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Chartered Institute of Taxation
Excellence in Taxation

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Dear Mike

CGT Section 10A - shares and non-residents

We write in relation to a query brought to the attention of the CIOT Capital Gains Tax and Investment Income Sub-Committee.

Suppose an individual were to own 100 shares in a limited company. The company is not the individual's employer. The individual becomes non-resident and, whilst non-resident, purchases in the market a further 200 shares (of the same class) in the same company. Whilst non-resident, the individual then disposes of the entire shareholding at a gain. At some later stage (and within five years of the original departure), the individual returns to the UK.

Under TCGA 1992 section 10A, assets owned at the date of departure which are then disposed of whilst non-resident are treated as disposed of in the year of return if the individual is away for fewer than five tax years. Section 10A therefore catches the disposal of the 100 shares.

The policy behind section 10A would not therefore seek to charge tax on any gain arising in respect of the 200 shares acquired, held and disposed of whilst the individual was non-resident. This would ordinarily be provided for by section 10A(3)(a).

However, section 104 provides that shares (and other fungible assets) are treated as a single asset 'growing or diminishing' as the case may be. Therefore, it would appear that section 104 treats the 200 shares as if they were part of the same asset which previously consisted of only 100 shares. That asset is one that was held prior to the individual's departure (and therefore falls outside the exception provided for by section 10A(3)(a)).

We should be grateful if H M Revenue & Customs would clarify their approach to such cases and, if necessary, to consider a future law change.

Yours sincerely

John Barnett
Chairman, Capital Gains Tax & Investment Income Sub-Committee

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The Chartered Institute of Taxation

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The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

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