



Finance Act 1974

1974 CHAPTER 30

PART III

^{F1} CAPITAL GAINS FROM LAND

CHAPTER I

^{F1} DEVELOPMENT GAINS FROM LAND

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*
- (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 land-owning company*

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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);*
- (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 . . . ^{F1} 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*

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between the shares in that company to arrive at the part attributable to any of those shares.

In its application by virtue of [F²section 93 of the Capital Gains Tax Act 1979 F²] 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),*
- 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*

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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 [F³section 72 of the Capital Gains Tax Act 1979 F³] (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.*

Textual Amendments

- F1** Words repealed by Finance Act 1980 (c. 48), s. 122, Sch.20 Part VIII with effect for accounting periods ending after 26 March 1980.
- F2** Capital Gains Tax Act 1979 (c. 14, SIF 63:1), s. 157(2) and Sch. 7 para. 9 for 1979-80 et seq.
- F3** Capital Gains Tax Act 1979 (c. 14, SIF 63:1), s. 157(2) and Sch. 7 para. 9 for 1979-80 et seq.

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