

1967 No. 149

TAXES

The Capital Gains Tax Regulations 1967

Made - - - - - 9th February 1967

*Laid before the
House of Commons* - 15th February 1967

Coming into Operation 16th February 1967

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 2 of Schedule 10 to the Finance Act 1965(a) and after consultation with the Council on Tribunals in so far as is required by section 8 of the Tribunals and Inquiries Act 1958(b) (as amended by section 3 of the Tribunals and Inquiries Act 1966(c)), hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Capital Gains Tax Regulations 1967, and shall come into operation on 16th February 1967.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“appeal” means an appeal against an assessment to capital gains tax or against a decision on a claim relating to capital gains tax;

“the Board” means the Commissioners of Inland Revenue;

“Commissioners” means (subject to Regulation 17) General Commissioners or Special Commissioners;

“third party” means a third or subsequent party joined under Regulation 8;

references to the Income Tax Management Act 1964(d) are references to that Act as applied in relation to capital gains tax by paragraph 1 of Schedule 10 to the Finance Act 1965;

references to Part III of the Finance Act 1965 include Schedules 6 to 10 to that Act and any other enactment to be construed as one with the said Part III;

subject to Regulation 15, other expressions have the same meaning as in Part III of the Finance Act 1965.

(2) The Interpretation Act 1889(e) shall apply to these Regulations as it applies to an Act of Parliament.

(a) 1965 c. 25.

(b) 6 & 7 Eliz. 2. c. 66.

(c) 1966 c. 43.

(d) 1964 c. 37.

(e) 52 & 53 Vict. c. 63.

Notices of appeals against assessments

3. An appeal against an assessment to capital gains tax shall be brought by giving notice in writing to the inspector within thirty days after the date of the notice of assessment or the coming into operation of these Regulations, whichever is the later.

Choice of appeal Commissioners

4. An appeal against an assessment to capital gains tax shall be to the General Commissioners unless the appellant elects (in accordance with section 12(2) of the Income Tax Management Act 1964) to bring the appeal before the Special Commissioners instead of the General Commissioners.

Assignment of appeals to General Commissioners

5. The rules for assigning proceedings to Commissioners in Schedule 3 to the Income Tax Management Act 1964 shall apply to an appeal against an assessment to capital gains tax as they apply to an appeal against an assessment under Schedule D, other than Cases I and II.

Representations in writing

6. The Commissioners hearing an appeal or a question in an appeal shall consider any representations in writing made to them by any party entitled to be present who is not present or represented at the hearing, other than the inspector and—

- (a) the appellant, if the hearing is before Commissioners ascertained under the rules in Schedule 3 to the Income Tax Management Act 1964, or by an election made by him; or
- (b) a third party, if the hearing is before Commissioners to whom the appeal has been transferred on his application under Regulation 8(6).

Representation of the inspector

7. Any officer of the Board may represent the inspector on or in connection with the hearing of an appeal or of any question in an appeal.

Joinder of third parties in appeals

8.—(1) Where the market value of an asset on a particular date or the apportionment of any amount or value is a material question in an appeal any person whose liability to capital gains tax for any period may be affected by that market value or by the manner in which that amount or value is apportioned may apply under this Regulation to be joined as a party in the appeal.

(2) An application under this Regulation to be joined as a party in an appeal shall be made in writing to the inspector stating—

- (a) the name and address of the applicant;
- (b) the question which may affect his liability to capital gains tax;
- (c) how his liability may be affected; and
- (d) his contention with regard to that question.

(3) The inspector shall send a copy of the application to the appellant and to any other party to the appeal.

(4) If the application is received by the inspector not later than thirty days before the date fixed for the hearing of the appeal (or of the question), or if

when he receives the application no date has been fixed, he shall, if he is satisfied that it is proper to join the applicant as a party in the appeal, join him as a third party and give notice of the joinder to the appellant and any other party to the appeal.

(5) If the application is received by the inspector later than thirty days before the date fixed for the hearing of the appeal (or of the question) but before it has been determined, or if he is not satisfied that it is proper to join the applicant as a party in the appeal, he shall refer the application to the Commissioners before whom the appeal is brought, and those Commissioners may in their discretion allow or refuse the application.

(6) The Commissioners before whom the appeal is brought may on the application of a third party transfer the appeal to the General Commissioners for the division in which the applicant ordinarily resides at the date of the application, or to the Special Commissioners:

Provided that an appeal shall not be so transferred unless the Commissioners to whom the application is made are satisfied that the balance of convenience to the parties is in favour of the transfer.

(7) At the hearing and on the determination of the appeal or of any question in the appeal a third party shall, so far as relates to the question in which he is interested, have the same rights as an appellant, including any right to require the statement of a case for the opinion of any Court.

(8) On the hearing of the appeal or of any question in the appeal a third party shall not (unless the appellant consents) be entitled to be present except during such part of the hearing as relates to a question in which he is interested, and the Commissioners shall if necessary hear any such question separately from the rest of the appeal.

(9) A person entitled under section 26(5) of the Finance Act 1965 (proceedings consequent on death) to be a party to an appeal shall, if he wishes to be made a party, apply to be joined under this Regulation.

Applications for determination of market value

9.—(1) Where the market value of an asset on a particular date or the apportionment of any amount or value may affect the liability to capital gains tax for any period (and whether for the same or different periods) of two or more persons and is not (and has not been) a material question in an appeal already brought by any of them, any of those persons may apply to the Commissioners to determine that market value or the manner in which that amount or value should be apportioned.

(2) An application under this Regulation shall be made by notice in writing sent to the inspector stating the question for determination and (to the best of the applicant's knowledge) the names and addresses of the other persons whose liability to capital gains tax may be affected by the question.

(3) In relation to proceedings under this Regulation references in Schedule 3 to the Income Tax Management Act 1964 (rules for assigning proceedings to Commissioners) to the place where the appellant ordinarily resided in the year of assessment to which the proceedings relate shall, in cases where the application does not relate to any ascertained year of assessment, be construed as references to the place where the applicant ordinarily resides at the time of making the application.

(4) The inspector shall be a party to proceedings under this Regulation.

(5) An election to bring proceedings under this Regulation before the Special Commissioners instead of before the General Commissioners (or, if the proceedings are in Northern Ireland, before a county court instead of before the Special Commissioners) shall, if not made in the notice of application be made by notice in writing to the inspector within thirty days thereafter.

(6) Subject to paragraphs (1) to (5) above, these Regulations, Part III of the Finance Act 1965, and any enactment directly or indirectly applied by the said Part III shall, so far as they are applicable and with any necessary modifications, apply in relation to proceedings under this Regulation as they apply in relation to an appeal against an assessment to capital gains tax.

References of questions of value to other tribunals

10.—(1) A question in an appeal which is required to be determined in accordance with section 44(6), (7) or (8) of the Finance Act 1965 (questions of the value of land or unquoted shares or securities) may be referred to the appropriate tribunal by the Commissioners before whom the appeal is brought or, if the hearing of the appeal has not begun, by the inspector.

(2) Commissioners to whom a question is referred in accordance with section 44(8) of the Finance Act 1965 shall hear and determine the proceedings in the same way as an appeal against an assessment, and section 12 of the Income Tax Management Act 1964 shall apply to the proceedings (but not so that subsection (4) thereof shall preclude the statement of a case under section 64 of the Income Tax Act 1952^(a) on the determination of the proceedings).

(3) Where any question in an appeal has been referred to another tribunal in accordance with section 44(6), (7) or (8) of the Finance Act 1965 the Commissioners before whom the appeal is brought may determine the remaining questions in the appeal and may at the request of any party (whether or not he declared his dissatisfaction immediately after that determination) state a case thereon under section 64 of the Income Tax Act 1952 without awaiting the determination of the question referred to the other tribunal.

Conclusive effect of a determination on appeal

11.—(1) Where the market value of an asset on a particular date or the apportionment of any amount or value (being a market value or apportionment affecting or which may affect the liability to capital gains tax of two or more persons) is finally determined on an appeal that determination shall, subject to Regulation 14, be in all proceedings relating to capital gains tax conclusive between the Board or any officer of the Board and the following persons—

- (a) parties to the appeal; and
- (b) any person who was entitled to apply to be joined as a third party in the appeal, and had notice, in reasonable time for making such application, of the appeal and of the question in the appeal entitling him so to apply, not being a person who did so apply without undue delay and whose application was not allowed.

(2) For the purposes of these Regulations—

- (a) the determination of an appeal or a question in an appeal shall be treated as final when the determination can no longer be varied by the tribunal making it or by the order of any court;

(b) the market value of an asset on a particular date or the apportionment of any amount or value shall be deemed to have been finally determined on an appeal notwithstanding that there was no dispute concerning that market value or apportionment if the market value or apportionment was a material question in the appeal and the appeal has been finally determined.

(3) The Commissioners shall, if required by any party to an appeal, record in their decision the market value of an asset on a particular date or the apportionment of an amount or value if that market value or apportionment was a material question in the appeal.

(4) The final determination on an appeal of the market value of an asset on a particular date or of the apportionment of any amount or value may be proved in any proceedings relating to capital gains tax by a certificate stating the material particulars signed by the inspector or by the clerk or registrar of the Commissioners or other tribunal who determined the appeal or determined the question in accordance with section 44(6), (7) or (8) of the Finance Act 1965 or in accordance with Regulation 10(3); and a document purporting to be such a certificate may be received in evidence in any such proceedings without further proof.

Agreements in writing of market value or apportionment

12.—(1) An agreement or notification which apart from this Regulation would have effect under section 510 of the Income Tax Act 1952 (settlement of appeals by agreement or withdrawal) as if an appeal had been determined by Commissioners shall not have that effect in relation to any appeal in which a third party has been joined unless, at the time when such agreement is made or notification is given, the question in which the third party is interested has been finally determined on the appeal or disposed of by an agreement made in accordance with paragraph (2) below.

(2) Where the market value of an asset on a particular date or the apportionment of any amount or value may affect the liability to capital gains tax of two or more persons and is a material question in an appeal, then if the market value or apportionment is agreed in writing between the inspector or any other officer of the Board and all the parties to the appeal whose liability may be affected by it the agreement shall in all proceedings relating to capital gains tax be conclusive between the Board or any officer of the Board and the following persons—

(a) parties to the agreement; and

(b) any person who was entitled, in respect of the question in the appeal to which the agreement relates, to apply to be joined as a third party in the appeal, and had notice of the appeal and of the question in the appeal not less than thirty days before the agreement was made, not being a person who did so apply before the agreement was made.

(3) A document purporting to be an agreement made in accordance with paragraph (2) above and produced from proper custody may be received in evidence in any proceedings relating to capital gains tax without further proof as such an agreement made by the persons by whom it purports to be signed.

Persons affected by a determination or agreement in writing

13.—(1) A determination or agreement which is by virtue of these Regulations conclusive against or in favour of any person shall to the same extent be conclusive against or in favour of his personal representatives and his trustee or assignee in bankruptcy or under a deed of arrangement.

(2) A determination or agreement relating to any settled property which is by virtue of these Regulations conclusive against or in favour of the trustees of the settlement shall to the same extent be conclusive against or in favour of any person becoming absolutely entitled to that property as against the trustees.

(3) A determination or agreement relating to an asset comprised in the estate of a deceased person, or in a testamentary disposition made by him, which is by virtue of these Regulations conclusive against or in favour of his personal representatives shall to the same extent be conclusive against or in favour of any person acquiring the asset as legatee.

(4) Where paragraph 20 of Schedule 7 to the Finance Act 1965 (disposals between husband and wife) or section 31(4) of that Act (disposals of certain works of art, etc.) applies in respect of the disposal of an asset, a determination or agreement relating to the asset which is by virtue of these Regulations conclusive against or in favour of the person making the disposal shall to the same extent be conclusive against or in favour of the person acquiring the asset.

Fraud or wilful default

14. A determination or agreement shall not by virtue of these Regulations be conclusive in favour of any person if it is shown that any form of fraud or wilful default committed by or on behalf of that person procured or contributed to procure the determination or agreement.

Interpretation of certain expressions

15. For the purposes of these Regulations—

(a) The market value of an asset or the apportionment of any amount or value is a material question in an appeal notwithstanding that there is no dispute thereon between the appellant and the inspector if the adoption of a different market value or of a different apportionment might produce a different determination on the appeal.

(b) A person shall not be treated as being at any date a person whose liability to capital gains tax may be affected by the market value of an asset or by the apportionment of any amount or value paid, payable or ascertained in connection with an asset unless—

(i) on or before that date, but since 6th April 1965, there has been (or is deemed to have been) a disposal or acquisition of the asset by him, or by personal representatives from whom he may acquire the asset as legatee, or by a company or trustees whose chargeable gains may to any extent be treated as having accrued to him under section 41 or 42 of the Finance Act 1965 (non-resident companies and trusts); and

(ii) he is at that date, or was during the year of assessment in which any such disposal or acquisition was made, resident or ordinarily resident in the United Kingdom or carrying on a trade in the United Kingdom:

Provided that section 10(3) of the Finance Act 1956(a) (determination of questions of ordinary residence) shall not apply to a question arising under this paragraph.

(c) Personal representatives or trustees who are for the purposes of Part III of the Finance Act 1965 treated as a single and continuing body of persons shall be treated as a single person distinct from the persons who may from time to time be the personal representatives or trustees, and if the same persons are personal representatives or trustees in respect of more than one

estate or settlement they shall be treated as a separate person in respect of each estate or settlement.

Notification of third parties

16. Where it appears to the inspector that a person is entitled to apply to be joined as a third party in an appeal the inspector may, and at that person's request shall, notify him of the appeal and disclose to him (so far as relevant to his interest in that appeal) the market value of any asset or the apportionment of any amount or value used in making the assessment or decision from which the appeal is brought.

Proceedings in Northern Ireland

17. Section 14(1) of the Income Tax Management Act 1964 (meaning of "General Commissioners" in relation to proceedings in Northern Ireland) shall apply to these Regulations as it applies to Part III of the Finance Act 1965.

Service by post

18. Any notice or other document to be given, served, sent or delivered under these Regulations may be served by post.

By Order of the Commissioners of Inland Revenue.

E. S. McNairn,
Secretary.

9th February 1967.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make certain provisions in relation to capital gains tax appeals which are not covered by the general statutory provisions on appeals. In particular, they lay down procedures under which a question of market value or apportionment which affects the liability of two or more persons (for example, a donor and donee, or vendor and purchaser in a transaction not at arm's length) can be settled.

Regulations 3 to 7, 10, 17 and 18 lay down time limits for making an appeal against a capital gains tax assessment and deal with the assignment of proceedings to the appropriate body of Commissioners or other tribunal and with certain other procedural points.

Regulation 8 allows persons whose liability to capital gains tax may be affected by the market value of an asset or the apportionment of any amount or value which is a material question in an appeal (the terms are defined in Regulation

15) to apply to be joined in the appeal; it specifies how the appeal is to be conducted if the application to be joined as a third party is accepted.

Regulation 9 provides that, where a market value or apportionment has not yet become a material question in an appeal, but may affect the liability of two or more persons, any such person may apply to the Commissioners to determine the market value or apportionment; it also lays down that proceedings under this Regulation are to be governed by the ordinary appeal provisions (including Regulation 8).

Regulation 11 provides that a market value or apportionment affecting the liability of two or more persons, once finally determined on appeal, is conclusive in all capital gains tax proceedings for parties to the appeal and for persons who had the opportunity of being joined as parties. Regulation 12 adapts the provisions of section 510 of the Income Tax Act 1952 to allow the conclusive settlement of a question in an appeal (affecting two or more persons) by an agreement in writing.

Regulations 13 to 16 deal respectively with certain other persons who may be bound by a determination or agreement; fraud and wilful default; the interpretation of certain expressions (and the position of a non-resident); and provisions allowing the inspector to give notice of appeal proceedings and to disclose the relevant market value or apportionment to persons who may be entitled to be joined as third parties.