



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VII

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

Charities and gifts of non-business assets etc.

256 Charities

- (1) Subject to section 505(3) of the Taxes Act and subsection (2) below, a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.
- (2) If property held on charitable trusts ceases to be subject to charitable trusts—
 - (a) the trustees shall be treated as if they had disposed of, and immediately reacquired, the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to a charity, and
 - (b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to a charity,and an assessment to capital gains tax chargeable by virtue of paragraph (b) above may be made at any time not more than 3 years after the end of the year of assessment in which the property ceases to be subject to charitable trusts.

257 Gifts to charities etc

- (1) Subsection (2) below shall apply where a disposal of an asset is made otherwise than under a bargain at arm's length—
 - (a) to a charity, or
 - (b) to any bodies mentioned in Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes, etc).

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- (2) Sections 17(1) and 258(3) shall not apply; but if the disposal is by way of gift (including a gift in settlement) or for a consideration not exceeding the sums allowable as a deduction under section 38, then—
- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
 - (b) where, after the disposal, the asset is disposed of by the person who acquired it under the disposal, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the person making the later disposal.
- (3) Where—
- (a) otherwise than on the termination of a life interest (within the meaning of section 72) by the death of the person entitled thereto, any assets or parts of any assets forming part of settled property are, under section 71, deemed to be disposed of and reacquired by the trustee, and
 - (b) the person becoming entitled as mentioned in section 71(1) is a charity, or a body mentioned in Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes, etc),
- then, if no consideration is received by any person for or in connection with any transaction by virtue of which the charity or other body becomes so entitled, the disposal and reacquisition of the assets to which the charity or other body becomes so entitled shall, notwithstanding section 71, be treated for the purposes of this Act as made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146(2) of the 1979 Act applied where the person who acquired the asset on that disposal disposes of the asset after the coming into force of this section.

258 Works of art etc

- (1) A gain accruing on the disposal of an asset by way of gift shall not be a chargeable gain if the asset is property falling within subsection (2) of section 26 of the Inheritance Tax Act 1984 (“the 1984 Act”) (gifts for public benefit) and the Board give a direction in relation to it under subsection (1) of that section.
- (2) A gain shall not be a chargeable gain if it accrues on the disposal of an asset with respect to which an inheritance tax undertaking or an undertaking under the following provisions of this section has been given and—
 - (a) the disposal is by way of sale by private treaty to a body mentioned in Schedule 3 to the 1984 Act (museums, etc.), or is to such a body otherwise than by sale, or
 - (b) the disposal is to the Board in pursuance of section 230 of the 1984 Act or in accordance with directions given by the Treasury under section 50 or 51 of the Finance Act 1946 (acceptance of property in satisfaction of tax).
- (3) Subsection (4) below shall have effect in respect of the disposal of any asset which is property which has been or could be designated under section 31 of the 1984 Act, being—
 - (a) a disposal by way of gift, including a gift in settlement, or

- (b) a disposal of settled property by the trustee on an occasion when, under section 71(1), the trustee is deemed to dispose of and immediately reacquire settled property (other than any disposal on which by virtue of section 73 no chargeable gain or allowable loss accrues to the trustee),

if the requisite undertaking described in section 31 of the 1984 Act (maintenance, preservation and access) is given by such person as the Board think appropriate in the circumstances of the case.

- (4) The person making a disposal to which subsection (3) above applies and the person acquiring the asset on the disposal shall be treated for all the purposes of this Act as if the asset was acquired from the one making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

- (5) If—

- (a) there is a sale of the asset and inheritance tax is chargeable under section 32 of the 1984 Act (or would be chargeable if an inheritance tax undertaking as well as an undertaking under this section had been given), or
- (b) the Board are satisfied that at any time during the period for which any such undertaking was given it has not been observed in a material respect,

the person selling that asset or, as the case may be, the owner of the asset shall be treated for the purposes of this Act as having sold the asset for a consideration equal to its market value, and, in the case of a failure to comply with the undertaking, having immediately reacquired it for a consideration equal to its market value.

- (6) The period for which an undertaking under this section is given shall be until the person beneficially entitled to the asset dies or it is disposed of, whether by sale or gift or otherwise; and if the asset subject to the undertaking is disposed of—

- (a) otherwise than on sale, and
- (b) without a further undertaking being given under this section,

subsection (5) above shall apply as if the asset had been sold to an individual.

References in this subsection to a disposal shall be construed without regard to any provision of this Act under which an asset is deemed to be disposed of.

- (7) Where under subsection (5) above a person is treated as having sold for a consideration equal to its market value any asset within section 31(1)(c), (d) or (e) of the 1984 Act, he shall also be treated as having sold and immediately reacquired for a consideration equal to its market value any asset associated with it; but the Board may direct that the preceding provisions of this subsection shall not have effect in any case in which it appears to them that the entity consisting of the asset and any assets associated with it has not been materially affected.

For the purposes of this subsection 2 or more assets are associated with each other if one of them is a building falling within section 31(1)(c) of the 1984 Act and the other or others such land or objects as, in relation to that building, fall within section 31(1) (d) or (e) of the 1984 Act.

- (8) If in pursuance of subsection (5) above a person is treated as having on any occasion sold an asset and inheritance tax becomes chargeable on the same occasion, then, in determining the value of the asset for the purposes of that tax, an allowance shall be made for the capital gains tax chargeable on any chargeable gain accruing on that occasion.

- (9) In this section “inheritance tax undertaking” means an undertaking under Chapter II of Part II or section 78 of, or Schedule 5 to, the 1984 Act.

259 Gifts to housing associations

- (1) Subsection (2) below shall apply where—
- (a) a disposal of an estate or interest in land in the United Kingdom is made to a registered housing association otherwise than under a bargain at arm’s length, and
 - (b) a claim for relief under this section is made by the transferor and the association.
- (2) Section 17(1) shall not apply; but if the disposal is by way of gift or for a consideration not exceeding the sums allowable as a deduction under section 38, then—
- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
 - (b) where, after the disposal, the estate or interest is disposed of by the association, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the association.
- (3) In this section “registered housing association” means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981.
- (4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146A(2) of the 1979 Act applied where the association which acquired the estate or interest in land on that disposal disposes of it after the coming into force of this section.

260 Gifts on which inheritance tax is chargeable etc

- (1) If—
- (a) an individual or the trustees of a settlement (“the transferor”) make a disposal within subsection (2) below of an asset,
 - (b) the asset is acquired by an individual or the trustees of a settlement (“the transferee”), and
 - (c) a claim for relief under this section is made by the transferor and the transferee or, where the trustees of a settlement are the transferee, by the transferor alone,
- then, subject to subsection (6) below and section 261, subsection (3) below shall apply in relation to the disposal.
- (2) A disposal is within this subsection if it is made otherwise than under a bargain at arm’s length and—
- (a) is a chargeable transfer within the meaning of the Inheritance Tax Act 1984 (or would be but for section 19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act),
 - (b) is an exempt transfer by virtue of—
 - (i) section 24 of that Act (transfers to political parties),
 - (ii) section 26 of that Act (transfers for public benefit),

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- (iii) section 27 of that Act (transfers to maintenance funds for historic buildings etc.), or
 - (iv) section 30 of that Act (transfers of designated property),
 - (c) is a disposition to which section 57A of that Act applies and by which the property disposed of becomes held on trusts of the kind referred to in subsection (1)(b) of that section (maintenance funds for historic buildings etc.),
 - (d) by virtue of subsection (4) of section 71 of that Act (accumulation and maintenance trusts) does not constitute an occasion on which inheritance tax is chargeable under that section,
 - (e) by virtue of section 78(1) of that Act (transfers of works of art etc.) does not constitute an occasion on which tax is chargeable under Chapter III of Part III of that Act, or
 - (f) is a disposal of an asset comprised in a settlement where, as a result of the asset or part of it becoming comprised in another settlement, there is no charge, or a reduced charge, to inheritance tax by virtue of paragraph 9, 16 or 17 of Schedule 4 to that Act (transfers to maintenance funds for historic buildings etc.).
- (3) Where this subsection applies in relation to 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 in question,shall each be reduced by an amount equal to the held-over gain on the disposal.
- (4) Subject to subsection (5) 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 this section.
- (5) 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 any provision of this Act) 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 section 38,the held-over gain on the disposal shall be reduced by the excess referred to in paragraph (b) above or, if part of the gain on the disposal is relieved under Schedule 6, by so much, if any, of that excess as exceeds the part so relieved.
- (6) Subsection (3) above does not apply in relation to a disposal of assets within section 115(1) on which a gain is deemed to accrue by virtue of section 116(10)(b).
- (7) In the case of a disposal within subsection (2)(a) above there shall be allowed as a deduction in computing the chargeable gain accruing to the 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.

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- (8) Where an amount of inheritance tax is varied after it has been taken into account under subsection (7) above, 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.
- (9) Where subsection (3) above applies in relation to a disposal which is deemed to occur by virtue of section 71(1) or 72(1), subsection (5) above shall not apply.
- (10) Where a disposal is partly within subsection (2) above, or is a disposal within paragraph (f) of that subsection on which there is a reduced charge such as is mentioned in that paragraph, the preceding provisions of this section shall have effect in relation to an appropriate part of the disposal.

261 Section 260 relief: gifts to non-residents

- (1) Section 260(3) shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.
- (2) Section 260(3) shall not apply where the transferee is an individual who—
 - (a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
 - (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.