

Disposals of principal private residence. CGTA75 s25; FA79 s35; FA80 s61(c); FA84 s67; FA97 s146(1) and Sch9 Ptl par9(2) 604.—(1) In this section, “the period of ownership”—

(a) where the individual has had different interests at different times, shall be taken to begin from the first acquisition taken into account in determining the expenditure which under the Capital Gains Tax Acts is allowable as a deduction in computing the amount of the gain to which this section applies, and

(b) for the purposes of subsections (3) to (5), shall not include any period before the 6th day of April, 1974.

(2) This section shall apply to a gain accruing to an individual on the disposal of or of an interest in—

(a) a dwelling house or part of a dwelling house which is or has been occupied by the individual as his or her only or main residence, or

(b) land which the individual has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the site of the dwelling house) not exceeding one acre;

but, where part of the land occupied with a residence is and part is not within this subsection, then, that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(3) The gain shall not be a chargeable gain if the dwelling house or the part of a dwelling house has been occupied by the individual as his or her only or main residence throughout the period of ownership or throughout the period of ownership except for all or any part of the last 12 months of that period.

(4) Where subsection (3) does not apply, such portion of the gain shall not be a chargeable gain as represents the same proportion of the gain as the length of the part or parts of the period of ownership during which the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence, but inclusive of the last 12 months of the period of ownership in any event, bears to the length of the period of ownership.

(5) (a) In this subsection, “period of absence” means a period during which the dwelling house or part of a dwelling house was not the individual's only or main residence and throughout which he or she had no residence or main residence eligible for relief under this section.

(b) For the purposes of subsections (3) and (4)—

(i) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the State, and

(ii) in addition, any period of absence not exceeding 4 years (or periods of absence which together did

not exceed 4 years) throughout which the individual was prevented from residing in the dwelling house or the part of a dwelling house in consequence of the situation of the individual's place of work or in consequence of any condition imposed by the individual's employer requiring the individual to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of the employee's duties,

shall be treated as if in that period of absence the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence if both before and after the period the dwelling house (or the part in question) was occupied by the individual as his or her only or main residence.

(6) Where the gain accrues from the disposal of a dwelling house or part of a dwelling house part of which is used exclusively for the purposes of a trade, business or profession, the gain shall be apportioned and subsections (2) to (5) shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.

(7) Where at any time in the period of ownership there is a change in the dwelling house or the part of it which is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling house for the purpose of a trade, business or profession or for any other purpose, the relief given by this section may be adjusted in such manner as the inspector and the individual may agree, or as the Appeal Commissioners may on an appeal consider to be just and reasonable.

(8) For the purposes of this section, an individual shall not be treated as having more than one main residence at any one time and in so far as it is necessary to determine which of 2 or more residences is an individual's main residence for any period—

(a) that question may be determined by agreement between the inspector and the individual on the latter giving notice in writing to the inspector by the end of the year 1975-76 or within 2 years from the beginning of that period if that is later, and

(b) failing such agreement, the question shall be determined by the inspector, whose determination may be as respects either the whole or specified parts of the period of ownership in question,

and notice of any determination by the inspector under paragraph (b) shall be given to the individual who may appeal to the Appeal Commissioners against that determination within 21 days of service of the notice.

(9) In the case of a man and his wife living with him—

(a) there may be for the purposes of this section only one residence or main residence for both so long as they are living together and, where a notice under subsection (8)(a) affects both the husband and his wife, it must be made by both,

(b) if the one disposes of, or of his or her interest in, the dwelling house or part of a dwelling house which is their only or main residence to the other, or if it passes on death to the other as legatee, the other's period of ownership shall begin with the beginning of the period of ownership of the one making the

disposal or from whom it passes on death,

(c) if paragraph (b) applies but the dwelling house or part of a dwelling house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was the only or main residence of the one as if it was also the only or main residence of the other, and

(d) any notice under subsection (8)(b) which affects a residence owned by the husband and a residence owned by the wife shall be given to each and either may appeal under that subsection.

(10) This section shall also apply in relation to a gain accruing to a trustee on a disposal of settled property, being an asset within subsection (2), where during the period of ownership of the trustee the dwelling house or the part of a dwelling house mentioned in that subsection has been the only or main residence of an individual entitled to occupy it under the terms of the settlement, and in this section as so applied—

(a) references to the individual shall be taken as references to the trustee except in relation to the occupation of the dwelling house or the part of a dwelling house, and

(b) the notice which may be given to the inspector under subsection (8)(a) shall be a joint notice by the trustee and the person entitled to occupy the dwelling house or the part of a dwelling house.

(11) (a) In this subsection, “dependent relative”, in relation to an individual, means a relative of the individual, or of the wife or husband of the individual, who is incapacitated by old age or infirmity from maintaining himself or herself, or the widowed father or widowed mother (whether or not he or she is so incapacitated) of the individual or of the wife or husband of the individual.

(b) Where as respects a gain accruing to an individual on the disposal of, or of an interest in, a dwelling house or part of a dwelling house which is, or has at any time in his or her period of ownership been, the sole residence of a dependent relative of the individual, provided rent-free and without any other consideration, the individual so claims, such relief shall be given in respect of it and of its garden or grounds as would be given under this section if the dwelling house (or part of the dwelling house) had been the individual's only or main residence in the period of residence by the dependent relative, and shall be so given in addition to any relief available under this section apart from this subsection; but no more than one dwelling house (or part of a dwelling house) may qualify for relief as being the residence of a dependent relative of the claimant at any one time.

(12) (a) In this subsection—

“base date”, in relation to an asset disposed of by an individual, means the date of acquisition by the individual of the asset or, if the asset was held by the individual on the 6th day of April, 1974, that date;

“base value”, in relation to an asset disposed of by an individual, means the amount or value of the consideration, in money or money's worth, given by the individual or on his or her behalf wholly and exclusively for the acquisition of the asset exclusive of the incidental costs to the individual of the

acquisition or, if the asset was held by the individual on the 6th day of April, 1974, the market value of the asset on that date;

“current use value” and “development land” have the same meanings respectively as in section 648.

(b) Where—

(i) a gain accrues to an individual on the disposal of or of an interest in an asset which is development land, and

(ii) apart from this subsection relief would be given under this section in respect of the disposal of that asset (being an asset within subsection (2) or (11)),

then, subject to paragraph (c), that relief shall be given in respect of the gain (or where appropriate in respect of a portion of the gain) only to the extent (if any) to which such relief would be given if, in computing the chargeable gain accruing on the disposal (notwithstanding that the disposal was a disposal of development land), there were excluded from the computation—

(I) the amount (if any) by which the base value of the asset exceeds the current use value of the asset on the base date,

(II) the amount by which the consideration for the disposal of the asset exceeds the current use value of the asset on the date of the disposal,

(III) if the asset was not held by the individual on the 6th day of April, 1974, such proportion (if any) of the incidental costs to the individual of the acquisition of the asset as would be referable to the amount (if any) referred to in subparagraph (I), and

(IV) such proportion of the incidental costs to the individual of the disposal of the asset as would be referable to the amount referred to in subparagraph (II).

(c) Paragraph (b) shall not apply to a disposal made by an individual in any year of assessment if the total consideration in respect of all disposals made by that individual in that year and to which that paragraph would otherwise apply does not exceed £15,000.

(13) Apportionments of consideration shall be made wherever required by this section and in particular where a person disposes of a dwelling house only part of which is the person's only or main residence.

(14) This section shall not apply in relation to a gain if the acquisition of or of the interest in the dwelling house or the part of the dwelling house was made wholly or mainly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain in so far as the gain is attributable to any expenditure which was incurred after the beginning of the period of ownership and wholly or mainly for the purpose of realising a gain from the disposal.