



# Finance Act 2016

## 2016 CHAPTER 24

### PART 4

#### CAPITAL GAINS TAX

##### *Rate*

### **83 Reduction in rate of capital gains tax**

- (1) Section 4 of TCGA 1992 (rates of capital gains tax) is amended as set out in subsections (2) to (12).
- (2) In subsection (1) after “entrepreneurs' relief” insert “and section 169VC (rate in case of claim for investors' relief)”.
- (3) In subsection (2)—
  - (a) after “section” insert “ and section 4BA ”, and
  - (b) for the words from “in respect” to the end substitute—
    - “(a) in respect of upper rate gains accruing to a person in a tax year, is 18%, and
    - (b) in respect of gains accruing to a person in a tax year which are not upper rate gains, is 10%.”
- (4) After subsection (2) insert—

“(2A) In this section “upper rate gains” means—

  - (a) residential property gains (see section 4BB),
  - (b) NRCGT gains (see section 14D), and
  - (c) carried interest gains (see subsections (12) and (13)).”
- (5) For subsection (3) substitute—

“(3) The rate of capital gains tax in respect of gains accruing in a tax year to the trustees of a settlement or the personal representatives of a deceased person—

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- (a) in respect of upper rate gains, is 28%, and
  - (b) in respect of gains which are not upper rate gains, is 20%.”
- (6) In subsection (4), for the words from the second “in respect” to the end substitute—
- “(a) in respect of upper rate gains accruing to the individual in the tax year, is 28%, and
  - (b) in respect of gains accruing to the individual in the tax year which are not upper rate gains, is 20%.”
- (7) In subsection (5) for “28%” substitute “ (subject to section 4BA) 20% ”.
- (8) For subsection (6) substitute—
- “(6) Subsection (6A) applies for the purposes of subsection (5) where—
- (a) there is an excess as mentioned in that subsection (“the higher-rate excess”), and
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year includes any special rate gains, that is, gains which are—
    - (i) chargeable to capital gains tax at the rate in section 169N(3), or
    - (ii) chargeable to capital gains tax at the rate in section 169VC(2).
- (6A) Where this subsection applies—
- (a) if the total amount of the special rate gains exceeds the unused part of the individual's basic rate band, the higher-rate excess is to be treated as reduced by the amount by which the special rate gains exceed that unused part;
  - (b) if not, the higher-rate excess is to be treated as consisting of gains other than the special rate gains.”
- (9) In subsection (7) for “The reference in subsection (5)” substitute “ Any reference in this section ”.
- (10) In subsection (9) after “this section” insert “ and section 4BA ”.
- (11) In subsection (10) after “and (5)” insert “ and section 4BA(1) ”.
- (12) After subsection (11) insert—
- “(12) In subsection (2A)(c) “carried interest gains” means—
- (a) gains treated as accruing under section 103KA(2) or (3), and
  - (b) gains accruing to an individual as a result of carried interest arising to the individual where—
    - (i) the individual performs investment management services directly or indirectly in respect of an investment scheme under arrangements not involving a partnership,
    - (ii) the carried interest arises to the individual under the arrangements, and
    - (iii) the carried interest does not constitute a co-investment repayment or return.
- (13) For the purposes of subsection (12)(b)—

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- (a) “carried interest”, in relation to any arrangements, has the same meaning as in section 809EZB of ITA 2007 (see sections 809EYC and 809EYD of that Act);
  - (b) carried interest “arises” to an individual if it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007;
  - (c) “arrangements”, “investment management services” and “investment scheme” have the same meanings as in that Chapter (see sections 809EZA(6) and 809EZE of that Act);
  - (d) “co-investment repayment or return” has the same meaning as in section 103KA.”
- (13) In section 4A of TCGA 1992 (special cases), in subsection (5) after “and (5)” insert “and section 4BA(1) ”.
- (14) After section 4B of TCGA 1992 insert—

**“4BA Rates, and use of unused basic rate band, in certain cases**

- (1) This section applies where an individual is chargeable to capital gains tax in respect of gains accruing in a tax year and—
  - (a) no income tax is chargeable at the higher rate, the Welsh higher rate or the dividend upper rate in respect of the income of the individual for the tax year,
  - (b) the amount on which the individual is chargeable to capital gains tax for the tax year (“the chargeable gains amount”) exceeds the unused part of the individual's basic rate band, and
  - (c) all or part of the chargeable gains amount consists of upper rate gains.
- (2) In the following provisions of this section “the available gains” means the gains on which the individual is chargeable to capital gains tax for the tax year, excluding any special rate gains.
- (3) The available gains not used by the individual under subsection (4) are to be charged to capital gains tax—
  - (a) to the extent that they consist of upper rate gains, at the rate in section 4(4)(a);
  - (b) to the extent that they consist of gains which are not upper rate gains, at the rate in section 4(5).
- (4) The individual may, subject to subsection (5) (which limits the overall amount that can be used under this subsection)—
  - (a) use any of the available gains that are upper rate gains to be charged at the rate in section 4(2)(a);
  - (b) use any of the available gains that are not upper rate gains to be charged at the rate in section 4(2)(b).
- (5) The total amount of gains used under subsection (4) must equal the qualifying amount.
- (6) The “qualifying amount” is the unused part of the individual's basic rate band less the total amount of any special rate gains.

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- (7) If special rate gains are included in the chargeable gains amount, subsection (4) applies only if the unused part of the individual's basic rate band exceeds the total amount of the special rate gains.
- (8) In this section—
- “upper rate gains” has the same meaning as in section 4;
  - “special rate gains” has the same meaning as in section 4(6);
  - “the unused part of the individual's basic rate band” has the same meaning as in section 4.

#### **4BB Residential property gain or loss**

- (1) For the purposes of the charge to capital gains tax, a residential property gain or loss is a gain or loss which accrues on the disposal of a residential property interest.
- (2) But a residential property gain or loss does not accrue on a non-resident CGT disposal.
- (3) In this Act “disposal of a residential property interest” means—
- (a) a disposal of a UK residential property interest, or
  - (b) a disposal of a non-UK residential property interest.
- (4) Schedule B1 gives the meaning in this Act of “disposal of a UK residential property interest”.
- (5) Schedule BA1 gives the meaning in this Act of “disposal of a non-UK residential property interest”.
- (6) See section 57C and Schedule 4ZZC for how to compute—
- (a) the residential property gain or loss accruing on the disposal of a residential property interest, and
  - (b) the gain or loss accruing on the disposal of a residential property interest which is not a residential property gain or loss.”
- (15) Schedule 11 inserts Schedule BA1 in TCGA 1992 and makes related amendments.
- (16) Schedule 12 inserts section 57C and Schedule 4ZZC in TCGA 1992 and makes related amendments.
- (17) The amendments made by this section and Schedules 11 and 12 have effect in relation to gains accruing on or after 6 April 2016.
- (18) In relation to a time before the tax year appointed under section 14(3)(b) of the Wales Act 2014 in relation to the provision inserted by section 9(14) of that Act, subsection (1) of section 4BA of TCGA 1992 (inserted by subsection (14) of this section) has effect as if the words “, the Welsh higher rate” were omitted.
- (19) In relation to a time before the tax year appointed under section 13(15) of the Scotland Act 2016, subsection (1) of section 4BA of TCGA 1992 (inserted by subsection (14) of this section) has effect as if before “or the dividend upper rate” there were inserted “, the Scottish higher rate”.

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## *Entrepreneurs' relief*

### **84 Entrepreneurs' relief: associated disposals**

(1) Section 169K of TCGA 1992 (disposal associated with relevant material disposal) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “A1,” insert “ A1A, ”, and
- (b) in paragraph (b), for “and C” substitute “ , C and D ”.

(3) After subsection (1A) insert—

“(1AA) Condition A1A is that P makes a material disposal of business assets which consists of the disposal of the whole of P's interest in the assets of a partnership, and—

- (a) that interest is an interest of less than 5%,
- (b) P holds at least a 5% interest in the partnership's assets throughout a continuous period of at least 3 years in the 8 years ending with the date of the disposal, and
- (c) at the date of the disposal, no partnership purchase arrangements exist.

(1AB) Subject to subsection (6A), for the purposes of conditions A1 and A1A, in relation to the disposal of an interest in the assets of a partnership, “partnership purchase arrangements” means arrangements (other than the material disposal itself) under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share).”

(4) In subsection (1E), in the words before paragraph (a)—

- (a) at the beginning insert “ Subject to subsection (6A), ”, and
- (b) after “means arrangements” insert “ (other than the material disposal itself) ”.

(5) After subsection (3A) insert—

“(3AA) Subject to subsection (6A), for the purposes of condition B, in relation to a disposal mentioned in that condition and a partnership, “partnership purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire any interest in, or increase that person's interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share), but does not include any arrangements in connection with a material disposal in relation to which condition A1 or A1A is met.”

(6) In subsection (3B), for “arrangements” to the end substitute “ share purchase arrangements ”.

(7) After subsection (3B) insert—

“(3BA) Subject to subsection (6A), for the purposes of condition B, in relation to a disposal mentioned in that condition and company A, “share purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire shares in or securities of—

- (a) company A, or

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- (b) a company which is a member of a trading group of which company A is a member,  
but does not include any arrangements in connection with a material disposal in relation to which condition A2 or A3 is met.”
- (8) In subsection (3C), for “(3B)” substitute “ (3BA) ”.
- (9) After subsection (4) insert—  
“(4A) Condition D is that the disposal mentioned in condition B is of an asset which P owns throughout the period of 3 years ending with the date of that disposal.”
- (10) Omit subsection (6).
- (11) Before subsection (7) insert—  
“(6A) For the purposes of this section, in relation to a material disposal of business assets and a disposal mentioned in condition B, arrangements are not partnership purchase arrangements or share purchase arrangements if they were made before both disposals and without regard to either of them.”
- (12) In subsection (9), after “entitled to share in the” insert “ capital ”.
- (13) The amendments made by subsections (2)(a), (3) to (8) and (10) to (12) have effect in relation to disposals made on or after 18 March 2015.
- (14) The amendments made by subsections (2)(b) and (9) have effect in relation to disposals of assets which are acquired on or after 13 June 2016.

## **85 Entrepreneurs' relief: disposal of goodwill**

- (1) Section 169LA of TCGA 1992 (relevant business assets: goodwill transferred to a related party etc) is amended as follows.
- (2) In subsection (1)—
  - (a) at the beginning insert “ Subject to subsection (1A), ”,
  - (b) at the end of paragraph (a) insert “ and ”,
  - (c) after paragraph (a) insert—
    - “(aa) immediately after the disposal—
      - (i) P and any relevant connected person together own 5% or more of the ordinary share capital of C or of any company which is a member of a group of companies of which C is a member, or
      - (ii) P and any relevant connected person together hold 5% or more of the voting rights in C or in any company which is a member of a group of companies of which C is a member.”, and
  - (d) omit paragraphs (b) and (c).
- (3) After subsection (1) insert—
  - “(1A) Where—
    - (a) subsection (1)(aa) applies by virtue of P's ownership, or any relevant connected person's ownership, of C's ordinary share capital, and
    - (b) the conditions mentioned in subsection (1B) are met,

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subsection (4) does not apply.

(1B) The conditions referred to in subsection (1A)(b) are—

- (a) P and any relevant connected person dispose of C's ordinary share capital to another company (“A”) such that, immediately before the end of the relevant period, neither P nor any relevant connected person own any of C's ordinary share capital, and
- (b) where A is a close company, immediately before the end of the relevant period—
  - (i) P and any relevant connected person together own less than 5% of the ordinary share capital of A or of any company which is a member of a group of companies of which A is a member, and
  - (ii) P and any relevant connected person together hold less than 5% of the voting rights in A or in any company which is a member of a group of companies of which A is a member.

(1C) In subsection (1B) “the relevant period” means the period of 28 days beginning with the date of the qualifying business disposal, or such longer period as the Commissioners for Her Majesty's Revenue and Customs may by notice allow.”

(4) Omit subsections (2) and (3).

(5) In subsection (5), omit the words from “(including” to the end.

(6) In subsection (7), omit paragraph (b) and the “or” at the end of paragraph (a).

(7) In subsection (8)—

- (a) after the definition of “arrangements” insert—

““group” is to be construed in accordance with section 170;”
- (b) for the definition of “associate”, “control”, “major interest” and “participator” substitute—

““relevant connected person” means—
  - (a) a company connected with P, and
  - (b) trustees connected with P.”

(8) In the heading, for “related party etc” substitute “close company”.

(9) The amendments made by this section have effect in relation to disposals made on or after 3 December 2014.

## **86 Entrepreneurs' relief: “trading company” and “trading group”**

Schedule 13 contains provision about the meaning of “trading company” and “trading group” for the purposes of Chapter 3 of Part 5 of TCGA 1992 (entrepreneurs' relief).

### *Investors' relief*

## **87 Investors' relief**

Schedule 14 contains provision relating to investors' relief.

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### *Employee shareholder shares*

#### **88 Employee shareholder shares: limit on exemption**

(1) Section 236B of TCGA 1992 (exemption for employee shareholder shares) is amended in accordance with subsections (2) and (3).

(2) After subsection (1) insert—

“(1A) Where a gain accrues to a person (“P”) on the first disposal of a post-16 March 2016 exempt employee shareholder share (the “relevant disposal”), subsection (1) applies only to so much of the gain as, when added to the total amount of previous potentially chargeable gains, does not exceed £100,000.

(1B) For the purposes of subsection (1A), “previous potentially chargeable gain” means a gain accruing to P on the first disposal of a post-16 March 2016 exempt employee shareholder share at any time before the relevant disposal.

(1C) Where a single transaction disposes of more than one post-16 March 2016 exempt employee shareholder share, the reference in subsection (1A) to the first disposal of a share is to be treated as a reference to the disposal of all of the post-16 March 2016 exempt employee shareholder shares first disposed of by that transaction.”

(3) After subsection (3) insert—

“(3A) In this section, “post-16 March 2016 exempt employee shareholder share” means an exempt employee shareholder share acquired in consideration of an employee shareholder agreement entered into after 16 March 2016.”

(4) Section 236F of TCGA 1992 (reorganisation of share capital involving employee shareholder shares) is amended in accordance with subsections (5) and (6).

(5) After subsection (1) insert—

“(1A) Subsection (1B) applies where—

- (a) an exempt employee shareholder share (“the original EES share”) is held by a person (“P”) before, and is concerned in, a reorganisation, and
- (b) the original EES share is disposed of on the reorganisation.

(1B) P is to be treated as if the original EES share were disposed of for consideration of an amount determined in accordance with subsections (1D) to (1H) (the “relevant amount”).

(1C) In this section “notional gain” means the gain, if any, that would accrue to P if the original EES share were disposed of on the reorganisation for consideration of an amount equal to the market value of the share.

(1D) Subsections (1E) to (1G) apply where a notional gain would accrue to P on the disposal of the original EES share.

(1E) Where the whole of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is the amount that would secure that on the disposal neither a gain nor a loss would accrue to P.



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- (1F) Where part (but not the whole) of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is the maximum amount, not exceeding the market value of the share, that would secure that on the disposal no chargeable gain would accrue to P.
- (1G) Where no part of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is equal to the market value of the original EES share at the time of the disposal.
- (1H) Where no notional gain would accrue to P on the disposal of the original EES share, the relevant amount is the amount that would secure that on the disposal neither a gain nor a loss would accrue to P.
- (1I) In determining for the purposes of this section whether any part of a notional gain is a chargeable gain by virtue of section 236B(1A), subsection (1B) is to be disregarded.
- (1J) Where more than one original EES share is disposed of by P on a reorganisation, references in this section to the disposal of the original EES share are to be treated as references to the disposal of all of the original EES shares disposed of on the reorganisation.
- (1K) In this section “reorganisation” has the same meaning as in section 127.”
- (6) In subsection (2) for “reference in subsection (1) to section 127 includes” substitute “references in this section to section 127 include ”.
- (7) Section 58 of TCGA 1992 (spouses and civil partners) is amended in accordance with subsections (8) and (9).
- (8) In subsection (2)(c) after “disposal is” insert “ a relevant disposal ”.
- (9) After subsection (2) insert—
  - “(3) For the purposes of subsection (2) a disposal of exempt employee shareholder shares is a “relevant disposal” if (apart from this section)—
    - (a) a gain would accrue on the disposal, and
    - (b) no part of the gain would be a chargeable gain.
  - (4) Subsection (5) applies where the disposal is of exempt employee shareholder shares and (apart from this section)—
    - (a) a gain would accrue on the disposal, and
    - (b) part (but not the whole) of the gain would be a chargeable gain by virtue of section 236B(1A).
  - (5) Where this subsection applies, subsection (1) has effect in relation to the disposal as if—
    - (a) for “such amount as” there were substituted “ the maximum amount, not exceeding the market value of the asset, that ”, and
    - (b) for “neither a gain nor a loss” there were substituted “ no chargeable gain ”.”
- (10) The amendments made by this section have effect in relation to disposals made after 16 March 2016.

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## 89 Employee shareholder shares: disguised fees and carried interest

- (1) In section 236B of TCGA 1992 (exemption for employee shareholder shares), after subsection (2) insert—
- “(2A) Subsection (1) does not apply in relation to a gain accruing on a disposal where the proceeds of the disposal, in relation to any individual, constitute—
- (a) a disguised fee for the purposes of Chapter 5E of Part 13 of ITA 2007 (see section 809EZA(3) of that Act), or
  - (b) carried interest within the meaning given by section 809EZC of that Act.”
- (2) The amendment made by this section has effect in relation to gains accruing on or after 6 April 2016.

### *Other provisions*

## 90 Disposals of UK residential property by non-residents etc

- (1) In Schedule 4ZZA to TCGA 1992 (relevant high value disposals: gains and losses), in paragraph 2(1), for “paragraph 6” substitute “ paragraph 6A ”.
- (2) In Schedule 4ZZB to TCGA 1992 (non-resident CGT disposals: gains and losses), in paragraph 17—
- (a) omit sub-paragraph (2), and
  - (b) in sub-paragraph (3), omit the words from “If” to “applies”.
- (3) The amendment made by subsection (1) has effect in relation to disposals made on or after 6 April 2015.
- (4) The amendment made by subsection (2) has effect in relation to disposals made on or after 26 November 2015.

## 91 NRCGT returns

In TMA 1970, after section 12ZB (NRCGT return) insert—

### **“12ZBA Elective NRCGT return**

- (1) A person is not required to make and deliver an NRCGT return under section 12ZB(1), but may do so, in circumstances to which this section applies.
- (2) The circumstances to which this section applies are where the disposal referred to in section 12ZB(1) is—
- (a) a disposal on or after 6 April 2015 where, by virtue of any of the no gain/no loss provisions, neither a gain nor a loss accrues, or
  - (b) the grant of a lease on or after 6 April 2015 which is—
    - (i) for no premium,
    - (ii) to a person who is not connected with the grantor, and
    - (iii) under a bargain made at arm's length.
- (3) For the purposes of subsection (2)—

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“connected” is to be construed in accordance with section 286 of 1992 Act;

“no gain/no loss provisions” has the meaning given by section 288(3A) of the 1992 Act;

“lease” and premium” have the meanings given by paragraph 10 of Schedule 8 to the 1992 Act.

- (4) The Treasury may by regulations made by statutory instrument add or remove circumstances to which this section applies.
- (5) Regulations under subsection (4) may—
  - (a) amend this section or any other enactment;
  - (b) make consequential provision.
- (6) A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Paragraph 1 of Schedule 55 to the Finance Act 2009 (penalty for late returns) does not apply in relation to an NRCGT return which is made and delivered by virtue of this section.”

## **92 Addition of CGT to Provisional Collection of Taxes Act 1968**

In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax etc), in subsection (1), after “income tax,” insert “ capital gains tax, ”.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)