Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 2) Act 2010, Cross Heading: Amendments of TCGA 1992. (See end of Document for details)*

SCHEDULES

SCHEDULE 1 U.K.

RATES OF CAPITAL GAINS TAX

Amendments of TCGA 1992

1 TCGA 1992 is amended as follows.

2 For section 4 (rate of capital gains tax) substitute—

"**4 Rates of capital gains tax**

(1) This section makes provision about the rates at which capital gains tax is charged, but is subject to section 169N (rate in case of claim for entrepreneurs' relief).

(2) Subject to the following provisions of this section, the rate of capital gains tax in respect of gains accruing to a person in a tax year is 18%.

(3) The rate of capital gains tax in respect of gains accruing to—

(a) the trustees of a settlement, or

(b) the personal representatives of a deceased person,

in a tax year is 28%.

(4) If income tax is chargeable at the higher rate or the dividend upper rate in respect of any part of the income of an individual for a tax year, the rate of capital gains tax in respect of gains accruing to the individual in the year is 28%.

(5) If no income tax is chargeable at the higher rate or the dividend upper rate in respect of the income of an individual for a tax year, but the amount on which the individual is chargeable to capital gains tax exceeds the unused part of the individual's basic rate band, the rate of capital gains tax on the excess is 28%.

(6) For the purposes of subsection (5), gains which are chargeable to capital gains tax at the rate in section 169N(3) are to be treated as forming the lowest part of the amount on which an individual is chargeable to capital gains tax.

(7) The reference in subsection (5) to the unused part of an individual's basic rate band is a reference to the amount by which the basic rate limit exceeds the individual's Step 3 income.

(8) For the purposes of this section, "the Step 3 income" of an individual means the individual's net income less allowances deducted at Step 3 of the calculation in section 23 of ITA 2007 for the purpose of calculating the individual's income tax liability.

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(9) Section 989 of ITA 2007 (the definitions) applies for the purposes of this section as it applies for income tax purposes.

4A Section 4: special cases

(1) Subsection (2) applies if for a tax year—

(a) a person is entitled, by virtue of section 539 of ITTOIA 2005 (gains from contracts for life insurance etc), to relief by reference to the amount of a deficiency, or

(b) the residuary income of an estate is treated, by virtue of section 669(1) and (2) of that Act (reduction in residuary income: inheritance tax on accrued income), as reduced so as to reduce a person's income by any amount for the purposes of extra liability.

(2) Section 4(7) is to have effect as if the person's Step 3 income for the year were reduced by the amount of the deficiency mentioned in subsection (1)(a) or the amount mentioned in subsection (1)(b) (as the case may be).

(3) Subsections (4) and (5) apply if, by virtue of section 465 of ITTOIA 2005 (gains from contracts for life insurance etc), a person's total income for a tax year is deemed to include any amount or amounts.

(4) Section 4(7) is to have effect as if the person's Step 3 income for the year included not the whole of the amount or amounts concerned but only the annual equivalent within the meaning of section 536(1) of that Act or the total annual equivalent within the meaning of section 537 of that Act (as the case may be).

(5) If—

(a) relief is given under section 535 of that Act, and

(b) the calculation under section 536(1) or 537 of that Act (as the case may be) does not involve the higher rate of income tax,

section 4(4) and (5) are to have effect as if no income tax were chargeable at the higher rate or the dividend upper rate in respect of the person's income."

3 After section 4A (as substituted by paragraph 2) insert—

"**4B Deduction of losses etc in most beneficial way**

(1) This section applies if the gains accruing to a person in a tax year are (apart from this section) chargeable to capital gains tax at different rates.

(2) Allowable losses may be deducted from those gains, and the exempt amount under section 3 may be used in respect of those gains, in such way as is most beneficial to that person.

(3) Subsection (2) is subject to any enactment which contains a limitation on the gains from which allowable losses may be deducted."

4 In section 169H (introduction to entrepreneurs' relief), in subsection (1), for "relief from capital gains tax" substitute " for a lower rate of capital gains tax ".

5 (1) Section 169N (amount of relief: general) is amended as follows.

(2) For subsections (2) to (4) substitute—

"(2) The resulting amount is to be treated for the purposes of this Act as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made.

(3) The rate of capital gains tax in respect of that gain is 10%, but this is subject to subsections (4) to (4B).

(4) Subsections (4A) and (4B) apply if the aggregate of—

(a) the gain mentioned in subsection (2), and

(b) the total of so much of each amount resulting under subsection (1) by virtue of its operation in relation to earlier relevant qualifying business disposals (if any) as was—

(i) charged at the rate in subsection (3), or

(ii) subject to reduction under subsection (2) of this section as originally enacted,

exceeds £5 million.

(4A) The rate in subsection (3) is to apply only to so much (if any) of the gain mentioned in subsection (2) as (when added to the total mentioned in subsection (4)(b)) does not exceed £5 million.

(4B) Section 4 (rates of capital gains tax) is to apply to so much of the gain mentioned in subsection (2) as is not subject to the rate in subsection (3)."

(3) In subsection (7), for "subsection (3)" substitute " subsection (4) ".

6 In section 169O (amount of relief: special provision for certain trust disposals), in subsection (3), omit "with no reduction under subsection (2) of that section".

7 In section 169P (amount of relief: special provision for certain associated disposals), in subsection (3), omit "with no reduction under subsection (2) of that section".

8 For section 169R (reorganisations involving acquisition of qualifying corporate bonds) substitute—

"**169R Reorganisations involving acquisition of qualifying corporate bonds**

(1) This section applies where the calculation under section 116(10)(a) would (apart from this section) have effect to produce a chargeable gain for an individual by reason of a relevant transaction.

(2) If an election is made under this section, a claim for entrepreneurs' relief may be made as if the relevant transaction involved a disposal of the old asset; and if such a claim is made section 116(10) does not apply.

(3) An election under this section must be made—

(a) if the relevant transaction, so far as it relates to the old asset, would (apart from section 116(10)) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and

(b) otherwise, by the individual.

(4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the relevant transaction takes place.

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(5) In this section, "old asset" and "relevant transaction" have the meaning given by section 116."

9 (1) Paragraph 1 of Schedule 5B (enterprise investment scheme: re-investment) is amended as follows.

(2) After sub-paragraph (5) insert—

"(5A) The reference in sub-paragraph (1)(b) to a gain accruing in accordance with section 169N does not include such a gain so far as it is chargeable to capital gains tax at the rate in section 169N(3)."

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