and [Sch.27 Part X](#).
- F5** [S. 51](#) repealed by [Finance Act 1975 \(c. 7, SIF 63:1\)](#), [s. 59\(5\)](#), [Sch.13 Parts I, II](#) in relation to disposals after 26 March 1974.

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