



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART II

#### GENERAL PROVISIONS RELATING TO COMPUTATION OF GAINS AND ACQUISITIONS AND DISPOSALS OF ASSETS

### CHAPTER III

#### COMPUTATION OF GAINS: GENERAL PROVISIONS

*Re-basing to 1982, and assets held on 6th April 1965*

#### **35 Assets held on 31st March 1982 (including assets held on 6th April 1965)**

- (1) This section applies to a disposal of an asset which was held on 31st March 1982 by the person making the disposal.
- (2) Subject to the following provisions of this section, in computing for the purpose of this Act the gain or loss accruing on the disposal it shall be assumed that the asset was on 31st March 1982 sold by the person making the disposal, and immediately reacquired by him, at its market value on that date.
- (3) Subject to subsection (5) below, subsection (2) above shall not apply to a disposal—
  - (a) where a gain would accrue on the disposal to the person making the disposal if that subsection did apply, and either a smaller gain or a loss would so accrue if it did not,
  - (b) where a loss would so accrue if that subsection did apply, and either a smaller loss or a gain would accrue if it did not,
  - (c) where, either on the facts of the case or by virtue of Schedule 2, neither a gain nor a loss would accrue if that subsection did not apply, or
  - (d) where neither a gain nor a loss would accrue by virtue of any of—

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*Status: This is the original version (as it was originally enacted).*

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- (i) sections 58, 73, 139, 171, 172, 215, 216, 218 to 221, 257(3), 258(4), 264 and 267(2) of this Act;
  - (ii) section 148 of the 1979 Act;
  - (iii) section 148 of the Finance Act 1982;
  - (iv) paragraph 2 of Schedule 2 to the Trustee Savings Banks Act 1985;
  - (v) section 130(3) of the Transport Act 1985;
  - (vi) section 486(8) of the Taxes Act; and
  - (vii) paragraph 2(1) of Schedule 12 to the Finance Act 1990.
- (4) Where in the case of a disposal of an asset—
- (a) the effect of subsection (2) above would be to substitute a loss for a gain or a gain for a loss, but
  - (b) the application of subsection (2) is excluded by subsection (3),
- it shall be assumed in relation to the disposal that the asset was acquired by the person making the disposal for a consideration such that, on the disposal, neither a gain nor a loss accrues to him.
- (5) If a person so elects, disposals made by him (including any made by him before the election) shall fall outside subsection (3) above (so that subsection (2) above is not excluded by that subsection).
- (6) An election by a person under subsection (5) above shall be irrevocable and shall be made by notice to the inspector at any time before 6th April 1990 or at any time during the period beginning with the day of the first relevant disposal and ending—
- (a) 2 years after the end of the year of assessment or accounting period in which the disposal is made, or
  - (b) at such later time as the Board may allow;
- and “the first relevant disposal” means the first disposal to which this section applies which is made by the person making the election.
- (7) An election made by a person under subsection (5) above in one capacity does not cover disposals made by him in another capacity.
- (8) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under subsection (5) above.
- (9) Schedule 2 shall have effect in relation to disposals of assets owned on 6th April 1965 in cases where neither subsection (2) nor subsection (4) above applies.
- (10) Schedule 3, which contains provisions supplementary to subsections (1) to (8) above, shall have effect.

### **36 Deferred charges on gains before 31st March 1982**

Schedule 4, which provides for the reduction of a deferred charge to tax where the charge is wholly or partly attributable to an increase in the value of an asset before 31st March 1982, shall have effect.

*Allowable deductions***37 Consideration chargeable to tax on income**

- (1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of the Income Tax Acts.
- (2) Subsection (1) above shall not be taken as excluding from the consideration so taken into account any money or money's worth which is—
  - (a) taken into account in the making of a balancing charge under the 1990 Act, including the provisions of the Taxes Act which are to be treated as contained in the 1990 Act but excluding Part III of the 1990 Act, or
  - (b) brought into account as the disposal value of machinery or plant under section 24 of the 1990 Act.
- (3) This section shall not preclude the taking into account in a computation of the gain, as consideration for the disposal of an asset, of the capitalised value of a rentcharge (as in a case where a rentcharge is exchanged for some other asset) or of the capitalised value of a ground annual or feu duty, or of a right of any other description to income or to payments in the nature of income over a period, or to a series of payments in the nature of income.
- (4) The reference in subsection (1) above to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of subsection (2) of section 76 of the Taxes Act (expenses of management of insurance companies).

**38 Acquisition and disposal costs etc**

- (1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—
  - (a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,
  - (b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
  - (c) the incidental costs to him of making the disposal.
- (2) For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor

or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty) together—

- (a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and
  - (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.
- (3) Except as provided by section 40, no payment of interest shall be allowable under this section.
- (4) Any provision in this Act introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

### **39 Exclusion of expenditure by reference to tax on income**

- (1) There shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains; and this subsection applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.
- (2) Without prejudice to the provisions of subsection (1) above, there shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.
- (3) No account shall be taken of any relief under Chapter II of Part IV of the Finance Act 1981 or under Schedule 5 to the Finance Act 1983, in so far as it is not withdrawn and relates to shares issued before 19th March 1986, in determining whether any sums are excluded by virtue of subsection (1) or (2) above from the sums allowable as a deduction in the computation of gains or losses for the purposes of this Act.

### **40 Interest charged to capital**

- (1) Where—
- (a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under section 38 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and
  - (b) that expenditure was defrayed out of borrowed money,
- the sums so allowable under section 38 shall, subject to subsection (2) below, include the amount of any interest on that borrowed money which is referable to a period or part of a period ending on or before the disposal.

- (2) Subsection (1) above has effect subject to section 39 and does not apply to interest which is a charge on income.
- (3) In relation to interest paid in any accounting period ending before 1st April 1981 subsection (1) above shall have effect with the substitution for all following paragraph (b) of—

“and

- (c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

and the sums so allowable under section 38 shall include the amount of that interest charged to capital.”;

and subsection (2) above shall not apply.

#### **41 Restriction of losses by reference to capital allowances and renewals allowances**

- (1) Section 39 shall not require the exclusion from the sums allowable as a deduction in the computation of the gain of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made, but the amount of any losses accruing on the disposal of an asset shall be restricted by reference to capital allowances and renewals allowances as follows.
- (2) In the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of it.
- (3) If the person making the disposal acquired the asset—
- (a) by a transfer by way of sale in relation to which an election under section 158 of the 1990 Act was made, or
  - (b) by a transfer to which section 78(2) of that Act applies,
- (being enactments under which a transfer is treated for the purposes of capital allowances as being made at written down value), the preceding provisions of this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except so far as any loss to the transferor was restricted under those provisions) been made to the person making the disposal (that is the transferee); and where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection can be taken into account in relation to the transferor shall also be taken into account in relation to the transferee (that is the person making the disposal), and so on for any series of transfers before the disposal.
- (4) In this section “capital allowance” means—
- (a) any allowance under the 1990 Act, including the provisions of the Taxes Act which are to be treated as contained in the 1990 Act, other than an allowance under section 33(1) of the Taxes Act (relief for cost of maintenance of agricultural land),
  - (b) any relief given under section 30 of the Taxes Act (expenditure on sea walls), and
  - (c) any deduction in computing profits or gains allowable under section 91 of the Taxes Act (cemeteries).

- (5) In this section “renewals allowance” means a deduction allowable in computing the profits or gains of a trade, profession or vocation for the purpose of income tax by reference to the cost of acquiring an asset for the purposes of the trade, profession or vocation in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.
- (6) The amount of capital allowances to be taken into account under this section in relation to a disposal include any allowances falling to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event.
- (7) Where the disposal is of machinery or plant in relation to expenditure on which allowances or charges have been made under Part II of the 1990 Act, and neither section 79 (assets used only partly for trade purposes) nor section 80 (wear and tear subsidies) of that Act applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the capital expenditure incurred, or treated as incurred, under that Part on the provision of the machinery or plant by the person making the disposal and the disposal value required to be brought into account in respect of the machinery or plant.

## 42 Part disposals

- (1) Where a person disposes of an interest or right in or over an asset, and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums which under paragraphs (a) and (b) of section 38(1) are attributable to the asset shall, both for the purposes of the computation of the gain accruing on the disposal and for the purpose of applying this Part in relation to the property which remains undisposed of, be apportioned.
- (2) The apportionment shall be made by reference—
- (a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and
  - (b) to the market value of the property which remains undisposed of on the other hand (call that market value B),

and accordingly the fraction of the said sums allowable as a deduction in the computation of the gain accruing on the disposal shall be—

$$\frac{A}{A + B}$$

and the remainder shall be attributed to the property which remains undisposed of.

- (3) Any apportionment to be made in pursuance of this section shall be made before operating the provisions of section 41 and if, after a part disposal, there is a subsequent disposal of an asset the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to subsection (4) below, be those referable to the sums which under paragraphs (a) and (b) of section 38(1) are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under the provisions of section 41.

- (4) This section shall not be taken as requiring the apportionment of any expenditure which, on the facts, is wholly attributable to what is disposed of, or wholly attributable to what remains undisposed of.
- (5) It is hereby declared that this section, and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain, are to be operated before the operation of, and without regard to, section 58(1), sections 152 to 158 (but without prejudice to section 152(10)), section 171(1) or any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

#### **43 Assets derived from other assets**

If and so far as, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in the computation of a gain in respect of the other asset under paragraphs (a) and (b) of section 38(1) shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

#### *Wasting assets*

#### **44 Meaning of “wasting asset”**

- (1) In this Chapter “wasting asset” means an asset with a predictable life not exceeding 50 years but so that—
  - (a) freehold land shall not be a wasting asset whatever its nature, and whatever the nature of the buildings or works on it;
  - (b) “life”, in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal;
  - (c) plant and machinery shall in every case be regarded as having a predictable life of less than 50 years, and in estimating that life it shall be assumed that its life will end when it is finally put out of use as being unfit for further use, and that it is going to be used in the normal manner and to the normal extent and is going to be so used throughout its life as so estimated;
  - (d) a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is 50 years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Board.
- (2) In this Chapter “the residual or scrap value”, in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section.
- (3) The question what is the predictable life of an asset, and the question what is its predictable residual or scrap value at the end of that life, if any, shall, so far as those questions are not immediately answered by the nature of the asset, be taken, in relation to any disposal of the asset, as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

#### **45 Exemption for certain wasting assets**

- (1) Subject to the provisions of this section, no chargeable gain shall accrue on the disposal of, or of an interest in, an asset which is tangible movable property and which is a wasting asset.
- (2) Subsection (1) above shall not apply to a disposal of, or of an interest in, an asset—
  - (a) if, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, the asset has been used and used solely for the purposes of a trade, profession or vocation and if that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset or interest under paragraph (a) or paragraph (b) of section 38(1); or
  - (b) if the person making the disposal has incurred any expenditure on the asset or interest which has otherwise qualified in full for any capital allowance.
- (3) In the case of the disposal of, or of an interest in, an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—
  - (a) the consideration for the disposal, and any expenditure attributable to the asset or interest by virtue of section 38(1)(a) and (b), shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
  - (b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
  - (c) subsection (1) above shall not apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances.
- (4) Subsection (1) above shall not apply to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market.

#### **46 Straightline restriction of allowable expenditure**

- (1) In the computation of the gain accruing on the disposal of a wasting asset it shall be assumed—
  - (a) that any expenditure attributable to the asset under section 38(1)(a) after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nothing at the end of its life, and
  - (b) that any expenditure attributable to the asset under section 38(1)(b) is written off from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nothing at the end of its life, so that an equal daily amount is written off day by day.
- (2) Thus, calling the predictable life of a wasting asset at the time when it was acquired or provided by the person making the disposal L, the period from that time to the time of disposal T(1), and, in relation to any expenditure attributable to the asset under section 38(1)(b), the period from the time when that expenditure is first reflected in



the state or nature of the asset to the said time of disposal T(2), there shall be excluded from the computation of the gain—

- (a) out of the expenditure attributable to the asset under section 38(1)(a) a fraction—

$$\frac{T(1)}{L}$$

of an amount equal to the amount of that expenditure minus the residual or scrap value, if any, of the asset, and

- (b) out of the expenditure attributable to the asset under section 38(1)(b) a fraction—

$$\frac{T(2)}{L - (T(1) - T(2))}$$

of the amount of the expenditure.

- (3) If any expenditure attributable to the asset under section 38(1)(b) creates or increases a residual or scrap value of the asset, the provisions of subsection (1)(a) above shall be applied so as to take that into account.

#### 47 Wasting assets qualifying for capital allowances

- (1) Section 46 shall not apply in relation to a disposal of an asset—

- (a) which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used and used solely for the purposes of a trade, profession or vocation and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under paragraph (a) or paragraph (b) of section 38(1), or
- (b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.

- (2) In the case of the disposal of an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—

- (a) the consideration for the disposal, and any expenditure attributable to the asset by paragraph (a) or paragraph (b) of section 38(1) shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
- (b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
- (c) section 46 shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances, and
- (d) if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal

or for the purpose of making any balancing charge on him, that apportionment shall be employed for the purposes of this section, and

- (e) subject to paragraph (d) above, the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under paragraph (a) above.

#### *Miscellaneous provisions*

### **48 Consideration due after time of disposal**

In the computation of the gain consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the inspector to be irrecoverable, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

### **49 Contingent liabilities**

- (1) In the first instance no allowance shall be made in the computation of the gain—
  - (a) in the case of a disposal by way of assigning a lease of land or other property, for any liability remaining with, or assumed by, the person making the disposal by way of assigning the lease which is contingent on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms and conditions of the lease,
  - (b) for any contingent liability of the person making the disposal in respect of any covenant for quiet enjoyment or other obligation assumed as vendor of land, or of any estate or interest in land, or as a lessor,
  - (c) for any contingent liability in respect of a warranty or representation made on a disposal by way of sale or lease of any property other than land.
- (2) If it is subsequently shown to the satisfaction of the inspector that any such contingent liability has become enforceable, and is being or has been enforced, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.
- (3) Subsection (2) above also applies where the disposal in question was before the commencement of this section.

### **50 Expenditure reimbursed out of public money**

There shall be excluded from the computation of a gain any expenditure which has been or is to be met directly or indirectly by the Crown or by any Government, public or local authority whether in the United Kingdom or elsewhere.

### **51 Exemption for winnings and damages etc**

- (1) It is hereby declared that winnings from betting, including pool betting, or lotteries or games with prizes are not chargeable gains, and no chargeable gain or allowable loss

shall accrue on the disposal of rights to winnings obtained by participating in any pool betting or lottery or game with prizes.

- (2) It is hereby declared that sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation are not chargeable gains.

## **52 Supplemental**

- (1) No deduction shall be allowable in a computation of the gain more than once from any sum or from more than one sum.
- (2) References in this Chapter to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of income tax shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.
- (3) In this Chapter references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.
- (4) For the purposes of any computation of the gain any necessary apportionments shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Chapter, be such method as appears to the inspector or on appeal the Commissioners concerned to be just and reasonable.
- (5) In this Chapter “capital allowance” and “renewals allowance” have the meanings given by subsections (4) and (5) of section 41.