

SCHEDULES

SCHEDULE 7

DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC

PART 2

OTHER AMENDMENTS

- 41 TMA 1970 is amended in accordance with paragraphs 42 to 55.
- 42 After section 7 insert—

“7A Disregard of certain NRCGT gains for purposes of section 7

- (1) This section applies where—
- a person (“P”) is the taxable person in relation to an NRCGT return relating to a tax year (“year X”) which is made and delivered to an officer of Revenue and Customs before the end of the notification period and contains an advance self-assessment,
 - the return is in respect of a non-resident CGT disposal on which an NRCGT gain accrues, and
 - P would (apart from this section) be required to give a notice under section 7 with respect to year X.
- (2) For the purpose of determining whether or not P is required to give such a notice (and only for that purpose), P is regarded as not being chargeable to capital gains tax in respect of the NRCGT gain mentioned in subsection (1) (b).
- (3) The reference in subsection (1) to the tax year to which an NRCGT return “relates” is to be interpreted in accordance with section 12ZB(7).
- (4) In this section—
- “advance self-assessment” has the meaning given by section 12ZE(1);
 - “the notification period” has the meaning given by section 7(1C);
 - the “taxable person”, in relation to a non-resident CGT disposal, means the person who would be chargeable to capital gains tax in respect of any chargeable NRCGT gain accruing on the disposal (were such a gain to accrue).
- (5) See—
- section 14B of the 1992 Act for the meaning of “non-resident CGT disposal”;
 - section 57B of, and Schedule 4ZZB to, the 1992 Act for the meaning of “NRCGT gain”.

43 Before section 12AA (and the italic heading before it) insert—

“NRCGT returns

12ZA Interpretation of sections 12ZB to 12ZN

- (1) In sections 12ZA to 12ZN—
- “advance self-assessment” is to be interpreted in accordance with section 12ZE(1);
 - “amount notionally chargeable” is to be interpreted in accordance with section 12ZF(1);
 - “filing date”, in relation to an NRCGT return, is to be interpreted in accordance with section 12ZB(8);
 - “interest in UK land” has the same meaning as in Schedule B1 to the 1992 Act (see paragraph 2 of that Schedule);
 - the “taxable person”, in relation to a non-resident CGT disposal, means the person who would be chargeable to capital gains tax in respect of any chargeable NRCGT gain (see section 57B of, and Schedule 4ZZB to, the 1992 Act) accruing on the disposal (were such a gain to accrue).
- (2) In those sections, references to the tax year to which an NRCGT return “relates” are to be interpreted in accordance with section 12ZB(7).
- (3) For the purposes of those sections the “completion” of a non-resident CGT disposal is taken to occur—
- (a) at the time of the disposal, or
 - (b) if the disposal is under a contract which is completed by a conveyance, at the time when the asset is conveyed.
- (4) For the meaning in those sections of “non-resident CGT disposal” see section 14B of the 1992 Act (and see also section 12ZJ).
- (5) For the meaning of “NRCGT group” in those sections see section 288(1) of the 1992 Act.
- (6) In this section “conveyance” includes any instrument (and “conveyed” is to be construed accordingly).

12ZB NRCGT return

- (1) Where a non-resident CGT disposal is made, the appropriate person must make and deliver to an officer of Revenue and Customs, on or before the filing date, a return in respect of the disposal.
- (2) In subsection (1) the “appropriate person” means—
- (a) the taxable person in relation to the disposal, or
 - (b) if the disposal is made by a member of an NRCGT group, the relevant members of the group.
- (3) A return under this section is called an “NRCGT return”.
- (4) An NRCGT return must—

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- (a) contain the information prescribed by HMRC, and
 - (b) include a declaration by the person making it that the return is to the best of the person's knowledge correct and complete.
- (5) Subsection (1) does not apply to a non-resident CGT disposal to which section 188C of the 1992 Act applies (transfers within NRCGT group).
- (6) For the purposes of subsection (2)(b), the “relevant members” of the NRCGT group are—
- (a) the companies which are members of that group when the disposal is made, and
 - (b) any other companies which are, at any time before the time of the disposal in the tax year to which the return relates, members of that group.
- (7) An NRCGT return “relates to” the tax year in which any gains on the non-resident CGT disposal would accrue.
- (8) The “filing date” for an NRCGT return is the 30th day following the day of the completion of the disposal to which the return relates.

But see also section 12ZJ(5).

12ZC Single return in respect of two or more non-resident CGT disposals

Where—

- (a) a person is required to make and deliver an NRCGT return with respect to two or more non-resident CGT disposals,
- (b) the date of the completion of each of the disposals is the same, and
- (c) any gains accruing on the disposals would accrue in the same tax year,

the person is to make and deliver a single return with respect to all those disposals.

12ZD NRCGT returns: grant and exercise of options

- (1) This section applies where—
- (a) by virtue of section 144(2) of the 1992 Act, the grant of an option binding the grantor to sell an interest in UK land is, on the exercise of the option, treated as the same transaction as the sale, and
 - (b) both the grant of the option and the transaction entered into by the grantor in fulfilment of the grantor's obligations under the option (“the sale”) would be non-resident CGT disposals (were they not treated as a single transaction).
- (2) On completion of the sale—
- (a) the grantor is to be subject to the same obligations under sections 12ZB, 12ZE and 59AA (duties relating to returns and payments on account) in relation to the grant of the option as the grantor would be subject to were the option never to be exercised, and
 - (b) the consideration for the option is to be disregarded (despite section 144(2) of the 1992 Act) in calculating under section 12ZF the

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amount of capital gains tax notionally chargeable at the completion date of the single transaction mentioned in subsection (1)(a).

- (3) In this section “sell” is to be interpreted in accordance with section 144(6) of the 1992 Act.

12ZE NRCGT return to include advance self-assessment

- (1) An NRCGT return (“the current return”) relating to a tax year (“year Y”) which a person (“P”) is required to make in respect of one or more non-resident CGT disposals (“the current disposals”) must include an assessment (an “advance self-assessment”) of—
- (a) the amount notionally chargeable at the filing date for the current return (see section 12ZF), and
 - (b) if P has made (or is to make) a prior NRCGT return, the amount of any increase in the amount notionally chargeable for year Y.

But see the exceptions in section 12ZG.

- (2) In a case falling within subsection (1)(b)—
- (a) there is an “increase in the amount notionally chargeable” for year Y if the amount notionally chargeable at the filing date for the current return exceeds the corresponding amount for the prior NRCGT return (or the prior NRCGT return which has the most recent filing date, if there is more than one), and
 - (b) the amount of that increase is the amount of the excess.
- (3) “Prior NRCGT return” means an NRCGT return which—
- (a) relates to year Y, and
 - (b) is in respect of a non-resident CGT disposal (or disposals) the completion date of which is earlier than that of the current disposals.

12ZF The “amount notionally chargeable”

- (1) The “amount notionally chargeable” at the filing date for an NRCGT return (“the current return”) is the amount of capital gains tax to which the person whose return it is (“P”) would be chargeable under section 14D or 188D of the 1992 Act for the year to which the return relates (“year Y”), as determined—
- (a) on the assumption in subsection (2),
 - (b) in accordance with subsection (3), and
 - (c) if P is an individual, on the basis of a reasonable estimate of the matters set out in subsection (4).
- (2) The assumption mentioned in subsection (1)(a) is that in year Y no NRCGT gain or loss accrues to P on any disposal the completion of which occurs after the day of the completion of the disposals to which the return relates (“day X”).
- (3) In the determination of the amount notionally chargeable—
- (a) all allowable losses accruing to P in year Y on disposals of assets the completion of which occurs on or before day X which are available to be deducted under paragraph (a) or (b) of section 14D(2) or (as the

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- case may be) section 188D(2) of the 1992 Act are to be so deducted,
and
- (b) any other relief or allowance relating to capital gains tax which is required to be given in P's case is to be taken into account, so far as the relief would be available on the assumption in subsection (2).
- (4) The matters mentioned in subsection (1)(c) are—
- (a) whether or not income tax will be chargeable at the higher rate or the dividend upper rate in respect of P's income for year Y (see section 4(4) of the 1992 Act), and
 - (b) (if P estimates that income tax will not be chargeable as mentioned in paragraph (a)) what P's Step 3 income will be for year Y.
- (5) An advance self-assessment must, in particular, give particulars of any estimate made for the purposes of subsection (1)(c).
- (6) A reasonable estimate included in an NRCGT return in accordance with subsection (5) is not regarded as inaccurate for the purposes of Schedule 24 to the Finance Act 2007 (penalties for errors).
- (7) Where P is the relevant body of an NRCGT group—
- (a) the references to P in subsections (2) and (3)(a) are to be read as references to any member of the NRCGT group;
 - (b) the reference to P in subsection (3)(b) is to be read as including any member of the NRCGT group.
- (8) For the purposes of this section—
- an estimate is “reasonable” if it is made on a basis that is fair and reasonable, having regard to the circumstances in which it is made;
 - “Step 3 income”, in relation to an individual, has the same meaning as in section 4 of the 1992 Act.
- (9) In this section, references to the “relevant body” of an NRCGT group are to be interpreted in accordance with section 188D(4) of the 1992 Act.
- (10) Section 989 of ITA 2007 (the definitions) applies for the purposes of this section as it applies for income tax purposes.
- (11) For the meaning of “NRCGT gain” and “NRCGT loss” see section 57B of, and Schedule 4ZZB to, the 1992 Act.

12ZG Cases where advance self-assessment not required

- (1) Where a person (“P”) is required to make and deliver an NRCGT return relating to a tax year (“year Y”), section 12ZE(1) (requirement to include advance self-assessment in return) does not apply if condition A, B or C is met.
- (2) Condition A is that P (or, if P is the trustees of a settlement, any trustee of the settlement) has been given, on or before the day on which the NRCGT return is required to be delivered, a notice under section 8 or 8A with respect to—
 - (a) year Y, or
 - (b) the previous tax year,and that notice has not been withdrawn.

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- (3) Condition B is that P has been given, on or before the day on which the NRCGT return is required to be delivered, a notice under paragraph 3 of Schedule 18 to the Finance Act 1998 (notice requiring delivery of a company tax return) specifying a period which includes the whole or part of—
- (a) year Y, or
 - (b) the previous tax year,
- and that notice has not been withdrawn.
- (4) Condition C is that an annual tax on enveloped dwellings return has been delivered by P (or a representative partner acting instead of P) for the preceding chargeable period.
- (5) In subsection (4)—
- “the preceding chargeable period” means the chargeable period (as defined in section 94(8) of the Finance Act 2013) which ends with the 31 March preceding year Y;
- “representative partner” has the meaning given by section 167(6) of the Finance Act 2013.
- (6) The Treasury may by regulations prescribe further circumstances in which section 12ZE(1) is not to apply.
- (7) Regulations under subsection (6)—
- (a) may make different provision for different purposes;
 - (b) may include incidental, consequential, supplementary or transitional provision.

12ZH NRCGT returns and annual self-assessment: section 8

- (1) This section applies where a person (“P”) (other than the relevant trustees of a settlement)—
- (a) is not required to give a notice under section 7 with respect to a tax year (“year X”), and
 - (b) would be required to give such a notice in the absence of section 7A (which removes that duty in certain cases where the person has made an NRCGT return that includes an advance self-assessment).
- (2) In this section, “the relevant NRCGT return” means—
- (a) the NRCGT return by virtue of which P is not required to give a notice under section 7 with respect to year X, or
 - (b) if more than one NRCGT return falls within paragraph (a), the one relating to the disposal which has the latest completion date.
- (3) P is treated for the purposes of the Taxes Acts as having been required to make and deliver to an officer of Revenue and Customs a return under section 8 for the purpose of establishing, with respect to year X, the matters mentioned in section 8(1).
- (4) For the purposes of subsection (3), section 8 is to be read as if subsections (1E) to (1G) of that section were omitted.
- (5) If P does not give a notice under subsection (6) before 31 January in the tax year after year X, the Taxes Acts have effect, from that date, as if the

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advance self-assessment contained in the relevant NRCGT return were a self-assessment included, for the purposes set out in section 9(1), in a return under section 8 made by P and delivered on that date.

- (6) If P gives HMRC a notice under this subsection specifying an NRCGT return which—
- (a) relates to year X, and
 - (b) contains an advance self-assessment,
- the Taxes Acts are to have effect, from the effective date of the notice, as if that advance self-assessment were a self-assessment included, for the purposes set out in section 9(1), in a return under section 8 made by P and delivered on that date.
- (7) References in the Taxes Acts to a return under section 8 (for example, references to amending, or enquiring into, a return under that section) are to be read in accordance with subsections (5) and (6).
- (8) A notice under subsection (6)—
- (a) must be given before 31 January in the tax year after year X;
 - (b) must state that P considers the advance self-assessment in question to be an accurate self-assessment in respect of year X for the purposes of section 9.
- (9) The “effective date” of a notice under subsection (6) is—
- (a) the day on which the NRCGT return specified in the notice is delivered, or
 - (b) if later, the day on which the notice is given.
- (10) The self-assessment which subsection (5) or (6) treats as having been made by P is referred to in this section as the “section 9 self-assessment”.
- (11) If P—
- (a) gives a notice under subsection (6), and
 - (b) makes and delivers a subsequent NRCGT return relating to year X which contains an advance self-assessment,
- that advance self-assessment is to be treated as amending the section 9 self-assessment.
- (12) For the purposes of subsection (11), an NRCGT return made and delivered by P (“return B”) is “subsequent” to an NRCGT return to which P’s notice under subsection (6) relates (“the notified return”) if the day of the completion of the disposal to which return B relates is later than the day of the completion of the disposal to which the notified return relates.

12ZI NRCGT returns and annual self-assessment: section 8A

- (1) This section applies where the relevant trustees of a settlement (“the trustees”)—
- (a) are not required to give a notice under section 7 with respect to a tax year (“year X”), and
 - (b) would be required to give such a notice in the absence of section 7A (which removes that duty in certain cases where the person has made an NRCGT return including an advance self-assessment).

- (2) In this section, “the relevant NRCGT return” means—
- (a) the NRCGT return by virtue of which P is not required to give a notice under section 7 with respect to year X, or
 - (b) if more than one NRCGT return falls within paragraph (a), the one relating to the disposal which has the latest completion date.
- (3) The trustees are treated for the purposes of the Taxes Acts as having been required to make and deliver to an officer of Revenue and Customs a return under section 8A, for the purpose of establishing, with respect to year X, the matters mentioned in section 8A(1).
- (4) For the purposes of subsection (3), section 8A is to be read as if—
- (a) in subsection (1) of that section, “, and the settlors and beneficiaries,” were omitted, and
 - (b) subsections (1C) to (1E) of that section were omitted.
- (5) If the trustees do not give a notice under subsection (6) before 31 January in the tax year after year X, the Taxes Acts have effect, from that date, as if the advance self-assessment contained in the relevant NRCGT return were a self-assessment included, for the purposes set out in section 9(1), in a return under section 8A made by the trustees and delivered on that date.
- (6) If the trustees give HMRC a notice under this subsection specifying an NRCGT return which—
- (a) relates to year X, and
 - (b) contains an advance self-assessment,
- the Taxes Acts are to have effect, from the effective date of the notice, as if that advance self-assessment were a self-assessment included, for the purposes set out in section 9(1), in a return under section 8A made by the trustees and delivered on that date.
- (7) References in the Taxes Acts to a return under section 8A (for example, references to amending, or enquiring into, a return under that section) are to be read in accordance with subsections (5) and (6).
- (8) A notice under subsection (6)—
- (a) must be given before 31 January in the tax year after year X;
 - (b) must state that the trustees consider the advance self-assessment in question to be an accurate self-assessment in respect of year X for the purposes of section 9.
- (9) The “effective date” of a notice under subsection (6) is—
- (a) the day on which the NRCGT return specified in the notice is delivered, or
 - (b) if later, the day on which the notice is given.
- (10) The self-assessment which subsection (5) or (6) treats as having been made by the trustees is referred to in this section as the “section 9 self-assessment”.
- (11) If the trustees—
- (a) give a notice under subsection (6), and
 - (b) make and deliver a subsequent NRCGT return relating to year X which contains an advance self-assessment,

that advance self-assessment is to be treated as amending the section 9 self-assessment.

- (12) For the purposes of subsection (11), an NRCGT return made and delivered by the trustees (“return B”) is “subsequent” to an NRCGT return to which the trustees’ notice under subsection (6) relates (“the notified return”) if the day of the completion of the disposal to which return B relates is later than the day of the completion of the disposal to which the notified return relates.

12ZJ Sections 12ZA to 12ZI: determination of residence status

- (1) For the purposes of sections 12ZA to 12ZI, the question whether or not a disposal of a UK residential property interest is a non-resident CGT disposal is to be determined in accordance with subsections (2) and (3).
- (2) A non-residence condition is to be taken to be met in relation to a disposal of a UK residential property interest if, at the time of the completion of the disposal—
- (a) it is uncertain whether or not that condition will be met, but
 - (b) it is reasonable to expect that that condition will be met.
- (3) If (in a case within subsection (2)) it later becomes certain that neither of the non-residence conditions is met in relation to the disposal, the disposal is treated as not being, and as never having been, a non-resident CGT disposal (and any necessary repayments or adjustments are to be made accordingly).
- (4) Subsection (5) applies if—
- (a) at the time of the completion of the disposal of a UK residential property interest it is uncertain whether or not the disposal is a non-resident CGT disposal because it is uncertain whether or not a non-residence condition will be met, but the case does not fall within subsection (2), and
 - (b) it later becomes certain that a non-residence condition is met in relation to the disposal.
- (5) For the purposes of this Act, the filing date for the NRCGT return is taken to be the 30th day following the day on which it becomes certain that a non-residence condition is met in relation to the disposal.
- (6) In this section “a non-residence condition” means condition A or B in section 14B of the 1992 Act.

12ZK Amendment of NRCGT return by the taxpayer

- (1) A person may, by notice to an officer of Revenue and Customs, amend the person’s NRCGT return.
- (2) An amendment may not be made more than 12 months after 31 January of the year following the relevant tax year.
- (3) In subsection (2) “the relevant tax year” means the tax year in which any gains on the disposal to which the return relates would accrue.

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12ZL Correction of NRCGT return by HMRC

- (1) An officer of Revenue and Customs may amend an NRCGT return so as to correct—
 - (a) obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise), and
 - (b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.
- (2) A correction under this section is made by notice to the person whose return it is.
- (3) No such correction may be made more than 9 months after—
 - (a) the day on which the return was delivered, or
 - (b) if the correction is required in consequence of an amendment of the return under section 12ZK (amendment by the taxpayer), the day on which that amendment was made.
- (4) A correction under this section is of no effect if the person to whom the notice of correction was given gives notice rejecting the correction.
- (5) Notice of rejection under subsection (4) must be given—
 - (a) to the officer of Revenue and Customs by whom the notice of correction was given,
 - (b) before the end of the period of 30 days beginning with the date of issue of the notice of correction.

12ZM Notice of enquiry

- (1) An officer of Revenue and Customs may enquire into an NRCGT return if the officer gives notice of the intention to do so (“notice of enquiry”)—
 - (a) to the person whose return it is,
 - (b) within the time allowed.
- (2) The time allowed is—
 - (a) if the return was delivered on or before 31 January in the year following the relevant tax year (the “annual filing date”), up to the end of the period of 12 months after the day on which the return was delivered;
 - (b) if the return was delivered after the annual filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
 - (c) if the return is amended under section 12ZL (correction by HMRC), up to and including the quarter day next following the first anniversary of the day on which the amendment was made.

For this purpose the quarter days are 31 January, 30 April, 31 July and 31 October.

- (3) An enquiry extends to anything contained in the return, or required to be contained in the return, including any claim or election included in the return, subject to the following limitation.

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- (4) If the notice of enquiry is given as a result of an amendment of the return under section 12ZK (amendment by taxpayer)—
 - (a) at a time when it is no longer possible to give notice of enquiry under subsection (2)(a) or (b), or
 - (b) after an enquiry into the return has been completed,the enquiry into the return is limited to matters to which the amendment relates or which are affected by the amendment.
- (5) In subsection (2) “the relevant tax year” means the tax year in which any gain on the disposal to which the return relates would accrue.

12ZN Amendment of return by taxpayer during enquiry

- (1) This section applies if an NRCGT return is amended under section 12ZK (amendment by taxpayer) at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) So far as the amendment affects the amount notionally chargeable for the purposes of the return (see section 12ZF(1)), it does not take effect while the enquiry is in progress and—
 - (a) if the officer states in the closure notice that the officer has taken the amendment into account and that—
 - (i) the amendment has been taken into account in formulating the amendments contained in the notice, or
 - (ii) the officer’s conclusion is that the amendment is incorrect, the amendment is not to take effect;
 - (b) otherwise, the amendment takes effect when the closure notice is issued.
- (4) For the purposes of this section the period during which an enquiry is in progress is the whole of the period—
 - (a) beginning with the day on which the notice of enquiry is given, and
 - (b) ending with the day on which the enquiry is completed.”

44 (1) Section 28A (completion of enquiry into personal or trustee return) is amended as follows.

(2) In subsection (1), after “9A(1)” insert “or 12ZM”.

(3) In the heading, after “return” insert “or NRCGT return”.

45 Before section 29 insert—

“28G Determination of amount notionally chargeable where no NRCGT return delivered

- (1) This section applies where it appears to an officer of Revenue and Customs that—

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- (a) a person is required to make and deliver in respect of a non-resident CGT disposal an NRCGT return containing an advance self-assessment, and
 - (b) the person has not delivered the required return by the filing date for the return.
- (2) The officer may make a determination, to the best of the officer's information and belief, of the amount of capital gains tax which should have been assessed in the required return as the amount notionally chargeable.
- (3) Notice of any determination under this section must be served on the person in respect of whom it is made and must state the date on which it is issued.
- (4) Until such time (if any) as it is superseded by an advance self-assessment on the basis of information contained in an NRCGT return, a determination under this section is to have effect as if it were an advance self-assessment contained in an NRCGT return made by the person in respect of the disposal concerned.
- (5) Where—
- (a) proceedings have been commenced for the recovery of an amount payable by virtue of a determination under this section, and
 - (b) before those proceedings are concluded, the determination is superseded by an advance self-assessment made by the person in respect of the disposal,
- those proceedings may be continued as if they were proceedings for the recovery of so much of the amount payable by virtue of the advance self-assessment as is due and payable and has not been paid.
- (6) No determination under this section, and no advance self-assessment superseding such a determination may be made—
- (a) after the end of the period of 3 years beginning with 31 January of the year following the tax year to which the determination relates, or
 - (b) in the case of such an advance self-assessment, after the end of the period of 12 months beginning with the date of the determination.
- (7) In this section—
- “advance self-assessment” is to be interpreted in accordance with section 12ZE(1);
 - “amount notionally chargeable” is to be interpreted in accordance with section 12ZF(1);
 - “filing date”, in relation to an NRCGT return, is to be interpreted in accordance with section 12ZB(8).
- (8) For the meaning in this section of “non-resident CGT disposal” see section 14B of the 1992 Act.”

46 In section 29 (assessment where loss of tax discovered), in subsection (7)(a), omit the “and” following sub-paragraph (i), and after that sub-paragraph insert—

- “(ia) a reference to any NRCGT return made and delivered by the taxpayer which contains an advance self-assessment relating to the relevant year of assessment or either of the two immediately preceding chargeable periods; and”.

47 After section 29 insert—

“29A Non-resident CGT disposals: determination of amount which should have been assessed

- (1) Subsection (2) applies if HMRC discover, as regards a non-resident CGT disposal made by a person (“P”) (or two or more such disposals in a case falling within section 12ZC) and a tax year (“the relevant tax year”) that—
 - (a) an amount that ought to have been assessed as the amount notionally chargeable in an advance self-assessment under section 12ZE(1) has not been so assessed by the filing date, or
 - (b) an assessment of the amount notionally chargeable for the purposes of section 12ZF(1) contained in an NRCGT return made and delivered by P has become insufficient.
- (2) HMRC may determine that the amount or further amount which in its opinion ought to be assessed under section 12ZE to remedy the failure mentioned in subsection (1)(a) or the insufficiency mentioned in subsection (1)(b) is to be treated for the purposes of this Act as if it were so assessed in—
 - (a) an NRCGT return made by P in respect of the disposal, or
 - (b) (if P has made and delivered an NRCGT return in respect of the disposal) that return.

But see subsections (3) to (5).

- (3) Where P has made and delivered in respect of the disposal an NRCGT return containing an advance self-assessment, HMRC may not make a determination under subsection (2) in respect of the disposal unless one of the two conditions mentioned below is met.
- (4) The first condition is that the situation mentioned in subsection (1) was brought about carelessly or deliberately by P or a person acting on P’s behalf.
- (5) The second condition is that at the time when an officer of Revenue and Customs—
 - (a) ceased to be entitled to give notice of the officer’s intention to enquire into the NRCGT return, or
 - (b) informed P of the completion of the officer’s enquiries into the return,the officer could not reasonably have been expected, on the basis of the information made available to the officer before that time, to be aware of the situation mentioned in subsection (1).
- (6) For the purposes of subsection (5), information is made available to an officer of Revenue and Customs if—
 - (a) it is contained in an NRCGT return made and delivered by P which relates to the relevant tax year or either or the two immediately preceding tax years,
 - (b) it is contained in any return under section 8 or 8A made and delivered by P in respect of either of the two tax years immediately preceding the relevant tax year,

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- (c) it is contained in any claim made by P which relates to P's capital gains tax position with respect to the relevant tax year or either of the two immediately preceding tax years,
- (d) it is contained in any accounts, statements or documents accompanying a return falling within paragraph (a) or (b) or a claim falling within paragraph (c),
- (e) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries by an officer of Revenue and Customs into a return falling within paragraph (a) or (b) or a claim falling within paragraph (c) are produced or provided by P to the officer, or
- (f) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1)—
 - (i) could be reasonably expected to be inferred by an officer of Revenue and Customs from information falling within paragraphs (a) to (e), or
 - (ii) are notified in writing by the taxpayer to an officer of Revenue and Customs.

(7) In subsection (6)—

- (a) any reference to a return made and delivered by P under section 8 in respect of a tax year includes, if P carries on a trade, profession or business in partnership, a reference to any partnership return with respect to the partnership for that tax year, and
- (b) any reference to P includes a person acting on P's behalf.

(8) An objection to the making of a determination under subsection (2) on the ground that neither of the two conditions mentioned above is fulfilled may not be made otherwise than on an appeal against the assessment.

(9) In this section—

“advance self-assessment” has the meaning given by section 12ZE(1);

“amount notionally chargeable” is to be interpreted in accordance with section 12ZF(1);

“filing date”, in relation to an NRCGT return, has the meaning given by section 12ZB(8).

(10) For the meaning in this section of “non-resident CGT disposal” see section 14B of the 1992 Act.”

48 In section 34 (ordinary time limit of 4 years), after subsection (1) insert—

“(1A) In subsection (1) the reference to an assessment to capital gains tax includes a determination under section 29A (non-resident CGT disposals: determination of amount which should have been assessed).”

49 In section 42 (procedure for making claims), in subsection (11), after “8A,” insert “12ZB”.

50 In section 59A (payments on account of income tax), omit subsection (7).

51 After section 59A insert—

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“59AA Non-resident CGT disposals: payments on account of capital gains tax

- (1) Subsections (2) and (3) apply where a person (“P”) is required to make, in relation to a tax year, an NRCGT return in respect of one or more non-resident CGT disposals containing an advance self-assessment and the amount in subsection (6)(a) is greater than the amount in subsection (6)(b).
- (2) With effect from the filing date for the return, the balancing amount is (or, where applicable, becomes) the amount payable by P on account of P’s liability to capital gains tax for the tax year.
- (3) Where P is the relevant members of an NRCGT group, P is responsible for discharging the obligation of the taxable person to pay any balancing amounts and such amounts are payable on account of the taxable person’s liability to capital gains tax for the tax year.
- (4) Subsection (5) applies where a person (“P”) is required to make, in relation to a tax year, an NRCGT return containing an advance self-assessment and the amount in subsection (6)(a) is less than the amount in subsection (6)(b).
- (5) The balancing amount is repayable to P on the filing date for the return.
- (6) The amounts referred to in subsections (1) and (4) are—
 - (a) the amount notionally chargeable contained in the self-assessment, and
 - (b) the total of any amounts previously paid under this section on account of P’s liability to capital gains tax for the tax year.
- (7) In subsections (2) and (5) “the balancing amount” means the difference between those amounts.
- (8) Where, in the case of a repayment, the NRCGT return is enquired into by an officer of Revenue and Customs—
 - (a) nothing in subsection (5) requires the repayment to be made before the day on which, by virtue of section 28A(1), the enquiry is completed, but
 - (b) the officer may at any time before that day make the repayment, on a provisional basis, to such extent as the officer thinks fit.
- (9) Subsection (10) applies to—
 - (a) any amount payable on account of capital gains tax as a result of the amendment or correction under section 12ZK, 12ZL or 28A of an advance self-assessment, and
 - (b) any amount paid on account of capital gains tax which is repayable as a result of such an amendment or correction.
- (10) The amount is payable or (as the case may be) repayable on or before the day specified by the relevant provision of Schedule 3ZA.
- (11) Subsection (12) applies where a determination under section 28G (determination of amount notionally chargeable where no NRCGT return delivered) which has effect as a person’s advance self-assessment is superseded by an advance self-assessment in an NRCGT return made and delivered by the person under section 12ZB.

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- (12) Any amount which is payable on account of capital gains tax, and any amount paid on account of capital gains tax which is repayable, by virtue of the supersession is to be payable or (as the case may be) repayable on or before the filing date for the return.
- (13) In this section—
 “advance self-assessment” has the meaning given by section 12ZE(1);
 “amount notionally chargeable” is to be interpreted in accordance with section 12ZF(1);
 “filing date”, in relation to an NRCGT return, has the meaning given by section 12ZB(8);
 the “taxable person”, in relation to a non-resident CGT disposal, means the person who would be chargeable to capital gains tax in respect of any chargeable NRCGT gain accruing on the disposal (were such a gain to accrue).
- (14) For the meaning in this section of “non-resident CGT disposal” see section 14B of the 1992 Act.
- (15) For the meaning in this section of “NRCGT group” see section 288(1) of the 1992 Act.

59AB Amounts payable on account: recovery

The provisions of the Taxes Acts as to the recovery of tax shall apply to an amount falling to be paid on account of tax in the same manner as they apply to an amount of tax.”

- 52 (1) Section 59B (payment of income tax and capital gains tax) is amended as follows.
- (2) In subsection (1)(b), after “59A” insert “or 59AA”.
- (3) After subsection (2) insert—
 “(2A) The reference in subsection (1)(b) to payments on account under section 59AA does not include any amounts already repaid under section 59AA(5).”
- 53 In section 107A (relevant trustees), in subsection (2)(b), after “59A” insert “, 59AA”.
- 54 In section 118 (interpretation), in subsection (1), at the appropriate place insert—
 ““NRCGT return” has the meaning given by section 12ZB;”.
- 55 (1) Schedule 3ZA (date by which payment to be made after amendment or correction of self-assessment) is amended as follows.
- (2) In paragraph 1—
 (a) in sub-paragraph (1), at the end insert “or an advance self-assessment (see section 12ZE(1))”;
- (b) in sub-paragraph (2), after “section” insert “59AA(2) or”.
- (3) In paragraph 2—

- (a) in sub-paragraph (1), at the end insert “or an amendment of an advance self-assessment under section 12ZK (amendment of NRCGT return by taxpayer)”;
 - (b) in sub-paragraph (3), after “9B(3)” insert “or 12ZN(3)” and after “self-assessment” insert “or advance self-assessment”.
- (4) In paragraph 3(1), after “9ZB” insert “or 12ZL” and after “trustee return” insert “or NRCGT return”.
- (5) In paragraph 5(1)—
- (a) after “amount of tax” insert “or an amount on account of capital gains tax”;
 - (b) after “self-assessment” insert “or advance self-assessment”;
 - (c) omit “personal or trustee”.
- 56 (1) In FA 2007, Schedule 24 (penalties for errors) is amended as follows.
- (2) In paragraph 1, in the table in sub-paragraph (4), after the entry relating to accounts in connection with a partnership return insert—

“Capital gains tax	Return under section 12ZB of TMA 1970 (NRCGT return).”
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- (3) After paragraph 21B insert—
- “Treatment of certain payments on account of tax*
- 21C In paragraphs 1(2) and 5 references to “tax” are to be interpreted as if amounts payable under section 59AA(2) of TMA 1970 (non-resident CGT disposals: payments on account of capital gains tax) were tax.”
- 57 In Schedule 36 to FA 2008 (information and inspection powers), after paragraph 21 insert—

“Taxpayer notices following NRCGT return

- 21ZA (1) Where a person has delivered an NRCGT return with respect to a non-resident CGT disposal, a taxpayer notice may not be given for the purpose of checking the person’s capital gains tax position as regards the matters dealt with in that return.
- (2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met.
- (3) Condition A is that notice of enquiry has been given in respect of—
- (a) the return, or
 - (b) a claim (or an amendment of a claim) made by the person in relation to the chargeable period,
- and the enquiry has not been completed.
- (4) In sub-paragraph (3) “notice of enquiry” means a notice under section 12ZM of TMA 1970.
- (5) Condition B is that an officer of Revenue and Customs has reason to suspect that—

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- (a) an amount that ought to have been assessed under section 12ZE of TMA 1970 as payable on account of the person's liability to capital gains tax for the tax year to which the return relates has not been so assessed by the filing date for the return, or
 - (b) an assessment under section 12ZE of TMA 1970 of the amount payable on account of P's liability to capital gains tax for the tax year to which the return relates has become insufficient.
- (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person's position as regards a tax other than capital gains tax.
- (7) In this paragraph—
 “NRCGT return” has the meaning given by section 12ZB of TMA 1970;
 “non-resident CGT disposal” has the meaning given by section 14B of TCGA 1992.”
- 58 In CTA 2009, in section 2 (charge to corporation tax), in subsection (2A), for the words from “under” to the end substitute “under—
 (a) section 2B of TCGA 1992 (companies etc chargeable to capital gains tax on ATED-related gains on relevant high value disposals), or
 (b) section 14D or 188D of that Act (persons chargeable to capital gains tax on NRCGT gains on non-resident CGT disposals).”
- 59 (1) In Schedule 55 to FA 2009 (penalty for failure to make returns etc), in the Table in paragraph 1, after item 2 insert—
- | | | |
|-----|-------------------|---|
| “2A | Capital gains tax | NRCGT return under section 12ZB of TMA 1970”. |
|-----|-------------------|---|
- (2) That Schedule, as amended by sub-paragraph (1), is taken to have come into force for the purposes of NRCGT returns on the date on which this Act is passed.