



Finance Act 1978

1978 CHAPTER 42

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

CAPITAL GAINS

44 Relief for gains less than £9,500

- (1) An individual shall not be chargeable to capital gains tax for a year of assessment if his taxable amount for that year does not exceed £1,000.
- (2) If an individual's taxable amount for a year of assessment exceeds £1,000 but does not exceed £5,000, the amount of capital gains tax to which he is chargeable for that year shall be 15 per cent. of the excess over £1,000.
- (3) If an individual's taxable amount for a year of assessment exceeds £5,000, the amount of capital gains tax to which he is chargeable for that year shall not exceed £600 plus one-half of the excess over £5,000.
- (4) For the purposes of this section an individual's taxable amount for a year of assessment is the amount on which he is chargeable under section 20(4) of the Finance Act 1965 for that year but—
 - (a) where the amount of chargeable gains less allowable losses accruing to an individual in any year of assessment does not exceed £1,000, no deduction from that amount shall be made for that year in respect of allowable losses carried forward from a previous year or carried back from a subsequent year in which the individual dies; and
 - (b) where the amount of chargeable gains less allowable losses accruing to an individual in any year of assessment exceeds £1,000, the deduction from that amount for that year in respect of allowable losses carried forward from a

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previous year or carried back from a subsequent year in which the individual dies shall not be greater than the excess.

- (5) Where in a year of assessment—
- (a) the amount of chargeable gains accruing to an individual does not exceed £1,000; and
 - (b) the aggregate amount or value of the consideration for all the disposals of assets made by him (other than disposals gains accruing on which are not chargeable gains) does not exceed £5,000,
- a statement to the effect of paragraphs (a) and (b) above shall, unless the inspector otherwise requires, be sufficient compliance with any notice under section 8 of the Taxes Management Act 1970 requiring the individual to make a return of the chargeable gains accruing to him in that year.
- (6) Schedule 7 to this Act shall have effect as respects the application of this section to husbands and wives, personal representatives and trustees.
- (7) The following provisions, namely—
- (a) section 21 of the said Act of 1965 (alternative charge to tax); and
 - (b) section 57 of the Finance Act 1971 (exemption for small disposals),
- shall cease to have effect.
- (8) For the percentages specified in—
- (a) section 112(3)(b) and (c) of the Finance Act 1972 (unit trusts: reduction of tax liability); and
 - (b) section 113 of that Act (unit trusts; reduced rate of tax),
- there shall be substituted " 10 per cent. "
- (9) Subsections (1) to (6), (7)(b) and (8)(b) above apply for the year 1977-78 and subsequent years of assessment, subsection (7)(a) above applies for the year 1978-79 and subsequent years of assessment and subsection (8)(a) above applies to gains accruing on disposals after 5th April 1979.

45 Chattel exemption

- (1) In subsections (1), (3) and (5)(b) and (c) of section 30 of the Finance Act 1965 (chattels sold for £1,000 or less) for the words " one thousand pounds" there shall be substituted " £2,000 ".
- (2) For subsection (2) of that section there shall be substituted—
- “(2) Where the amount or value of the consideration for the disposal of an asset which is tangible movable property exceeds £2,000, there shall be excluded from any chargeable gain accruing on the disposal so much of it as exceeds five-thirds of the difference between—
- (a) the amount or value of the consideration; and
 - (b) £2,000.”
- (3) In subsection (4) of that section for the word " tax " there shall be substituted the words " chargeable gains ".
- (4) In subsection (5)(b) of that section for the words " the limitation on the amount of tax in subsection (2) of this section shall be to half the difference " there shall be substituted

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the words " the part of any chargeable gain that is excluded from it under subsection (2) of this section shall be so much of the gain as exceeds five-thirds of the difference ".

- (5) In sections 12(2)(b) and 25(7) of the Taxes Management Act 1970 (information about chargeable gains) for " £1,000 " there shall be substituted " £2,000 ".
- (6) This section applies for the year 1978-79 and subsequent years of assessment; and subsections (2) to (4) above apply also for the year 1977-78 but as if for any reference in the substituted subsection (2) to £2,000 there were substituted a reference to £1,000.

46 Relief for gifts of business assets

- (1) If, after 11th April 1978, an individual (in this section referred to as "the transferor") makes a disposal, otherwise than under a bargain at arm's length, to a person resident or ordinarily resident in the United Kingdom (in this section referred to as " the transferee ") of—

- (a) an asset which is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by the transferor or by a company which is his family company, or
- (b) shares or securities of a trading company which is the transferor's family company,

then, subject to subsection (2) below, the provisions of subsection (3) below shall apply in relation to the disposal if a claim for relief under this section is made by the transferor and the transferee.

- (2) Subsection (3) below does not apply in relation to a disposal if,—
- (a) in the case of a disposal of an asset, any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under section 34 of the Finance Act 1965 (transfer of business on retirement); or
- (b) in the case of a disposal of shares or securities, the proportion determined under subsection (3)(b) of that section of any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under that section.

- (3) Where a claim for relief is made under this section in respect of a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
- (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,
- shall each be reduced by an amount equal to the held-over gain on the disposal.

- (4) Part I of Schedule 8 to this Act shall have effect for extending the relief provided for by virtue of subsections (1) to (3) above in the case of agricultural property and for applying it in relation to settled property, and, in consequence of the provisions of this section and of that Part, section 55 of the Finance (No. 2) Act 1975 (relief from tax on chargeable gains in respect of agricultural property, etc.) shall not apply in relation to a disposal of an asset after 11th April 1978.

- (5) Subject to Part II of Schedule 8 to this Act (which provides for reductions in the held-over gain in certain cases) and subsection (6) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (3) above and (in

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appropriate cases) section 34 of the Finance Act 1965, and in subsection (6) below that chargeable gain is referred to as the unrelieved gain on the disposal.

- (6) In any case where—
- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of section 22(4) of the Finance Act 1965) for a disposal in respect of which a claim for relief is made under this section, and
 - (b) that actual consideration exceeds the sums allowable as a deduction under paragraph 4 of Schedule 6 to that Act,
- the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.
- (7) Subject to subsection (8) below, in this section and Schedule 8 to this Act—
- (a) " family company " and " trading company " have the same meaning as in section 34 of the Finance Act 1965 ; and
 - (b) " trade ", " profession " and " vocation " have the same meaning as in the Income Tax Acts.
- (8) In this section and Schedule 8 to this Act and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression " trade " shall be taken to include 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.

47 Replacement of business assets

- (1) For subsection (9) of section 33 of the Finance Act 1965 (replacement of business assets: relief where person carries on two trades) there shall be substituted the following subsection—
- “(9) This section shall apply in relation to a person who, either successively or at the same time, carries on two or more trades as if both or all of them were a single trade.”
- (2) After the said subsection (9) there shall be inserted the following subsection—
- “(9A) In relation to a case where—
- (a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and
 - (b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his family company, within the meaning of section 34 below,
- any reference in the preceding provisions of this section to the person carrying on the trade (or the two or more trades) includes a reference to that individual.”
- (3) This section applies where the acquisition of, or of the interest in, the new assets takes place after 11th April 1978.

48 Transfer of business on retirement

- (1) For subsection (1) of section 34 of the Finance Act 1965 (relief for capital gains tax purposes on gains accruing on the transfer of a business on retirement) there shall be substituted the following subsections—

“(1) If an individual who has attained the age of 60 years—

- (a) disposes by way of sale or gift of the whole or part of a business, or
- (b) disposes by way of sale or gift of shares or securities of a company,

and throughout a period of at least one year ending with the disposal the relevant conditions have been fulfilled, relief shall be given under this section in respect of gains accruing to him on the disposal.

- (1A) For the purposes of subsection (1) above the relevant conditions are fulfilled at any time if at that time,—

- (a) in the case of a disposal falling within paragraph (a) of that subsection, the business in question is owned either by the individual or by a company with respect to which the following conditions are at that time fulfilled, namely,—
 - (i) it is a trading company ;
 - (ii) it is the individual's family company ; and
 - (iii) he is a full-time working director of it; and
- (b) in the case of a disposal falling within paragraph (b) of that subsection, either the conditions in sub-paragraphs (i) to (iii) of paragraph (a) above are fulfilled with respect to the company in question or the individual owns the business which, at the time of the disposal, is owned by the company;

and in relation to a particular disposal the period, up to a maximum of 10 years, which ends with the disposal and throughout which the relevant conditions are fulfilled is in this section referred to as ' the qualifying period'.

- (1B) The amount available for relief under this section shall be—

- (a) in the case of an individual who has attained the age of 65 years, the relevant percentage of £50,000; and
- (b) in the case of an individual who has not attained that age, the relevant percentage of the aggregate of £10,000 for every year by which his age exceeds 60 and a corresponding part of £10,000 for any odd part of a year ;

and for the purpose of this subsection ' the relevant percentage ' means a percentage determined according to the length of the qualifying period on a scale rising arithmetically from 10 per cent. where that period is precisely one year to 100 per cent. where it is ten years.”

- (2) Subsection (3) of that section (which relates to relief in the case of a transfer of shares or securities in a family trading company) shall be amended as follows:—

- (a) in paragraph (b) (which, on a disposal of shares or securities, specifies the proportion of the gains by reference to which relief is allowed) for the words " the value of the company's assets (including cash)" there shall be substituted the words " the value of the company's chargeable assets "; and
- (b) at the end of the subsection there shall be added the words " and for the purposes of paragraph (b) above every asset is a chargeable asset except one,

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on the disposal of which by the company at the time of the disposal of the shares or securities, no chargeable gain would accrue " .

- (3) In subsection (4) of that section (application of relief) for the words " subsection (1) above " there shall be substituted the words " this section " and the words " within that subsection " shall be omitted.
- (4) In subsection (6) of that section, in paragraph (b) of the definition of " family company " for the words " seventy-five per cent. " there shall be substituted the words " fifty-one per cent. " and for the words " ten per cent." there shall be substituted the words " five per cent. " .
- (5) This section applies with respect to any disposal which takes place after 11th April 1978.

49 Relief in respect of loans to traders

- (1) In this section " a qualifying loan " means a loan in the case of which—
 - (a) the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money; and
 - (b) the borrower is resident in the United Kingdom; and
 - (c) the borrower's debt is not a debt on a security as defined in paragraph 5 of Schedule 7 to the Finance Act 1965;

and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.

- (2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.
- (3) If, on a claim by a person who has made a qualifying loan, the inspector is satisfied that—
 - (a) any outstanding amount of the principal of the loan has become irrecoverable; and
 - (b) the claimant has not assigned his right to recover that amount; and
 - (c) the claimant and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time,

Part III of the said Act of 1965 shall have effect as if an allowable loss equal to that amount had accrued to the claimant when the claim was made.

- (4) If, on a claim by a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan, the inspector is satisfied that—
 - (a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower; and
 - (b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount; and
 - (c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment; and

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- (d) the lender and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time and the claimant and the borrower were not each other's spouses, and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,
- the said Part III shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.
- (5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, the said Part III shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.
- (6) For the purposes of subsection (5) above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money's worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm's length he shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.
- (7) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.
- (8) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—
- (a) no chargeable gain shall accrue to him otherwise than under subsection (5) above; and
- (b) no allowable loss shall accrue to him under the said Part III,
- on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.
- (9) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.
- (10) In this section " spouses " means spouses who are living together (construed in accordance with section 45(3) of the said Act of 1965), "trading company" has the meaning given by paragraph 11 of Schedule 16 to the Finance Act 1972 and " group " shall be construed in accordance with section 272 of the Taxes Act.
- (11) Subsection (3) above applies where the loan is made after 11th April 1978 and subsection (4) above applies where the guarantee is given after that date.

50 Relief for private residences

- (1) In section 29 of the Finance Act 1965 (relief for private residences) after subsection (4) there shall be inserted—

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“(4A) If at any time during an individual's period of ownership of a dwelling-house or part of a dwelling-house he—

- (a) resides in living accommodation which is for him job-related within the meaning of paragraph 4A of Schedule 1 to the Finance Act 1974 ; and
- (b) intends in due course to occupy the dwelling house or part of a dwelling-house as his only or main residence,

this section shall apply as if the dwelling-house or part of a dwelling-house were at that time occupied by him as a residence.”

- (2) The new subsection (4A) set out above applies where the time referred to in that subsection is after the passing of this Act.

51 Part disposals of land

- (1) In paragraph 10(3)(a) and (b) of Schedule 19 to the Finance Act 1969 (roll-over relief for gain or part disposal of land where consideration does not exceed £2,500) for " £2,500 " there shall be substituted " £10,000 ".

- (2) This section applies with respect to any disposal after 5th April 1978.

52 Alteration of dispositions taking effect on death

- (1) For section 24(11) of the Finance Act 1965 (deeds of family arrangement, etc.) there shall be substituted—

“(11) Subject to subsections (12) and (13) of this section, where within the period of two years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions—

- (a) the variation or disclaimer shall not constitute a disposal for the purposes of this Part of this Act; and
- (b) this section shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.

- (12) Subsection (11) of this section does not apply to a variation unless the person or persons making the instrument so elect by written notice given to the Board within six months after the date of the instrument or such longer time as the Board may allow.

- (13) Subsection (11) of this section does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.

- (14) Subsection (11) of this section applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.”

- (2) This section applies in relation to any variation or disclaimer made after the passing of this Act.