



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### [<sup>F1</sup>PART 1

#### CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

### [<sup>F1</sup>CHAPTER 3

#### ATTRIBUTION OF GAINS OF NON-UK RESIDENT CLOSE COMPANIES

##### Textual Amendments

- F1** Pt. 1 substituted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), [Sch. 1 para. 2](#)

#### *Gains of non-UK resident companies not otherwise chargeable*

### 3 Gains attributed to UK resident individuals etc

- (1) This section applies if—
- a chargeable gain accrues at any time to a non-UK resident close company,
  - the gain is connected to avoidance (see section 3A),
  - the gain is not connected to a foreign trade or other economically significant foreign activities (see section 3A), and
  - apart from this section, some or all of the gain would not be chargeable to corporation tax on the company.
- (2) So much of the gain as would not otherwise be so chargeable is apportioned among participators, or indirect participators, in the company—
- who are resident in the United Kingdom at that time, or
  - who are trustees of a settlement and are not resident in the United Kingdom at that time.

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- (3) The proportion of the amount of the gain to be apportioned to each person corresponds to the extent of the person's interest in the company as a participator or indirect participator.
- (4) The amount apportioned to each person is treated as a chargeable gain accruing to the person.
- (5) No apportionment of any part of a gain is made to an individual if—
  - (a) the gain accrues in a tax year which, as respects the individual, is a split year, and
  - (b) the gain accrues in the overseas part of the year.
- (6) No apportionment of any part of a gain is made to a person if the total amount that would, apart from this subsection, be apportioned to—
  - (a) the person, and
  - (b) persons connected to the person,
 is 25% or less of the amount of the gain falling to be apportioned.
- (7) A person (“P”) is an “indirect participator” in a company (“A”) if—
  - (a) another company (“B”) which is a non-UK resident close company is a participator in A, and
  - (b) P is a participator in B or P is a participator in a third non-UK resident close company which is participator in B,
 and so on through any number of non-UK resident close companies that are participators in other non-UK resident close companies.
- (8) P's interest as an indirect participator in A in the case of any gain is determined by—
  - (a) apportioning the gain among the participators in A according to the extent of their respective interests as participators, and
  - (b) then further apportioning the gain apportioned to B among the participators in B according to the extent of their respective interests as participators, and so on through other companies.
- (9) So far as it would go to reduce or extinguish chargeable gains accruing, as a result of this section, to a person in a chargeable period, this section applies to a loss accruing to the company on the disposal of an asset in that period as it would apply if there had been a gain.
- (10) But—
  - (a) this only applies in relation to that person, and
  - (b) this section does not otherwise apply in relation to losses accruing to the company.
- (11) In this section “a non-UK resident close company” means a company—
  - (a) which is not resident in the United Kingdom, and
  - (b) which would be a close company if it were resident in the United Kingdom.

### **3A Gains connected to avoidance or foreign activities etc**

- (1) A gain accruing to a company on the disposal of an asset is taken to be “connected to avoidance” unless it is shown that neither—
  - (a) the disposal of the asset by the company, nor

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- (b) the acquisition or holding of the asset by the company, formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax.
- (2) A gain is “connected to a foreign trade” if it accrues on the disposal of an asset used only—
  - (a) for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (b) for the purposes of the foreign part of a trade carried on by the company partly within, and partly outside, the United Kingdom,and the reference here to the foreign part of a trade is to the part of the trade carried on outside the United Kingdom.
- (3) For this purpose an asset is to be regarded as used only for the purposes of a trade carried on by the company wholly outside the United Kingdom if—
  - (a) the asset is accommodation, or an interest or right in accommodation, situated outside the United Kingdom, and
  - (b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.
- (4) Each of the following is a “relevant period”—
  - (a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or
  - (b) if the company has beneficially owned the accommodation (or interest or right) for more than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company had that beneficial ownership.
- (5) The reference in this section to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but as if—
  - (a) sections 266, 268 and 268A were omitted, and
  - (b) the reference to an accounting period in section 267(1) were to a relevant period.
- (6) A gain accruing on the disposal of an asset is “connected to other economically significant foreign activities” if—
  - (a) the asset is used only for the purposes of activities carried on by the company wholly or mainly outside the United Kingdom,
  - (b) the activities consist of the provision of goods or services on a commercial basis, and
  - (c) the activities also satisfy the staff, premises and economic value test.
- (7) Activities satisfy the staff, premises and economic value test if they involve—
  - (a) the use of employees, agents or contractors of the company in numbers, and with competence and authority, commensurate with the size and nature of the activities,
  - (b) the use of premises and equipment commensurate with the size and nature of the activities, and
  - (c) the addition of economic value by the company to the persons to whom the goods or services are provided commensurate with the size and nature of the activities.

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(8) This section applies for the purposes of section 3(1)(b) and (c).

### **3B Participators and their interests**

- (1) “Participator” has the meaning given by section 454 of CTA 2010.
- (2) Any reference to a person's interest as a participator in a company is to the interest in it represented by all the factors by reference to which the person is a participator.
- (3) Any reference to the extent of a person's interest as a participator in a company is to such proportion of the interests as participators of all of the company's participators as, on a just and reasonable basis, is represented by that interest.
- (4) If—
  - (a) the interest of a person in a company is wholly or partly represented by an interest under a settlement (“the beneficial interest”), and
  - (b) the beneficial interest is the factor (or one of them) by reference to which the person would, apart from this subsection, have an interest as a participator in the company,
 that interest as a participator is, so far as represented by the beneficial interest, to be treated instead as the interest of the trustees of the settlement.
- (5) If—
  - (a) exempt assets of a pension scheme are taken into account in ascertaining a person's interest as a participator in a company, and
  - (b) if those assets were ignored, an amount in respect of a gain accruing to the company would not be apportioned to the person as a result of section 3,
 no amount in the respect of the gain is to be apportioned to the person as a result of that section.
- (6) For this purpose—
  - (a) “assets of a pension scheme” means assets held for the purposes of a fund or scheme to which section 271(1)(c) or (1A) applies, and
  - (b) those assets are “exempt” if, at the time when the gain accrues, a disposal of those assets would be exempt from tax as a result of either of those provisions.
- (7) This section applies for the purposes of section 3.

#### *Prevention of multiple charges*

### **3C Prevention of double UK taxation**

- (1) If—
  - (a) an amount of tax is paid by a person as a result of section 3 in respect of a gain, and
  - (b) there is a distribution of an amount in respect of the gain before the end of the relevant period,
 the amount of tax is applied so as to reduce or extinguish any liability of the person to tax in respect of the distribution.
- (2) For the purposes of subsection (1)—

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- (a) the distribution is one made by way of dividend or distribution of capital or on the dissolution of the company,
  - (b) the tax in respect of the distribution is income tax, corporation tax or capital gains tax, and
  - (c) in determining the liability to tax of any individual in respect of any distribution for a tax year it is to be assumed that the distribution is the highest part of the individual's income for the year.
- (3) For the purposes of subsection (1) “the relevant period” means the period of 3 years from the end of whichever of the following periods is earlier—
  - (a) the period of account of the company in which the gain accrued, and
  - (b) the period of 12 months beginning with the date on which the gain accrued.
- (4) The amount of tax paid by a person as a result of section 3 is allowable as a deduction in calculating a chargeable gain accruing on the disposal by the person of any asset representing the person's interest as a participator in the company.
- (5) An amount of tax—
  - (a) is not to be used more than once under this section (whether to reduce or extinguish a liability or as a deduction or a combination of those things), and
  - (b) is not to be applied if it is reimbursed by the company.

*Non-UK domiciled individuals and temporary non-residents*

**3D Non-UK domiciled individuals**

- (1) This section applies if, as a result of section 3, an amount in respect of a gain accruing to a company in a tax year is apportioned to an individual who is not domiciled in the United Kingdom in that year.
- (2) The apportioned amount is regarded for the purposes of paragraph 1 of Schedule 1 as accruing on a disposal of a foreign asset if the asset disposed of by the company is a foreign asset (but not otherwise).
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
  - (a) treat any consideration obtained by the company on the disposal of the asset as deriving from the apportioned amount, and
  - (b) if that consideration is less than the market value of the asset, treat the asset as deriving from the apportioned amount.
- (4) The apportioned amount may not be reduced or extinguished by a loss under section 3 if—
  - (a) the apportioned amount is regarded for the purposes of paragraph 1 of Schedule 1 as accruing on a disposal of a foreign asset,
  - (b) the remittance basis applies to the individual for the tax year in question, and
  - (c) any of the apportioned amount is remitted to the United Kingdom in a subsequent tax year.
- (5) Paragraph 5 of Schedule 1 applies for the purposes of this section as it applies for the purposes of that Schedule.

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### **3E Temporary non-residents**

- (1) This section applies if—
  - (a) an individual is temporarily non-resident, and
  - (b) a gain or loss accrues to a company in a tax year falling wholly or partly in the temporary period of non-residence.
- (2) So much of the gain as would, as a result of section 3, have been treated as accruing to the individual in the tax year if the residence assumption were made is to be treated as accruing to the individual in the period of return.
- (3) But if—
  - (a) the remittance basis applies to the individual for the tax year that comprises or includes the period of return, and
  - (b) any part of the gain has not been remitted to the United Kingdom before the period of the return,
 subsection (2) has effect subject to the further application of Schedule 1 (as read with section 3D) in relation to that part of the gain.
- (4) Paragraph 5 of Schedule 1 applies for the purposes of subsection (3) as it applies for the purposes of that Schedule.
- (5) So much of the loss accruing in the tax year as would, in accordance with section 3(9), have reduced or extinguished a gain treated as accruing to the individual in that year as a result of section 3 if the residence assumption were made is to be treated as accruing to the individual in the period of return.
- (6) For the purposes of this section the “residence assumption” is—
  - (a) that the individual was resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, and
  - (b) that the tax year was not a split year as respects the individual.
- (7) Nothing in any double taxation arrangements prevents a charge to capital gains tax arising as a result of this section.
- (8) For the purposes of this section each of the following expressions has the meaning given by Part 4 of Schedule 45 to the Finance Act 2013 (statutory residence test: anti-avoidance)—
  - “the period of return”
  - “temporarily non-resident”
  - “the temporary period of non-residence”.

#### *Application to groups*

### **3F Non-resident groups of companies**

- (1) This section applies, for the purposes of section 3, certain provisions of this Act (modified as mentioned below) in relation to non-resident companies which are members of a non-resident group of companies.
- (2) The applied provisions are—
  - (a) section 41(8),
  - (b) section 171 but as if subsections (1)(b) and (1A) were omitted,

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- (c) section 173 but as if “to which this section applies” in subsections (1)(a) and (2)(a) were omitted, as if “such” in subsections (1)(c) and (2)(c) were omitted and as if subsection (3) were omitted,
  - (d) section 174(4) but as if “at a time when both were members of the group” were substituted for “ in a transfer to which section 171(1) applied ”,
  - (e) section 175(1) but as if “to which this section applies” were omitted, and
  - (f) section 179 but as if subsections (1)(b) and (1A) were omitted, as if for any reference to a group of companies there were substituted a reference to a non-resident group of companies and as if for any reference to a company there were substituted a reference to a non-resident company.
- (3) In this section—

“non-resident company” means a company which is not resident in the United Kingdom,

“non-resident group of companies”—

- (a) in the case of a group none of whose members are resident in the United Kingdom, means that group, and
- (b) in the case of a group some of whose members are not resident in the United Kingdom, means the members which are not resident in the United Kingdom, and

“group” is to be read in accordance with section 170.

### *Supplementary*

## **3G Supplementary provisions**

- (1) If tax payable by a person (“P”) as a result of section 3 is paid by—
  - (a) the company (“C”) to which the gain accrues, or
  - (b) a company by reference to which P is regarded as an indirect participator in C, the amount paid is not a payment to P for tax purposes.
- (2) The reference here to tax purposes is to the purposes of income tax, capital gains tax or corporation tax.
- (3) For the purposes of section 3 the amount of a gain or loss accruing to a company is calculated as if the company were a company resident in the United Kingdom chargeable to corporation tax on the gain.]

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [1997 c. 16 Sch. 12 para. 12\(7\)](#)[1314](#)
- Act applied by [2002 c. 23 Sch. 16 para. 48\(1\)\(2\)](#)
- Act construed as one with reg. 37 by [S.I. 2006/575 reg. 37\(2\)](#)
- Act construed as one with reg. 38 by [S.I. 2006/575 reg. 38\(3\)](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 4(10)(11) inserted by [2016 c. 11 s. 15\(4\)](#)
- s. 4(10) words inserted by [2016 c. 24 s. 83\(11\)](#)
- s. 35(3)(d)(xviii) added by [2008 c. 17 Sch. 7 para. 9](#)
- s. 35(3)(d)(xviii) inserted by [2008 c. 18 Sch. 13 para. 46](#)
- s. 35(3)(d)(xviii) repealed by [S.I. 2008/3002 Sch. 1 para. 42](#)[Sch. 3](#) (This amendment comes into force on the day 2008 c. 4, s. 5 comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by [S.I. 2008/3068](#), art. 2(1)(b))
- s. 104(4)(b)(i) words substituted by [S.I. 1989/469](#), reg. 27(2) (as amended) by [S.I. 1997/1716 reg. 13\(1\)\(b\)](#)
- s. 107(11) words substituted by [S.I. 1989/469](#), reg. 27(2A) (as amended) by [S.I. 1997/1716 reg. 13\(2\)\(b\)](#)
- s. 169S(4A) inserted by [2015 c. 11 s. 43\(2\)](#)
- s. 587B inserted by [2000 c. 17 s. 43\(1\)](#)
- Sch. 5C para. 3(1) modified by [S.I. 2004/2199 reg. 7\(1\)](#)
- Sch. 5C para. 3(6) modified by [S.I. 2004/2199 reg. 7\(2\)](#)
- Sch. 5C para. 5(1) modified by [S.I. 2004/2199 reg. 7\(3\)](#)
- Sch. 5C para. 3 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 5 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 6 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 3(1)(f) words substituted by [2007 c. 3 Sch. 1 para. 347](#)