Tolley's
Capital Gains Tax
2010-11

FULLY CROSS-REFERENCED TO SIMON'S TAXES
ENDORSED BY THE ASSOCIATION
OF TAXATION TECHNICIANS

Kevin Walton MA

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by

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About This Book

Welcome to your new look Tolley Tax Annual. We have re-launched the books this year, aiming to make them easier to use and more practical. They still contain the same trusted, valuable content but now you can find the answer you need even quicker than before.

The first difference you'll notice is the new front cover. However, that's not the only change – the text has been revised too.

What are the other key changes?

- New key points – to direct you to matters that are of use in planning, or to areas of difficulty you may come across in practice.
- There are further practical examples – highly valued interpretation to help you understand the effects of the legislation on your day to day work. Examples are set in shaded boxes so they stand out if you need to go straight to practical interpretation.
- More contributions from practitioners using their own valuable experience.
- New, clearer text design – larger font and more white space for a more comfortable reading experience.
- Clearer contents – easier to read.
- The law and practice for the last four years is included and we have dispensed with any unnecessary historical text and statutory references.
- There are introductions for chapters – so that you can see quickly what is covered.
- We have split chapters where relevant – to break down the information into more manageable chunks and the structure of chapters has been improved.
- More headings have been introduced, with more distinct levels so that you can find the section that you want to read easily.
- Where appropriate, text has been converted to tables and lists to save you time and sentences shortened.

We hope that the new style meets your requirement for greater accessibility to the changing tax legislation and the ever increasing demands on you as a practitioner. We would be pleased to receive your feedback on the new style and any suggestions for further improvements. You can do this by e-mailing the Editor, Gemma Furniss at gemma.furniss@lexisnexis.co.uk. Technical queries will be dealt with by the author.

Contributors

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Barry Hallam is a Senior Tax Manager at Mercer & Hole, having worked in tax since the 1970s, first in the Inland Revenue and then for the last 24 years in practice. He specialises in providing tax advice to private clients, particularly in the areas of capital gains tax and general tax planning for non-UK domiciled clients.

Kay Hogg

Kay Hogg is a qualified tax adviser who has specialised in trust taxation for many years, working in private practice for a number of leading accounting firms. She is now an independent tax consultant specialising in inheritance tax and trust taxation, although her practice covers all aspects of private client taxation, including general tax planning for high net worth individuals and families.

Pete Miller

Pete Miller is a partner with Powrie Appleby and has more than 22 years' experience in tax, having started as an inspector with the Inland Revenue in 1988, and spending some years in Policy Division, advising Ministers on capital allowances and on the taxation of the film industry. Pete has also worked for 11 years in 'Big 4' firms and specialised in a number of areas, including reorganisations and reconstructions, anti-avoidance legislation, the substantial shareholdings exemption, and the taxation of M&A transactions and of intangible assets. He is a regular contributor to books and journals, an examiner for the CIOT, and a member of the Education Committee.

Paula Tallon

Paula Tallon is a Tax Partner at BDO LLP. Paula trained and qualified as a Chartered Accountant with a London based firm of accountants where she quickly moved into tax and qualified as a Chartered Tax Adviser. She subsequently joined a top 20 accountancy firm where she progressed to tax partner before joining Chiltern (which was acquired by BDO in October 2007) in May 2005. She has a broad range of tax expertise with particular emphasis on owner-managed businesses. Paula regularly lectures to accountants and writes on the tax issues facing OMBs and their advisers as well as being a regular face on the lecture circuit.

Consolidation of Tax Enactments

With effect generally for 1992/93 and subsequent years of assessment (and for companies' accounting periods beginning after 5 April 1992) the *Taxes Acts* provisions relating to the taxation of chargeable gains are consolidated in the *Taxation of Chargeable Gains Act 1992 (TCGA 1992)*.

Tolley's Capital Gains Tax 2010/11 sets out the position for the four years prior to 2010/11, i.e. for 2006/07 to 2009/10, but occasional references are still required to earlier years.

The approach which has been adopted to statutory references in this work is as follows.

(i) References to current legislation invariably quote the *TCGA 1992* reference in the familiar form, i.e. '*TCGA 1992, s XXX*' to identify a section and '*TCGA 1992, Sch XX*' to identify a Schedule. Where there has been no change in the legislation in the last six years, no statutory reference other than the current legislation is quoted.

(ii) Where the legislation has changed during the last four years, the earlier provisions continue to be described in the text, and the appropriate earlier statutory reference is quoted. Legislation current during those four years but now repealed is similarly dealt with. Where any part of the current legislation was introduced during those four years, the commencement date is quoted.

Following the re-enactment of certain legislation in the *Income Tax Act 2007*, the *Corporation Tax Act 2009* and the *Taxation (International and Other Provisions) Act 2010* as part of the tax law rewrite programme, both the old and the new references are quoted in the text, as the revised wording and layout of the legislation may be relevant, particularly in cases where minor changes have been incorporated.

Abbreviations and References

Abbreviations

A-G	Attorney-General.
Art	Article.
BES	Business Expansion Scheme.
CA	Court of Appeal.
CAA	Capital Allowances Act.
CCA	Court of Criminal Appeal.
CCAB	Consultative Committee of Accountancy Bodies.
CES	Court of Exchequer (Scotland).
Cf.	compare.
CGT	Capital Gains Tax.
CGTA	Capital Gains Tax Act.
CJEC	Court of Justice of the European Communities.
Ch D	Chancery Division.
CIR	Commissioners of Inland Revenue ('the Board' or 'the Revenue').
CRCA	Commissioners for Revenue and Customs Act.
CTA	Corporation Tax Act.
DC	Divisional Court.
EC	European Community.
ECHR	European Court of Human Rights.
EIS	Enterprise Investment Scheme.
ESC	Inland Revenue Extra-Statutory Concession.
EU	European Union.
Ex D	Exchequer Division (now part of Chancery Division).
FA	Finance Act.
Fam D	Family Division.

HC	House of Commons.
HL	House of Lords.
HMRC	Her Majesty's Revenue and Customs.
I	Ireland.
ICAEW	Institute of Chartered Accountants in England and Wales.
ICTA	Income and Corporation Taxes Act.
IHT	Inheritance Tax.
IHTA	Inheritance Tax Act.
ISA	Individual Savings Account.
ITA	Income Tax Act.
ITEPA	Income Tax (Earnings and Pensions) Act.
ITTOIA	Income Tax (Trading and Other Income) Act.
KB	King's Bench Division.
LLP	Limited Liability Partnership.
LLPA	Limited Liability Partnership Act.
NI	Northern Ireland.
OEIC	Open-ended Investment Company
PC	Privy Council.
PDA	Probate, Divorce and Admiralty Division (now Family Division).
PEP	Personal Equity Plan.
QB	Queen's Bench Division.
QIS	Qualified Investor Scheme
R	Regina or Rex (i.e. The Crown).
Reg	Regulation.
RPI	Retail Prices Index.
s	Section.
SC(I)	Supreme Court (Ireland).
SCS	Scottish Court of Session.
Sch	Schedule.
SE	*Societas Europaea* (European Company)
SI	Statutory Instrument.
SP	Inland Revenue Statement of Practice.

Sp C	Special Commissioners.
TCEA	Tribunals, Courts and Enforcement Act.
TCGA	Taxation of Chargeable Gains Act.
TIOPA	Taxation (International and Other Provisions) Act.
TMA	Taxes Management Act.

References

(*denotes a series accredited for citation in court).

All E R	*All England Law Reports (LexisNexis).
All ER(D)	All England Reporter Direct (LexisNexis).
AC	*Law Reports, Appeal Cases (Incorporated Council of Law Reporting for England and Wales, Megarry House, 119 Chancery Lane, London WC2A 1PP).
ATC	*Annotated Tax Cases (publication discontinued).
Ch	*Law Reports, Chancery Division.
CMLR	Common Market Law Reports.
Ex D	Law Reports, Exchequer Division (1875–1880; see also below).
Fam D	*Law Reports, Family Division.
KB	*Law Reports, King's Bench Division (1900–1952).
IR	*Irish Reports (Incorporated Council of Law Reporting for Ireland, First Floor, Áras Uí Dhálaigh, Inns Quay, Dublin 7).
ITC	*Irish Tax Cases (Government Publications, 1 and 3 G.P.O. Arcade, Dublin 1).
LR Ex	*Law Reports, Exchequer Division (1865–1875; see also above).
NILR	Northern Ireland Law Reports.
QB	*Law Reports, Queen's Bench Division (1891–1901 and 1952 onwards).
QBD	Law Reports, Queen's Bench Division (1875–1890).
SLT	Scots Law Times.
Sp C	Special Commissioner's Decisions (Finance and Tax Tribunals, 15–19 Bedford Avenue, London, WC1B 3AS).

SSCD	Simon's Tax Cases—Special Commissioners' Decisions (LexisNexis).
STC	*Simon's Tax Cases (LexisNexis).
STI	Simon's Tax Intelligence (LexisNexis).
TC	*Official Reports of Tax Cases (The Stationery Office, P.O. Box 29, Norwich, NR3 1GN).
TR	Taxation Reports (publication discontinued).
WLR	*Weekly Law Reports (Incorporated Council of Law Reporting).

The first number in the citation refers to the volume, and the second to the page, so that [1978] 2 WLR 10 means that the report is to be found on page ten of the second volume of the Weekly Law Reports for 1978. Where no volume number is given, only one volume was produced in that year. Some series have continuous volume numbers.

Where legal decisions are very recent and in the lower courts, it must be remembered that they may be reversed on appeal. However, references to the official Tax Cases ('*TC*'), and to the Appeal Cases ('*AC*') may be taken as final.

In English cases, Scottish and Northern Irish decisions (unless there is a difference of law between the countries) are generally followed but are not binding, and Republic of Ireland decisions are considered (and vice versa).

Acts of Parliament, Command Papers, 'Hansard' Parliamentary Reports and Statutory Instruments (SI) are obtainable from The Stationery Office (P.O. Box 29, Norwich, NR3 1GN). Publications can be purchased using their online bookshop (at www.tso.co.uk). Fax orders should be made to 0870 600 5533. General enquiries and telephone orders should be made to 0870 600 5522. **Hansard** (referred to as HC Official Report or H L Official Report) references are to daily issues and do not always correspond to the columns in the bound editions. **N.B.** Statements in the House, while useful as indicating the intention of enactments, have no legal authority except in the limited circumstances mentioned in **4.24 APPEALS**.

Contents

1

Introduction

Basic principles of capital gains tax

[1.1] Capital gains tax is charged on chargeable gains made by individuals, personal representatives and trustees on the disposal of **ASSETS** (**7.2**). The tax is chargeable on the total gains on disposals in a 'year of assessment', after deductions, including **LOSSES** (**43**) and the annual exemption (see **2 ANNUAL RATES AND EXEMPTIONS**). Every gain is a chargeable gain unless expressly excluded (see **24 EXEMPTIONS AND RELIEFS**). For this purpose, a '*year of assessment*', otherwise known as a '*tax year*', is a year ending on 5 April. Thus '2010/11' indicates the year of assessment ending on 5 April 2011 (and so on). [*TCGA 1992, s 288(1)(1ZA); ITA 2007, Sch 1 para 342(2)(i); FA 2008, Sch 2 para 101*].

Companies and other corporate bodies within the scope of corporation tax do not pay capital gains tax as such but instead are chargeable to corporation tax on their chargeable gains. The computation of their gains is now significantly different from the computation principles applying for capital gains tax (see **14.2 COMPANIES**). Companies pay corporation tax by reference to accounting periods rather than years of assessment.

For both capital gains tax and corporation tax purposes, a gain is computed by reference to the excess of the disposal consideration over the acquisition consideration, received and given, for an asset. In certain circumstances the legislation deems a disposal or acquisition to take place where there is no actual disposal or acquisition. Certain types of expenditure are deductible in computing the gain. See **16 COMPUTATION OF GAINS AND LOSSES**. Companies are given an allowance, known as the indexation allowance (see **37 INDEXATION**), which for each gain adjusts for the effects of inflation. For CGT purposes, indexation allowance is abolished for disposals on or after 6 April 2008, having previously been frozen at its April 1998 level. For CGT purposes, a taper relief applied to disposals before 6 April 2008 whereby a chargeable gain was progressively reduced according to the length of time the asset had been held, with more generous reductions for business assets than for other assets (see **63 TAPER RELIEF**). For disposals on or after 6 April 2008, taper relief was abolished, but gains on certain business disposals may, subject to a lifetime limit, qualify for **ENTREPRENEURS' RELIEF** (**23**). Neither taper relief nor entrepreneurs' relief apply for the purposes of corporation tax on chargeable gains.

Capital gains tax (CGT) was introduced by *FA 1965* and commenced on 6 April 1965. The legislation was consolidated by *CGTA 1979* and subsequently by *TCGA 1992*. Assets acquired before 7 April 1965 are within the charge if they are disposed of on or after that date, but there are special provisions dealing with the computation of gains on the disposal of such assets (see **8 ASSETS HELD ON 6 APRIL 1965**). *FA 1988* replaced the 1965 base date with 31 March 1982, subject to the detailed provisions of **ASSETS HELD ON 31 MARCH 1982 (9)**. For CGT purposes, for disposals on or after 6 April 2008, re-basing to 31 March 1982 applies to all assets held on that date without exception. Exceptions continue to apply for corporation tax purposes.

Both CGT and corporation tax are administered and paid under **SELF-ASSESSMENT (58)**. For individuals, the rate of CGT for 2010/11 is 18% for disposals before 23 June 2010. For disposals on or after that date, gains are treated as if they were the top slice of the taxpayer's income. To the extent that gains fall within the basic rate band they are taxable at 18%. Where they exceed the basic rate band limit they are taxable at 28%. For 2008/09 and 2009/10 a single rate of 18% applies. For earlier years, the amount chargeable to CGT was again treated as if it were the top slice of the taxpayer's income. To the extent that the gains fell within the starting rate band, they were taxable at a rate equivalent to the income tax starting rate (10%). To the extent that they fell within the basic rate band they were taxable at the lower rate of income tax (20%) and, where they exceeded the basic rate limit, at the higher rate of income tax (40%). Trustees of settlements and personal representatives are chargeable to CGT for 2010/11 at 18% for disposals before 23 June 2010 and at 28% for disposals on or after that date (18% for 2009/10 and 2008/08 and normally 40% for 2007/08 and earlier years). See **2 ANNUAL RATES AND EXEMPTIONS**. For companies, chargeable gains form part of the profits chargeable to corporation tax and are accordingly taxable at the appropriate corporation tax rate. See **14 COMPANIES.**

The charge to tax

[1.2] Subject to exceptions and special provisions, a person is chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment during any part of which he is resident in the UK, or during which he is ordinarily resident in the UK. [*TCGA 1992, s 1(1), s 2(1)*].

Companies are chargeable to corporation tax in respect of their chargeable gains. [*TCGA 1992, s 1(2); CTA 2009, Sch 1 para 359*]. Although *TCGA 1992, s 2(1)* refers to a 'person' (i.e. including a company) and ordinary residence, the key factor in charging companies is residence in the UK.

See **14 COMPANIES, 48.8 OVERSEAS MATTERS**, and **55.6 RESIDENCE AND DOMICILE.**

Special rules apply to persons not resident or individuals not domiciled in the UK, to temporary visitors to the UK and to persons becoming temporarily non-UK resident. See **47 OFFSHORE SETTLEMENTS, 48 OVERSEAS MATTERS, 54 REMITTANCE BASIS** and **55 RESIDENCE AND DOMICILE.**

Married persons and civil partners are taxed independently. Transfers between spouses or civil partners living together are made on a 'no gain, no loss' basis. See **45 MARRIED PERSONS AND CIVIL PARTNERS.**

Persons may be assessed in a representative capacity. See **6 ASSESSMENTS, 12 CHILDREN, 19 DEATH, 58 SELF-ASSESSMENT** and **59 SETTLEMENTS.**

There are special rules for UK resident or ordinarily resident shareholders of certain overseas resident companies. See **48.7 OVERSEAS MATTERS**. See **47 OFFSHORE SETTLEMENTS** for the provisions applying to trustees, settlors and beneficiaries of settlements which are or become overseas resident.

For unit and investment trusts, real estate investment trusts, open-ended investment companies and qualifying investor schemes, see **67 UNIT TRUSTS ETC.** For venture capital trusts, see **68.10 VENTURE CAPITAL TRUSTS.**

See Tolley's Corporation Tax under Friendly Societies for provisions of *TCGA 1992* (and related provisions) which are integral with the corporation tax regime applicable to life assurance business carried on by such entities.

TCGA 1992, ss 194–198G, which deal with matters relating to oil exploration taxed under the *Oil Taxation Act 1975* and in practice apply mainly to companies, are not dealt with in this book.