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## SCHEDULES

### SCHEDULE 1

#### CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS ETC

##### PART 1

#### EXTENDING CASES IN WHICH NON-RESIDENTS ARE CHARGED TO TAX ETC

2 For the sections contained in Part 1 substitute—

##### “PART 1

#### CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

##### CHAPTER 1

#### CAPITAL GAINS TAX

##### *Charge to capital gains tax*

##### **1 Capital gains tax**

- (1) Capital gains tax is charged for a tax year on chargeable gains accruing in the year to a person on the disposal of assets.
- (2) As a result of section 4 of CTA 2009, capital gains tax is not charged on gains accruing to a company, but corporation tax is chargeable instead in accordance with—
  - (a) section 2 of CTA 2009,
  - (b) Chapter 2 of this Part, and
  - (c) other relevant provisions of the Corporation Tax Acts.
- (3) Capital gains tax is charged on the total amount of chargeable gains accruing to a person in a tax year after deducting—
  - (a) any allowable losses accruing to the person in the tax year, and
  - (b) so far as not previously deducted under this subsection, any allowable losses accruing to the person in any previous tax year.

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### *Territorial scope of charge*

#### **1A Territorial scope**

- (1) A person who is UK resident for a tax year is chargeable to capital gains tax on chargeable gains accruing to the person in the tax year on the disposal of assets wherever situated.
- (2) In the case of individuals who are UK resident for a tax year, see also—
  - (a) Schedule 1 (foreign gains accruing to individuals to whom the remittance basis applies),
  - (b) section 1G (cases where the tax year is a split year),
  - (c) sections 1M and 1N (temporary periods of non-residence),
  - (d) Chapter 3 (gains of non-UK resident close companies attributed to individuals), and
  - (e) sections 86, 87, 87K, 87L and 89(2) (gains of non-UK resident trustees attributed to individuals).
- (3) A person who is not UK resident for a tax year is chargeable to capital gains tax on chargeable gains accruing to the person in the tax year on the disposal of—
  - (a) assets situated in the United Kingdom that have a relevant connection to the person's UK branch or agency and are disposed of at a time when the person has that branch or agency (see section 1B),
  - (b) assets not within paragraph (a) that are interests in UK land (see section 1C), and
  - (c) assets (wherever situated) not within paragraph (a) or (b) that derive at least 75% of their value from UK land where the person has a substantial indirect interest in that land (see section 1D and Schedule 1A).
- (4) For the purposes of this Chapter a person is “UK resident” for a tax year if the person is resident in the United Kingdom during any part of the tax year.
- (5) For the relevant residence rules—
  - (a) in the case of individuals, see Schedule 45 to the Finance Act 2013 (which provides that individuals meeting the applicable tests for a tax year are taken to be resident for the whole of the year),
  - (b) in the case of the personal representatives of deceased individuals, see section 62(3), and
  - (c) in the case of trustees of settlements, see section 69.

#### **1B Non-UK residents: UK branch or agency**

- (1) For the purposes of section 1A(3)(a) a person has a UK branch or agency at any time if, at that time, the person carries on a trade, profession or vocation in the United Kingdom through a branch or agency there.
- (2) For the purposes of section 1A(3)(a) an asset has a relevant connection to a person's UK branch or agency if—

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- (a) it is, or was, used in or for the purposes of the trade, profession or vocation at or before the time of the disposal,
  - (b) it is, or was, used or held for the purposes of the branch or agency at or before that time, or
  - (c) it is acquired for use by or for the purposes of the branch or agency.
- (3) Section 1A(3)(a) does not apply to a person who, as a result of Part 2 of TIOPA 2010 (double taxation arrangements), is exempt from income tax for the tax year in respect of the profits or gains of the branch or agency.
- (4) In the case of a profession or vocation carried on by a person, an asset does not have a relevant connection to the person's UK branch or agency if—
- (a) the asset was only used in or for the purposes of the profession or vocation before 14 March 1989, or
  - (b) the asset was only used or held for the purposes of the branch or agency before that date.
- (5) In this Act, unless the context otherwise requires, “branch or agency”—
- (a) means any factorship, agency, receivership, branch or management, but
  - (b) does not include any person within any of the exemptions under sections 835G to 835K of ITA 2007 (persons who are not UK representatives).

### **1C Non-UK residents: disposing of an “interest in UK land”**

- (1) For the purposes of section 1A(3)(b) an “interest in UK land” means—
- (a) an estate, interest, right or power in or over land in the United Kingdom, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of an estate, interest, right or power in or over land in the United Kingdom,
- other than an excluded interest.
- (2) The following interests are “excluded interests”—
- (a) any interest or right held for securing the payment of money or the performance of any other obligation,
  - (b) a licence to use or occupy land,
  - (c) in England and Wales or Northern Ireland, a tenancy at will or an advowson, franchise or manor, and
  - (d) such other descriptions of interest or right in relation to land in the United Kingdom as may be specified in regulations made by the Treasury.
- (3) An interest or right is not within subsection (2)(a) if it is—
- (a) a rentcharge, or
  - (b) in Scotland, a feu duty or a payment mentioned in section 56(1) of the Abolition of Feudal Tenure etc (Scotland) Act 2000.
- (4) The grant of an option by a person binding the person to dispose of an interest in UK land is (so far as it would not otherwise be the case) regarded

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as a disposal of an interest in UK land by the person for the purposes of section 1A(3)(b).

- (5) This does not affect the operation of section 144 in relation to the grant of the option (or otherwise).
- (6) In this section—
- “franchise” means a grant from the Crown such as the right to hold a market or fair, or the right to take tolls, and
- “land” includes—
- (a) buildings and structures, and
  - (b) land under the sea or otherwise covered by water.

#### **1D Non-UK residents: assets deriving 75% of value from UK land etc**

- (1) For the purposes of section 1A(3)(c) the following questions are determined in accordance with the provision made by Schedule 1A—
- (a) whether the asset being disposed of derives at least 75% of its value from UK land, and
  - (b) whether the person making the disposal has a substantial indirect interest in the UK land at the time of the disposal.
- (2) The provision made by Schedule 1A is not to be taken as affecting the meaning of “substantial” in other contexts.

#### *Deduction of allowable losses*

#### **1E Losses deductible only when within scope of tax etc**

- (1) A loss is not an allowable loss if it accrues in a tax year at a time when, had a gain accrued instead, the gain would not have been chargeable to capital gains tax under this Act for the tax year (and see also sections 16(2) and 16A).
- (2) In addition, the only allowable losses that qualify for deduction from chargeable gains under section 1A(3) (non-UK residents) are those accruing to the person on disposals of assets within that subsection.
- (3) An allowable loss counts for the purposes of subsection (2) even if it accrues in a tax year in which the person was UK resident.
- (4) No allowable losses may be deducted from chargeable gains treated as accruing to an individual as a result of section 87, 87K, 87L or 89(2) (read, where appropriate, with section 1M).
- (5) If—
- (a) amounts (or elements of amounts) treated as accruing to an individual as a result of section 86 relate to different settlements, and
  - (b) the deduction of allowable losses does not reduce the amounts or elements to nil,

the deduction applicable to each amount is the proportion that the amount concerned bears to the total of the amounts.

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- (6) The deduction of allowable losses also has effect subject to Schedule 1 (UK resident individuals not domiciled in UK).
- (7) For the only case in which an allowable loss accruing in a tax year may be carried back to an earlier tax year, see section 62 (death).

#### **1F Allowable losses to be used in most beneficial way etc**

- (1) Allowable losses may (subject to express provision to the contrary) be deducted from gains in whichever way is most beneficial to a person chargeable to capital gains tax.
- (2) Accordingly, an allowable loss may be deducted from a chargeable gain irrespective of the rate of tax at which the gain would otherwise have been charged.
- (3) Allowable losses that are deducted from gains may not be deducted any further than is necessary to eliminate the gains.
- (4) No part of an allowable loss may be relieved under this Act more than once.
- (5) So far as an amount has been relieved under the Income Tax Acts, it may not be further relieved under this Act.

*UK resident individuals with split tax years*

#### **1G Gains accruing to UK resident individuals in split years**

- (1) If, as respects any individual, a tax year is a split year, sections 1A(1) and 1E have effect subject to the modifications made by this section.
- (2) Gains accruing to the individual in the overseas part of the tax year are chargeable to capital gains tax only if they accrue on the disposal of assets within section 1A(3).
- (3) Losses are deductible from gains accruing to the individual in the overseas part of the tax year on the disposal of assets within section 1A(3)(b) or (c) only if the losses accrue to the individual on the disposal of—
  - (a) assets that are within section 1A(3)(b) or (c), or
  - (b) assets that would be within section 1A(3)(b) or (c) if they did not have a relevant connection to the individual's UK branch or agency.
- (4) But losses accruing in the overseas part of the tax year on disposals of assets within section 1A(3)(b) or (c) are (so far as not deducted as mentioned in subsection (3)) deductible from gains accruing in the UK part of the tax year.

*Rates of CGT*

#### **1H The main rates of CGT**

- (1) This section makes provision about the rates at which capital gains tax is charged but has effect subject to—
  - (a) section 169N (entrepreneurs' relief: rate of 10%), and

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- (b) section 169VC (investors' relief: rate of 10%).
- (2) Chargeable gains accruing in a tax year to an individual that are—
  - (a) residential property gains (see Schedule 1B), or
  - (b) carried interest gains (see subsections (9) to (11)),
 are charged to capital gains tax at a rate of 18% or 28%.
- (3) Other chargeable gains accruing in a tax year to an individual are charged to capital gains tax at a rate of 10% or 20%.
- (4) The question as to which of the rates applies to the gains concerned is determined by section 1I (income taxed at higher rates or gains exceeding unused basic rate band).
- (5) Chargeable gains accruing in a tax year to the personal representatives of a deceased individual that are—
  - (a) residential property gains, or
  - (b) carried interest gains,
 are charged to capital gains tax at a rate of 28%.
- (6) Other chargeable gains accruing in a tax year to the personal representatives of a deceased individual are charged to capital gains tax at a rate of 20%.
- (7) Residential property gains accruing in a tax year to the trustees of a settlement are charged to capital gains tax at a rate of 28%.
- (8) Other chargeable gains accruing in a tax year to the trustees of a settlement are charged to capital gains tax at a rate of 20%.
- (9) For the purposes of this section chargeable gains are “carried interest gains” if they accrue to an individual (“X”)—
  - (a) under section 103KA(2) or (3) (investment management services), or
  - (b) as a result of carried interest arising to X under arrangements not involving a partnership under which X performs investment management services directly or indirectly in respect of an investment scheme.
- (10) A gain is not a carried interest gain under subsection (9)(b) if the carried interest constitutes a co-investment repayment or return.
- (11) Expressions used in subsection (9) or (10) have the same meaning as they have in Chapter 5 of Part 3.

### **1I Income taxed at higher rates or gains exceeding unused basic rate band**

- (1) If any of an individual's income for a tax year is chargeable to income tax at a higher income tax rate, gains accruing to the individual in the tax year are charged—
  - (a) at the rate of 28%(if they are residential property gains or carried interest gains), or
  - (b) at the rate of 20% (if they are other kinds of gains).
- (2) If—

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- (a) none of an individual's income for a tax year is chargeable to income tax at a higher income tax rate, but
  - (b) the individual is chargeable to capital gains tax for the tax year on an amount that exceeds the unused part of the individual's basic rate band,  
the excess (“the higher rate excess”) is charged at the rate of 28%(so far as comprising residential property gains or carried interest gains) or at the rate of 20% (so far as comprising other kinds of gains).
- (3) The remainder of this section sets out special rules which apply depending on the nature of the gains within subsection (2)(b).
- (4) If—
- (a) the gains consist of or include gains (“entrepreneur or investor gains”) chargeable at the rate of 10% under section 169N(3) or 169VC(2), and
  - (b) the total amount of the entrepreneur or investor gains exceeds the unused part of the individual's basic rate band,  
that unused part is used fully against those gains.
- (5) The effect of so doing is that other gains comprised in the higher rate excess are then charged—
- (a) at the rate of 28%(if they are residential property gains or carried interest gains), or
  - (b) at the rate of 20% (if they are other kinds of gains).
- (6) If the total amount of the entrepreneur or investor gains does not exceed the unused part of the individual's basic rate band—
- (a) so much of that unused part as is equal to that total amount is used against those gains, and
  - (b) accordingly, the higher rate excess consists only of gains other than entrepreneur or investor gains.
- (7) The individual may allocate so much of the unused part of the individual's basic rate band as then remains to—
- (a) any residential property gains or carried interest gains, or
  - (b) any other gains.
- (8) The effect of the allocation is that the gains to which the allocation is made are charged—
- (a) at the rate of 18%(if they are residential property gains or carried interest gains), or
  - (b) at the rate of 10% (if they are other kinds of gains).
- (9) Any gains to which no allocation is made are charged—
- (a) at the rate of 28%(if they are residential property gains or carried interest gains), or
  - (b) at the rate of 20% (if they are other kinds of gains).

## **1J Section 1I: definitions and other supplementary provision**

- (1) For the purposes of section 1I—

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- a “higher income tax rate” means—
- (a) the higher rate or the default higher rate,
  - (b) the savings higher rate, or
  - (c) the dividend upper rate, and
- “the unused part of the individual's basic rate band” means the amount by which the basic rate limit exceeds the individual's Step 3 income.
- (2) If an individual is entitled to relief for a tax year under section 539 of ITTOIA 2005 (contracts for life insurance) by reference to the amount of a deficiency, the individual's Step 3 income for the tax year is treated for the purposes of this section as reduced by the amount of the deficiency.
  - (3) If, as a result of section 669(1) and (2) of ITTOIA 2005 (inheritance tax on accrued income), there is a reduction in the residuary income of an estate for a tax year that reduces an individual's income by any amount, the individual's Step 3 income for the tax year is treated for the purposes of this section as reduced by the amount of that reduction in the individual's income.
  - (4) If an individual has life insurance gains for a tax year, the individual's Step 3 income for the tax year is treated for the purposes of this section as if the amount of those gains were limited to—
    - (a) the annual equivalent within the meaning of section 536(1) of ITTOIA 2005, or
    - (b) the total annual equivalent within the meaning of section 537 of that Act,
as the case may be.
  - (5) If—
    - (a) an individual has life insurance gains for a tax year,
    - (b) relief is given under section 535 of ITTOIA 2005 for the tax year, and
    - (c) the calculation under section 536(1) or 537 of that Act for the tax year does not involve the higher rate,
the individual is treated for the purposes of section 11 as if none of the individual's income were chargeable to income tax at the higher rate, the default higher rate or the dividend upper rate.
  - (6) In the application of section 11 in the case of any individual it is to be assumed that the individual is not a Scottish or Welsh taxpayer.
  - (7) In this section—

“the individual's Step 3 income” means so much of the individual's total income for the tax year as is left after taking Step 3 under section 23 of ITA 2007 (income tax liability calculation), and

“life insurance gains”, in relation to an individual, means the amount or amounts treated as the individual's income as a result of section 465 of ITTOIA 2005 (gains from contracts for life insurance).
  - (8) Expressions used in this section which have a meaning when used in the Income Tax Acts have the same meaning in this section.



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### *Annual exempt amount*

#### **1K Annual exempt amount**

- (1) If an individual is (or, apart from this section, would be) chargeable to capital gains tax for a tax year on chargeable gains, the annual exempt amount for the year is to be deducted from those gains (but no further than necessary to eliminate them).
- (2) The annual exempt amount for a tax year is £12,000.
- (3) The annual exempt amount may not be deducted from chargeable gains to which paragraph 2 of Schedule 1 applies (foreign gains of non-UK domiciled individuals accruing in one year and remitted in later year).
- (4) The deduction of the annual exempt amount—
  - (a) is made after the deduction of allowable losses accruing in the tax year, but
  - (b) is made before the deduction of allowable losses accruing in a previous tax year or, if section 62 applies, in a subsequent tax year.
- (5) The annual exempt amount may be deducted from gains in whatever way is most beneficial to a person chargeable to capital gains tax (irrespective of the rate of tax at which the gains would otherwise have been charged).
- (6) An individual is not entitled to an annual exempt amount for a tax year if section 809B of ITA 2007 (claim for remittance basis) applies to the individual for the year.
- (7) For the tax year in which an individual dies and for the next two tax years, this section applies to the individual's personal representatives as if references to the individual were to those personal representatives.
- (8) This section applies in relation to trustees in accordance with the provision made by Schedule 1C.

#### **1L Increasing annual exempt amount to reflect increases in CPI**

- (1) If the consumer prices index for the September before the start of a tax year is higher than it was for the previous September—
  - (a) the annual exempt amount is increased by the same percentage as the rise in that index (rounded up to the nearest £100), and
  - (b) section 1K(2) has effect for the tax year (and subsequent tax years) as if it referred to the increased amount.
- (2) If, as a result of this section, the annual exempt amount for a tax year increases, the Treasury must before the start of the tax year make an order showing the increased amount.

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### *Temporary periods of non-residence*

#### **1M Temporary non-residents**

(1) If, in the case of the disposal of an asset by an individual who is temporarily non-resident—

- (a) a gain or loss accrues to the individual in the temporary period of non-residence, and
- (b) the asset is not excluded from this subsection by section 1N (certain assets acquired in that period),

the gain or loss is treated instead as accruing to the individual in the period of return.

(2) If—

- (a) a gain is, as a result of subsection (1), treated as accruing to an individual in a tax year for which the remittance basis applies to the individual,
- (b) the tax year consists of or includes the period of return, and
- (c) the gain was remitted to the United Kingdom in the temporary period of non-residence,

the gain is treated instead as remitted to the United Kingdom in the period of return.

(3) If—

- (a) an individual is temporarily non-resident, and
- (b) a gain would, as a result of section 86, have accrued to the individual in a tax year falling wholly or partly in the temporary period of non-residence if the individual had been resident in the United Kingdom for that year,

the gain is treated instead as accruing to the individual in the period of return (but see also section 86A).

(4) Nothing in any double taxation arrangements prevents a charge to capital gains tax arising as a result of this section.

(5) Nothing in this section is to affect a gain or loss which, apart from this section, would be chargeable to capital gains tax or would be an allowable loss.

(6) For the purposes of this section each of the following expressions has the meaning given by Part 4 of Schedule 45 to the Finance Act 2013 (statutory residence test: anti-avoidance)—

- “the period of return”
- “temporarily non-resident”
- “the temporary period of non-residence”.

(7) In this section the reference to “the remittance basis” applying to an individual for a tax year is to section 809B, 809D or 809E of ITA 2007 applying to the individual for the year.

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### **1N Section 1M(1): assets acquired in temporary period of non-residence**

- (1) An asset is excluded from section 1M(1) if—
  - (a) it was acquired by the individual in the temporary period of non-residence,
  - (b) the acquisition was otherwise than by means of a disqualifying no gain/no loss disposal,
  - (c) there is no reduction in the consideration for the acquisition under section 23(4)(b) or (5)(b), 152(1)(b), 153(1)(b), 162(3)(b) or 247(2)(b) or (3)(b) by reference to a UK resident disposal, and
  - (d) the asset is not an interest created by or arising under a settlement.
- (2) This exclusion does not apply in the case of an asset (“the new asset”) if—
  - (a) on a disposal of the new asset a gain or loss is treated as a result of 116(10) or (11), 134 or 154(2) or (4) as accruing (ignoring section 1M),
  - (b) the gain or loss is calculated by reference to another asset (“the old asset”), and
  - (c) the new asset is one that meets the conditions for exclusion but the old asset does not.
- (3) For the purposes of this section “a UK resident disposal” means a disposal by a person (“P”) of an asset which was acquired by P at a time when—
  - (a) P was resident in the United Kingdom, and
  - (b) P was not Treaty non-resident.
- (4) For the purposes of this section “a disqualifying no gain/no loss disposal” means a UK resident disposal to which section 58, 73 or 258(4) applies.

#### *Interpretation*

### **1O Definitions used in Chapter**

In this Chapter any reference to a person who is, or is not, “UK resident” is to be read in accordance with section 1A(4).

## **CHAPTER 2**

### **CORPORATION TAX ON CHARGEABLE GAINS**

#### *Corporation tax on chargeable gains: the general scheme*

### **2 Corporation tax on chargeable gains**

- (1) As a result of section 2(1) and (2) of CTA 2009, corporation tax is charged on chargeable gains accruing to a company on the disposal of assets.
- (2) The charge to corporation tax on chargeable gains has effect in accordance with this Act and all other relevant provisions of the Corporation Tax Acts.

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## **2A Company's total profits to include chargeable gains**

- (1) The amount of chargeable gains to be included in a company's total profits for an accounting period is the total amount of chargeable gains accruing to the company in the period after deducting—
  - (a) any allowable losses accruing to the company in the period, and
  - (b) so far as not previously deducted under this subsection, any allowable losses previously accruing to the company while it was within the charge to corporation tax.
- (2) For the purposes of corporation tax on gains “allowable loss” does not include a loss accruing to a company if, had a gain accrued, the company would not have been chargeable to corporation tax on the gain.

### *Territorial scope*

## **2B Territorial scope of charge to corporation tax on chargeable gains**

- (1) A company which is resident in the United Kingdom in an accounting period is chargeable to corporation tax on chargeable gains accruing to the company in the period on the disposal of assets wherever situated.
- (2) This is subject to Chapter 3A of Part 2 of CTA 2009 (exemption from charge in respect of profits of foreign permanent establishments).
- (3) A company which is not resident in the United Kingdom is chargeable to corporation tax on chargeable gains that—
  - (a) accrue to the company on the disposal of assets situated in the United Kingdom that have a relevant connection to the company's UK permanent establishment (see section 2C),
  - (b) accrue at a time when it has that permanent establishment, and
  - (c) are, in accordance with sections 20 to 32 of CTA 2009, attributable to that permanent establishment.
- (4) In addition, a company which is not resident in the United Kingdom is chargeable to corporation tax on chargeable gains accruing to the company on the disposal of assets not within subsection (3) that are—
  - (a) interests in UK land, or
  - (b) assets (wherever situated) not within paragraph (a) that derive at least 75% of their value from UK land where the company has a substantial indirect interest in that land.
- (5) Section 1C applies for the purposes of subsection (4)(a) as it applies for the purposes of section 1A(3)(b) (disposing of interests in UK land).
- (6) The reference in subsection (4)(b) to assets deriving at least 75% of their value from UK land where the company has a substantial indirect interest in that land is to be read in accordance with Schedule 1A.

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## **2C Non-UK resident company with UK permanent establishment**

- (1) For the purposes of section 2B(3) a company has a UK permanent establishment at any time if, at that time, the company carries on a trade in the United Kingdom through a permanent establishment there.
- (2) For the purposes of section 2B(3) an asset has a relevant connection to a company's UK permanent establishment if—
  - (a) it is, or was, used in or for the purposes of the trade at or before the time of the disposal,
  - (b) it is, or was, used or held for the purposes of the permanent establishment at or before that time, or
  - (c) it is acquired for use by or for the purposes of the permanent establishment.
- (3) Section 2B(3) does not apply to a company which, as a result of Part 2 of TIOPA 2010 (double taxation arrangements), is exempt from corporation tax for the accounting period in respect of the profits of the permanent establishment.
- (4) In the case of the long-term business of an overseas life insurance company, subsection (2) has effect as if for paragraph (b) there were substituted—
  - “(b) it is, or was, used or held for the purposes of the permanent establishment at or before that time (irrespective of where it is situated at that time).”
- (5) In this section references to a trade include an office and references to carrying on a trade include holding an office.

### *Application of CGT principles etc*

## **2D Application of CGT principles in calculating gains and losses**

- (1) The total amount of chargeable gains to be included in a company's total profits for an accounting period is calculated for corporation tax purposes in accordance with capital gains tax principles.
- (2) All of the following questions are determined in accordance with the enactments relating to capital gains tax as if accounting periods were tax years—
  - (a) any question as to the amounts to be, or not to be, taken into account as chargeable gains or allowable losses,
  - (b) any question as to the amounts to be, or not to be, taken into account in calculating gains or losses,
  - (c) any question as to the amounts charged to tax as a company's gains, and
  - (d) any question as to the time when any amount is treated as accruing.
- (3) This section is subject to any provision made elsewhere by the Corporation Tax Acts.

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## **2E References to income tax or Income Tax Acts in case of companies**

- (1) If the CGT enactments contain any reference to—
  - (a) income tax, or
  - (b) the Income Tax Acts,the reference is, in relation to a company, to be read as a reference to corporation tax or the Corporation Tax Acts.
- (2) But—
  - (a) this does not affect references to income tax in section 39(2), and
  - (b) so far as the CGT enactments operate by reference to matters of any specified description, account is to be taken for corporation tax purposes of matters of that description confined to companies but not of any confined to individuals.
- (3) In this section “the CGT enactments” means the enactments relating to capital gains tax.

## **2F Interaction of capital gains tax and corporation tax**

- (1) This Act as it has effect in accordance with this Chapter is not to be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes.
- (2) But this Act is, so far as it is consistent with the Corporation Tax Acts, to apply in relation to capital gains tax and corporation tax on gains as if they were one tax.
- (3) Accordingly, a matter which in a case involving two individuals is relevant to both of them in relation to capital gains tax is in a similar case involving an individual and a company—
  - (a) relevant to the individual in relation to capital gains tax, and
  - (b) relevant to the company in relation to corporation tax.

### *Supplementary*

## **2G Assets of a company vested in a liquidator**

- (1) If assets of a company are vested in a liquidator—
  - (a) this Chapter, and
  - (b) the enactments applied by this Chapter,apply as if the assets were vested in the company and as if the acts of the liquidator in relation to the assets were the company's acts.
- (2) Accordingly, acquisitions from or disposals to the liquidator by the company are ignored.
- (3) The assets may be vested in the liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2. (See end of Document for details)*

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## CHAPTER 3

### ATTRIBUTION OF GAINS OF NON-UK RESIDENT CLOSE COMPANIES

#### *Gains of non-UK resident companies not otherwise chargeable*

#### **3 Gains attributed to UK resident individuals etc**

- (1) This section applies if—
  - (a) a chargeable gain accrues at any time to a non-UK resident close company,
  - (b) the gain is connected to avoidance (see section 3A),
  - (c) the gain is not connected to a foreign trade or other economically significant foreign activities (see section 3A), and
  - (d) apart from this section, some or all of the gain would not be chargeable to corporation tax on the company.
- (2) So much of the gain as would not otherwise be so chargeable is apportioned among participators, or indirect participators, in the company—
  - (a) who are resident in the United Kingdom at that time, or
  - (b) who are trustees of a settlement and are not resident in the United Kingdom at that time.
- (3) The proportion of the amount of the gain to be apportioned to each person corresponds to the extent of the person's interest in the company as a participator or indirect participator.
- (4) The amount apportioned to each person is treated as a chargeable gain accruing to the person.
- (5) No apportionment of any part of a gain is made to an individual if—
  - (a) the gain accrues in a tax year which, as respects the individual, is a split year, and
  - (b) the gain accrues in the overseas part of the year.
- (6) No apportionment of any part of a gain is made to a person if the total amount that would, apart from this subsection, be apportioned to—
  - (a) the person, and
  - (b) persons connected to the person,is 25% or less of the amount of the gain falling to be apportioned.
- (7) A person (“P”) is an “indirect participator” in a company (“A”) if—
  - (a) another company (“B”) which is a non-UK resident close company is a participator in A, and
  - (b) P is a participator in B or P is a participator in a third non-UK resident close company which is participator in B,and so on through any number of non-UK resident close companies that are participators in other non-UK resident close companies.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2. (See end of Document for details)*

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- (8) P's interest as an indirect participator in A in the case of any gain is determined by—
- (a) apportioning the gain among the participators in A according to the extent of their respective interests as participators, and
  - (b) then further apportioning the gain apportioned to B among the participators in B according to the extent of their respective interests as participators, and so on through other companies.
- (9) So far as it would go to reduce or extinguish chargeable gains accruing, as a result of this section, to a person in a chargeable period, this section applies to a loss accruing to the company on the disposal of an asset in that period as it would apply if there had been a gain.
- (10) But—
- (a) this only applies in relation to that person, and
  - (b) this section does not otherwise apply in relation to losses accruing to the company.
- (11) In this section “a non-UK resident close company” means a company—
- (a) which is not resident in the United Kingdom, and
  - (b) which would be a close company if it were resident in the United Kingdom.

### **3A Gains connected to avoidance or foreign activities etc**

- (1) A gain accruing to a company on the disposal of an asset is taken to be “connected to avoidance” unless it is shown that neither—
- (a) the disposal of the asset by the company, nor
  - (b) the acquisition or holding of the asset by the company,
- formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax.
- (2) A gain is “connected to a foreign trade” if it accrues on the disposal of an asset used only—
- (a) for the purposes of a trade carried on by the company wholly outside the United Kingdom, or
  - (b) for the purposes of the foreign part of a trade carried on by the company partly within, and partly outside, the United Kingdom,
- and the reference here to the foreign part of a trade is to the part of the trade carried on outside the United Kingdom.
- (3) For this purpose an asset is to be regarded as used only for the purposes of a trade carried on by the company wholly outside the United Kingdom if—
- (a) the asset is accommodation, or an interest or right in accommodation, situated outside the United Kingdom, and
  - (b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.
- (4) Each of the following is a “relevant period”—



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2. (See end of Document for details)*

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- (a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or
  - (b) if the company has beneficially owned the accommodation (or interest or right) for more than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company had that beneficial ownership.
- (5) The reference in this section to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but as if—
  - (a) sections 266, 268 and 268A were omitted, and
  - (b) the reference to an accounting period in section 267(1) were to a relevant period.
- (6) A gain accruing on the disposal of an asset is “connected to other economically significant foreign activities” if—
  - (a) the asset is used only for the purposes of activities carried on by the company wholly or mainly outside the United Kingdom,
  - (b) the activities consist of the provision of goods or services on a commercial basis, and
  - (c) the activities also satisfy the staff, premises and economic value test.
- (7) Activities satisfy the staff, premises and economic value test if they involve—
  - (a) the use of employees, agents or contractors of the company in numbers, and with competence and authority, commensurate with the size and nature of the activities,
  - (b) the use of premises and equipment commensurate with the size and nature of the activities, and
  - (c) the addition of economic value by the company to the persons to whom the goods or services are provided commensurate with the size and nature of the activities.
- (8) This section applies for the purposes of section 3(1)(b) and (c).

### **3B Participators and their interests**

- (1) “Participator” has the meaning given by section 454 of CTA 2010.
- (2) Any reference to a person's interest as a participator in a company is to the interest in it represented by all the factors by reference to which the person is a participator.
- (3) Any reference to the extent of a person's interest as a participator in a company is to such proportion of the interests as participators of all of the company's participators as, on a just and reasonable basis, is represented by that interest.
- (4) If—
  - (a) the interest of a person in a company is wholly or partly represented by an interest under a settlement (“the beneficial interest”), and

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- (b) the beneficial interest is the factor (or one of them) by reference to which the person would, apart from this subsection, have an interest as a participator in the company,  
that interest as a participator is, so far as represented by the beneficial interest, to be treated instead as the interest of the trustees of the settlement.
- (5) If—
- (a) exempt assets of a pension scheme are taken into account in ascertaining a person's interest as a participator in a company, and
  - (b) if those assets were ignored, an amount in respect of a gain accruing to the company would not be apportioned to the person as a result of section 3,
- no amount in the respect of the gain is to be apportioned to the person as a result of that section.
- (6) For this purpose—
- (a) “assets of a pension scheme” means assets held for the purposes of a fund or scheme to which section 271(1)(c) or (1A) applies, and
  - (b) those assets are “exempt” if, at the time when the gain accrues, a disposal of those assets would be exempt from tax as a result of either of those provisions.
- (7) This section applies for the purposes of section 3.

*Prevention of multiple charges*

**3C Prevention of double UK taxation**

- (1) If—
- (a) an amount of tax is paid by a person as a result of section 3 in respect of a gain, and
  - (b) there is a distribution of an amount in respect of the gain before the end of the relevant period,
- the amount of tax is applied so as to reduce or extinguish any liability of the person to tax in respect of the distribution.
- (2) For the purposes of subsection (1)—
- (a) the distribution is one made by way of dividend or distribution of capital or on the dissolution of the company,
  - (b) the tax in respect of the distribution is income tax, corporation tax or capital gains tax, and
  - (c) in determining the liability to tax of any individual in respect of any distribution for a tax year it is to be assumed that the distribution is the highest part of the individual's income for the year.
- (3) For the purposes of subsection (1) “the relevant period” means the period of 3 years from the end of whichever of the following periods is earlier—
- (a) the period of account of the company in which the gain accrued, and
  - (b) the period of 12 months beginning with the date on which the gain accrued.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2. (See end of Document for details)*

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- (4) The amount of tax paid by a person as a result of section 3 is allowable as a deduction in calculating a chargeable gain accruing on the disposal by the person of any asset representing the person's interest as a participator in the company.
- (5) An amount of tax—
  - (a) is not to be used more than once under this section (whether to reduce or extinguish a liability or as a deduction or a combination of those things), and
  - (b) is not to be applied if it is reimbursed by the company.

*Non-UK domiciled individuals and temporary non-residents*

### **3D Non-UK domiciled individuals**

- (1) This section applies if, as a result of section 3, an amount in respect of a gain accruing to a company in a tax year is apportioned to an individual who is not domiciled in the United Kingdom in that year.
- (2) The apportioned amount is regarded for the purposes of paragraph 1 of Schedule 1 as accruing on a disposal of a foreign asset if the asset disposed of by the company is a foreign asset (but not otherwise).
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
  - (a) treat any consideration obtained by the company on the disposal of the asset as deriving from the apportioned amount, and
  - (b) if that consideration is less than the market value of the asset, treat the asset as deriving from the apportioned amount.
- (4) The apportioned amount may not be reduced or extinguished by a loss under section 3 if—
  - (a) the apportioned amount is regarded for the purposes of paragraph 1 of Schedule 1 as accruing on a disposal of a foreign asset,
  - (b) the remittance basis applies to the individual for the tax year in question, and
  - (c) any of the apportioned amount is remitted to the United Kingdom in a subsequent tax year.
- (5) Paragraph 5 of Schedule 1 applies for the purposes of this section as it applies for the purposes of that Schedule.

### **3E Temporary non-residents**

- (1) This section applies if—
  - (a) an individual is temporarily non-resident, and
  - (b) a gain or loss accrues to a company in a tax year falling wholly or partly in the temporary period of non-residence.
- (2) So much of the gain as would, as a result of section 3, have been treated as accruing to the individual in the tax year if the residence assumption were made is to be treated as accruing to the individual in the period of return.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2. (See end of Document for details)*

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- (3) But if—
- (a) the remittance basis applies to the individual for the tax year that comprises or includes the period of return, and
  - (b) any part of the gain has not been remitted to the United Kingdom before the period of the return,
- subsection (2) has effect subject to the further application of Schedule 1 (as read with section 3D) in relation to that part of the gain.
- (4) Paragraph 5 of Schedule 1 applies for the purposes of subsection (3) as it applies for the purposes of that Schedule.
- (5) So much of the loss accruing in the tax year as would, in accordance with section 3(9), have reduced or extinguished a gain treated as accruing to the individual in that year as a result of section 3 if the residence assumption were made is to be treated as accruing to the individual in the period of return.
- (6) For the purposes of this section the “residence assumption” is—
- (a) that the individual was resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, and
  - (b) that the tax year was not a split year as respects the individual.
- (7) Nothing in any double taxation arrangements prevents a charge to capital gains tax arising as a result of this section.
- (8) For the purposes of this section each of the following expressions has the meaning given by Part 4 of Schedule 45 to the Finance Act 2013 (statutory residence test: anti-avoidance)—
- “the period of return”
  - “temporarily non-resident”
  - “the temporary period of non-residence”.

#### *Application to groups*

### **3F Non-resident groups of companies**

- (1) This section applies, for the purposes of section 3, certain provisions of this Act (modified as mentioned below) in relation to non-resident companies which are members of a non-resident group of companies.
- (2) The applied provisions are—
- (a) section 41(8),
  - (b) section 171 but as if subsections (1)(b) and (1A) were omitted,
  - (c) section 173 but as if “to which this section applies” in subsections (1)(a) and (2)(a) were omitted, as if “such” in subsections (1)(c) and (2)(c) were omitted and as if subsection (3) were omitted,
  - (d) section 174(4) but as if “at a time when both were members of the group” were substituted for “ in a transfer to which section 171(1) applied ”,
  - (e) section 175(1) but as if “to which this section applies” were omitted, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2. (See end of Document for details)*

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- (f) section 179 but as if subsections (1)(b) and (1A) were omitted, as if for any reference to a group of companies there were substituted a reference to a non-resident group of companies and as if for any reference to a company there were substituted a reference to a non-resident company.
- (3) In this section—
- “non-resident company” means a company which is not resident in the United Kingdom,
- “non-resident group of companies”—
- (a) in the case of a group none of whose members are resident in the United Kingdom, means that group, and
- (b) in the case of a group some of whose members are not resident in the United Kingdom, means the members which are not resident in the United Kingdom, and
- “group” is to be read in accordance with section 170.

### *Supplementary*

#### **3G Supplementary provisions**

- (1) If tax payable by a person (“P”) as a result of section 3 is paid by—
- (a) the company (“C”) to which the gain accrues, or
- (b) a company by reference to which P is regarded as an indirect participator in C,
- the amount paid is not a payment to P for tax purposes.
- (2) The reference here to tax purposes is to the purposes of income tax, capital gains tax or corporation tax.
- (3) For the purposes of section 3 the amount of a gain or loss accruing to a company is calculated as if the company were a company resident in the United Kingdom chargeable to corporation tax on the gain.”

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2019, Paragraph 2.