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British Tax Guide:

Capital Gains Tax

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STRATEGIC PARTNER



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British Tax Guide: Capital Gains Tax 2009-10



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Trevor is a past President of the Association of Taxation Technicians serving from July 2001 to July 2002 during his 14-year membership of the Council of the Association. On retiring from Council he was elected as an honorary life member of the Association and subsequently the Council established a prize bearing his name to be awarded in respect of the Associations examinations. He continues to serve on the Association's Technical Committee.

He has also served for 12 years on the Council of the Chartered Institute of Taxation and was at different times Chairman of the Examinations Sub-Committee and the Chairman of the Education Committee.

Until recently he served as a General Commissioner for Income Tax.

Preface

The fourth edition of the *British Tax Guide Capital Gains Tax 2009-10* provides clear, practical and accessible commentary on the tax issues likely to be of widespread interest to tax advisers dealing with their clients' 2009–10 capital gains tax affairs. To achieve this aim, it has been necessary to either omit, or cover in summary form, some less mainstream topics. Comments from readers about the scope and depth of the coverage are welcomed.

The other books in the British Tax Guide series provide straightforward but authoritative commentary on the UK's other main taxes. In each book, extensive cross referencing is provided to relevant legislation, cases and HMRC guidance as well as to CCHs in depth commentary in the British Tax Reporter and British VAT Reporter making them an ideal desktop companion to CCHs comprehensive online services.

After the trauma created by the Chancellors desire to simplify capital gains tax in his 2007 Pre-Budget Report and the resulting Finance Act of 2008, it is refreshing to find the tax being largely untouched by Finance Act 2009. Nevertheless, there are still court and tribunal decisions as well as HMRC pronouncements which have to be assimilated.

As the title suggests, this work is year specific in that it provides commentary on the law as applicable for the tax year 2009–10 and as it stood on 31 July 2009.

Trevor Johnson

Ravenscar

August 2009

What's new?

The main changes and developments which have occurred since the last edition of *British Tax Guide: Capital Gains Tax* are summarised below:

- 5-000ff.: All key data updated as appropriate.
- 215-750: Reference to Revenue & Customs Brief 30/09 which corrects HMRCs previous policy in respect of shares acquired by the exercise of employment related options prior to 10 April 2003.
- 218-660: Commentary on the Court of Appeal decision in [2008] BTC 772.
- 219-440: Reference to the decision of the First Tier Tribunal in *Coll & Anor. v R & C Commrs* [2009] TC 00028.
- 225-280: Reference to the decisions in *Domain Dynamics (Holdings) Ltd v R & C Commrs* (2008) Sp C 701 and *Blackburn & Anor v R & C Commrs* [2009] BTC 39.
- 226-300: Paragraph rewritten in the light of Revenue & Customs Brief 09/09 on changes in partnership changing ratios relating to assets held at 31 March 1982.

Key Data: Capital Gains Tax

TAXATION OF CAPITAL GAINS

5-000 Rates, annual exemption, chattel exemption

Tax year	Annual exempt amount		Chattel exemption (max sale proceeds) ⁽¹⁾ £	Rate	
	Individuals, PRs ⁽²⁾ , trusts for mentally disabled £	Other trusts ⁽³⁾ £		Individuals ⁽⁴⁾ %	Trustees and PRs %
2008–09	9,600	4,800	6,000	18	18
2007–08	9,200	4,600	6,000	10/20/40	40
2006–07	8,800	4,400	6,000	10/20/40	40
2005–06	8,500	4,250	6,000	10/20/40	40
2004–05	8,200	4,100	6,000	10/20/40	40
2003–04	7,900	3,950	6,000	10/20/40	34
2002–03	7,700	3,850	6,000	10/20/40	34

Notes

⁽¹⁾ Where disposal proceeds exceed the exemption limit, marginal relief restricts any chargeable gain to $\frac{5}{3}$ of the excess. Where there is a loss and the proceeds are less than £6,000 the proceeds are deemed to be £6,000.

⁽²⁾ For year of death and next two years in the case of personal representatives (PRs) of deceased persons.

⁽³⁾ Multiple trusts created by the same settlor; each attracts relief equal to the annual amount divided by the number of such trusts (subject to a minimum of 10% of the full amount).

⁽⁴⁾ For years to 2007–08 inclusive, capital gains were taxed as the top slice of income at:

- starting rate to the extent to the starting rate limit;
- savings rate to the extent above the starting rate limit but to the basic rate limit; and
- higher rate to the extent above the basic rate limit.

5-020 Taper relief and indexation allowance (for years to 2007–08 only)

Taper relief and indexation allowance were abolished for disposals taking place on or after 6 April 2008.

Taper relief

The chargeable gain was reduced according to the number of complete years in the period of ownership limited to the period since 5 April 1998. Non-business assets acquired prior to 17 March 1998 qualified for an addition of one year to the period for which they are treated as held after 5 April 1998.

The taper was generally applied to the net chargeable gain for the year after deduction of any losses of the same tax year and of any losses carried forward from earlier years.

The tables below show the percentage of chargeable gain that was subject to capital gains tax i.e. the gain after taper relief. So, for example, if the percentage of gain chargeable was 100 per cent, then taper relief was 0 per cent; if the percentage of gain chargeable was 95 per cent, then taper relief was 5 per cent, and so on.

Business assets

Number of complete years after 5.4.98 for which asset held	Percentage of gains chargeable	
	All years from 2002–03 to 2007–08	2001–02
0	100	100
1	50	87.5
2	25	75
3	25	50
4 or more	25	25

Non-business assets

Number of complete years after 5.4.98 for which asset held	Percentage of gains chargeable (all years from 2001–02 to 2007–08)
0	100
1	100
2	100
3	95
4	90
5	85
6	80
7	75
8	70
9	65
10 or more	60

Indexation allowance

Indexation allowance in respect of changes shown by the retail prices indices for months after April 1998 is allowed only for the purposes of corporation tax. For disposals made by

individuals, trustees and personal representatives after April 1998, indexation allowance was 'frozen' at that date and was abolished completely for disposals on or after 6 April 2008.

For years to 2007–08, the table below sets out the figure determined by the formula of $(RD - RI)/RI$ where RD is the retail prices index for April 1998 and RI is the retail prices index for the later of March 1982 and the date that the item of relevant allowable expenditure was incurred. The indexation allowance was the aggregate of the indexed rise in each item of relevant allowable expenditure, a sum produced by multiplying the amount of that item of expenditure by the appropriate figure in the table below.

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1982	—	—	1.047	1.006	0.992	0.987	0.986	0.985	0.987	0.977	0.967	0.971
1983	0.968	0.960	0.956	0.929	0.921	0.917	0.906	0.898	0.889	0.883	0.876	0.871
1984	0.872	0.865	0.859	0.834	0.828	0.823	0.825	0.808	0.804	0.793	0.788	0.789
1985	0.783	0.769	0.752	0.716	0.708	0.704	0.707	0.703	0.704	0.701	0.695	0.693
1986	0.689	0.683	0.681	0.665	0.662	0.663	0.667	0.662	0.654	0.652	0.638	0.632
1987	0.626	0.620	0.616	0.597	0.596	0.596	0.597	0.593	0.588	0.580	0.573	0.574
1988	0.574	0.568	0.562	0.537	0.531	0.525	0.524	0.507	0.500	0.485	0.478	0.474
1989	0.465	0.454	0.448	0.423	0.414	0.409	0.408	0.404	0.395	0.384	0.372	0.369
1990	0.361	0.353	0.339	0.300	0.288	0.283	0.282	0.269	0.258	0.248	0.251	0.252
1991	0.249	0.242	0.237	0.222	0.218	0.213	0.215	0.213	0.208	0.204	0.199	0.198
1992	0.199	0.193	0.189	0.171	0.167	0.167	0.171	0.171	0.166	0.162	0.164	0.168
1993	0.179	0.171	0.167	0.156	0.152	0.153	0.156	0.151	0.146	0.147	0.148	0.146
1994	0.151	0.144	0.141	0.128	0.124	0.124	0.129	0.124	0.121	0.120	0.119	0.114
1995	0.114	0.107	0.102	0.091	0.087	0.085	0.091	0.085	0.080	0.085	0.085	0.079
1996	0.083	0.078	0.073	0.066	0.063	0.063	0.067	0.062	0.057	0.057	0.057	0.053
1997	0.053	0.049	0.046	0.040	0.036	0.032	0.032	0.026	0.021	0.019	0.019	0.016
1998	0.019	0.014	0.011	—	—	—	—	—	—	—	—	—

5-060 Leases which are wasting assets

Restrictions of allowable expenditure

Fraction equal to $\frac{P(1) - P(3)}{P(1)}$ excluded from expenditure of TCGA 1992, s. 38(1)(a),

and fraction equal to $\frac{P(2) - P(3)}{P(2)}$ excluded from expenditure of TCGA 1992, s. 38(1)(b),

where

P(1) = table percentage for duration of lease at time of acquisition (or 31 March 1982 where applicable);

P(2) = table percentage for duration of lease at time expenditure incurred; and

P(3) = table percentage for duration of lease at time of disposal.

Years	%	Monthly ⁽¹⁾ increment
50 or more	100	—
49	99.657	.029
48	99.289	.031

Key Data: Capital Gains Tax

Years	%	Monthly⁽¹⁾ increment
47	98.902	.032
46	98.490	.034
45	98.059	.036
44	97.595	.039
43	97.107	.041
42	96.593	.043
41	96.041	.046
40	95.457	.049
39	94.842	.051
38	94.189	.054
37	93.497	.058
36	92.761	.061
35	91.981	.065
34	91.156	.069
33	90.280	.073
32	89.354	.077
31	88.371	.082
30	87.330	.087
29	86.226	.092
28	85.053	.098
27	83.816	.103
26	82.496	.110
25	81.100	.116
24	79.622	.123
23	78.055	.131
22	76.399	.138
21	74.635	.147
20	72.770	.155
19	70.791	.165
18	68.697	.175
17	66.470	.186
16	64.116	.196
15	61.617	.208
14	58.971	.221
13	56.167	.234
12	53.191	.247
11	50.038	.263
10	46.695	.279
9	43.154	.295
8	39.399	.313
7	35.414	.332
6	31.195	.352
5	26.722	.373
4	21.983	.395
3	16.959	.419
2	11.629	.444
1	5.983	.470
0	0	.499

Notes

⁽¹⁾ Where duration is *not* an *exact* number of years, the table percentage for the whole number of years is increased by $\frac{1}{12}$ of the difference between that and the next highest percentage for each odd month. Fourteen odd days or more are rounded up and treated as a month; less than 14 odd days are ignored.

5-080 Premiums for short leases – CGT/IT charge

The chart below shows the proportion of any premium received in respect of a lease of less than 50 years which is chargeable to capital gains tax and that which is chargeable to income tax.

Length of lease in years	Amount chargeable to CGT %	Amount chargeable to income tax %
Over 50	100	0
50	98	2
49	96	4
48	94	6
47	92	8
46	90	10
45	88	12
44	86	14
43	84	16
42	82	18
41	80	20
40	78	22
39	76	24
38	74	26
37	72	28
36	70	30
35	68	32
34	66	34
33	64	36
32	62	38
31	60	40
30	58	42
29	56	44
28	54	46
27	52	48
26	50	50
25	48	52
24	46	54
23	44	56
22	42	58
21	40	60
20	38	62
19	36	64
18	34	66
17	32	68
16	30	70
15	28	72
14	26	74
13	24	76

Key Data: Capital Gains Tax

Length of lease in years	Amount chargeable to CGT %	Amount chargeable to income tax %
12	22	78
11	20	80
10	18	82
9	16	84
8	14	86
7	12	88
6	10	90
5	8	92
4	6	94
3	4	96
2	2	98
1 or less	0	100

5-100 CGT exempt gilt-edged securities

TCGA 1992, s. 115(1) provides that a gain arising on the disposal of 'gilt-edged securities is not a chargeable gain. As a consequence a loss arising on such a disposal will not be an allowable loss (TCGA 1992, s. 16(2)). A "gilt-edged security" is one specified in TCGA 1992, Sch. 9, Pt. II and other securities as may be specified from time to time by Treasury Order (TCGA 1992, Sch. 9, para. 1).'

The current list of exempt gilt-edged securities can be found on HMRC's website at www.hmrc.gov.uk/cgt/gilts-list.htm.

5-120 Securities of negligible value

The HMRC website contains a list, constantly updated, of shares or securities formerly quoted (largely) on the London Stock Exchange which have been officially declared as being of negligible value for the purposes of a claim under s.24(2) Taxation of Chargeable Gains Act 1992. A summary of principles, together with a link to the current list, may be found at www.hmrc.gov.uk/cgt/negligible_list.htm.

5-140 Expenses incurred by personal representatives

In respect of deaths the scale of expenses allowable in computing the gains or losses of personal representatives on the sale of assets in a deceased person's estate is as follows (SP 2/04):

Gross value of estate	Allowable expenditure
Not exceeding £50,000	1.8% of probate value of assets sold by personal representatives
£50,001–£90,000	£900, divided among all assets in the estate in proportion to their probate values and allowed in those proportions on assets sold by personal representatives
£90,001–£400,000	1% of probate value of assets sold
£400,001–£500,000	£4,000, divided as above
£500,001–£1,000,000	0.8% of probate value of assets sold
Over £1,000,000–£5,000,000	£8,000, divided as above
Over £5,000,000	0.16% of probate value of assets sold, subject to a maximum of £10,000

Note

Computations based either on the above scale or on actual expenditure incurred are accepted.

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