ICAEW

REPRESENTATION 105/18

CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS AND RETURNS FOR DISPOSALS OF LAND (CL6 SCH1 AND 2 F3B17-19)

Issued 31 August 2018

ICAEW welcomes the opportunity to comment on the consultation on draft Finance (No.3) Bill 2017-19 legislation: Clause 6 and Sch 1: Chargeable gains accruing to non-residents etc and Sch 2: Returns for disposals of land etc published by HMRC on 6 July 2018.

This response of 31 August 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

On 9 August 2018 we attended a meeting with HMRC in which we were able to put forward some key comments and concerns and discuss aspects of the draft legislation.

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EXECUTIVE SUMMARY

SCHEDULE 1: CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS ETC

1. In the November Budget 2017 the Chancellor announced that the territorial scope of UK Capital Gains Tax (CGT) would be extended such that non-residents would suffer tax on chargeable gains on all immovable UK property and also on disposals of “UK property rich companies”. HMRC published a consultation document entitled Taxing gains made by non-residents on UK immovable property and a technical note entitled Taxing gains made by non-residents on UK immovable property - Applicable of the anti-forestalling rule. We commented on the proposals in ICAEW Rep 23/18.
2. On 6 July 2018 HMRC published both a response document and draft legislation (clause 6 and schedule 1 Chargeable gains accruing to non-residents etc). Schedule 1
   - extends the territorial scope of UK Capital Gains Tax (CGT) so that broadly all disposals of immovable property will be within charge whether the disposal is by a UK resident or a non-resident. There are trading exemptions and special treatment for collective investment vehicles and exempt investors
   - abolishes ATED-related CGT
   - provides that gains accruing to companies are chargeable only to corporation tax
   - rewrites Part 1 of TCGA 1992 to include the new provisions.
3. We wholly support the decision to abolish ATED-related CGT. It is very unfortunate that the UK property tax system has undergone such extensive and piecemeal changes since 2012. Abolishing ATED-related CGT will leave a simplified and coherent regime going forward.
4. We are concerned that some of the changes since 2012 have encouraged individuals to remove property from companies while other changes have provided incentives to move properties into companies. It would benefit all to have a complete review of property taxation with the intention of having a coherent approach with parity between different taxpayers.
5. We note that the government has published a framework for further discussion in relation to the treatment of offshore collective investment vehicles and exempt investors (including Channel Islands unit trusts). We support this as the issues are complex and the potential for multiple tax charges on disposal are significant if the final legislation is not fit for purpose.
6. Trying to insert the changes into the existing legislation would have been difficult so we understand why the decision was taken to wholly rewrite Part 1 of TCGA 1992. However, we do not support any general proposal to rewrite the rest of TCGA 1992.
7. Rewritten legislation can have unintended consequences. Our comments below are preliminary and we will continue to look at the rewrite provisions and feed through any concerns we identify. We have reviewed the legislation and set down our initial observations below. Appendix 1 contains a Table of Destinations and Appendix 2 contains a Table of Origins, both of which are helpful.
8. We are pleased that the Treasury may make regulations to amend the rewritten legislation if it is found that it inadvertently changes the law (para 28). We suggest that this date may need to be extended as it might take a number of years for any issues to come to light, and necessary changes might not be uncovered until after 22 May 2022.

SCHEDULE 2: RETURNS FOR DISPOSALS OF LAND ETC

9. Schedule 2 introduces new rules for returns and payments on account for direct or indirect disposals of land by non UK residents on or after 6 April 2019 and for disposals by UK residents on or after 6 April 2020 of residential property on which a gain accrues. The disposal has to be reported and the CGT paid within 30 days of completion. We submitted earlier comments as ICAEW Rep 64/18 and it is disappointing that many of our suggestions have not been taken up.
10. Non-residents have been required to report disposals of UK residential property and pay any tax due within 30 days since 6 April 2015. Based on the comments on our website and those of other professional bodies and also the cases in the First Tier Tribunal the communication

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of this change by the government and HMRC was extremely poor. This latest change affecting UK residents and also now including non-residential property for non-residents is requires a better and more extensive communication strategy.

11. The 30 day window to report and pay the tax is inadequate. Many of the disposals will involve complex calculations and it will not be possible to prepare a reasonable computation in this time frame. As a minimum 90 days should be allowed for the reporting obligation and tax payment.
12. Losses (other than on another residential property) realised in the same tax year, but after the disposal of the property, cannot be used to reduce the tax payable on the gain. This is fundamentally wrong. HMRC will be collecting and retaining tax, some or all of which may not be due. We fully support the principle that everybody should pay the correct amount of tax at the correct time, but this policy could result in taxpayers paying more tax than is ultimately due for a tax year. HMRC will not refund the overpayment until after the self assessment tax return has been submitted, which due to the complexity of other entries on the return may not be submitted until up to 21 months later.

GENERAL

13. Going forward we would welcome the opportunity to work with HMRC on the guidance to accompany the legislation and any helpsheets to accompany the return.

THE DRAFT LEGISLATION

SCHEDULE 1: CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS ETC

14. Schedule 1- this extends the scope of gains to which non-residents are charged to tax and rewrites part of the existing TCGA 1992.
15. Sch 1 para 2 inserts a new Part 1 into TCGA 1992. As explained in the Executive Summary this new Part 1 both changes the law and rewrites existing provisions.

OUR COMMENTS ON THE REWRITE

16. As has always been the case with the rewrite style of legislation, the new legislation is longer. While the appendices are useful, better signposting is required to assist users.

USE OF ALLOWABLE LOSSES AND MATCHING RULES FOR RELIEVING ALLOWABLE LOSSES

OUR CONCERN

17. We are concerned that the draft rewrite legislation with respect to the following is unclear and muddled:
    a) use of allowable losses;
    b) UK resident individuals not domiciled in the UK matching rules for relieving allowable losses.

OUR RECOMMENDATION

18. The draft legislation is reviewed and rewritten to make it clearer and easier to follow.

SECTION 1B NON-UK RESIDENTS: UK BRANCH OR AGENCY

OUR CONCERNS

19. The current wording of new draft s1B, TCGA 1992 appears to be wider than the original provision.
20. Draft 1B(5)(b) refers to s82 TMA 1970, which was repealed by FA 1995.

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OUR RECOMMENDATION

21. The draft legislation is reviewed and necessary changes made.

ATTRIBUTION OF GAINS OF NON-RESIDENT CLOSE COMPANIES – NEW DRAFT TCGA 1992, CHAPTER 3 (SECTIONS 3 TO 3G)

OUR CONCERNS – GAINS WITHIN THE SCOPE OF THE LEGISLATION

22. We assume that s3(1)(d) will apply such that any pre 6 April 2019 (or pre 6 April 2015) rebased gain, that came within ATED-related CGT and/or the NRCGT regime, will post 5 April 2019 come within TCGA 1992 Chapter 3. Therefore no gain that would previously have been charged will drop out as a result of the changes, although these provisions could be clearer and we should like confirmation that this is correct, particularly given the rebasing provisions in new Sch 4AA, TCGA 1992.
23. Any post 5 April 2019 gain will be taxable directly on the close company (applying the favourable rebasing provisions within new Sch 4AA, TCGA 1992) so not with new Chapter 3TCGA 1992,.

OUR RECOMMENDATION

24. The draft legislation is reviewed and rewritten to make it clearer and easier to follow. It will also be important that these issues explained fully in the guidance.

OUR CONCERNS – INADVERTENT CHANGES TO THE LEGISLATION

25. It was accepted that s13, TCGA 1992 gains were computed using the corporate capital gains tax rules. For example, rebasing was available for many years after it was abolished for individuals and it was accepted that the loan relationship rules applied. So a gain which accrues to a non UK resident company on disposal of a debt represented by a balance in a non sterling bank account was not a chargeable gain and as such no gain accrued under s13, TCGA 1992. Most recently HMRC guidance acknowledged this in published guidance on foreign currency bank accounts (now available only from the National Archive website as it was archived when it was no longer considered relevant).
26. In the rewrite (draft new s3, TCGA 1992) a different interpretation has been taken despite the claim there is no intention to change the law. We are very concerned by this as we see it as a fundamental change and would like to discuss this issue further with HMRC.
27. We are concerned that new draft s3C, TCGA 1992 (Prevention of double UK taxation) is of even less assistance to taxpayers than the original provisions. Specifically, new draft s3C(5)(a), TCGA1992 states that an amount of tax “is not to be used more than once”. The provision should be deleted as it will cause issues for group structures.
28. We are worried that new draft s3E, TCGA 1992, does not work adequately such that foreign gains would benefit from the remittance basis.

OUR RECOMMENDATIONS

29. The draft rewrite legislation should be amended as discussed above.

FOREIGN DOMICILIARY CONSOLIDATED LEGISLATION – NEW TCGA 1992 SCHEDULE 1

OUR CONCERNS AND RECOMMENDATIONS

30. Cross referencing of foreign chargeable gains to s809F, ITA 2007 is needed.

THE REWRITE OF THE TCGA 1992 S16ZB TO S16ZD PROVISIONS (INDIVIDUALS WHO ARE FOREIGN DOMICILED AND HAVE MADE THE TCGA 1992 S16ZA ELECTION

31. We are concerned that the rewrite has not fully taken account of the changes to the taxation of non UK domiciliaries introduced with effect from 6 April 2017 by Finance (No 2) Act 2017. These changes were with respect to foreign losses on becoming deemed domiciled. Our

understanding is set down in the professional bodies' questions and answers, see TAXguide 06/18, Rebasing and the changes to CGT foreign capital losses election:

Question 10: Do surplus losses which arise while a capital loss election is in force remain available to offset gains accruing once deemed domiciled?

Suggested Answer Section 16ZA TCGA provides for an election, the consequence of which is to confirm foreign losses as allowable losses. While the election has effect, s16ZB, s16ZC and s16ZD also have 10 effect (subject to other specific criteria) and provide for special ordering rules on how to offset foreign losses. Once an individual becomes deemed domiciled, s16ZA(2A) disapplies the election for that, and subsequent, tax years and consequently s16ZB, s16ZC and s16ZD are also turned off. Surplus foreign losses which arose while the election was in place remain as allowable losses under s16 once the individual becomes deemed domiciled. And since the special ordering rules at s16ZB, s16ZC and s16ZD no longer apply, the surplus losses may be offset against both UK and foreign gains which arise once the individual is deemed domiciled. For individuals who did not make the foreign capital loss election, any losses which accrued prior to becoming deemed domiciled are not allowable losses and remain so.

Question 11: Can capital losses which are realised while deemed domiciled be offset against Remittance Basis foreign chargeable gains that are remitted to the UK during the deemed domiciled period?

Suggested answer: S16ZB operates to stop allowable losses being offset against earlier foreign chargeable gains remitted at a later date (i.e. to prevent the effective carry back of losses). Loss relief is instead provided by the special ordering rules in s16ZC. However, once an individual becomes deemed domiciled, s16ZA(2A) disapplies the election under s16ZA for that, and subsequent, tax years and consequently s16ZB, s16ZC and s16ZD are also turned off. Thus, allowable loses which are realised while the individual is deemed domiciled can be offset against Remittance Basis foreign chargeable gains remitted while the individual is deemed domiciled. It should be noted that the same result applies where the individual did not make the foreign capital losses election (that is a loss realised after an individual is deemed UK domiciled can be set against a gain that: (i) was realised when an individual was not deemed UK domiciled; and (ii) is remitted when the individual is deemed UK domiciled).

32. The above does not seem to be reflected in this draft legislation.

OUR RECOMMENDATION

33. The draft legislation should be amended such that it is in line with the analysis set down in the professional bodies' questions and answers.

OUR COMMENTS ON THE NEW MEASURES

PARA 13 – INSERTS NEW SCHEDULE 1A – ASSETS DERIVING 75% OF VALUE FROM UK LAND ETC

OUR CONCERNS

34. The definition of "interest" included loans (subject to the commercial carve-out). It seems to us that this could make the provisions in this schedule difficult to apply.

35. We are not clear how the provisions work in the following example and would suggest that consideration is given to clarifying the issue.

Example

Mr L (a non UK resident) wholly owns a foreign company which in turn owns 15% of a company which owns £100 million of UK land and £5 million of cash.

Does Mr L have £15 million of UK land or say £8 million (applying a minority discount).

36. We are not sure whether the new legislation with respect to "qualifying assets" and the removal of related party assets work as intended.

37. In our view draft new Sch 1A para 6 is badly worded and we question whether the provisions achieve what was intended.
38. In para 6(1) the test of the shareholding has nothing to do with how long the UK land is held for since it is just the two year qualifying ownership period that matters. This will produce results which seem unfair.
39. Using "insignificant proportion of that period" in para 6(2) can lead to some anomalous results. The qualifying period in question is either two years or from date of acquisition if shorter so it could be just one month. If 25% was owned for one day out of two years, then that probably is insignificant, but if 25% is owned for one day in one month, then potentially it is not insignificant.
40. Part 4 is entitled "Anti-avoidance". However, draft para 9 refers to "tax advantage". The definition of "tax advantage" is extremely and inappropriately wide.

OUR RECOMMENDATIONS

41. Further consideration should be given to the draft legislation with particular respect to the points we raise above.
42. In para 6(2) it would be better to have a de minimis absolute measure alongside the subjective measure to avoid unfair anomalies.
43. Para 9 should only apply where there is tax avoidance. All references to tax advantage should be deleted.

PARA 14 – INSERTS NEW SCHEDULE 1B – RESIDENTIAL PROPERTY GAINS

44. The contrasting CGT rates (28% for individuals disposing of residential property which does not qualify for main residence relief, compared with the 19% corporation tax rate) means that where a relief or exemption means ATED does not apply, there seems to be an incentive to hold property through corporate entities.

PARA 16 – INSERTS NEW SCHEDULE 4AA – RE-BASING FOR NON-RESIDENTS IN RESPECT OF UK LAND ETC HELD ON 5 APRIL 2019

OUR CONCERNS AND RECOMMENDATIONS

45. The rebasing situation for companies is more favourable than for individuals (companies benefitting as a result of para 16). As stated in our Executive Summary we feel that all taxpayers should be treated equally and that inbound individuals should get the same treatment as inbound companies.
46. In part 2 of new draft Sch 4AA there are a number of references to UK land that was not fully residential before 6 April 2019. We are concerned that this reference does not capture what is required for the purposes of the provisions. We would suggest that consideration is given to either:
    a) fully non-residential and properties previously outside the scope of NRCGT (such as open companies); or
    b) fully commercial and properties previously outside the scope of NRCGT (such as open companies).
47. As set down in the current draft legislation (new Sch 4AA para 21) the election is irrevocable and has to be made within 30 days. We do not think this is reasonable. If the election is to be irrevocable then the deadline should be much longer. Ideally it would be the standard four years from the end of the tax year the disposal takes place and would also be revocable in that timeframe. At a minimum the time limit should tie in with the self assessment tax return amendment deadline (one year following 31 January following the end of the tax year of disposal). If the 30 day time limit has to be retained then any election should definitely be revocable within the standard time limit.
48. New Sch 4AA para 22(2) is a potential elephant trap for taxpayers and should be clearly highlighted in guidance.

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CONSEQUENTIAL AMENDMENTS

49. We understand that HMRC is working on the consequential amendments that need to be made to other legislation as a result of the changes. We highlight below some issues we have identified.

OUR CONCERNS AND RECOMMENDATIONS

50. Consequential amendments need to be made to s171, TCGA 1992 to reflect to abolition of ATED-related CGT. Section 171(2)(ba) should be omitted.
51. Finance (No 2) Act 2017 introduced Sch A1Non-excluded overseas property into IHTA 1984. Various definitions used for the purposes of this schedule (such as “interest in UK land”, “dwelling” and “contract for an off-plan purchase”) are all taken for the current Sch B1 TCGA 1992. As such, the omission of Schedule B1 means the definitions at Sch A1para 8(3) IHTA 1984 need to be amended to refer instead to the appropriate provisions in Schedule 1B.

SCHEDULE 2: RETURNS FOR DISPOSALS OF LAND ETC

THE MEASURE

52. Sch 2 para 1(1)(b) and para 2(2) – this requires a report where a gain accrues on a residential property disposal by a UK resident, but if no tax is payable para 2(2) removes the requirement to file a return.

OUR CONCERNS

53. Some disposals may give rise to very small gains, for example the property may have been the principal private residence of the individual for most of the time, and this could give rise to a filing and payment obligation for a very small amount.

OUR RECOMMENDATION

54. A small de minimis of say £5,000 tax due, ie, where the gain is just above the level of the annual exemption, the taxpayer could be excluded from the need to report and pay within 30 days. This would reduce the administrative burden in such cases. The person would still need to make a self assessment tax return in the usual way so no tax would be lost.

THE MEASURE

55. Sch 2 para 1(2)(c) – this treats a disposal of a foreign residential property by a UK resident as excluded if foreign tax is payable and that tax is eligible for double taxation relief.

OUR CONCERNS

56. In many countries a percentage of the sale proceeds is retained and it can be several months later before it is known if in fact there is any foreign tax payable, certainly more than 30 days after completion.

OUR RECOMMENDATION

57. For such disposals, the 30 day clock should only start once the foreign tax position is confirmed and not from the date of completion. Individuals in this position have a vested interest in speeding up the process where possible as the deduction form the sale proceeds is invariably in excess of any tax that may be payable.

THE MEASURE

58. Sch 2 para 1(2)(d) – this treats a disposal of a foreign residential property by a UK resident as excluded if it is to be taxed on the remittance basis.

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OUR CONCERNS

59. For a non UK domiciliary the decision as to whether or not to opt for the remittance basis cannot be taken until the end of the year and so although, at the time of the disposal, they may think they will be a remittance basis user, so the gain is excluded. If later they do not opt for the remittance basis it will not be excluded and the tax payment should have been made.

OUR RECOMMENDATION

60. Penalties should not be applied if a return is not made under Sch 2 para 1(2)d but a return is subsequently due because the taxpayer does not later opt for the remittance basis.

THE MEASURE

61. Sch 2 paras 2 & 3 – imposes the 30 day time limit for reporting and paying the tax.

OUR CONCERNS

62. Calculating, reporting and paying the tax in the 30 day period is very tight. Many cases of this type, will require complex calculations possibly involving valuations and detailed research regarding occupation etc which it is not always possible to determine in advance of the sale. Taxpayers are frequently unwilling to engage, or unable to afford, professional help until after a sale has completed, after which they have the justification for the expense and the wherewithal to pay the fees.
63. We are pleased to note that excess tax paid can be repaid under Sch 2 para 5 but this is in limited circumstances.

OUR RECOMMENDATION

64. The government is seeking to collect the tax earlier than the current due date of 31 January following the end of the tax year of disposal. A 90 day window would meet this objective while being more realistic (and reasonable) for the taxpayer.

THE MEASURE

65. Sch 2 para 3(4) – this provision can bring companies into the same reporting and payment regime from a date to be appointed by the Treasury by order.

OUR CONCERNS

66. As mentioned in our Executive Summary, the taxation of property has evolved over a number of Finance Acts in a piecemeal fashion.

OUR RECOMMENDATION

67. A clear statement of Government policy in this area is needed. Many recent policies have resulted in encouraging individuals to buy or transfer properties into companies and excluding companies from the 30 day reporting and payment regime is another example of a nudge in that direction. Is it the intention to push individuals into owning property via companies?

THE MEASURE

68. Sch 2 para 3(4) – If the requirement to file and pay within 30 days is switched on without being able to take account of most subsequent events, charities could be adversely affected where a non-charitable subsidiary of a charity sells a residential property.

OUR CONCERNS

69. Under the current law the subsidiary can eliminate any corporation tax that would otherwise be payable on a capital gain arising on the sale of the property by making a donation to its parent charity within 9 months after the end of the accounting period in which the sale occurs.

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70. In theory this will continue to be possible but in practice the requirement in draft Sch 2 para 4 for a tax payment to be made on account does not currently allow the subsidiary to take into account its intended donation in calculating the amount of the payment on account that is required. Moreover, if the subsidiary is required to make a tax payment on account the payment will in some cases - particularly if the property has a low base cost relative to the sale proceeds - reduce the funds of the subsidiary that are available to make the donation that is intended to eliminate the corporation tax liability on the gain. It will not be feasible for the parent charity to provide the subsidiary with short-term funding to enable it to make the intended donation as HMRC regards such arrangements as too circular in nature and has indicated that it would challenge their effectiveness.

71. Sch 2 para 8(4) allows the computation to be restated if it is now known that a relief applies but this only applies to a relief under a provision of TCGA 1992 and the charities relief is under s189 CTA 2010.

72. If the payment was made by the subsidiary to the charity in the 30 days between completion and filing the tax could be eliminated. However, while it may be possible for some companies to make a donation to the parent charity within the 30 day filing period, in practice as most charity-owned subsidiaries aim to donate their entire taxable profits to the parent charity they can only complete the calculation of these profits once the relevant accounting period has ended. It was for this reason that HMRC originally agreed that it was appropriate to allow them a period of 9 months after the end of the accounting period (currently in s199 CTA 2010) to complete this work and make the necessary donation.

73. More recently, the subsidiary's task has become more complicated as a result of the guidance issued by ICAEW in TECH 16/14BL on the basis of advice that it received from company law counsel. Donations by charity-owned subsidiaries to their parent charities are distributions for company law purposes (notwithstanding that s194, CTA 2010 prevents them from being treated as distributions for tax purposes). This guidance makes it clear that the subsidiary can only make a valid donation to its parent charity if it has sufficient distributable profits (as measured for company law purposes) to cover the donation and that any payment that exceeds its distributable profits will be unlawful. In consequence, HMRC agreed that the subsidiary will not be allowed a tax deduction for an unlawful distribution for any accounting period starting on or after 1 April 2015 (see section 45 of Annex iv to HMRC's guidance "Charities: Detailed guidance notes").

74. In practice this means that the directors and members of a charity-owned subsidiary would be very wary of making a donation within the 30 day filing period unless they could be confident that the donation would not subsequently to be regarded as an unlawful distribution.

OUR RECOMMENDATION

75. Sch 2 para 8(4) should be extended to allow for a recalculation for any reliefs that affect the tax payable not just reliefs under TCGA 1992.

APPENDIX 1

REWRITE PART 1, TCGA 1992 TABLE OF DESTINATIONS

Existing provision	Rewritten provision
Section 1 The charge to tax	Section 1
Section 2 Persons and gains chargeable to capital gains tax and allowable losses	Various, section 1A, section 1E and, section 1G.
Section 2A Taper relief	Not rewritten as repealed by FA 2008
Section 2B Persons chargeable to capital gains tax on ATED-related gains	Repealed
Section 2c “Relevant high value disposal”	Not rewritten as ATED-related CGT is abolished
Section 2d “The threshold amount”	Not rewritten as ATED-related CGT is abolished
Section 2e Restriction of losses	Not rewritten as ATED-related CGT is abolished
Section 2f Tapering relief for gains	Not rewritten as ATED-related CGT is abolished
Section 3 Annual exempt amount	Section 1K and section 1L
Section 3A Reporting limits	New TMA 1970 s 8C inserted into TMA 1970 after s 8B
Section 4 rates of capital gains tax	Section 1H
Section 4A Section 4: special cases	Section 1J
Section 4B Deduction of losses etc in most beneficial way	Section 1F
Section 4BA Rates and use of unused basic rate tax band, in certain cases	Section 1I
Section 5 Accumulation and discretionary settlements	Not rewritten as repealed by FA 1998
Section 6	Not rewritten as repealed by FA 2008
Section 7 Time for payment of tax	Not rewritten as repealed by FA 1995
Section 8 Company’s total profits to include chargeable gains	Section 2A
Section 9 Residence, including temporary residence	Not rewritten as repealed by FA 2013
Section 10 Not resident with UK branch or agency	Section 1B
Section 10A Temporary non-residents	Section 1M
Section 10AA Section 10A: supplementary	Section 1N
Section 10B Non-resident company with UK permanent establishment	Section 2C
Section 11 Visiting forces and official agents	Two new provisions inserted after TCGA 1992 s 271 (new TCGA 1992 s 271ZA and new TCGA 1992 s 271 (new TCGA 1992 s 271ZB)
Section 12 Non-UK domiciled individuals to whom remittance basis applies	Schedule 1(1) and 1(5)
Section 13 Attribution of gains to members of non-resident companies	Section 3, section 3B, section 3C, section 3E and section 3G

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REWRITE PART 1, TCGA 1992 TABLE OF DESTINATIONS CONTINUED…

Existing provision	Rewritten provision
Section 13A Section 13 (5): Interpretation	Section 3A
Section 14 Non-resident groups of companies	Section 3F
Section 14A Section 13: non-UK domiciled individuals	Section 3D
Section 14B Meaning of “non-resident CGT disposal”	New TCGA 1992 sch 1B
Section 14C Meaning of disposal of a UK residential property interest”	Not rewritten as repealed by FA 2013
Section 14D Persons chargeable to capital gains tax on NRCGT gains	Consolidated within general provisions setting out who is subject to UK CGT
Section 14E Further provision about use of NRCGT losses	Consolidated within general loss provisions
Section 14F Persons not chargeable under section 14D if a claim is made	Omitted. New provisions (for those non-UK residents exempted from the CGT charge on immovable UK property gains under the new regime
Section 14G Section 14F: dividend companies	Does not appear to have been rewritten at the moment.
Section 14H Section 14F: arrangements for avoiding tax	New TCGA 1992 sch 1A para 9

APPENDIX 2

REWRITE PART 1, TCGA 1992 TABLE OF ORIGINS

Provision	Origin
CHAPTER 1 – CAPITAL GAINS TAX	
Section 1 Capital gains tax	• Section 1 with amendments to reflect abolition of ATED-related CGT. • Small portion of losses part of section 2.
Section 1A Territorial scope	• Persons and gains chargeable part of section 2. • UK branch or agency -section 10. • New as required to extend the scope of CGT as desired.
Section 1B Non-UK residents: UK branch or agency	Section 10
Section 1C Non-UK residents: disposing of an “interest in UK land”	Section 14B but changes required to take account of the extensions in the scope of CGT.
Section 1D Non-UK residents: disposing of an “interest in UK land”	New provision to take account of the changes.
Section 1E Losses deductible only when within scope of tax etc	Consolidation of loss provisions (apart from split year), including: • losses part of section 2; and • section 14E. Adjustments required for extensions in the scope of CGT.
Section 1F Allowable losses to be used in most beneficial way	Section 4B
Section 1G Gains accruing to UK individuals in split years	Section 2 split year provisions.
Section 1H The main rates of CGT	Section 4
Section 1I Income taxed at higher rates or gains exceeding unused basic rate band	Section 4BA
Section J Section 1I: definitions and other supplementary provision	Section 4BA and section 4A
Section 1K Annual exempt amount	Section 3
Section 1L Increasing annual exempt amount to reflect increases in CPI	Section 3
Section 1M Temporary non-residents	Section 10
Section 1N Section 1M(1): assets acquired in temporary period of non-residence	Section 10AA
CHAPTER 2 – CORPORATION TAX ON CHARGEABLE GAINS	
Section 2 Capital gains tax	Section 8
Section 2A Company’s total profits to include chargeable gains	Section 8

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REWRITE PART 1, TCGA 1992 TABLE OF ORIGINS CONTINUED…

Provision	Origin
Section 2B Territorial scope of charge to corporation tax on chargeable gains	Section 8 with adjustments for extensions in the scope.
Section 2C Non-UK resident company with UK permanent establishment	Section 10B
Section 2D Application of CGT principles in calculating gains and losses	Section 8
Section 2E References to income tax or Income Tax Acts in case of companies	Section 8
Section 2F Interaction of capital tax and corporation tax	Section 8
Section 2G Assets of a company vested in a liquidator	Section 8
CHAPTER 3 – ATTRIBUTION OF GAINS OF NON-UK RESIDENT CLOSE COMPANIES	
Section 3 Gains attributed to UK resident individuals etc	Section 13
Section 3A Gains connected to avoidance or foreign activities etc	Section 13
Section 3B Participators and their interests	Section 13
Section 3C Prevention of double UK taxation	Section 13
Section 3D Non-UK domiciled individuals	Section 14A
Section 3E Temporary non-residents	Section 13
Section 3F Non–resident groups of companies	Section 14
Section 3G Supplementary provisions	Section 13

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APPENDIX 3

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).

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