



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART III

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

MISCELLANEOUS PROVISIONS

58 Husband and wife

- (1) If, in any year of assessment, and in the case of a woman who in that year of assessment is a married woman living with her husband, the man disposes of an asset to the wife, or the wife disposes of an asset to the man, both shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.
- (2) This section shall not apply—
 - (a) if until the disposal the asset formed part of trading stock of a trade carried on by the one making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring the asset, or
 - (b) if the disposal is by way of donatio mortis causa,but this section shall have effect notwithstanding the provisions of section 18 or 161, or of any other provisions of this Act fixing the amount of the consideration deemed to be given on a disposal or acquisition.

59 Partnerships

Where 2 or more persons carry on a trade or business in partnership—

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- (a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Scotland as well as elsewhere in the United Kingdom, be assessed and charged on them separately, and
- (b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such, and
- (c) section 112(1) and (2) of the Taxes Act (residence of partnerships) shall apply in relation to tax chargeable in pursuance of this Act as it applies in relation to income tax.

60 Nominees and bare trustees

- (1) In relation to assets held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for 2 or more persons who are or would be jointly so entitled), this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).
- (2) It is hereby declared that references in this Act to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

61 Funds in court

- (1) For the purposes of section 60, funds in court held by the Accountant General shall be regarded as held by him as nominee for the persons entitled to or interested in the funds, or as the case may be for their trustees.
- (2) Where funds in court standing to an account are invested or, after investment, are realised, the method by which the Accountant General effects the investment or the realisation of investments shall not affect the question whether there is for the purposes of this Act an acquisition, or as the case may be a disposal, of an asset representing funds in court standing to the account, and in particular there shall for those purposes be an acquisition or disposal of shares in a court investment fund notwithstanding that the investment in such shares of funds in court standing to an account, or the realisation of funds which have been so invested, is effected by setting off, in the Accountant General's accounts, investment in one account against realisation of investments in another.
- (3) In this section "funds in court" means—
 - (a) money in the Supreme Court, money in county courts and statutory deposits described in section 40 of the Administration of Justice Act 1982, and
 - (b) money in the Supreme Court of Judicature of Northern Ireland and money in a county court in Northern Ireland,

and investments representing such money; and references in this section to the Accountant General are references to the Accountant General of the Supreme Court of Judicature in England and, in relation to money within paragraph (b) above and investments representing such money, include references to the Accountant General

of the Supreme Court of Judicature of Northern Ireland or any other person by whom such funds are held.

62 Death: general provisions

- (1) For the purposes of this Act the assets of which a deceased person was competent to dispose—
 - (a) shall be deemed to be acquired on his death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death, but
 - (b) shall not be deemed to be disposed of by him on his death (whether or not they were the subject of a testamentary disposition).
- (2) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.
- (3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence, and domicile at the date of death.
- (4) On a person acquiring any asset as legatee (as defined in section 64)—
 - (a) no chargeable gain shall accrue to the personal representatives, and
 - (b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.
- (5) Notwithstanding section 17(1) no chargeable gain shall accrue to any person on his making a disposal by way of donatio mortis causa.
- (6) Subject to subsections (7) and (8) below, where within the period of 2 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 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.
- (7) Subsection (6) above does not apply to a variation unless the person or persons making the instrument so elect by notice given to the Board within 6 months after the date of the instrument or such longer time as the Board may allow.
- (8) Subsection (6) above 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.
- (9) Subsection (6) above applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

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- (10) In this section references to assets of which a deceased person was competent to dispose are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

63 Death: application of law in Scotland

- (1) The provisions of this Act, so far as relating to the consequences of the death of an heir of entail in possession of any property in Scotland subject to an entail, whether sui juris or not, or of a proper liferenter of any property, shall have effect subject to the provisions of this section.
- (2) For the purposes of this Act, on the death of any such heir or liferenter the heir of entail next entitled to the entailed property under the entail or, as the case may be, the person (if any) who, on the death of the liferenter, becomes entitled to possession of the property as fiar shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.

64 Expenses in administration of estates and trusts

- (1) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which he became absolutely entitled as legatee or as against the trustees of settled property—
- (a) any expenditure within section 38(2) incurred by him in relation to the transfer of the asset to him by the personal representatives or trustees, and
 - (b) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,
- shall be allowable as a deduction in the computation of the gain accruing to that person on the disposal.
- (2) In this Act, unless the context otherwise requires, “legatee” includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a person taking under a donatio mortis causa shall be treated (except for the purposes of section 62) as a legatee and his acquisition as made at the time of the donor's death.
- (3) For the purposes of the definition of “legatee” above, and of any reference in this Act to a person acquiring an asset “as legatee”, property taken under a testamentary disposition or on an intestacy or partial intestacy includes any asset appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy.

65 Liability for tax of trustees or personal representatives

- (1) Capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of any one or more of those

trustees or personal representatives, but where an assessment is made in pursuance of this subsection otherwise than on all the trustees or all the personal representatives the persons assessed shall not include a person who is not resident or ordinarily resident in the United Kingdom.

- (2) Subject to section 60 and any other express provision to the contrary, chargeable gains accruing to the trustees of a settlement or to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such trustees or personal representatives, shall not be regarded for the purposes of this Act as accruing to, or chargeable on, any other person, nor shall any trustee or personal representative be regarded for the purposes of this Act as an individual.

66 Insolvents' assets

- (1) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement this Act shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to him by the bankrupt or debtor being disregarded accordingly), and tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from him.
- (2) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of this Act be regarded as held by a personal representative of the deceased and—
 - (a) subsection (1) above shall not apply after the death, and
 - (b) section 62(1) shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if he were a personal representative.
- (3) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of this Act be regarded as held by a personal representative of the deceased, and subsection (1) above shall not apply.
- (4) The definition of “settled property” in section 68 shall not include any property as being property held by a trustee or assignee in bankruptcy or under a deed of arrangement.
- (5) In this section—

“deed of arrangement” means a deed of arrangement to which the Deeds of Arrangement Act 1914 or any corresponding enactment forming part of the law of Scotland or Northern Ireland applies, and

“trustee in bankruptcy” includes a permanent trustee within the meaning of the Bankruptcy (Scotland) Act 1985.

67 Provisions applicable where section 79 of the Finance Act 1980 has applied

- (1) In this section “a claim” means a claim under section 79 of the Finance Act 1980 (“section 79”) and “relief” means relief under that section (which provided general relief for gifts).
- (2) Where a disposal in respect of which a claim is or has been made is or proves to be a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the

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transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

- (a) the inheritance tax attributable to the value of the asset; and
- (b) the amount of the chargeable gain as computed apart from this subsection;

and in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

(3) Where an amount of inheritance tax—

- (a) falls to be redetermined in consequence of the transferor's death within 7 years of making the chargeable transfer in question; or
- (b) is otherwise varied,

after it has been taken into account under subsection (2) above (or under section 79(5)), all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

(4) Where—

- (a) a claim for relief has been made in respect of the disposal of an asset to a trustee, and
- (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a),

sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset, or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

(5) Subsection (4) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.

(6) Section 168 shall apply where relief has been given—

- (a) with the substitution for subsection (1) of the following—

“(1) If—

- (a) relief has been given under section 79 of the Finance Act 1980 in respect of a disposal made after 5th April 1981 to an individual (“the relevant disposal”); and
- (b) at a time when he has not disposed of the asset in question, the transferee becomes neither resident nor ordinarily resident in the United Kingdom,

then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 67) on the relevant disposal.”; and

- (b) with the substitution in subsections (2), (6) and (10) for the references to section 165(4)(b) of references to section 79(1)(b).

(7) In this section “held-over gain”, in relation to a disposal, means the chargeable gain which would have accrued on that disposal apart from section 79, reduced where applicable in accordance with subsection (3) of that section, and references to inheritance tax include references to capital transfer tax.