CHAPTER 36

DOUBLE TAX RELIEF FOR CGT

36.1 Unilateral relief

If a UK resident individual suffers tax on capital gains in both the UK and in a foreign country, he will receive double taxation relief or "DTR". DTR is either available under a double taxation treaty or by virtue of **"unilateral relief".** We will not consider double tax treaties in this chapter.

Typically, unilateral relief will be available when a UK resident individual makes a capital gain on the disposal of a foreign asset. As the gain will be chargeable both in the UK and in the foreign country, the UK authorities will allow a measure of double tax relief.

The double tax relief will be the **lower of two numbers**:
1) The double tax relief can never exceed any **foreign tax** paid.
2) The DTR cannot exceed the amount of the **UK capital gains tax paid** on the foreign gain.

We **deduct the DTR from the UK CGT** liability to give UK capital gains tax due.

UK CGT liability		X
Less: DTR		
Lower of		
(i) foreign tax paid	A	
(ii) UK CGT on foreign gain	B	
		(X)
		X

Therefore in all DTR computations, we must calculate the amount of the UK capital gains tax on the foreign gain.

Any available losses and the annual exemption should be **allocated in order to maximise the DTR available.** This means they should be set **against UK gains in priority** to gains on which foreign tax has been charged. By leaving more of the foreign gain in charge, the UK tax on this gain will be increased, maximising the potential for DTR.

Illustration 1

Paul is a higher rate taxpayer who is resident and domiciled in the UK. Paul sells two assets in November 2010. He sells a UK asset giving rise to a gain of £15,000, and a foreign asset giving rise to a gain of £5,000. The overseas country charges Paul foreign tax of £1,500 on this overseas gain.

We will calculate Paul's CGT due for 2010/11.

First we divide the chargeable gains into UK gains and foreign gains. Paul is entitled to an annual exemption of £10,100 and this is deducted from the gain on the UK asset in priority.

	UK	*Foreign*
	£	£
Chargeable gains	15,000	5,000
Less: AE	(10,100)	(Nil)
Taxable gains	4,900	5,000

	UK	*Foreign*
	£	£
Taxable gains	4,900	5,000
@ 28%	1,372	
@ 28%		1,400

As the foreign gain has suffered overseas tax, Paul can claim unilateral double tax relief. The DTR is the lower of the foreign tax paid, or the UK tax on the foreign gain. The foreign tax paid is £1,500. The UK capital gains tax on the foreign gain is £1,400.

The double tax relief which Paul can claim, is the lower of these two numbers being £1,400. Paul's UK capital gains tax due for 2010/11 is therefore

		£
UK CGT before DTR £(1,372 + 1,400)		2,772
Less: DTR		
Lower of (i) foreign tax	1,500	
(ii) UK CGT on foreign gain	1,400	(1,400)
UK CGT due		1,372

Even though Paul has suffered £1,500 of foreign tax, he will only be able to use £1,400 of this to reduce his UK capital gains tax bill. The excess foreign tax credit will be wasted.

Where an individual pays tax on capital gains at different rates, the foreign gain should be treated as taxed at the highest rate, again to maximise double tax relief.

36.2 Deduction relief

In some instances, unilateral tax credit relief may not be advantageous for the taxpayer, so instead he may claim deduction relief.

Deduction relief means that a taxpayer will be able to make a claim to **deduct the foreign tax when calculating the capital gain**. Essentially the taxpayer will treat the foreign tax as an allowable expense for CGT purposes. Deduction relief will be useful either when all gains have been deferred – for example by rollover relief – or where losses are available such that chargeable gains have been reduced to zero.

If the taxpayer suffers foreign tax but has no UK capital gains tax liability, no credit relief will be available. In these circumstances, the taxpayer may claim deduction relief instead of credit relief.

Illustration 2

Tony (UK resident) sells two assets in 2010/11. He sells a UK asset giving rise to a capital loss of £20,000, and a foreign asset giving rise to a gain of £15,000. Tony suffers £3,000 of overseas tax on this foreign gain.

Tony could claim unilateral credit relief. If he does, no tax credit will be available as Tony has no UK CGT liability. Tony must offset all his gains and losses in the year, to leave him with a loss to carry forward of £5,000. As there is no UK tax liability, the UK authorities cannot give any credit for foreign tax.

	£
Gain on foreign asset	15,000
Less: Loss on UK asset	(15,000)
	Nil
Loss to carry forward £(20,000 – 15,000)	£5,000

In this instance Tony will be best advised to claim deduction relief. Tony sold a UK asset making a loss of £20,000. He sold a foreign asset making a gain of £15,000. If Tony claims deduction relief, the foreign tax of £3,000 can be deducted from the foreign gain, to give a chargeable foreign gain of £12,000. This is what we mean by the foreign tax effectively being treated as an allowable expense for CGT purposes.

If Tony now offsets his gains and his losses, you will see that the loss to be carried forward to 2011/12 has now increased to £8,000.

	£	£
Gain on foreign asset	15,000	
Less: Tax on foreign gain	(3,000)	
		12,000
Less: Loss on UK asset		(12,000)
		Nil
Loss to carry forward £(20,000 – 12,000)		£8,000

If Tony had not claimed deduction relief, the foreign tax of £3,000 would effectively have been wasted.

36.3 Delayed Remittances

If an individual is UK resident but not UK domiciled and has claimed the remittance basis, the foreign gains are only taxable if the gains are remitted to the UK.

If those foreign gains have suffered tax in the overseas country, DTR is available on a proportionate basis. This means that when the non-domiciliary remits the gain to the UK, he effectively remits his tax credit together with the capital gain.

For example, if the non-domiciliary has made a gain of £80,000 and remits proceeds of £40,000 he has remitted half of the capital gain which then becomes taxable in the UK. Therefore half of the foreign tax paid in the overseas country will be available as a tax credit, and will reduce UK CGT in the year of remittance.

A **relief** is available if an individual is **unable to bring** any of his foreign sales **proceeds back to the UK**. For example, if an individual who is resident and domiciled in the UK makes a gain on a foreign asset, that gain is immediately chargeable, regardless of whether he brings the proceeds back to the UK. In some instances, it may be physically impossible for the UK individual to bring the money into the UK in order to pay his CGT bill. This may be due to the action of the foreign Government or due to exchange restrictions outside the taxpayer's control.

In this instance, the UK taxpayer can make a claim such that the capital gain does not become chargeable in the year it is made, but it is instead **deferred until the tax year when it becomes possible to transfer the funds back to the UK.**

Example 1

Simon, who has taxable income of £30,000 in 2010/11, had the following disposals in October 2010:

	£
UK painting	26,000
UK unquoted shares	(10,000)
Ski chalet in France	15,000

The gain on the ski chalet suffered French tax of £5,000.

Calculate Simon's UK CGT liability for 2010/11.

Example 2

Sunita has been resident in the UK for three years but is domiciled in India. She makes the following gains in January 2011:

	Proceeds	*Gain*
	£	£
UK shares	25,000	22,000
House in India	50,000	40,000

Sunita remits £20,000 of the foreign proceeds back to the UK and does not intend to remit the remaining £30,000. The Indian authorities charged the gain at a flat rate of 5% tax. She has no UK or foreign income.

Calculate Sunita's CGT liability for 2010/11, assuming that she claims the remittance basis.

Answer 1

	UK	*Foreign*
	£	£
Gains	26,000	15,000
Less: losses	(10,000)	_____
Net gains	16,000	15,000
Less: AE	(10,100)	(Nil)
Taxable	5,900	15,000

CGT:	£
£5,900 @ 18% (W)	1,062
£1,500 @ 18%	270
£13,500 @ 28%	3,780
	5,112
Less: DTR	
Lower of:	
(i) Foreign tax paid (£5,000)	
(ii) UK tax on foreign asset	
£(270 + 3,780 = 4,050)	
	(4,050)
UK CGT due	£1,062

Working:	£
Basic Rate Band	37,400
Less: taxable income	(30,000)
Unused Basic Rate Band	7,400

Answer 2

	UK	*Foreign*	*Total*
	£	£	£
UK gain	12,000		
Foreign gain (remittance basis claimed)	_____	20,000	
Taxable gains	12,000	20,000	
CGT @ 18%	2,160	3,600	5,760
Less: DTR			
Lower of			
(i) Foreign tax paid (£20,000 @ 5%)		1,000	
(ii) UK tax on foreign asset		3,600	(1,000)
UK CGT due			**£4,760**

Note: Where the remittance basis is claimed, the individual is not entitled to an annual exemption.