



# Finance Act 2016

## 2016 CHAPTER 24

### PART 4

#### CAPITAL GAINS TAX

##### *Rate*

### **83 Reduction in rate of capital gains tax**

- (1) Section 4 of TCGA 1992 (rates of capital gains tax) is amended as set out in subsections (2) to (12).
- (2) In subsection (1) after “entrepreneurs’ relief” insert “and section 169VC (rate in case of claim for investors’ relief)”.
- (3) In subsection (2)—
  - (a) after “section” insert “and section 4BA”, and
  - (b) for the words from “in respect” to the end substitute—
    - “(a) in respect of upper rate gains accruing to a person in a tax year, is 18%, and
    - (b) in respect of gains accruing to a person in a tax year which are not upper rate gains, is 10%.”
- (4) After subsection (2) insert—

“(2A) In this section “upper rate gains” means—

  - (a) residential property gains (see section 4BB),
  - (b) NRCGT gains (see section 14D), and
  - (c) carried interest gains (see subsections (12) and (13)).”
- (5) For subsection (3) substitute—

“(3) The rate of capital gains tax in respect of gains accruing in a tax year to the trustees of a settlement or the personal representatives of a deceased person—

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- (a) in respect of upper rate gains, is 28%, and
  - (b) in respect of gains which are not upper rate gains, is 20%.”
- (6) In subsection (4), for the words from the second “in respect” to the end substitute—
  - “(a) in respect of upper rate gains accruing to the individual in the tax year, is 28%, and
  - (b) in respect of gains accruing to the individual in the tax year which are not upper rate gains, is 20%.”
- (7) In subsection (5) for “28%” substitute “(subject to section 4BA) 20%”.
- (8) For subsection (6) substitute—
  - “(6) Subsection (6A) applies for the purposes of subsection (5) where—
    - (a) there is an excess as mentioned in that subsection (“the higher-rate excess”), and
    - (b) the amount on which the individual is chargeable to capital gains tax for the tax year includes any special rate gains, that is, gains which are—
      - (i) chargeable to capital gains tax at the rate in section 169N(3), or
      - (ii) chargeable to capital gains tax at the rate in section 169VC(2).
  - (6A) Where this subsection applies—
    - (a) if the total amount of the special rate gains exceeds the unused part of the individual’s basic rate band, the higher-rate excess is to be treated as reduced by the amount by which the special rate gains exceed that unused part;
    - (b) if not, the higher-rate excess is to be treated as consisting of gains other than the special rate gains.”
- (9) In subsection (7) for “The reference in subsection (5)” substitute “Any reference in this section”.
- (10) In subsection (9) after “this section” insert “and section 4BA”.
- (11) In subsection (10) after “and (5)” insert “and section 4BA(1)”.
- (12) After subsection (11) insert—
  - “(12) In subsection (2A)(c) “carried interest gains” means—
    - (a) gains treated as accruing under section 103KA(2) or (3), and
    - (b) gains accruing to an individual as a result of carried interest arising to the individual where—
      - (i) the individual performs investment management services directly or indirectly in respect of an investment scheme under arrangements not involving a partnership,
      - (ii) the carried interest arises to the individual under the arrangements, and
      - (iii) the carried interest does not constitute a co-investment repayment or return.
  - (13) For the purposes of subsection (12)(b)—

- (a) “carried interest”, in relation to any arrangements, has the same meaning as in section 809EZB of ITA 2007 (see sections 809EYC and 809EYD of that Act);
  - (b) carried interest “arises” to an individual if it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007;
  - (c) “arrangements”, “investment management services” and “investment scheme” have the same meanings as in that Chapter (see sections 809EZA(6) and 809EZE of that Act);
  - (d) “co-investment repayment or return” has the same meaning as in section 103KA.”
- (13) In section 4A of TCGA 1992 (special cases), in subsection (5) after “and (5)” insert “and section 4BA(1)”.
- (14) After section 4B of TCGA 1992 insert—

**“4BA Rates, and use of unused basic rate band, in certain cases**

- (1) This section applies where an individual is chargeable to capital gains tax in respect of gains accruing in a tax year and—
  - (a) no income tax is chargeable at the higher rate, the Welsh higher rate or the dividend upper rate in respect of the income of the individual for the tax year,
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year (“the chargeable gains amount”) exceeds the unused part of the individual’s basic rate band, and
  - (c) all or part of the chargeable gains amount consists of upper rate gains.
- (2) In the following provisions of this section “the available gains” means the gains on which the individual is chargeable to capital gains tax for the tax year, excluding any special rate gains.
- (3) The available gains not used by the individual under subsection (4) are to be charged to capital gains tax—
  - (a) to the extent that they consist of upper rate gains, at the rate in section 4(4)(a);
  - (b) to the extent that they consist of gains which are not upper rate gains, at the rate in section 4(5).
- (4) The individual may, subject to subsection (5) (which limits the overall amount that can be used under this subsection)—
  - (a) use any of the available gains that are upper rate gains to be charged at the rate in section 4(2)(a);
  - (b) use any of the available gains that are not upper rate gains to be charged at the rate in section 4(2)(b).
- (5) The total amount of gains used under subsection (4) must equal the qualifying amount.
- (6) The “qualifying amount” is the unused part of the individual’s basic rate band less the total amount of any special rate gains.

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

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- (7) If special rate gains are included in the chargeable gains amount, subsection (4) applies only if the unused part of the individual's basic rate band exceeds the total amount of the special rate gains.
- (8) In this section—
- “upper rate gains” has the same meaning as in section 4;
  - “special rate gains” has the same meaning as in section 4(6);
  - “the unused part of the individual's basic rate band” has the same meaning as in section 4.

#### **4BB Residential property gain or loss**

- (1) For the purposes of the charge to capital gains tax, a residential property gain or loss is a gain or loss which accrues on the disposal of a residential property interest.
- (2) But a residential property gain or loss does not accrue on a non-resident CGT disposal.
- (3) In this Act “disposal of a residential property interest” means—
- (a) a disposal of a UK residential property interest, or
  - (b) a disposal of a non-UK residential property interest.
- (4) Schedule B1 gives the meaning in this Act of “disposal of a UK residential property interest”.
- (5) Schedule BA1 gives the meaning in this Act of “disposal of a non-UK residential property interest”.
- (6) See section 57C and Schedule 4ZZC for how to compute—
- (a) the residential property gain or loss accruing on the disposal of a residential property interest, and
  - (b) the gain or loss accruing on the disposal of a residential property interest which is not a residential property gain or loss.”
- (15) Schedule 11 inserts Schedule BA1 in TCGA 1992 and makes related amendments.
- (16) Schedule 12 inserts section 57C and Schedule 4ZZC in TCGA 1992 and makes related amendments.
- (17) The amendments made by this section and Schedules 11 and 12 have effect in relation to gains accruing on or after 6 April 2016.
- (18) In relation to a time before the tax year appointed under section 14(3)(b) of the Wales Act 2014 in relation to the provision inserted by section 9(14) of that Act, subsection (1) of section 4BA of TCGA 1992 (inserted by subsection (14) of this section) has effect as if the words “, the Welsh higher rate” were omitted.
- (19) In relation to a time before the tax year appointed under section 13(15) of the Scotland Act 2016, subsection (1) of section 4BA of TCGA 1992 (inserted by subsection (14) of this section) has effect as if before “or the dividend upper rate” there were inserted “, the Scottish higher rate”.