Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART I

CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

General

1 The charge to tax

(1) Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets.

(2) Companies shall be chargeable to corporation tax in respect of chargeable gains accruing to them in accordance with section 6 of the Taxes Act and the other provisions of the Corporation Tax Acts.

(3) Without prejudice to subsection (2), capital gains tax shall be charged for all years of assessment in accordance with the following provisions of this Act.

Capital gains tax

2 Persons and gains chargeable to capital gains tax, and allowable losses

(1) Subject to any exceptions provided by this Act, and without prejudice to sections 10 and 276, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment during any part of which he is resident in the United Kingdom, or during which he is ordinarily resident in the United Kingdom.

(2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting—

(a) any allowable losses accruing to that person in that year of assessment, and

(b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing

to that person in any previous year of assessment (not earlier than the year 1965-66).

(3) Except as provided by section 62, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains accruing in any earlier year of assessment, and relief shall not be given under this Act more than once in respect of any loss or part of a loss, and shall not be given under this Act if and so far as relief has been or may be given in respect of it under the Income Tax Acts.

3 Annual exempt amount

(1) An individual shall not be chargeable to capital gains tax in respect of so much of his taxable amount for any year of assessment as does not exceed the exempt amount for the year.

(2) Subject to subsection (3) below, the exempt amount for any year of assessment shall be £5,500.

(3) If the retail prices index for the month of December preceding a year of assessment is higher than it was for the previous December, then, unless Parliament otherwise determines, subsection (2) above shall have effect for that year as if for the amount specified in that subsection as it applied for the previous year (whether by virtue of this subsection or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index and, if the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple.

(4) The Treasury shall, before each year of assessment, make an order specifying the amount which by virtue of this section is the exempt amount for that year.

(5) 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 2(2) 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 the exempt amount for the year, 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 the exempt amount for the year, the deduction from that amount 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 shall not be greater than the excess.

(6) Where in a year of assessment—

(a) the amount of chargeable gains accruing to an individual does not exceed the exempt amount for the year, 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 an amount equal to twice the exempt amount for the year,

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 Management Act requiring the individual to make a return of the chargeable gains accruing to him in that year.

(7) For the year of assessment in which an individual dies and for the next 2 following years, subsections (1) to (6) above shall apply to his personal representatives as they apply to an individual.

(8) Schedule 1 shall have effect as respects the application of this section to trustees.

4 Rates of capital gains tax

(1) Subject to the provisions of this section and section 5, the rate of capital gains tax in respect of gains accruing to a person in a year of assessment shall be equivalent to the basic rate of income tax for the year.

(2) If income tax is chargeable at the higher rate in respect of any part of the income of an individual for a year of assessment, the rate of capital gains tax in respect of gains accruing to him in the year shall be equivalent to the higher rate.

(3) If no income tax is chargeable at the higher rate in respect of the income of an individual for a year of assessment, but the amount on which he is chargeable to capital gains tax exceeds the unused part of his basic rate band, the rate of capital gains tax on the excess shall be equivalent to the higher rate of income tax for the year.

(4) The reference in subsection (3) above to the unused part of an individual's basic rate band is a reference to the amount by which the basic rate limit exceeds his total income (as reduced by any deductions made in accordance with the Income Tax Acts).

5 Accumulation and discretionary settlements

(1) The rate of capital gains tax in respect of gains accruing to trustees of an accumulation or discretionary settlement in a year of assessment shall be equivalent to the sum of the basic and additional rates of income tax for the year.

(2) For the purposes of subsection (1) above a trust is an accumulation or discretionary settlement where—

(a) all or any part of the income arising to the trustees in the year of assessment is income to which section 686 of the Taxes Act (liability to income tax at the additional rate) applies, or

(b) all the income arising to the trustees in the year of assessment is treated as the income of the settlor, but that section would apply to it if it were not so treated, or

(c) all the income arising to the trustees in the year of assessment is applied in defraying expenses of the trustees in that year, but that section would apply to it if it were not so applied, or

(d) no income arises to the trustees in the year of assessment, but that section would apply if there were income arising to the trustees and none of it were treated as the income of the settlor or applied as mentioned in paragraph (c) above.

6 Other special cases

(1) References in section 4 to income tax chargeable at the higher rate include references to tax chargeable by virtue of section 353(4), 369(3A), 683(1) or 684(1) of the Taxes Act (restriction to basic rate of relief on certain interest etc. and settlements) in respect

of excess liability (that is, liability to income tax over what it would be if all income tax were charged at the basic rate to the exclusion of any higher rate); and

(a) where for any year of assessment a deduction is by virtue of section 353(4) or 369(3A) not allowed in computing the total income of a person for the purposes of excess liability then, whether or not he is chargeable to tax otherwise than at the basic rate, that deduction shall not be allowed for the purposes of section 4(4);

(b) where for any year of assessment income is treated by virtue of section 683(1) or 684(1) as the income of a person for the purposes of excess liability then, whether or not he is chargeable to tax otherwise than at the basic rate, it shall also be treated as his income for the purposes of section 4(4).

(2) Where for any year of assessment—

(a) by virtue of section 549(2) of the Taxes Act (gains under life policy or life annuity contract) a deduction of an amount is made from a person's total income for the purposes of excess liability, or

(b) by virtue of section 683(1) or 684(1) of that Act an amount of a person's income is treated as not being his income for those purposes, or

(c) by virtue of section 699(1) of that Act (income accruing before death) the residuary income of an estate is treated as reduced so as to reduce a person's income by any amount for those purposes,

section 4(4) shall have effect as if his income for the year were reduced by that amount.

(3) Where by virtue of section 547(1)(a) of the Taxes Act (gains from insurance policies etc.) a person's total income for a year of assessment is deemed to include any amount or amounts—

(a) section 4(4) shall have effect as if his total income included not the whole of the amount or amounts concerned but only the appropriate fraction within the meaning of section 550(3) of that Act, and

(b) if relief is given under section 550 of that Act and the calculation required by section 550(2)(b) does not involve the higher rate of income tax, section 4(2) and (3) shall have effect as if no income tax were chargeable at the higher rate in respect of his income.

(4) Nothing in subsection (1) above shall be taken to reduce, and nothing in subsections (2) and (3) above shall be taken to increase, the amount of the deduction which a person is entitled to make from his total income by virtue of any provision of Chapter I of Part VII of the Taxes Act which limits any allowance by reference to the level of his total income.

7 Time for payment of tax

Capital gains tax assessed on any person in respect of gains accruing in any year shall be payable by that person on or before 1st December following the end of that year, or at the expiration of a period of 30 days beginning with the date of the issue of the notice of assessment, whichever is the later.

Corporation tax

8 Company's total profits to include chargeable gains

(1) Subject to the provisions of this section and section 400 of the Taxes Act, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting—

(a) any allowable losses accruing to the company in the period, and

(b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period, any allowable losses previously accruing to the company while it has been within the charge to corporation tax.

(2) For the purposes of corporation tax in respect of chargeable gains, "allowable loss" does not include a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it.

(3) Except as otherwise provided by this Act or any other provision of the Corporation Tax Acts, the total amount of the chargeable gains to be included in respect of chargeable gains in a company's total profits for any accounting period shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions—

(a) as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person's gain; or

(b) as to the time when any such amount is to be treated as accruing,

being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.

(4) Subject to subsection (5) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts; but—

(a) this subsection shall not affect the references to income tax in section 39(2); and

(b) in so far as those enactments operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.

(5) This Act as it has effect in accordance with this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving 2 individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax.

(6) Where assets of a company are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were

the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

Residence etc.

9 Residence, including temporary residence

(1) In this Act "resident" and "ordinarily resident" have the same meanings as in the Income Tax Acts.

(2) Section 207 of the Taxes Act (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.

(3) Subject to section 10(1), an individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the period (or the sum of the periods) for which he is resident in the United Kingdom in that year of assessment exceeds 6 months.

10 Non-resident with United Kingdom branch or agency

(1) Subject to any exceptions provided by this Act, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment in which he is not resident and not ordinarily resident in the United Kingdom but is carrying on a trade in the United Kingdom through a branch or agency, and shall be so chargeable on chargeable gains accruing on the disposal—

(a) of assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time when the capital gain accrued, or

(b) of assets situated in the United Kingdom and used or held for the purposes of the branch or agency at or before that time, or assets acquired for use by or for the purposes of the branch or agency.

(2) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency.

(3) For the purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade or vocation there through a branch or agency shall be, or include, such chargeable gains accruing on the disposal of assets situated in the United Kingdom as are by this section made chargeable to capital gains tax in the case of an individual not resident or ordinarily resident in the United Kingdom.

(4) This section shall not apply to a person who, by virtue of Part XVIII of the Taxes Act (double taxation relief agreements), is exempt from income tax or corporation tax chargeable for the chargeable period in respect of the profits or gains of the branch or agency.

(5) This section shall apply as if references in subsections (1) and (2) above to a trade included references to a profession or vocation, but subsection (1) shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.

(6) In this Act, unless the context otherwise requires, "branch or agency" means any factorship, agency, receivership, branch or management, but does not include any person within the exemptions in section 82 of the Management Act (general agents and brokers).

11 Visiting forces, agents-general etc

(1) A period during which a member of a visiting force to whom section 323(1) of the Taxes Act applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of capital gains tax either as a period of residence in the United Kingdom or as creating a change in his residence or domicile.

This subsection shall be construed as one with subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly.

(2) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from capital gains tax as that to which the head of a mission so resident is entitled under the Diplomatic Privileges Act 1964.

(3) Any person having or exercising any employment to which section 320(2) of the Taxes Act (staff of Agents-General etc.) applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.

(4) Subsections (2) and (3) above shall be construed as one with section 320 of the Taxes Act.

12 Foreign assets of person with foreign domicile

(1) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, capital gains tax shall not be charged in respect of gains accruing to them from the disposal of assets situated outside the United Kingdom (that is, chargeable gains accruing in the year 1965-66 or a later year of assessment) except that the tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those chargeable gains, any such amounts being treated as gains accruing when they are received in the United Kingdom.

(2) For the purposes of this section there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the United Kingdom, and subsections (6) to (9) of section 65 of the Taxes Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom) shall apply as they would apply for the purposes of subsection (5) of that section if the gain were income arising from possessions out of the United Kingdom.

13 Attribution of gains to members of non-resident companies

(1) This section applies as respects chargeable gains accruing to 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.

(2) Subject to this section, every person who at the time when the chargeable gain accrues to the company is resident or ordinarily resident in the United Kingdom, who, if an individual, is domiciled in the United Kingdom, and who holds shares in the company, shall be treated for the purposes of this Act as if a part of the chargeable gain had accrued to him.

(3) That part shall be equal to the proportion of the assets of the company to which that person would be entitled on a liquidation of the company at the time when the chargeable gain accrues to the company.

(4) If the part of a chargeable gain attributable to a person under subsection (2) above is less than one-twentieth, that subsection shall not apply to that person.

(5) This section shall not apply in relation to—

(a) any amount in respect of the chargeable gain which is distributed, whether by way of dividend or distribution of capital or on the dissolution of the company, to persons holding shares in the company, or creditors of the company, within 2 years from the time when the chargeable gain accrued to the company, or

(b) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used, and used only, for the purposes of a trade carried on by the company wholly outside the United Kingdom, or

(c) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1), where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the United Kingdom, or

(d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section 10(3).

(6) Subsection (5)(a) above shall not prevent the making of an assessment in pursuance of this section but if, by virtue of that paragraph, this section is excluded, all such adjustments, whether by way of repayment or discharge of tax or otherwise, shall be made as will give effect to the provisions of that paragraph.

(7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as not reimbursed by the company) shall be allowable as a deduction in the computation under this Act of a gain accruing on the disposal by him of the shares by reference to which the tax was paid.

(8) So far as it would go to reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person; and subject to the preceding provisions of this subsection this section shall not apply in relation to a loss accruing to the company.

(9) If the person owning any of the shares in the company at the time when the chargeable gain accrues to the company is itself a company which is not resident in the United Kingdom but which would be a close company if it were resident in the United Kingdom, an amount equal to the amount apportioned under subsection (3) above out of the chargeable gain to the shares so owned shall be apportioned among the issued shares of the second-mentioned company, and the holders of those shares shall be treated in accordance with subsection (2) above, and so on through any number of companies.

(10) The persons treated by this section as if a part of a chargeable gain accruing to a company had accrued to them shall include trustees owning shares in the company if when the gain accrues to the company the trustees are neither resident nor ordinarily resident in the United Kingdom.

(11) If any tax payable by any person by virtue of subsection (2) above is paid by the company to which the chargeable gain accrues, or in a case under subsection (9) above is paid by any such other company, the amount so paid shall not for the purposes of income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

14 Non-resident groups of companies

(1) This section has effect for the purposes of section 13.

(2) Sections 171 to 174 and 175(1) shall apply in relation to non-resident companies which are members of a non-resident group of companies, as they apply in relation to companies resident in the United Kingdom which are members of a group of companies.

(3) Sections 178 to 180 shall apply for the purposes of section 13 as if for any reference therein to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the United Kingdom.

(4) For the purposes of this section —

(a) a "non-resident group" of companies—

(i) in the case of a group, none of the members of which are resident in the United Kingdom, means that group, and

(ii) in the case of a group, 2 or more members of which are not resident in the United Kingdom, means the members which are not resident in the United Kingdom;

(b) "group" shall be construed in accordance with section 170 without subsections (2)(a), (9) and (12) to (14).