



Finance Act 1974

1974 CHAPTER 30

PART III

CAPITAL GAINS FROM LAND

CHAPTER I

DEVELOPMENT GAINS FROM LAND

38 Certain development gains from land to be taxed as income

- (1) This section applies to any disposal of any interest in land situated in the United Kingdom which is made after 17th December 1973.
- (2) Where a gain accrues to a person on a disposal of an interest in land to which this section applies, so much (if any) of the gain as by virtue of this Chapter is a development gain shall be treated for all the purposes of the Tax Acts as income arising at the time of the disposal and as constituting profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the disposal is made, and (except for the purpose of computing the development gain, if any, accruing in respect of the disposal) shall not be a chargeable gain.
- (3) Where a chargeable gain accrues to a person on a disposal of an interest in land to which this section applies, then, subject to the provisions of this Chapter, the development gain accruing to him in respect of that disposal shall be equal to whichever is the least of the following amounts (computed in accordance with any relevant provisions of this Chapter), that is to say—
 - (a) the net proceeds of the disposal reduced by an amount equal to 120 per cent, of the total sum that is by virtue of paragraph 4(1)(a) and (b) of Schedule 6 to the Finance Act 1965 allowable as a deduction from the consideration for the disposal in computing the chargeable gain;
 - (b) the net proceeds of the disposal reduced by an amount equal to 110 per cent, of the current use value of the interest at the time of the disposal; and

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- (c) the amount of the chargeable gain reduced by the amount (if any) by which the current use value of the interest at the time of the disposal exceeds the current use value of the interest at the time of its acquisition by the person making the disposal or, if the interest was acquired by him before 6th April 1965, its current use value at that date.
- (4) Schedule 3 to this Act shall have effect for interpreting and supplementing this section, which is there referred to as the principal section.
- (5) This section shall have effect subject to the transitional provisions in Schedule 4 to this Act.

39 Exemption or relief for small disposals

- (1) If the aggregate amount or value of the net proceeds of all the disposals of interests in land to which section 38 of this Act applies made by a person in a chargeable period does not exceed—
 - (a) in the case of an individual or the personal representatives of a deceased person as such, £10,000 ; or
 - (b) in the case of a company or the trustees of a settlement, £1,000,
 no part of the gain accruing to that person on any of those disposals shall be a development gain.
- (2) If, in a case not falling within subsection (1) above, the aggregate amount or value of the net proceeds of all the disposals of interests in land to which section 38 of this Act applies made by a person in a chargeable period is less than—
 - (a) in the case of an individual or the personal representatives of a deceased person as such, £20,000 ; or
 - (b) in the case of a company or the trustees of a settlement, £2,000,
 then the total of the development gains accruing to that person in respect of those disposals shall be treated for the purposes of the Tax Acts as reduced to a fraction of their actual total, and that fraction shall be—
 - (i) in the case of an individual or the personal representatives of a deceased person as such, the fraction of which the numerator is the amount by which the aggregate amount or value of the said net proceeds exceeds £10,000 and the denominator is £10,000 ; or
 - (ii) in the case of a company or the trustees of a settlement, the fraction of which the numerator is the amount by which that aggregate amount or value exceeds £1,000 and the denominator is £1,000 ;
 and the total of the chargeable gains accruing to him on those disposals shall be treated as increased by the amount of that reduction.
- (3) For the purposes of this section disposals made by a man to his wife living with him or by her to him shall be disregarded, and all other disposals made by either shall be treated as made by one individual.
- (4) Where two or more persons carry on a trade or business in partnership, then, for the purposes of this section—
 - (a) notwithstanding section 45(7)(b) of the Finance Act 1965, the firm shall be treated as a single individual, and all disposals of partnership assets by the firm shall be treated as made by that individual;

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- (b) a change in the persons carrying on the trade or business shall be disregarded if, assuming an election under section 154(2) of the Taxes Act to have been duly made, the trade or business would not by virtue of section 154(1) of that Act be treated as discontinued by reason of the change ; and
 - (c) for any year of assessment in or in a part of which a company is a member of the partnership, subsections (1) and (2) above shall apply as if in paragraph (a) above for the words " a single individual" and " that individual" there were substituted respectively the words " a company " and " that company ".
- (5) Schedule 5 to this Act shall have effect for supplementing this section.

40 Development losses

- (1) This section applies to any disposal of any interest in land situated in the United Kingdom which is made after 17th December 1973.
- (2) Where in any chargeable period a loss accrues to a person on a disposal of an interest in land to which this section applies, he may, by notice in writing given within two years after the end of that period, make a claim for relief from tax by reference to the amount of any development loss accruing to him in respect of the disposal.
- (3) If, but only if, a claim under subsection (2) above is made in respect of a disposal to which this section applies, then, subject to the provisions of Schedule 6 to this Act—
- (a) so much (if any) of the loss accruing on the disposal as by virtue of this Chapter is a development loss shall be treated as a loss to which section 176 or, as the case may be, section 179 of the Taxes Act (Case VI losses), applies, and (except for the purpose of computing the the development loss, if any, accruing in respect of the disposal) shall not be an allowable loss within the meaning of Part III of the Finance Act 1965; and
 - (b) the said section 176 or 179 shall apply to any development loss accruing in respect of the disposal as if a claim under that section had been duly made with regard to it.
- (4) Where an allowable loss accrues to a person on a disposal of an interest in land to which this section applies and a claim under subsection (2) above is made in respect of that disposal, then, subject to the provisions of this Chapter, the development loss accruing to him in respect of that disposal shall be equal to the amount of the allowable loss reduced by the amount (if any) by which the current use value of the interest at the time of the disposal is less than the current use value of the interest at the time of its acquisition by the person making the disposal or, if the interest was acquired by him before 6th April 1965, its current use value at that date.
- (5) Schedule 6 to this Act shall have effect for supplementing this section.
- (6) Without prejudice to subsection (3) of section 41 or subsection (3) of section 42 of this Act, nothing in either of those sections shall be taken to extend the application of this section.

41 Disposals of interests in land effected indirectly

- (1) Where after 17th December 1973 a person disposes of shares in a company (" the said company ") and immediately before the disposal either—
- (a) the said company is or has control of a land-owning company, and is a close company in which he has a material interest; or

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- (b) the said company, or a company of which it has control, has a material interest in a land-owning company which is a close company, and the said company is one of which he has control or of which he and persons connected with him have control,

the disposal shall be deemed to be a disposal of an interest in land to which section 38 of this Act applies.

- (2) Where a chargeable gain accrues to a person on a disposal of shares in a company to which the preceding subsection applies, then, subject to the provisions of section 39 of this Act and this section, the development gain accruing to him in respect of the disposal shall be equal to that chargeable gain.
- (3) Where, apart from this subsection, a development gain would by virtue of the preceding provisions of this section accrue to a person in respect of a disposal of shares in a company, then—
 - (a) a development gain shall not accrue to him in respect of the disposal unless an excess of development gains over development losses would have accrued to the company, being a land-owning company, or to a landowning company mentioned in paragraph (a) or (b), as the case may be, of subsection (1) above, on the company disposing of its relevant land at market value at the time of his disposal and any such land-owning company disposing likewise of the relevant land of that company; and
 - (b) the development gain accruing to him in respect of the disposal shall not exceed one-half of the excess of the total development gains over the total development losses that would have accrued as mentioned in paragraph (a) above, or one-half of such part of that excess as is attributable to the shares disposed of by him.

If a claim under section 40(2) of this Act could have been made in respect of any disposal which is to be assumed for the purposes of this subsection, that claim shall for those purposes be assumed to have been made.

- (4) Where a person disposes of shares in a company (" the said company ") in circumstances such that subsection (1) above would apply to the disposal if the said company or, as the case may be, a land-owning company mentioned in paragraph (b) of that subsection had been a close company at the material time (that is to say, immediately before the disposal), then, if the said company or that land-owning company was not resident in the United Kingdom at that time but would have been a close company at that time if it had been so resident, this Chapter shall apply in relation to the disposal as if the said company or, as the case may be, the land-owning company had been resident in the United Kingdom at that time.
- (5) Where a person disposes of shares in a company (" the said company ") in a case falling within subsection (1)(a) above and at the material time (that is to say, immediately before the disposal) the said company had control of a land-owning company which, because it was not resident in the United Kingdom, was not a close company, then this Chapter shall apply in relation to the disposal as if that land-owning company had been resident in the United Kingdom at that time.
- (6) For the purposes of this section—
 - (a) " land-owning company " means a company that owns relevant land to a value exceeding three-quarters of the net value of all its assets (that is to say, their value less the value of the debts and liabilities of the company);

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- (b) subject to subsection (11) below, a person has a material interest in a company if under subsection (6) of section 285 of the Taxes Act he would have a material interest in it for the purposes of that section if in the said subsection (6) for " 5 per cent. ", in both places, there were substituted " 10 per cent. ";
- (c) an unauthorised unit trust which owns relevant land to a value exceeding three-quarters of the net value of all its assets (that is to say, their value less the value of the debts and liabilities of the unit trust) shall be treated as if it were both a land-owning company and a close company;
- (d) the part attributable to any shares in a company of the amount of an excess of total development gains over total development losses shall be the sum which that amount would add to the distributions made in respect of those shares in a winding-up of the company if the amount represented assets of the company, and if apart from that amount the assets of the company were enough, and no more than enough, to ensure the satisfaction of its liabilities (including the return of share capital), and the part of any such amount which is directly or indirectly attributable under this paragraph to shares held by a company shall (so far as is necessary for the determination of any question as to the tax chargeable in consequence of this section) be apportioned by the like method between the shares in that company to arrive at the part attributable to any of those shares.

In its application by virtue of section 45(8) of the Finance Act 1965 to an unauthorised unit trust, paragraph (d) above shall have effect with any necessary modifications.

- (7) For the purposes of this and the preceding subsection—
 - (a) " relevant land" (subject to subsections (8) to (10) below) means any interest in land situated in the United Kingdom, other than an interest held as a trading stock;
 - (b) the value of the relevant land of a company or unauthorised unit trust shall be taken to be its value free of any liability charged or secured thereon ;
 - (c) a company or unauthorised unit trust shall be treated as owning any interest in land which it has unconditionally contracted to acquire, but not as owning any interest in land which it has unconditionally contracted to dispose of ;
 - (d) " value ", in relation to the relevant land of a company or unauthorised unit trust, means market value;
 - (e) the net value of the assets of a company other than a unit trust scheme is the net value they would have on a sale in the open market of the business of the company as a going concern ; and
 - (f) an interest under a settlement shall be treated as an interest in land situated in the United Kingdom if a disposal thereof would fall within section 42(1) of this Act.
- (8) The interest of a company in any building or part of a building—
 - (a) which the company occupies and uses for the purposes only of a trade carried on by it (other than a trade of providing services for the occupier of land in which the company has an interest) ; or
 - (b) which, in a case where the company is a member of a group of companies, some other member of the group occupies and uses for the purposes only of a trade carried on by that other member (other than a trade of providing services for the occupier of land in which any member of the group has an interest),

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shall not be relevant land in relation to the company for the purposes of subsections (6) and (7) above, nor shall its interest in the site of any such building or part of a building (including in the site any land in the immediate vicinity of the building which the company or, as the case may be, that other member of the group occupies for purposes ancillary to its occupation and use of the building or part of a building).

- (9) If, in the case of a building or part of a building in which a company has an interest, it is established to the satisfaction of the inspector or, on appeal, of the Commissioners concerned that the company or, in a case where the company is a member of a group of companies, some other member of the group intends within three years of the relevant disposal of shares to occupy and use that building or part as mentioned in paragraph (a) or, as the case may be, paragraph (b) of the preceding subsection, that paragraph shall have effect as if the company were so occupying that building or part.

- (10) Subsections (8) and (9) above—

- (a) shall apply in relation to any permanent or semi-permanent structure in the nature of a building as they apply in relation to a building ; and
- (b) shall apply in relation to the discharge of the functions of a public authority, and to the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits, as they apply in relation to a trade;

and section 272 of the Taxes Act (groups of companies: definitions) shall apply for the purposes of those subsections as it applies for the purposes of sections 273 to 281 of that Act.

- (11) In the case of a close company (within the meaning of this Chapter) which for the purposes of the Corporation Tax Acts is not a close company because it falls within section 282(4) or 283 of the Taxes Act, subsection (6)(b) above shall, except in relation to an excepted person, have effect as if for "'10 per cent.'" there were substituted "' 20 per cent.' "

- (12) In the preceding subsection " excepted person", in relation to a company, means any of the following, namely—

- (a) any director or associate of a director of the company; or
- (b) any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate; or
- (c) any associated company of the company; or
- (d) the trustees of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

Expressions used in this subsection and in subsection (5) of section 283 of the Taxes Act have the same meaning in this subsection as in that.

- (13) A disposal of an interest in shares in a company which under paragraph 3 of Schedule 7 to the Finance Act 1965 (capital distributions by companies) a person is treated as having made in consideration of a capital distribution from the company in the form of an interest in land shall be disregarded for the purposes of this section if the distribution is made or due in respect of share capital in the course of a dissolution or winding-up of the company.

42 Disposals of interests in settled property

- (1) Where after 17th December 1973 a person disposes of an interest under a settlement which immediately before the disposal is a land settlement, the disposal shall be deemed to be a disposal of an interest in land to which section 38 of this Act applies.
- (2) Where a chargeable gain accrues to a person on a disposal of an interest under a settlement to which the preceding subsection applies, then, subject to the provisions of section 39 of this Act and this section, the development gain accruing to him in respect of the disposal shall be equal to that chargeable gain.
- (3) Where, apart from this subsection, a development gain would by virtue of the preceding provisions of this section accrue to a person in respect of a disposal of an interest under a settlement then—
 - (a) a development gain shall not accrue to him in respect of the disposal unless an excess of development gains over development losses would have accrued to the trustees of the settlement on their disposing of the relevant land comprised in the settled property at market value at the time of his disposal; and
 - (b) the development gain accruing to him in respect of the disposal shall not exceed the amount (if any) by which the market value of the interest at that time exceeds what its market value would then have been if the value of the relevant land then comprised in the settled property had been equal to the actual value of that relevant land at that time reduced by one-half of the excess of development gains over development losses that would have accrued as mentioned in paragraph (a) above.

If a claim under section 40(2) of this Act could have been made in respect of any disposal which is to be assumed for the purposes of this subsection, that claim shall for those purposes be assumed to have been made.

- (4) Where a gain accrues to a person on a disposal of an interest under a settlement which immediately before the disposal is a land settlement and—
 - (a) paragraph 13(1) of Schedule 7 to the Finance Act 1965 (exemption for gains accruing on disposals of interests under settlements) would, apart from this subsection, apply to that gain ; and
 - (b) immediately before the disposal it was the case that under the terms of the settlement the person making the disposal would or might become absolutely entitled to all or any part of the settled property as against the trustee,then the development gain accruing to him in respect of that disposal shall first be computed as if the said paragraph 13(1) did not so apply, and the said paragraph 13(1) shall then apply to so much, if any, of the gain as is not by virtue of this Chapter a development gain.
- (5) Where by virtue of paragraph 13(2) of Schedule 7 to the Finance Act 1965 a person who has acquired an interest in settled property is treated as disposing of the interest on the occasion of his becoming, as the holder of that interest, absolutely entitled to any settled property as against the trustee, then—
 - (a) subsection (4) above shall not apply in the case of that disposal if the trustee is chargeable to tax on that occasion by virtue of section 25(3) of the Finance Act 1965 (settled property); and
 - (b) where the preceding paragraph would apply if the trustee were resident and ordinarily resident in the United Kingdom, then, if any beneficiary under the settlement is by virtue of section 42 of the Finance Act 1965 (non-resident trusts) treated as if the whole or part of the relevant amount had

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been development gains accruing to that beneficiary, the development gain accruing to the first-mentioned person in respect of the said disposal shall not exceed the difference between what that development gain would be apart from this paragraph and the relevant fraction of what that development gain would be apart from this paragraph.

- (6) For the purposes of this and the preceding subsection—
- (a) " the relevant amount" means the amount on which the trustee of the settlement mentioned in that subsection would have been chargeable to income tax in respect of development gains by virtue of section 38(2) of this Act as mentioned in subsection (2) of the said section 42;
 - (b) " the relevant fraction " means the fraction of which the numerator is equal to so much of the relevant amount as is by virtue of subsection (2) of the said section 42 treated as development gains accruing to beneficiaries under the said settlement, and the denominator is the relevant amount; and
 - (c) references to the said section 42 are references to that section as it has effect in relation to development gains by virtue of paragraph 3 of Schedule 8 to this Act.
- (7) Where, in a case to which subsection (4) above applies, a person having an interest in settled property is charged to tax in respect of a development gain accruing to him by virtue of this section, then, for the purposes of the computation under Schedule 6 to the Finance Act 1965 of the gain accruing to the trustees of the settlement on a disposal of all or any part of the relevant land which was comprised in the settled property immediately before the disposal in respect of which that development gain accrued to him, paragraph 4(1)(a) of that Schedule (computation of chargeable gains: allowable expenditure) shall apply—
- (a) as if a sum equal to the amount of that development gain formed part of the consideration given by the trustees for the acquisition of the relevant land which was so comprised in the settled property; and
 - (b) if the relevant land which was so comprised in the settled property consisted of more than one interest in land, as if such proportion of that sum as is just and reasonable formed part of the consideration given by the trustees for the acquisition of each of those interests.
- (8) For the purposes of this section—
- (a) a settlement is a " land settlement" if the settled property comprises relevant land to a value exceeding three-quarters of the net value of all the settled property (that is to say, its value less the value of any debts or liabilities of the trustees in their capacity as such); and
 - (b) " value ", in relation to any settled property, means market value.
- (9) For the purposes of this and the preceding subsection—
- (a) " relevant land" (subject to subsection (10) below) means any interest in land situated in the United Kingdom, other than an interest held as trading stock;
 - (b) the value of the relevant land comprised in settled property shall be taken to be its value free of any liability charged or secured thereon ;
 - (c) the net value of the assets of any business comprised in settled property shall be taken to be the net value they would have on a sale in the open market of the business as a going concern ;
 - (d) the settled property comprised in a settlement shall be treated as including any interest in land which the trustees in their capacity as such have

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unconditionally contracted to acquire, but not as including any interest in land which the trustees in that capacity have unconditionally contracted to dispose of; and

- (e) shares in a company shall be treated as an interest in land situated in the United Kingdom if a disposal thereof would fall within section 41(1) of this Act.

- (10) Subsections (8) to (10) of section 41 of this Act, except paragraph (b) of subsection (8) and so much of subsection (9) as refers to, or relates to the case mentioned in, that paragraph, shall apply for the purposes of subsections (8) and (9) above as they apply for the purposes of subsections (6) and (7) of that section, subject to the modification that for references to a company there shall be substituted references to the trustees of settled property in their capacity as such.

43 Special rates of charge for development gains accruing to trustees, personal representatives or unit trust schemes

- (1) Income arising in a year of assessment by virtue of section 38(2) of this Act to trustees or to the personal representatives of a deceased person as such or to an unauthorised unit trust shall (unless chargeable to income tax under any of the following provisions of this section) be chargeable to income tax at a rate equal to the sum of the basic rate and the additional rate for that year.

In this subsection " the additional rate " means the additional rate mentioned in section 32(1) of the Finance Act 1971 or, if more than one, the higher or highest of them.

- (2) Where in any year of assessment a gain accrues to a unit trust scheme from a disposal of an interest in land to which section 38 of this Act applies and by virtue of section 38(2) of the Finance Act 1965 (unit trusts for exempt unit holders) one-tenth only of all the gains accruing to the scheme in that year are chargeable gains, then—
 - (a) all the gains so accruing shall for the purposes of this Chapter be treated as chargeable gains (but not so as to give rise to any increased liability to capital gains tax or corporation tax by reference to chargeable gains); and
 - (b) of all the income of the scheme which is attributable to development gains accruing to it in that year of assessment by virtue of the preceding paragraph, 90 per cent, shall be exempt from income tax or corporation tax, and the other 10 per cent, shall—
 - (i) if the scheme is an authorised unit trust, be chargeable to corporation tax as profits of the scheme arising in the accounting period in which the disposal occurred; or
 - (ii) if the scheme is an unauthorised unit trust, be chargeable to income tax at the rate applicable under subsection (1) above.

44 Supplementary

- (1) For the purposes of this Chapter—

" authorised unit trust " has the meaning given by section 358 of the Taxes Act, and " unauthorised unit trust " means a unit trust scheme which is not an authorised unit trust;

" chargeable period " means an accounting period of a company or a year of assessment;

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" close company ", except for the purposes of Schedule 7 to this Act, has the meaning given by subsections (1) to (3) (disregarding (1)(d)) of section 282 of the Taxes Act, and (except as aforesaid) the exceptions made by subsections (4) and (5) of that section and section 283 of that Act shall not apply ;

" interest in land " means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other's ability to grant the estate, interest or right in question, except that it does not include the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land, or, in Scotland, the interest of a creditor in a charge or security of any kind over land ;

" land " includes buildings ;

" securities " includes securities as defined in paragraph 5 of Schedule 7 to the Finance Act 1965, except that it does not include a security for a normal commercial loan as defined in paragraph 1 of Schedule 12 to the Finance Act 1973 ;

" shares " does not include fixed-rate preference shares as defined in paragraph 1 of Schedule 12 to the Finance Act 1973, but includes securities (as well as, by virtue of section 45(1) of the Finance Act 1965, stock) and, in relation to a company not limited by shares (whether or not it has a share capital), also includes the interest of a member of the company as such, whatever the form of that interest, and this Chapter shall apply in relation to any disposal of rights attached to or forming part of a share as if the rights included in the disposal and those not included were separate shares;

" unit trust scheme " means a unit trust scheme as defined in section 26(1) of the Prevention of Fraud (Investments) Act 1958 or, for Northern Ireland, in section 22(1) of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

- (2) In this Chapter references to the net proceeds of a disposal of an interest in land to which section 38 of this Act applies are (subject to Schedule 5 to this Act) references to the amount which, in the computation of the chargeable gain accruing on the disposal, falls to be taken as the consideration, less any sum allowable in that computation as a deduction on account of the incidental costs to the person making the disposal of making it.
- (3) Where a person disposing of an interest in land acquired it in circumstances such that, by virtue of any enactment, he and the person from whom he acquired it (" the previous disposer ") fall to be treated as if the acquisition were for a consideration of such amount as would secure that on the disposal under which he acquired it neither a gain nor a loss would accrue to the previous disposer, any reference in this Chapter to the acquisition of the interest by the person making the disposal shall be construed as a reference to its acquisition by the previous disposer, or, if the previous disposer himself acquired it in such circumstances as aforesaid, as a reference to its acquisition by the person from whom the previous disposer acquired it (and likewise for any number of previous acquisitions of the interest each made in the like circumstances).
- (4) Schedule 7 to this Act shall have effect with respect to the treatment of development gains under the Tax Acts ; and the enactments relating to the taxation of capital gains shall have effect subject to the provisions of Schedule 8 to this Act (being provisions for adapting or amending those enactments in connection with this Chapter).

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(5) This Chapter shall be deemed to have come into force on 18th December 1973.