Appendix 14

This appendix includes draft material. This material may be added to or amended before being incorporated into the main body of this manual.

If you would like to comment on this material before it is finalised please use the following contact address nrcg.consultation@hmrc.gsi.gov.uk

CG73920P The charge to NRCGT and NRCG and the exemptions: Disposals from 6 April 2019

CG73920 Introduction

The rules from 6 April 2019 follow the basic principles of the previous NRCGT rules (see CG73700+). A basic overview of the history of the non-resident CG rules is in CG73700.

From 6 April 2019 some key features of the legislation:

The charge

For a non-resident person within the scope of Capital Gains Tax the charge is created by TCGA92/S1A(3).

Also see S1G(2) where the disposal is in the overseas part of a split year. Guidance on the Statutory Residence Test and what amounts to a split-year can be found in the RDR3: Statutory residence Test.

For other persons a non-resident CG disposal is within the charge to Corporation Tax.

A disposal does not come within the charge to the extent that any part of a gain accruing to the person would be chargeable to CGT under TCGA92/S1A(3)(a) (non-resident with UK branch or agency), or TCGA92/S2C (non-resident company with UK permanent establishment).

Direct and indirect disposals

A disposal of an interest in UK land will be a direct disposal within the scope of the new rules. An indirect disposal is where the disposal of interest involves rights to assets that derive at least 75% of their value from UK land, see CG73930+.

Where the charge is to Capital Gains Tax (CGT):

Annual Exempt Amount

This applies for a person within the scope of CGT (TCGA92\S1K and Sch 1C)

Rates of CGT

TCGA92\S1H and 1I determine the rates of CGT. Where the disposal is a direct disposal that gives rise to a residential property gain (TCGA92\Sch1B) the gain would be chargeable at 18 or 28%. For direct disposal of other UK land that rate would be 10 or 20%.

Where the disposal is an indirect disposal of any UK land the rate would be 10 or 20%.

When determining the rate of non-resident CGT for individuals, consideration is taken in the same way as for UK residents of the amount of income taxable in the UK or other gains to determine whether any part of an individual's gains are taxed at the lower rate of 10/18% or higher 20/28%.

Use of losses – CGT applies

NRCGT is charged on the total chargeable NRCGT gains for a tax year after deducting certain allowable losses.

The losses that may be set against NRCGT gains comprise any allowable losses accruing to the person in the tax year in question on direct and indirect disposals of UK land, plus any allowable losses accruing to the person in previous tax years, so far as they have not already been allowed as a deduction from chargeable gains and those losses are from direct or indirect disposals of UK land, TCGA92\1E(2).

No other deductions are allowed, except as permitted by TCGA92/S62 (carry-back of losses accruing in year of death).

Temporary non-residents

If an individual makes a disposal in the overseas part of a split year or in a year when non-resident any part of the gain on the disposal that is not chargeable to NRCGT may be caught by the temporary non-resident provisions and charged in the period of return. See CG26810+ for further detail on the temporary non-resident provisions.

Where the charge is to Corporation Tax (CT):

Use of losses – CT applies

The restrictions that apply for CGT do not apply for CT. For CT purposes any losses are treated in the same way as any other allowable loss. Any unused ATED related CGT or NRCGT losses in the periods to 5 April 2019 can be carried forward and allowed in the same way as any other brought forward allowable loss.

CG73922 Interests in UK land

For the purposes of NRCGT and NRCG an interest in UK land is defined in TCGA92\S1C(1) as:

> *(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.*

From this wide definition the following are excluded from scope (TCGA92\S1C(2):

> *(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.*

But 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.

The remainder of S1C is as follows:

> *(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 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.*

CG73924 Residential property gains

For CGT purposes an additional consideration is whether the interest in land would give rise to a residential property gain because of the different CGT rate that may apply see CG73920.

The definition of what are residential property gains is within TCGA92\Sch1B.

In most cases what amounts to a residential property gain will be a straightforward matter.

TCGA92\Sch1B follows the same principles that were previously within Sch B1.

TCGA92\Sch1B para 4 mirrors the definition of interests in UK land that are within TCGA92/S1C and also applies for the purposes of non-UK land.

To calculate what proportion of a chargeable gain is attributable to residential property the calculation is made on a time-apportionment using the fraction A/B.

A is the number of days in the applicable period on which the land to which the disposal relates consists of or includes a dwelling

B is the number of days in the applicable period (see below)

Various provisions in the non-resident CGT legislation deem that a "building" includes part of a building. This is necessary because there are differences in tax treatment between residential and non-residential property, but such property may be found within the same building.

In a case where there is mixed use the relevant fraction of the gain is adjusted on a just and reasonable basis to take account of the mixed use on the day or days.

As an example a building may comprise of a shop with a flat above. If the shop represented half of the building throughout the applicable period. In the A/B calculation, the numerator A should be adjusted to (A/2) / B

In individual cases it may sometimes be difficult to decide whether any particular part of a building should be looked at independently from other parts, or whether the building should be looked at as a whole. Such cases should be decided on their facts.

In some cases a building may become temporarily unsuitable for use as a dwelling. Such a temporary period is ignored and the building would continue to be treated as suitable for use as a dwelling.

An exception applies where the temporary unsuitability resulted from accidental damage and the building was unsuitable for use as a dwelling for a period of at least 90 consecutive days. But this exception does not apply if the damage occurred in the course of work being done to alter the building and involved or would be expected to involve the building becoming unsuitable for use as a dwelling for a period of at least 90 consecutive days. See para 6 Sch1B TCGA1992.

See also Para 7 for the rules that apply where the disposal is of a building that has undergone works.

Applicable period

The applicable period begins with the day on which the person making the disposal acquired the interest being disposed of, or if later the day from which the interest became chargeable. The period ends with the day before the day of disposal.

Example – Mr A has never been resident in the UK but acquired a residential property on 1 June 2009 which was disposed of on 24 April 2019. The applicable period would be 6 April 2015 to 31 May 2019.

If different interests in the land are acquired at different times the period would run from the earliest acquisition or if later, the date from which the interest became chargeable.

CG73926 Dwelling and disposing of residential property

A person disposes of residential property where:

- The land consisted or included a residential property at any time during the applicable period.
- The interest on land subsisted for the benefit of land that consisted of or included a dwelling at any time during the applicable period.
- The interest in land subsists under a contract for the acquisition of land consisting or including a building that is to be constructed or adapted for use as a dwelling.

The definition of dwelling for the Schedule is widely cast (TCGA92/SchB1 para 5) and applies where the building is used or suitable for use as a dwelling or is in the process of being constructed or adapted for use as a dwelling e.g. an off-plan purchase.

Land that at any time is, or is intended to be occupied or enjoyed with a dwelling as garden or grounds (including any building or structure) is taken to form part of the dwelling at that time.

Specific exclusions from the definition of dwelling apply for institutional buildings (CG73928). The exclusion only impacts the rate of CGT that can apply to the gains.

CG73928 Institutional buildings

TCGA92\Sch1B para 5

A building is an institutional building it is used as:

- residential accommodation for school pupils;
- residential accommodation for members of the armed forces;
- a home or institution providing residential accommodation for children;

- a home or institution providing residential accommodation with personal care for people who are elderly or disabled, or who have or have had alcohol or drug dependency or mental disorders;
- hospitals or hospices;
- prisons or similar establishments;
- hotels or similar establishments;
- an institution that is the sole or main residence of its residents;
- certain student accommodation in England and Wales (Para4 of Sch14 to the Housing Act 2004 applies or equivalent provision having effect in Scotland or Northern Ireland);
- Student accommodation where:
    - The accommodation provided includes at least 15 bedrooms
    - It is purpose built or converted for occupation by students and
    - It is occupied by students for undertaking a course of education on at least 165 days in the year

CG73930 Indirect disposals

TCGA92/S1A(3)(C), 2B(4)(B) AND SCHEDULE 1A

Non-UK resident persons are chargeable to UK tax where:

- A gain arises on disposal of an interest in an asset that derives 75% or more of its gross asset value from UK land, and
- The non-resident person making the disposal has a substantial indirect interest in that land.

These principles are provided for in TCGA92/s1A(3)(c) for CGT, and TCGA92/s2B(4)(b) for CT. The rules for establishing whether these conditions are met are in Schedule 1A to TCGA 1992.

The concepts referred to above are explained in brief below, together with links to more detailed guidance. There is an example demonstrating some of the core concepts at CG73932.

Disposal of a UK property rich asset

The immediate asset being disposed of will be a company, and ‘company’ will include any legal arrangements, agreements, or other entities that are deemed to be companies for the purposes of capital gains (for example under TCGA92/s99 or paragraph 4 of Schedule 5AAA to TCGA92). A company is UK property rich if 75% or more of the gross asset value of the company is UK land (for the meaning of UK land see CG73922).

Measuring the gross asset value of that company will include both the directly held assets of the company itself, and also assets the company has an investment in such as those that its subsidiaries hold (see CG73936).

There is an exemption which applies where the land in the company or companies being disposed of is being used in the course of an ongoing trade which is disposed of with the land (see CG73946).

Substantial indirect interest

'Substantial indirect interest' is explained in detail in [link], but is broadly that the person has a 25% or greater investment in the immediate company being disposed of. Investments may be traced through various entities if the person is not disposing of the shares themselves (see CG73938).

Calculating the gain

The gain or loss is calculated on the value of the asset being disposed of (for example, the shares in the company). This is under the normal rules for such disposals (CG11800, CG50200C), and no adjustment is made to reflect the assets that are not UK land.

There is an example of the basic application of these principles in CG73932.

Collective investment vehicles

There are specific rules applying to non-UK residents making disposals of interests in collective investment vehicles [*draft guidance in Appendix 15*]. There are also special regimes relating to these rules for collective investment vehicles [*draft guidance in Appendix 15*].

CG73932 Indirect disposals: The basics

TCAG92/SCH1A PARA 3 AND 4

These rules will apply, in general, where:

- A non-UK resident person disposes of an interest in a company (including entities deemed to be companies for capital gains)
- That disposal is of an asset that derives at least 75% of its gross asset value from UK land (see CG73934), and
- That person holds at least 25% investment in that company (see CG73938)

This page presents an example of how these core principles apply.

The facts

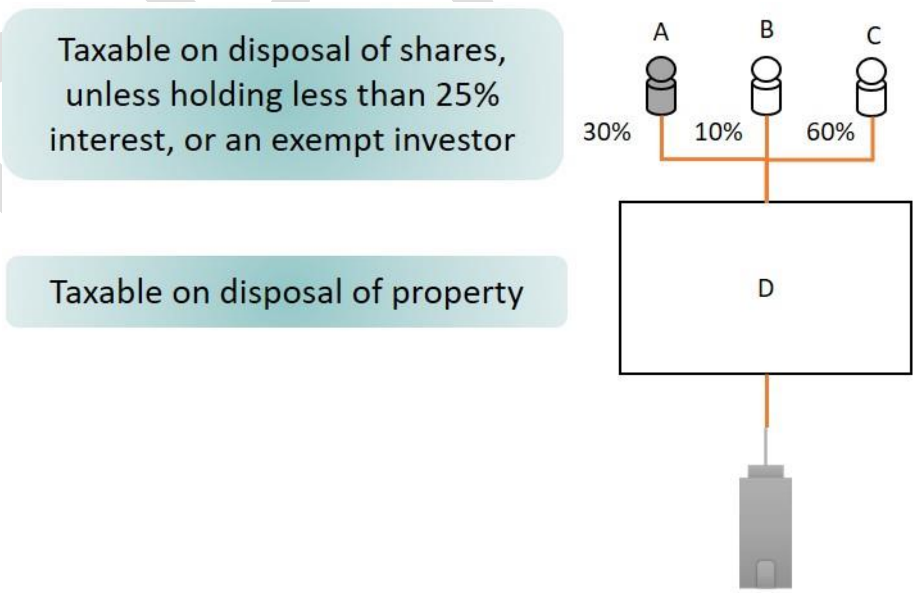
In the diagram below, A, B, and C are all shareholders in a non-resident company, D. All of D's shareholders are non-UK resident and have been the only persons with any interest in D for ten years. The shares are all of one class and carry equal rights to votes, profits, and assets.

A (in grey) is a pension fund and meets the conditions to be exempt from UK tax on capital gains.

A, B, and C all dispose of their interests in D by selling the shares to a third party.

D's assets and liabilities at the last balance sheet date, which was three months ago, were:

- An office in the UK worth £80,000, which D rents out to a third party
- Some stocks and bonds (unrelated to real estate) worth £20,000
- A loan from the bank for £10,000



UK property richness test (see CG73934)

In considering whether an interest in D is an asset that derives 75% or more of its gross asset value from UK land for the shareholders, they must calculate the proportion of assets that are UK land in relation to the overall assets. Hence the shareholders will consider the office (80,000) as a proportion of the total assets (80,000 + 20,000). No account is taken of the liabilities. See also CG73944 in relation to assets and liabilities of related parties.

On the basis of this calculation D is a UK property rich asset, as 80% of its gross assets are UK land as defined (see CG73932).

Substantial indirect interest (see CG73936)

A, B, and C will then need to consider whether they hold a substantial indirect interest in the land that makes D UK property rich. Broadly, a person holds a substantial indirect interest in land if they have, at some point in the two years prior to the disposal, held at least a 25% investment in the company or companies owning the interest in the land.

In the example, A, B, and C have been (the only) shareholders in D for the two years prior to disposal. As the shares are all of one class and carry equal rights to votes, profits, and assets, the level of investment in this case is based on the rights of the shareholders in D (see CG73938).

On the basis of their shares, B holds less than 25% investment in D, and so does not have a substantial indirect interest. B, as a non-UK resident and not meeting this condition, is not chargeable to UK tax on their gain on disposals of their interest in D.

Both A and C hold 25% or more investment in D, and so both hold a substantial indirect interest in D. Hence the two tests in section 1A(3)(c) or 2B(4)(b) TCGA 1992 (for CGT and CT respectively) are met. A is exempt from capital gains. C will be chargeable to tax on the disposal.

Calculating the gain (CG73950)

C will calculate the gain on the land using the normal rules for share disposals, and the full value of the shares (as a UK resident person would). There is no adjustment to the value for the proportion of assets that are UK land.

If C held an interest in the shares at 5 April 2018 and was a non-UK resident at that time, then the rebasing rules in Schedule 4AA to TCGA 1992 will apply. See CG73960 for CGT and CG73970 for CT for more details.

A disposal by D

The non-UK resident company, D, is taxable on any gain arising from its disposal of the UK land in question. This is a direct disposal, and it does not matter what other assets D holds (see CG73970P). The gain will be calculated on the basis of a normal disposal of UK land by a company (subject to any rebasing, if appropriate, under Schedule 4AA to TCGA 1992). (See CG73960 for CGT and CG73970 for CT).

CG73934 UK property richness

TCGA92/SCH1A PART 2

The UK property richness test looks at whether 75% or more of the gross **qualifying assets** of the company being disposed of are UK land (see CG73922). Qualifying assets includes all of the assets of the company, apart from those matching related party liabilities (see CG73944). The value to use for the test is the market value of the assets at the date of disposal (see CG73950). The test is based on gross assets, so no liabilities are taken into account.

It does not matter where the company (or any entities it has an interest in) are resident, but the test is only appropriate where the person making the disposal is non-UK resident and is chargeable on the disposal because of either TCGA92/s1A(3)(c) or s2B(4)(b) (for CGT or CT respectively).

This page will give you the background to the UK property richness test. The other condition for TCGA92/s1A(3)(c) or s2B(4)(b)) to apply is that the disponor must have a substantial indirect interest in UK land (see CG73936). There are examples to demonstrate both tests at CG73932.

Market value

The test is considered at the point of disposal. Any method for establishing the value of UK land and other assets that would be acceptable for general capital gains purposes will be acceptable for this test.

Where values are known at or shortly before the date of disposal they should be used; for example if they were acquired as part of due diligence or other processes surrounding the sale. There will be cases where valuations of the underlying assets of the company being disposed of are not undertaken as part of the transaction, in which case a recently updated balance sheet or similar statement of assets would be acceptable.

Formal valuation will not always be necessary, and HMRC would expect the basis of the valuation to be appropriate to the value and complexity of the situation which gives rise to the disposal. Where informal valuations have been made and these are used for other commercial purposes to report to independent parties (such as reporting to shareholders of a company that was not close, or informing a bank or similar creditor), these will in many cases be acceptable.

Undertaking the test

Paragraph 3 of Schedule 1A provides for the basic rules of how the 75% UK property richness test is undertaken. The market value of a company will include its own market value, and that of other assets it has a right or interest in.

A normal commercial loan is not a right or interest for this purpose; so a creditor making a normal commercial loan to a company that holds UK land is not considered to have an interest in that land, or the other assets of that company. See CTA10/ss158(1)(b) or 159(4)(b) for “normal commercial loan”.

Tracing asset value to include in the test

The tracing of market value can proceed through any number of companies, partnerships, trusts, or other entities, or arrangements. The attribution of assets is done at each stage –so between one company, entity, arrangement, etc. and the next- and in a way that is appropriate to each stage.

What is appropriate will depend on the facts of the situation, and in general will be a manner of attribution that is reasonable based on those facts. In some cases, such as between two companies where there is a single class of share capital with no special rights, this may be as for normal tracing of interests through corporates (such as under section 1154 CTA 2010). Alternatively, if the arrangement between the two companies being disposed of gave the holding company minimal rights to votes and income, but a significant right to UK land held by the subsidiary, then it would be appropriate to reflect the rights over the UK land assets accordingly.

Where the holding of shares is in a person's capacity as a partner in a partnership, the partnership agreement will be relevant.

The core test looks at a person's interests in the immediate company being disposed of, so in many cases no tracing exercise will be necessary. It would be necessary where a person is disposing of an interest other than in a company, but that interest ultimately leads to a company. Examples would be someone selling shares in a company in their capacity as a partner in a partnership.

Tracing value through companies is also necessary for the application of certain of the rules relating to collective investment vehicles [*draft guidance in Appendix 15*].

CG73936 Indirect disposals: Substantial indirect interest

TCGA92/SCHA 1A PARA 8

Overview

A non-UK resident person is chargeable on a gain on disposal of an interest in UK land under the indirect disposal rules in Schedule 1A to TCGA, in general, where:

- They are disposing of an interest in a company (including entities deemed to be companies for capital gains),
- That disposal is of an asset that derives at least 75% of its gross asset value from UK land [link to UKPR], and
- That person has a "substantial indirect interest in UK land".

This page provides guidance on the meaning of a "substantial indirect interest in UK land". In broad terms, it is that the person and certain connected people own, or at some point in the two years prior to the time of disposal have owned, at least a 25% investment in the company being disposed of. Guidance on establishing the level of investment is at CG73938.

The gain is calculated on the value of the person's asset being disposed of at the point of the disposal (see the section on 'Market value' at CG73934) –not at the point in time where they held 25% or greater investment.

There are rules that attribute interests held by certain connected persons, and rules that mean a person does not have a substantial indirect interest if they have not held an interest for a significant period of time (see under the heading for insignificant ownership period below).

This exemption for indirect disposals of UK land by non-UK residents where they do not hold a substantial indirect interest does not apply in certain circumstances where the disposal has a link to collective investment vehicles [*draft guidance in Appendix 15*].

Attribution of connected persons' interests

A person is taken as having all of the rights and interests of persons who are connected with them within the meaning of paragraph 10 of Schedule 1A to TCGA 1992. The guidance at [link] deals with what the methods of measuring investment are in regard to rights and interests.

'Connected' in paragraph 10 takes its meaning from TCGA92/286 (see CG14580), but with the following modifications:

- A person is connected to relatives (for s286(2)) who are their spouse or civil partner, their lineal ancestor or lineal descendant, or the lineal ancestor or descendant of their spouse or civil partner (siblings are not automatically connected)
- A person is not automatically connected to their business partners or to the spouses or civil partners of business partners

Persons are not to be taken as connected purely because of being parties to a normal commercial loan (CTA10/ss158(1)(b) or 159(4)(b)).

Insignificant ownership period

It will sometimes be the case that a person holds a 25% or greater investment in a company for a short period of time but only as a consequence of circumstances, and for the majority of the relevant time that person has had a less than 25% investment. This would commonly be the case where, say, a company was just acquiring investors, and during the initial seeding period that company had only a small number (sufficient that each one had 25% or greater); but once the company was established and on an ongoing basis no shareholders owned as much as 25%. Similar circumstances could arise where shareholders sell one by one, so that the last few shareholders left have 25% or more investment shortly before their own disposal.

The test considers:

- The length of time (aggregated) that a person has had a 25% or greater investment in the company,
- As a proportion of the two years prior to disposal
- Or, if a shorter period, as a proportion of the time the person has actually owned an interest in the company.

If that proportion is an insignificant proportion, then the person does not have a substantial indirect interest for the purposes of meeting the test.

As a general rule, HMRC will consider 'insignificant' to be 10% or less of the time (so 75 days or less for a full two year period). Where the total ownership period is very brief and the facts and circumstances indicate that the person was never intended to hold a 25% or greater investment for any length of time, this may allow a greater leeway.

Because (under paragraph 10 of Schedule 1A) a person is themselves taken to have the rights and interests of certain connected persons, the same considerations abide in looking at whether those rights were only held for an insignificant time by the connected persons. In looking to aggregate the amount of time in the relevant period a person has held a 25% or greater investment, this will interact with the aggregation of the rights and interests of others so that the test is one of how much time the disponor and connected parties have held such an investment.

CG73938 Indirect disposals: Establishing the level of investment

PARAGRAPH 9 OF SCHEDULE 1A TO TCGA 1992

Background

On disposal of a UK property rich asset (see CG73934), a non-UK resident is chargeable on gains under TCGA/s1A(3)(c) or 2B(4)(b) (for CGT and CT respectively) if they hold a substantial indirect interest in UK land –that is: if they hold at least a 25% investment in the company being disposed of in the transaction.

This section of the guidance looks at how to establish whether a person has a 25% investment in the company being disposed of. The wider guidance on this condition, including rules for periods of investment and aggregation of connected party interests, is at CG73936.

In the circumstances where the disposal is of several companies under one holding company, it is not necessary for the disponor to hold an effective 25% or greater investment in all of the companies being disposed of –only the immediate one which represents a UK property rich asset.

Example of establishing investment are at CG73940.

This exemption for indirect disposals of UK land by non-UK residents where they do not hold a substantial indirect interest does not apply in certain circumstances where the disposal has a link to collective investment vehicles (see [link to funds 25% rules]).

Overview

Broadly the provisions look at equity holdings in a company. They also consider chains of entities (for example if the person is making a disposal in their capacity as a partner in a partnership).

The rules will also cover establishing the level of investment in particular company further down a chain of companies, which have relevance for the rules relating to the exemption regime for collective investment vehicles [link to relevant funds guidance].

If this condition and the UK property rich condition are met for the purposes of TCGA92/s1A(3)(c) or s2B(4)(b), then the calculation of the gain or loss will be based on the normal share disposal rules and reflect the value of the asset being disposed of. This is under the normal rule for such disposals, and no adjustment is made to reflect the assets that are not UK land.

Measures of investment

A person has a 25%+ investment in a company if they have any of the following:

- 25%+ of the voting power over the company;
- Entitlement to acquire 25%+ of the voting power over the company;
- Entitlement to receive 25%+ of the proceeds of the equity on disposal of the company;
- Entitlement to 25%+ of the income on a distribution to all equity holders;
- Entitlement to receive 25%+ of the company’s assets on winding up (or otherwise), where those assets are distributed to equity holders.

“Equity” is shares (including stocks and other interests) other than restricted preference shares, and loans other than normal commercial loans. “Restricted preference shares” are as defined in CTA10/s160A, and a “normal commercial loan” is as defined in CTA10/ss158(1)(b) or 159(4)(b) (both with necessary modifications where the company does not have ordinary share capital).

A person may have 25% or more investment by the measure of entitlement to proceeds from equity, income distributed, or assets in any way specified. So for example, if one shareholder in a company was entitled to 100% of the assets on winding up and another shareholder in the same company had entitlement to 100% of the assets in all other circumstances, they would both have a 100% entitlement to the assets as equity holders for the purposes of this test. Even though they both have a 100% interest in the company in terms of meeting the test, the disposal value is still based on the actual value of the interest disposed of.

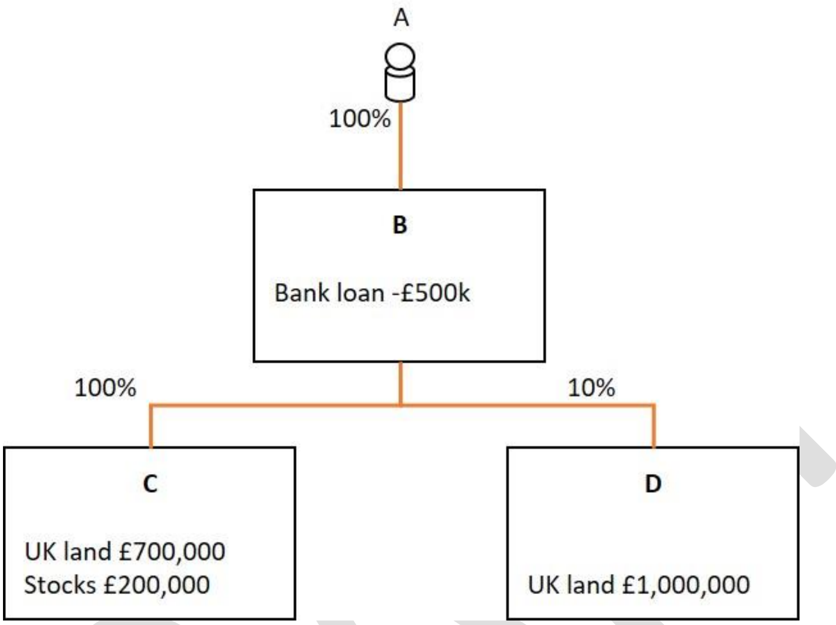
Where the chain of investment is through one or more partnerships, the entitlement amongst the partners should be apportioned on a just and reasonable basis.

CG73940 Examples of establishing the level of investment

TCGA92/SCH1A PART 2 AND PARA 9

The guidance on establishing the level of investment is at CG73938. These examples illustrate the rules set out on that page, and interactions with the UK property richness test (see CG73934).

Example 1: Disposal of a group of companies



A non-UK resident person, A, owns 100% of the shares in Company B. B owns 100% of the shares in C and 10% of the shares in D. All shares referred to in the example are of one class and carry equal rights.

B's only assets are its shares in C and D. B has a loan from the bank of £500,000.

C's assets at the last balance sheet date, which was three months ago, were:

- An office in the UK worth £700,000, which C rents out to a third party
- Some stocks and bonds (unrelated to real estate) worth £200,000

D's only asset at the last balance sheet date, which was three months ago, was an office in the UK worth £1,000,000, which D rents out to a third party.

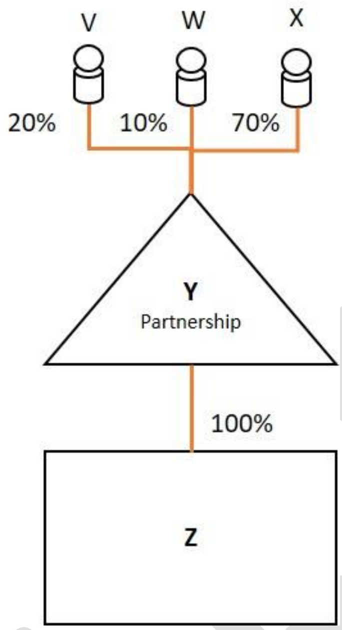
In considering whether A holds an interest in an asset that derives 75% or more of its gross asset value from UK land, we would aggregate:

- UK land: 100% of the £700,000 UK land in B, and 10% of the £1,000,000 UK land in D (total £800,000)
- Total assets: the above, plus 100% of the £200,000 bonds in C.

So (800,000 / 1,000,000) 80% of B's gross asset value is in UK land. B is UK property rich, so this leg of the test in sections 1A(3)(c) and 2B(4)(b) TCGA 1992 is met.

A has a substantial indirect interest in B by any of the measures outlined in CG73938. It does not matter that A does not have a substantial indirect interest in D because we are considering the disposal by A of B.

Example 2: Disposal involving a partnership



Y is a partnership with a 100% investment in company Z. Z is UK property rich.

The partners in Y have the following rights under the partnership agreement:

- V has 20% of the votes, and 20% entitlement to income, but no rights to the assets of Z on the winding up of Z
- W has 10% of the votes, and 10% entitlement to income, and 100% entitlement to the assets of Z on the winding up of Z
- X has 70% of the votes, and 70% entitlement to income, but no rights to the assets of Z on the winding up of Z

All other rights and interests follow the entitlement to income.

The partnership is not a legal person or chargeable to tax on gains. The partners' interests in the partnership are not assets for the purposes of capital gains. Hence in considering whether V, W, or X has a substantial indirect interest in UK land, we would look through the partnership at their "investment" in Z by the measures outlined in CG73938. The rights attached to the shares and the partnership agreement will both be informative in terms of this measurement. If by any of those measures, a partner has 25% or greater investment, then that partner will have a substantial indirect interest.

V does not have a 25% or greater investment in Z by any of the measures outlined in CG73938, and so does not have a substantial indirect interest.

W has a less than 25% investment in Z in terms of votes and rights to income, but is entitled to 100% of the assets on the winding up of Z and so has a substantial indirect interest in Z.

X does not have any rights to assets on the winding up of Z, but has 70% of the votes and is entitled to 70% of the income of Z, so has a substantial indirect interest by both of those measures.

Y may also invested in other assets separately to the investment in Z, and those assets may not be interests in UK land. The interests that the partners have in those assets through the partnership will not be relevant in looking at whether they have a substantial indirect interest in Z. Those other assets would also not be relevant in the calculation of whether Z is UK property rich (but see CG73942 on linked disposals).

CG73942 Linked disposals and assessing UK property richness

TCGA92/SCH1A PARA 6

In some circumstances two or more companies will be disposed of as part of a single arrangement, and taking all of the companies into account the disposals are not representative of a UK property rich asset (see CG73934).

If the arrangement is one where the disposal is of a single company that holds subsidiaries, then the basic rules for testing UK property richness will ensure that the disposal is not taxable under these rules. If, however, the arrangement is executed –in capital gains terms- by two or more separate disposals of companies, then outside of the rules covered in this page each disposal would be considered for property richness separately.

Consider the differences between Figures 1 and 2 below:

Figure 1

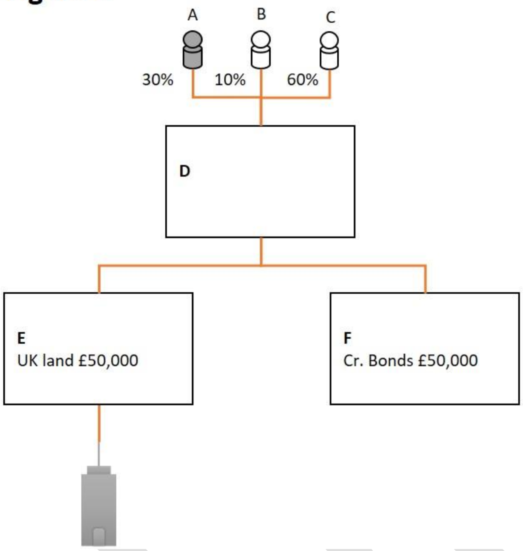
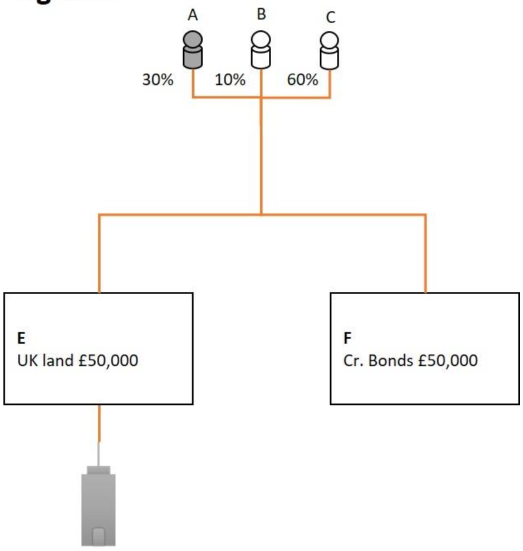


Figure 2



In Figure 1, there is a holding company, D, which holds 100% interest in subsidiaries E and F (and has no other assets or liabilities). In Figure 2, the shareholders directly hold interests in companies E and F.

In both diagrams, company E only holds UK land worth £50,000 which it rents out to an unconnected third party; and company F only holds bonds (unconnected with UK land) worth £50,000. The shareholders are non-UK resident.

Functionally there is no difference between these arrangements, apart from the fact that there is the holding company D in Figure 1. A disposal of company D, however, would not be of a UK property rich asset (as the values of E and F would be amalgamated in the asset value of D), where due to the absence of D in Figure 2 the investors are making a disposal of one UK property rich asset (company E) and one asset that is not (company F).

The analysis would be similar to Figure 2 if it were D making the disposal, rather than the shareholder selling their interest in D itself.

Paragraph 6 of Schedule 1A takes account of this by providing for the ability to measure property richness by aggregating several companies being disposed of where those disposals are linked. This ensures that those in a situation like Figure 2 will have the same outcome for those in a situation like Figure 1.

When disposals are linked

Those provisions apply where rights or interests in two or more companies are disposals of and the disposals are linked with each other.

Disposals are linked where:

- The disposals are made by the same person or by persons connected with each other and under the same arrangements,
- The person making each disposal is connected with the company they are disposing of, and
- The disposals are made to the same person or to persons connected with each other.

"Arrangements" takes its natural meaning. "Connected" takes its meaning from section 286 TCGA (see CG14580), but partners are considered connected even where the disposals or acquisitions of partnership assets are pursuant to bona fide commercial arrangements (so that partners are always connected). Connection is tested immediately before the disposals taking part in the arrangements.

One example would be if companies were disposed of by different persons within a corporate group to one or more companies in another corporate group as part of a single arrangement. Or if several partners in a partnership disposed of two or more companies to another partnership in one arrangement.

If the assets of all the companies in the linked disposals were aggregated into one of the companies, and such a disposal of that company would not be a disposal of a right or interest in an asset deriving at least 75% of its value from UK land, then none of the disposals is taken to be a disposal of a right or interest in an asset deriving at least 75% of its value from UK land.

The Targeted Anti-Avoidance Rule in Schedule 1A will apply where arrangements are entered into to take advantage of this or other provisions in that Schedule (see CG73952).

CG73944 **Related party assets and liabilities**

TCGA92/SCH1A PARA 4

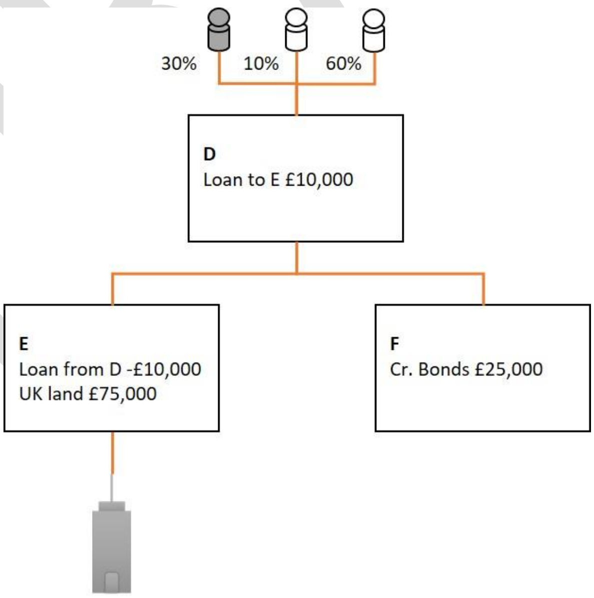
The 75% property richness test is made by considering the proportion of UK land in relation to the overall qualifying assets of the company being disposed of. Qualifying assets includes all of the assets of the company, apart from those matching related party liabilities. Related party assets will include, but not be limited to, intra-group loans and derivatives.

Liabilities are not considered when performing the UK property richness test. Removing related party assets ensures that the test is performed on the consolidated gross asset value of the entities being disposed of.

It is necessary to consider related party assets and liabilities where a company (which is the target of the UK property richness test; see [link]), is disposed of along with other connected companies in one disposal (or one arrangement; see CG73944).

As noted in CG73934, the value used for the property richness test will commonly be the balance sheet or similar value. In a case where one company is leasing property to another company being disposed of in the same disposal or arrangement, it would be expected that the value of the liability on the lease would not be represented separately, but would be reflected in the asset value of the lease. In removing the value of the lease as an asset, this thereby ensures that the value of the property is only considered once.

In the example below, the shareholders are disposing of companies D, E, and F by disposing of their interests in the shares in D. In considering whether the shares in D are a UK property rich asset, the shareholders will look at the assets of E and F in addition to the assets of D. E holds £75,000 of UK land, and owes £10,000 to D. F holds bonds (unconnected to UK land) worth £25,000.



Under paragraph 4, the qualifying assets will include all of the assets apart from those linked to related party liabilities. The creditor loan balance of £10,000 in D's hands is an asset linked to the liability in E, and as E's assets are included in the UK property richness test performed on D the asset of £10,000 in D is not a qualifying asset.

The only qualifying assets are therefore the £75,000 of UK land in E, and the £25,000 bonds in F.
75% of D's gross assets are UK land, so the shares in D are a UK property rich asset in the hands of its shareholders.

CG73946 The trading exemption

TCGA92/SCH1A PARA 5

There is an exemption to the rule which taxes non-UK residents on disposals of companies that are UK property rich (see CG73934) which can apply where all, or almost all, of the UK land being disposed of is being used in the course of a qualifying trade, or if not currently being so used was acquired for the use in the course of a qualifying trade.

This provision is intended to cover situations where what is being sold is an ongoing trade that has UK land amongst the assets. In most cases, an ongoing concern is unlikely to hold 75% of its gross assets in UK land; and paragraph 5 saves the need to calculate property richness in borderline cases where it is clear to the disponer that the disposal is of an ongoing trade, rather than a disposal of UK land in a company.

Meaning of qualifying trade

A qualifying trade is one:

- That is being carried on by the company owning the UK land, or persons who are connected with that company, at the time of disposal and has been so for a least a year prior to that time, and
- Which the disponer can reasonably conclude will continue to be carried on after the disposal for a more than insignificant period of time, on a commercial basis with a view to profits.

The company must be carrying on the trade at the time of disposal, or a person connected with the company must be carrying it on. Connected takes the meaning in TCGA 1992/s286 (see CG14580). The company carrying on the trade must continue to be connected at the point of disposal, but provided the trade continues after the disposal it may be transferred to another person in the purchasing group.

Whether a given trade continues is based on similar principles to those applied under Part 14 of CTA10. It is necessary for the disponer to reasonably conclude that the trade is likely to continue for a 'more than insignificant' period of time –'insignificant' in this context is a matter of degree, and should be taken in the context of these provisions to mean that the intention of the buyer is to continue to operate the trade.

There may be circumstances where the trade is in distress and at risk of closing down after the sale; providing that there is a genuine understanding that the buyer is acquiring the land and trade with the intention of making the trade profitable this can meet the conditions.

Letting out of property is not, in itself, a trade.

See also CG53000P in relation to companies disposing of trading companies or trading groups or sub-groups.

Land not being used in the trade

Either all of the UK land being disposed of must be used in a qualifying trade, or all but for low-value interests in UK land. This may be the case where, for example, a small amount of the value of UK land represents a dwelling for occupation by a member of staff, or where there are derelict, low-value properties amongst otherwise occupied ones. The scale of the portfolio of property being disposed of in the arrangement will be definitive in looking at the relative value of the amount of property not used in the trade.

Land can be counted as being used for trading where it is intended that it be so used. So a building that is under repair or being re-fitted can be considered –even if not occupied at the point of disposal- providing that the intention is to use it in the trade following the disposal.

CG73948 Impact of Double Tax Agreements

TIOPA10/S2

Domestic charging rules are subject to provision made by Double Taxation Agreements (DTAs) that the UK has entered into (see INTM150000). The UK has a substantial network of DTAs, most of which are based on the OECD Model Tax Convention (the OECD Model).

Where the UK does not have a DTA with a given territory, or where the DTA does not cover capital gains, then the UK domestic law applies unchanged. In other cases it is necessary to consider whether the provisions of the relevant DTA allocate taxing rights to the UK. It is the residence of the person making the disposal that determines the allocation of taxing rights, not the residence of the company (or companies) being disposed of.

The OECD Model and immovable property

For most gains the OECD Model gives the taxing rights for gains to the state of residence of the disponer. For disposals of "immovable property", which is left to be defined in local law, the primary taxing right for gains goes to the source state (i.e. the state where property is situated). This means that as a general principle a gain on a direct disposal of an interest in UK land by a non-UK resident will be chargeable to tax in the UK.

The OECD Model also contains a 'securitised land provision', which gives the source state (again, the state where the immovable property is situated) the primary right to tax gains on indirect disposals. In the 2017 OECD Model this is formulated as:

- Disposals of shares or similar interests in companies, partnerships and trusts,
- Where more than 50% of the value is derived, directly or indirectly, from immovable property in the source state.

Not all UK DTAs contain a provision comparable to the 'securitised land provision' in the OECD Model, and those that do will frequently be on different terms due to changes in the OECD Model and the preferences of both the UK and our treaty partners.

Variations on the OECD Model in UK DTAs

The following differences will need to be noted:

- The provision only covers disposals of shares (and not "comparable interests")
- The provision only covers "direct" indirect disposals (so the company being disposed of must, itself, be UK property rich; rather than being property rich because of the assets of its subsidiaries)
- The provision does not apply where the shares are regularly traded on a stock exchange.

In some DTAs, the asset value of the immovable property must be 75% or more. The UK property richness test CG73934 requires 75% or more, so is within these parameters.

These other differences are explained more below.

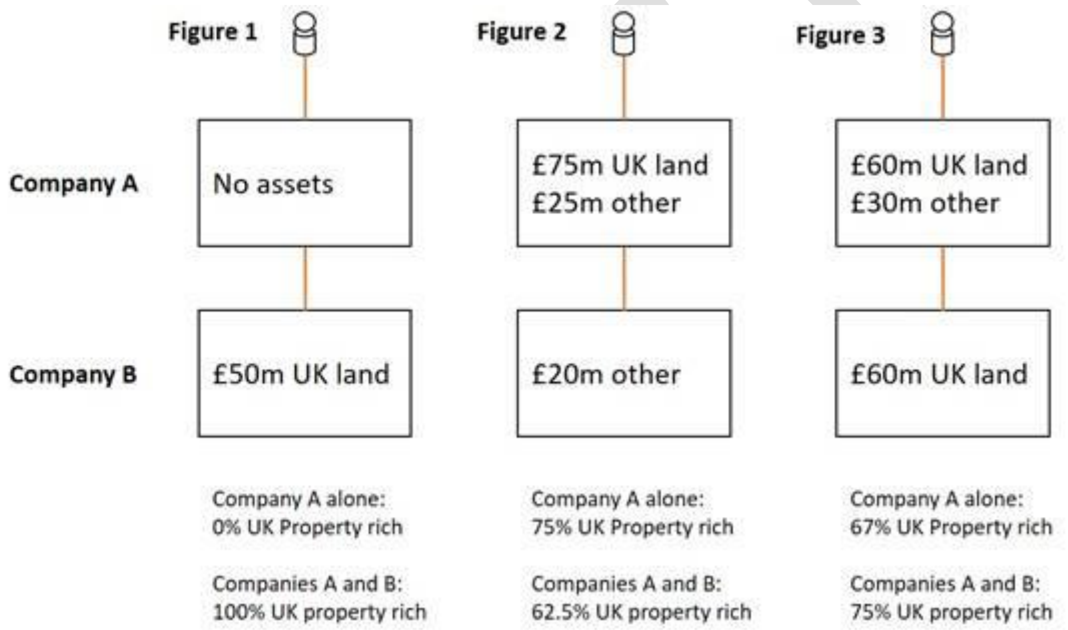
Disposals of shares but not comparable interests

The 2017 OECD Model refers to "shares or comparable interests" and gives as examples interests in a partnership or trust.

In the case of a partnership, UK domestic law treats the disposal of partnership interests as a disposal of the underlying assets of the partnership. So there is no need for the provisions of a given DTA to cover a disposal of partnership interests. If the partnership 'owns' an interest in the shares of a UK property rich company, the partners are for capital gains purposes (and in terms of the application of the DTA) directly holding an interest in those shares (see paragraph 32.4 of the Commentary to the 2017 OECD Model). The analysis may be different where a non-UK "partnership" is in fact an opaque entity (and it does not itself have shares).

Only direct interests in UK land

In some of the UK DTAs the securitised land provision only applies where the asset (i.e. the shares) being disposed of directly derives more than 50% of its value from UK land. This formulation means that the DTA only allocates taxing rights to the UK on the basis of the assets that are held by the company whose shares are being disposed of – not any assets held by subsidiaries of that company.



In each of the three scenarios above, a non-UK resident is disposing of their interest in Company A. The disposal also includes the 100% direct subsidiary of company A, Company B. In all cases the disponer has a substantial indirect interest in Company A. The disponer is tax resident in a territory with which the UK has a Treaty that only allocates taxing rights to the UK on direct disposals of assets deriving more than 50% of their value from UK immovable property.

Figure 1

In this scenario, Company A has no assets, and Company B has only UK land. The disposal meets the UK domestic law test for UK property richness (see CG73934), because the asset being disposed of is 100% UK land (and so 75% or more of its gross asset value is UK land).

The DTA, however, only grants taxing rights to the UK where the immediate disposal is of an asset that derives more than 50% of its value from UK immovable property. The immediate disposal is of an asset with no UK land assets, so the DTA provision allocates the sole right to tax to the state of residence of the disponer.

Figure 2
In this scenario, Company A has £75m of UK land and £25m of other (non UK land) assets; Company B has £20m of non UK land assets. A, taken alone, meets both the UK domestic test for property richness and the DTA condition.

Although the DTA allocates taxing rights to the UK on the direct disposal of Company A alone, the domestic provisions will still consider that Company B is part of the disposal and include the assets of B in the calculation for UK property richness. Including a consideration of Company B, only 63.5% of Company A's gross assets are UK land, so the disposal is not chargeable under the domestic provisions.

Figure 3
In this scenario, Company A has £60m of UK land and £30m of other (non UK land) assets; Company B has £60m of UK land. A, taken alone, does not meet the UK domestic test for property richness, but as the proportion of UK immovable property is greater than 50% it does meet the DTA condition.

As for Figure 2, the DTA does allocate taxing rights to the UK. The domestic provisions will consider the assets of Company B within Company A, and when taken together the disposal is of an asset where 75% or more of the gross assets are UK land. This disposal would be chargeable in the UK.

The DTA has not restricted the application of domestic law, having allocated taxing rights to the UK. Similarly, the DTA will not restrict the domestic law test to only considering the non UK land assets of Company B. The first consideration is whether the DTA condition is satisfied (is the gross asset value of the asset being disposed of, taken alone, more than 50% UK land), and if this is satisfied then the domestic law test applies without restriction.

Regularly traded shares

Some Treaties have a formulation that does not allocate taxing rights to the state where the land is situated where the disposal is of shares in which there is regular trading on a stock exchange.

This exclusion applies only to the shares in the company that is itself traded on a stock exchange. A disposal of shares in a subsidiary of that company would be within the UK's right to tax, as the subsidiary's shares are not traded.

CG73950 Calculating the gain

The gain or loss is calculated on the value of the asset being disposed of (for example, the shares in the company). This is under the normal rules for such disposals (see CG11800, and CG50200C), and no adjustment is made to reflect the assets that are not UK land. Similarly, if the person is disposing of the company in their capacity as a partner in a partnership, the usual rules for calculating that gain would apply.

The gain is calculated on the basis of the actual disposal and the rights that the disponer has at the time of the disposal. So in a situation where a person meets the substantial indirect interest condition (see CG73938) because they owned 25% or more of a company at a point in the two years prior to disposal, but now owns less than that. The disposal is to be calculated on the actual investment a person has and is disposing of.

It is not necessary to use the same values used in valuation of the assets of the company for calculating property richness (link to UKPR) when calculating the gain. The appropriate methods of calculating the values for the test and for the gain or loss are independent considerations.

CG73952 Targeted anti-avoidance rule

TCGA92/SCH1A PARA 11

Part 4 of Schedule 1A to TCGA 1992 contains the targeted anti-avoidance rule applying to indirect disposals of UK land as charged under TCGA92/s1A(3)(c), and s2B(4)(b) (for CGT and CT respectively).

The anti-avoidance rule is based on a motive test, which looks at whether a person has sought to obtain a tax advantage either

- Directly in relation to the provisions of Schedule 1A, or
- By overriding the provisions of Schedule 1A using the provisions of a Double Tax Agreement (DTA).

"Tax advantage" takes the same meaning as in similar provisions elsewhere:

- Relief or increased relief from tax
- Repayment or increased repayment of tax
- Avoidance or reduction of a charge to tax or an assessment to tax
- Avoidance of a possible assessment to tax
- Deferral of a payment of tax or advancement of a repayment of tax, or
- Avoidance of an obligation to deduct or account for tax

Whether a person has sought a tax advantage will be a question of fact. It is not possible for someone to have sought a tax advantage in respect of the rules in Schedule 1A before a point in time when they could be aware of the tax consequences of their actions. Hence, the provisions relating to DTAs have effect for arrangements entered into on or after 22 November 2017, and for other cases on or after 6 July 2018.

Effect of the rules applying

Where the TAAR applies, the rules allow that HMRC or the customer may make just and reasonable adjustments to counteract the tax advantage. In many cases this will be by giving effect to the law as it would have applied had the arrangements giving rise to the tax advantage not been entered into.

Treaty shopping cases

In the second instance, which the legislation refers to as treaty shopping cases, the tax advantage must be contrary to the object and purpose of the DTA. This is rooted in the internationally agreed principles governing what the Commentary to the OECD Model calls "improper use of the Convention", and is explored at length in the Commentary to Article 1 of the OECD Model (paragraphs 54 to 80 in the 2017 version).

In particular the Commentary says (paragraph 61):

> "A guiding principle is that the benefits of a double taxation convention should not be available where a main purpose for entering into certain transactions or arrangements was to secure a more favourable tax position and obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions."

A DTA will always provide a tax benefit in relation to a particular state in circumstances where the allocation of taxing rights and the relative rates of tax in the contracting states means a person pays less tax in that state than they would absent the DTA. However, under the guiding principle outlined above, abuse arises where arrangements have been entered into to create that effect, and not for commercial or substantive reasons.

HMRC will consider each case on its merits, but for example would in particular consider the application of the TAAR where historically a person or group of persons had used structures for holding UK land that would become taxable in the UK under these rules, but after becoming aware of the indirect disposal rules began to structure so that DTAs would restrict the UK's right to tax.

CG73960 Computational rules for CGT from 6 April 2019

TCGA1992\Sch4AA

The computational rules apply for both direct and indirect disposals by a non-UK resident person. For an individual the provisions also apply to disposals in the overseas part of a split year.

Where the asset was acquired on 6 April 2019 or later any gain or loss is calculated under normal principles.

The extension of the scope of the non-resident CG rules from 6 April 2019 means additional rules are required because the asset may have not been within the scope of non-resident CG (see CG73980) or was only partly (or for part of the period) within the scope of the non-resident capital gains tax charge between 6 April 2015 and 5 April 2019 (see CG73962 and CG73974).

For cases involving direct disposals of UK land the asset is not regarded as fully residential before 6 April 2019 if in the period beginning with 6 April 2015 (or acquisition if later) and ending 5 April 2019, there was no day on which the land consisted of or included a dwelling.

If the interest in land subsisted under a contract for the acquisition of land that at any time before 6 April 2019 consisted of or included a building to be constructed or adapted for use as a dwelling the disposal is taken to be fully residential before that date.

Where the asset was held but was not within the scope of the charge before 6 April 2019 in calculating the gain or loss on a disposal it is assumed that the asset was disposed of and immediately reacquired at its market value on 5 April 2019 (para 3 Sch 4AA). An example would be an indirect disposal.

An election can be made for this rebasing to not apply. However for an indirect disposal of UK land any loss arising as a result of the election is not an allowable loss (para 4 Sch 4AA).

If an election is made for rebasing not to apply and it is necessary to determine how much of a gain is a residential property gain the applicable period would start with the date of acquisition or if later 31 March 1982 (see CG73924).

CG73962 CGT – Computation - Direct disposals of pre-April 2015 assets fully chargeable before 6 April 2019

TCGA1992\Sch4AA paras 6 to 11

An asset is fully chargeable if in the period from 6 April 2015 (or acquisition if later) to 5 April 2019 on every day in the period the land to which the disposal relates consisted of a dwelling.

If the interest in land subsisted under a contract for the acquisition of land that at any time before 6 April 2019 did not consist of or include a building to be constructed or adapted for use as a dwelling, the disposal is taken not to be fully residential before that date.

In calculating the gain or loss on a disposal it is assumed that the asset was disposed of and immediately reacquired at its market value on 5 April 2015.

An election can be made for this rebasing not to apply. Such an election should state which of either the retrospective basis or time-apportionment method of computation should apply.

Where an election under para 8 for the retrospective basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant).

Where an election under para 9 for the time-apportionment basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant). The result of this computation is then time apportioned. The gain that relates to the post 5 April 2015 period is charged.

Example

Disposal made in June 2020 (1500 days after 5/4/15) and acquisition February 2011 (1500 days before in 6 April 2015). Gain before any apportionment £1,000.

The post 5 April 2015 proportion of the gain would be £500

i.e. 1,000 x (1,500/(1,500 + 1,500))

CG73964 CGT – Computation - Direct disposals of assets partly chargeable before 6 April 2019

TCGA1992\Sch4AA paras 12 to 17

In calculating the gain on the actual disposal it is assumed that the asset was sold and immediately reacquired at its market value on 5 April 2015 (but only if it was acquired on or before 5 April 2015) and in addition it is assumed that the asset was sold and immediately reacquired at its market value on 5 April 2019.

For the assumed sale on 5 April 2019 the gain or loss is treated as accruing on the actual disposal in addition to the gain or loss that actually accrues on the actual disposal.

Example

A building was acquired in the 1990’s and comprises of a shop with a flat above. The building is disposed of in say June 2021 for £380,000.The shop represented half of the building throughout.

MV at 5 April 2015	£300,000	
MV at 5 April 2019	£350,000	
Gain on assumed sale 5/4/19	£25,000	(£350,000 - £300,000)/2 (see CG73924)

Gain on actual June 2021 disposal	£30,000	(£380,000 - £350,000)
Total gain accruing June 2021	£55,000	

An election can be made for this rebasing not to apply. Such an election should state which of either the retrospective basis (para 14) or time-apportionment (para 15) method of computation should apply. An election can only be made under para 14 or para 15.

Where an election under para 14 for the retrospective basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant).

Where a valid election under para 15 for the time-apportionment basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant). The result of this computation is then adjusted.

The adjustments are:

> Any pre 6 April 2015 gain or loss is not treated as accruing on the actual disposal
>
> For the period April 2015 to April 2019 only the relevant part of the gain is treated as accruing

Example 1

Overall gain 2021 (asset held for say 10 years)			£300,000
Less			
Element relating to pre 6 April 2015 period		say £120,000	
Element relating to April 2015 to April 2019 say	£120,000		
Relevant proportion (see below) of this part say	£100,000		
Element of gain to be disregarded		£20,000	
Total to be disregarded			£140,000

Gains to be charged if para 15 election made			£160,000

An election under para 15 for time-apportionment can only be made if a 75% residential condition is met.

The 75% residential condition is only met if the relevant proportion of the amount of the April 2015 to April 2019 proportion of the gain or loss on the disposal is at least 75%.

Once the April 2015 to April 2019 gain or loss has been calculated the relevant proportion is calculated with the same approach that applies to determine the residential property gain (see CG73924).

The relevant proportion is determined using the fraction A/B.

A is the number of days in the period where the land consists of or includes a dwelling (see CG73926) in the April 2015 to April 2019 period

B is the total number of days in that period

Example 2

Bare land acquired in the 1990's is held and is disposed of in 2021. From 6 April 2017 construction of a dwelling commences.

The fraction would be 730/1461 (6/4/15 to 5/4/17 = 731 days, 6/4/17 to 5/4/19 = 730 days)

The fraction would be just under 50% and so a para 15 election cannot be made.

(The fraction in example 1 is 83.3% so the 75% test would be met.)

In a case where there is mixed use the relevant fraction of the gain is adjusted on a just and reasonable basis to take account of the mixed use on the day or days.

Example 3

A building may comprise of a shop with a flat above. If the shop represented half of the building throughout the applicable period. In the A/B calculation, the numerator A should be adjusted to (A/2) / B.

In individual cases it may sometimes be difficult to decide whether any particular part of a building should be looked at independently from other parts, or whether the building should be looked at as a whole. Such cases should be decided on their facts.

If the actual disposal is of an interest in land subsisting under a contract for the acquisition of land consisted of or included a building to be constructed or adapted for use as a dwelling the disposal, the land is taken to consist of or include a dwelling throughout the April 2015 to April 2019 ownership period.

CG73970 Computational rules for CT from 6 April 2019

TCGA1992\Sch4AA

The computational rules apply for both direct and indirect disposals by a non-UK resident person.

A simplification compared to the computational regime that applied to 5 April 2019 for a company is that ATED related CGT no longer applies. The regime follows the approach for other persons.

Where the asset was acquired on 6 April 2019 or later any gain or loss is calculated under normal principles.

The extension of the scope of the non-resident CG rules from 6 April 2019 means additional rules are required because the asset may have not been within the scope of non-resident CG (see CG73980) or was only partly (or for part of the period) within the scope of the non-resident capital gains tax charge between 6 April 2015 and 5 April 2019 (see CG73962 and CG73974).

For cases involving direct disposals of UK land the asset is not regarded as fully residential before 6 April 2019 if in the period beginning with 6 April 2015 (or acquisition if later) and ending 5 April 2019, there was no day on which the land consisted of or included a dwelling.

If the interest in land subsisted under a contract for the acquisition of land that at any time before 6 April 2019 consisted of or included a building to be constructed or adapted for use as a dwelling the disposal is taken to be fully residential before that date.

Where the asset was held but was not within the scope of the charge before 6 April 2019 in calculating the gain or loss on a disposal it is assumed that the asset was disposed of and immediately reacquired at its market value on 5 April 2019 (para 3 Sch 4AA). An example would be an indirect disposal.

An election can be made for this rebasing to not apply. However for an indirect disposal of UK land any loss arising as a result of the election is not an allowable loss (para 4 Sch 4AA).

If an election is made for rebasing not to apply and it is necessary to determine how much of a gain is a residential property gain the applicable period would start with the date of acquisition or if later 31 March 1982 (see CG73924).

CG73972 CT – Computation - Direct disposals of pre-April 2015 assets fully chargeable before 6 April 2019

TCGA1992\Sch4AA paras 6 to 11

An asset is fully chargeable if in the period from 6 April 2015 (or acquisition if later) to 5 April 2019 on every day in the period the land to which the disposal relates consisted of a dwelling. It follows this cannot include indirect disposals.

If the interest in land subsisted under a contract for the acquisition of land that at any time before 6 April 2019 did not consist of or included a building to be constructed or adapted for use as a dwelling the disposal is taken not to be fully residential before that date.

In calculating the gain or loss on a disposal it is assumed that the asset was disposed of and immediately reacquired at its market value on 5 April 2015.

An election can be made for this rebasing not to apply. Such an election should state which of either the retrospective basis or time-apportionment method of computation should apply.

Where an election under para 8 for the retrospective basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant).

Where an election under para 9 for the time-apportionment basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant). The result of this computation is then time apportioned. The gain that relates to the post 5 April 2015 period is charged.

Example

Disposal made in June 2020 (1500 days after 5/4/15) and acquisition February 2011 (1500 days before in 6 April 2015). Gain before any apportionment £1,000.

The post 5 April 2015 proportion of the gain would be £500

i.e. 1,000 x (1,500/(1,500 + 1,500))

CG73974 CT - Direct disposals of assets partly chargeable before 6 April 2019

TCGA1992\Sch4AA paras 12 to 17

In calculating the gain on the actual disposal it is assumed that the asset was sold and immediately reacquired at its market value on 5 April 2015 (but only if it was acquired on or before 5 April 2015) and in addition it is assumed that the asset was sold and immediately reacquired at its market value on 5 April 2019.

For the assumed sale on 5 April 2019 the gain or loss is treated as accruing on the actual disposal in addition to the gain or loss that actually accrues on the actual disposal.

Example

A building was acquired in the 1990's and comprises of a shop with a flat above. The building is disposed of in say June 2021 for £380,000.The shop represented half of the building throughout.

MV at 5 April 2015	£300,000
MV at 5 April 2019	£350,000

Gain on assumed sale 5/4/19	£25,000	(£350,000 - £300,000)/2 (see CG73924)
Gain on actual June 2021 disposal	£30,000	(£380,000 - £350,000)
Total gain accruing June 2021	£55,000	

An election can be made for this rebasing not to apply. Such an election should state which of either the retrospective basis (para 14) or time-apportionment (para 15) method of computation should apply. An election can only be made under para 14 or para 15.

Where an election under para 14 for the retrospective basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant).

Where a valid election under para 15 for the time-apportionment basis to apply is made, rebasing to 5 April is ignored and the gain or loss is calculated with the original acquisition cost (or rebasing to 31/3/82 if relevant). The result of this computation is then adjusted.

The adjustments are:

> Any pre 6 April 2015 gain or loss is not treated as accruing on the actual disposal
>
> For the period April 2015 to April 2019 only the relevant part of the gain is treated as accruing

Example 1

Overall gain in 2021 (asset held for say 10 years)		£300,000
Less		
Element relating to pre 6 April 2015 period	say £120,000	
Element relating to April 2015 to April 2019 say £120,000		
Relevant proportion (see below) of this part say £100,000		
Element of gain to be disregarded	£20,000	
Total to be disregarded		£140,000

Gains to be charged if para 15 election made		£160,000

An election under para 15 for time-apportionment can only be made if a 75% residential condition is met.

The 75% residential condition is only met if the relevant proportion of the amount of the April 2015 to April 2019 proportion of the gain or loss on the disposal is at least 75%.

Once the April 2015 to April 2019 gain or loss has been calculated the relevant proportion is calculated with the same approach that applies to determine the residential property gain (see CG73924).

The relevant proportion is determined using the fraction A/B.

A   is the number of days in the period where the land consists of or includes a dwelling (see CG73926) in the April 2015 to April 2019 period

B   is the total number of days in that period

Example 2

Bare land acquired in the 1990's is held and is disposed of in 2021. From 6 April 2017 construction of a dwelling commences.

The fraction would be 730/1461   (6/4/15 to 5/4/17 = 731 days, 6/4/17 to 5/4/19 = 730 days)

The fraction would be just under 50% and so a para 15 election cannot be made.

(The fraction in example 1 is 83.3% so the 75% test would be met.)

In a case where there is mixed use the relevant fraction of the gain is adjusted on a just and reasonable basis to take account of the mixed use on the day or days.

Example 3

A building may comprise of a shop with a flat above. If the shop represented half of the building throughout the applicable period. In the A/B calculation, the numerator A should be adjusted to (A/2) / B.

In individual cases it may sometimes be difficult to decide whether any particular part of a building should be looked at independently from other parts, or whether the building should be looked at as a whole. Such cases should be decided on their facts.

If the actual disposal is of an interest in land subsisting under a contract for the acquisition of land consisted of or included a building to be constructed or adapted for use as a dwelling the disposal, the land is taken to consist of or include a dwelling throughout the April 2015 to April 2019 ownership period.

CG73980 Specific occasions where person was not chargeable before 6 April 2019

TCGA92\Sch4AA

A person is treated as not chargeable before 6 April 2019, if immediately before that date the person was:

- A company that was not closely-held
- A widely marketed scheme
- A company carrying on life assurance business (FA2012\s56). Also see TCGA92\Sch4AA para 2(4)(c).

The detail of the provisions of para 2(4) to (8) is not replicated here. Additional guidance on 'a closely-held company' and 'widely-marketed scheme' is in CG73722 onwards.

CG73982 Other specific provisions

TCGA92|Sch4AA paras 18 to 24

Companies with UK land becoming UK resident after 5 April 2019

Where a company migrates to the UK and becomes resident after 5 April 2019, any previous entitlement to rebasing of the asset for the purposes of computing the gain on a disposal is preserved.

Persons with UK land ceasing to be UK resident after 5 April 2019

Where a company or a trust ceases to be resident in the UK an exit charge is not triggered (see CG73988). On a subsequent disposal the computational rules in Sch4AA do not apply to that subsequent disposal and any gain or loss is computed on normal rules.

Wasting assets

Where a rebasing date is used in accordance with Sch4AA e.g. 5 April 2019,that date is not to be used for the purposes of determining if an asset is a wasting asset under Chapter 2 Part 2 TCGA 92.

Capital allowances

If a valuation is used in accordance with Sch4AA to determine the deemed acquisition cost, that valuation should also apply for the purposes of capital allowance purposes in TCGA92/S41 and S47.

Making and varying of elections

An election must be made in the person's tax return. If no election is made, the default rebasing rules will apply.

An election is irrevocable if made in a person's normal tax return. If it is made in a return relating to the 30 day payment on account rules in Schedule 2 to Finance (No 3) Act 2018, the election may be withdrawn or a new election made in a subsequent tax return (if that return is made on time).

CG73984 Unascertainable consideration

TCGA92/S48A is concerned with cases where a person makes a chargeable non-resident CG disposal and all or part of the consideration for the disposal consists of a right for deferred consideration that is unascertainable (see CG14840+ for general guidance on deferred consideration). If the person subsequently receives a payment representing all or part of the unascertainable consideration, that payment is treated as not accruing on the disposal of the right, and the person's costs in acquiring the right (or the proportionate costs in the case of a part disposal) are taken to be nil.

A right to consideration is unascertainable if the amount or value are uncertain when the right is conferred, because they refer to matters which have not yet occurred. The legislation indicates that a right to consideration is not to be regarded as unascertainable in some cases, for example where the right to receive the consideration is merely postponed or contingent, or the amount or value will be fixed by reference to values or amounts that are ascertainable (see CG14940-14950).

TCGA92/S48A lays down the following basis for computing liability to non-resident CG on subsequent receipt of payments -

- Step 1, find any amount by which the later payment exceeds the original consideration for the right, and treat any excess as consideration (or further consideration) accruing on the original disposal. (If the original consideration exceeds the later payment, the original consideration is reduced by the excess.)
- Step 2, compute the difference that the adjustment under step 1 makes to any Non-resident CG or loss, or other gain or loss accruing on the original disposal (computing this separately for each type of gain or loss). The difference is "positive" if a loss is decreased or a gain created or increased, "negative" if a gain is reduced or a loss created or increased.
- Step 3, any positive amount is treated for the purposes of TCGA92 and TMA70 as a gain (of the type appropriate to the computation) accruing to the person at the time of the receipt of the subsequent payment. Any negative amount is treated for the purposes of the legislation as a loss (of the type appropriate to the computation) accruing to the person at the time of the receipt of the payment.

CG73986 Interactions with Gifts hold-over and other reliefs

The basic principles that applied on the introduction of non-resident CG continue to apply with the extension of the scope non-resident CG.

Gifts hold-over relief

TCGA92/S165 is concerned with cases where business assets are disposed of as a gift (see CG66990+). It is extended to cover assets involved in a non-resident CGT disposal from a non-UK resident to a UK resident. Non-resident CGT gains may therefore be included as held-over gains.

TCGA92/S167A modifies the rules in TCGA92/S165 on relief for gifts of business assets. It is concerned with cases where assets are disposed of as a gift from a UK resident to a non-UK resident, and the disposal relates to an asset within S1A(3) (b) or (c). It provides that hold-over relief is not denied where the asset is chargeable to non-resident CGT in the hands of the person to whom the asset is transferred. The full amount of the held-over gain accrues as a chargeable non-resident CGT gain for that person at the point when they subsequently dispose of it.

TCGA92/S260 is concerned with cases where gifts are exempt or potentially exempt from inheritance tax (see CG67040). This is amended, so that where the asset involved in disposal is a direct or indirect disposal of UK land which meets the non-residence condition as a gift from a non-UK resident to a UK resident, non-resident CGT gains may be included as held-over gains under this provision.

TCGA92/S261ZA is concerned with cases where assets are disposed of as a gift from a UK resident to a non-UK resident in the circumstances envisaged by TCGA92/S260, and the disposal is of an asset within S1A(3) (b) or (c). It provides that hold-over relief is not denied where the asset is chargeable to non-resident CGT in the hands of the person to whom the asset is transferred. The full amount of the held-over gain accrues as a chargeable non-resident CGT gain for the transferee when they subsequent dispose of the asset.

Reconstruction involving transfer of business

TCGA92/S139 is concerned with company reconstructions involving the transfer of a business. It allows companies to dispose of assets for no gain and no loss on a scheme of reconstruction (see CG52800+). This is extended so that assets which would remain chargeable to corporation tax on a subsequent disposal are included among the assets to which this provision applies.

Roll-over relief

TCGA92/S159A modifies the provisions on roll-over relief in TCGA92/S152. It provides that relief does not apply to a person chargeable to non-resident CG on a gain relating to the original assets, unless the replacement assets represent interests in UK land within the scope of the non-resident CG rules at the time they are acquired (see CG60250).

CG73988 Interactions with exit charges: Deemed disposals on exiting the UK

Deemed disposal under section 25(3)

Where a person has ceased to trade through a UK branch or agency, they are deemed (under TCGA92/S25) to have made a disposal of an asset (see CG25530). **TCGA92/S25ZA** applies in this case. Where the asset in question is an interest in UK land and a non-resident CG charge or loss would accrue to the person on the deemed disposal, the gain or loss will not accrue at the time of the deemed disposal, but when all or part of the interest in question is subsequently disposed of - at which point it will be treated as a non-resident CG chargeable gain or allowable loss.

The person may elect for TCGA92/S25(3) not to have effect if that is advantageous to them.

Deemed disposal under section 80

Where the trustees of a settlement have ceased to be UK resident, they may be deemed (under TCGA92/S80) to have made a disposal of an interest in UK land. Under **TCGA92/S80A** they may elect for the non-resident CGT gain or loss on the deemed disposal to accrue not at the time they leave the UK, but when all or part of the interest in question is subsequently disposed of. In that case the gain or loss on the deemed disposal would accrue at the time of the later disposal.

Emigration of donee, deemed disposal under S168

TCGA92/S168 provides that where an individual emigrates from the UK, with a gain on an asset they had acquired held over under TCGA92/S165 or 260, the gain accrues when they cease to be UK resident (see CG25780).

TCGA92/S168A, which modifies the effect of TCGA92/S168 in cases where the asset in question is a direct or indirect disposal of UK land which meets the non-residence condition and a non-resident CGT gain would be deemed to accrue under TCGA92/S168 at the time the individual ceases to be UK resident.

The individual may elect that the held over non-resident CGT gain or loss on the deemed disposal should not accrue at the time they cease to be UK resident. Where they prefer this course, the non-resident CGT gain (or loss) on the deemed disposal would accrue when the interest in question is subsequently disposed of.

Companies migrating from the UK - deemed disposal of UK residential property interest

TCGA92/S185 deems a company which ceases to be resident in the UK to dispose of its assets at the time of migration, and immediately reacquire them at market value (see CG42370). TCGA92/S187B applies where there is a deemed disposal of a UK residential property interest by virtue of TCGA92/S185.

If a non-resident CG or allowable loss accrues to a company, if it were non-resident at the time of the deemed disposal, the gain or loss is treated as not accruing immediately at the time of the deemed disposal, but rather on a subsequent disposal of all or part of the interest. Gains or losses so deferred are aggregated with any additional non-resident CG or losses that actually accrue on the subsequent disposal.

A company may make an election not to apply this rule in relation to the deemed disposal, with the result that the gain or loss does accrue at the time the company ceases to be UK resident. Such an election must be made within two years from the day on which the company ceases to be UK resident.

CG73990 Attribution of gains to other persons

Attribution of gains to members of non-resident companies under TCGA92/S3

TCGA92/S3 contains anti-avoidance legislation, the broad aim of which is to prevent people in the UK from setting up non-resident companies which they control for the purpose of holding assets, to keep gains on those assets outside the scope of CGT and CT. Where S3 applies, it attributes gains realised by non-resident companies (which would be close if UK resident) to UK resident participators in the company (or participators that are non-UK close companies or non-UK resident trustees of a settlement).

To prevent double taxation, S3 does not apply to the part of a gain where the company would otherwise also be subject to a charge to non-resident CG.

Example

A non UK resident close company disposes of a residential property. The property was acquired in 2010 and disposed of in 2020.

Any part of the overall gain arising on disposal that relates to the period from 6 April 2015 would be within the scope of the non-resident CG rules. S3 would continue to apply to the part of the gain arising before 6 April 2015.

Attribution of gains to settlors with interest in non-resident settlements under TCGA92/S86

TCGA92/S86 serves to prevent people in the UK setting up non-resident trusts to keep gains outside the scope of CGT and CT (see CG38430+).

Where gains accrue to non-resident trusts in respect of any settled property "originating from the settlor", that would be chargeable gains under TCGA92/S2(2) if the trustees were UK resident, the gains are attributed to settlors who have an interest in the trust, and are chargeable to CGT.

The legislation contains provisions amending S86 to prevent possible double taxation (the trustees of a non-UK resident settlement being charged non-resident CGT on a gain accruing to them and S86 treating the same gain as accruing to a UK settlor). A disposal of settled property which is a non-resident CGT disposal is disregarded for the purposes of the S86 charging provisions, to the extent that a chargeable non-resident CGT gain accrues to the trustees. The new charge to non-resident CGT therefore takes priority over a charge under TCGA92/S86.

Attribution of gains to beneficiaries of non-resident settlements under TCGA92/S87

TCGA92/S87 imposes a charge on beneficiaries of non-resident trusts where S86 does not apply (see CG38570+). Gains accruing to non-UK resident trustees are treated as chargeable gains accruing to beneficiaries, to the extent that the beneficiaries receive matched capital payments from the trustees. TCGA92/S91 increases the tax payable by an interest-related factor where the capital payment is made more than one year after the end of the relevant tax year.

The legislation amends S87 to prevent potential double taxation (the trustees of a non-UK settlement charged non-resident CGT on a gain accruing to them, and the same gain treated as accruing to the beneficiaries of the trust under S87).

TCGA92/S87(5A) provides that where a disposal of settled property is a non-resident CGT disposal, it is disregarded for the purposes of the charging provisions in S87, to the extent that a chargeable non-resident CGT gain accrues to the trustees. In the same way as for S86, the new charge to non-resident CGT takes priority over a charge under TCGA92/S87.

Transfers of value by trustees, attribution of gains to beneficiaries under TCGA92/Sch 4C

TCGA92/Sch 4C is part of a series of anti-avoidance provisions introduced to counter 'flip flop' schemes, involving trustees of a non-resident trust borrowing funds on the value of settled property and making loans to another trust. In broad terms, gains on deemed disposals are attributed to the settlor or else are allocated to beneficiaries in receipt of capital payments (see CG39100+).

The legislation contains provisions amending Sch 4C to prevent double taxation (a charge to non-resident CGT arising directly on the trustees on a disposal of a UK residential property interest, and a possible charge on beneficiaries on a deemed disposal of the same interest). Sch 4C is therefore disapplied in relation to disposals by the trustees that are non-resident CGT disposals, so that no deemed disposal accrues to the trustees at the time they make a transfer of value or there is trustee borrowing. Instead non-resident CGT would apply at the time of an actual disposal.