3 Capital gains tax regimes abroad—countries with inflation indexing

Capital gains taxation in Britain

The merits of indexing and tapering

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The capital gains tax was introduced in the United Kingdom under the Finance Act, 1965. It was consolidated in the Capital Gains Tax Act of 1979 and the Taxation of Chargeable Gains Act of 1992. These dates imply that non-trading capital gains were not subject to tax for more than a 150 years after income tax was brought in by Addington at the beginning of the nineteenth century. This late introduction of the capital gains tax is in stark contrast with the experience of the United States, where the Federal income tax was levied on capital gains from the beginning.

In the early years of the Second World War, Britain's maximum rate of income tax was increased to the sacrificial level of 19s 6d in the pound (97.5% gross) as a contribution to the war effort. After the war, this increase was treated as politically irreversible. It was not until 35 years after the war ended that the reforming government of Margaret Thatcher lowered this rate.

In the early 1960s, the gap between tax at 97.5% on income and 0% on capital gains was uncomfortably wide and increasingly exploited. Instead of reducing income tax, the Labour government, that was elected in 1964 introduced a tax on capital gains. This new

Notes will be found on page 121.

tax on individuals was set at 30%. The difference in the two rates of taxation represents a tacit admission of the economic difference between income and capital gains.

The capital gains tax rate on individuals remained at 30% for more than 20 years. In 1988, Chancellor of the Exchequer Lawson introduced a new rate structure. Capital gains were to be added to income and charged at the marginal rate of income tax. In practice, this was usually the top rate of income tax, which by 1988 had been reduced to 40%. Thus, capital gains and the top tranche of income were taxed respectively in 1964 at zero and 97.5%; in 1965 at 30% and 97.5% and in 1988 at 40% and 40%.

A company's chargeable gains have been treated since 1965 as part of its profits for corporation tax and charged at the appropriate rate. In 1965, this rate was limited to 30%, as for individuals. Trustees are subject to the same regime as individuals. Gifts are taxable unless they are made to a spouse or a charity; holdover relief for gifts between individuals was abolished in 1989. Emigration is a taxable event for companies but not for individuals. The charge on death was abolished for deaths occurring after 31 March 1971.

Gilt-edged stocks were exempted from capital gains taxes in 1969 if they were held for more than one year; this twelve-month qualifying period was removed in 1986. Certain corporate bonds were likewise made exempt assets in 1986. Financial institutions like unit trusts are not subject to capital gains tax, although their unit holders are. As a result, there is a strong incentive to own shares indirectly through a financial institution. Quoted companies do not on the whole pay much corporation tax on capital gains as they have more scope than individuals for tax reduction through appropriate planning. Owner-managers of unquoted companies and other businesses incur a tax liability on transfers of the business *inter vivo*. Holdover relief, which was retained for business assets in 1989, is not an exemption, and the tax charge held over may constitute an important liability for the business as well as for the owners.

The preceding summary of capital gains taxation in Britain implies that it is primarily a charge on individuals and trustees, partly because of the explicit concessions and tax privileges for companies. One of these concessions, rollover relief for the replacement of business assets, was introduced in 1971, whereas there is no general rollover relief for individuals. The rationale for this policy is based on differences between a natural and a corporate person: an individual has a life-cycle, which may generate taxable events, whereas a corporation is in principle undying. In addition, if an individual owns a company that makes a capital gain, the gain is taxed twice, first through the company and second on the owner upon the sale of the appreciated shares.

Indexation

In the late 1970s, price inflation rose to its highest level at well over 25% a year. Capital gains taxation under the 1965 provisions did not adjust rates for inflation. It was feared that the tax would cause serious damage to the economy since the taxation of inflationary capital gains amounts to the confiscation of real assets. In response to this threat, in October 1977 the Inland Revenue issued for comment and discussion a note that examined the administrative aspects of tapering, indexation, and other schemes to take account of the distortionary effects of capital gains taxes on highly inflated asset values.

After the 1979 Election, the new Conservative government addressed the problems caused by inflation, slowly and cautiously at first. In 1982, an indexation allowance was introduced for inflation after that year. The indexation was based on historic cost, which might have been incurred many years earlier, and a small proportion of the current value. The indexation could not be applied for gains during the first year of ownership and was not available if it created a loss or increased a loss that already existed (see Soper 1997: 18).

In 1985, the tax relief based on the use of indexation was extended backwards to the date of acquisition and the taxpayer was given the choice of using either historic cost or the value on March 31, 1982. In addition, the allowance could now be given on assets sold at a loss and could be used to create a loss. In 1988, the rate of capital gains tax was made equal to the rates of tax on individual incomes and corporate profits. At the same time, the government offered the further beneficial option of rebasing the cost of assets to March 31, 1982. Thus, while in 1985 taxpayers were permitted to use the value on March 31, 1982 to calculate the indexation allowance, in 1988 they were permitted to use this date as the date of acquisition. This meant that pre-1982 gains were disregarded in the calculation of capital gains for the purpose of taxation. However, if it was to their advantage, taxpayers were still permitted to use the original date of acquisition rather than March 31, 1982 as the base for indexation (see Soper 1997: 18).

In 1998, the new Labour government froze indexation for disposals by individuals after April 5, 1998. However, the new law permitted the submission of returns filed after this date if they contained indexation for earlier years. The indexation regime for corporate taxpayers remained unaltered (*Financial Times Information Capital Gains Tax Service* 1982/83–1999/2000: xviii). The 1998 law replaced indexation for individuals and trustees by a system of "tapering," under which the rate of capital gains taxation was made a decreasing function of the length of time over which an asset was held. Individuals' retirement relief from capital gains tax was phased out at the same time. The tapering system introduced in 1998 was made more generous for taxpayers in legislation passed in 2000 in ways that will be discussed below in the section, Indexation and tapering.

Indexation is based on the Retail Prices Index, which is a Laspeyres base-weighted index computed from a basket of goods and services covering about half of national income. A Retail Prices Index Advisory Committee advises the government about changes in the basket and other modifications. The Retail Prices Index is familiar to the public and is published about six weeks after the end of the period it covers. For these reasons, it has proved resistant to radical reform and is used in various parts of the tax system. The existing Retail Prices Index is widely criticized because increases in interest rates and indirect taxes, often caused by attempts to cool the economy and check inflation, feed into the Retail Prices Index and thus initially show inflation as rising. For this reason, the government publishes an "underlying" Retail Prices Index from which these elements are excluded. But, this procedure causes the underlying rate to exceed the most widely used "headline" index if interest rates fall. More recent criticisms of the Retail Prices Index are that in periods of rapid technological innovation the index exaggerates inflation by not allowing for improvements in the quality of goods and services consumed. It is also suspected that sometimes governments manipulate the Retail Prices Index to their own political advantage.[1]

In spite of these shortcomings of the Retail Prices Index in the use of calculating capital gains tax allowances, there is little support in the United Kingdom for the construction or use of a new index. Such a switch would bring only minor benefits at best. Over the period from 1982 to 1998, indexation served the useful purpose of reducing the lock-in effect and generally reducing the burden of a damaging tax.

The most important criticism of indexation of any kind arises from the fact that it is basically anti-entrepreneurial. Goodwill, the most entrepreneurial element of the sale of a new business, does not benefit from indexation since its acquisition cost is nil. The use of indexation can also be criticized on the grounds that there are other, superior means for reducing the burden of capital gains taxation. These alternatives will be discussed below.

Pooling

If taxpayers buy a given company's shares only once, the value of capital gains can be established readily upon the sale of some or all holdings. Presumably, the 1965 Inland Revenue thought that most taxpayers buy shares in a company only once and add to their portfolio through the purchase of shares of other companies. But, it has since been discovered that investors are as likely to increase holdings of a given company's shares as they are to diversify. Additions to the holdings of a given company's share at different times gives rise to the problem of identifying the cost of the shares sold and bringing a capital gain.

Three methods of identification are in common use: first in, first out (FIFO); last in, first out (LIFO); and pooling (which is the technical term for averaging in this context). If shares rise in value, through unindexed inflation or in real terms, LIFO is more favourable to the taxpayer than pooling and pooling is more favourable than FIFO. If share prices fall, these relationships are reversed. If the share prices are constant, all three methods are equivalent.

However, under Britain's system of tapering, the ranking is more complicated. Constant prices produce the same ordering for the merit of the available accounting methods as do falling prices. Rising prices make the ranking ambiguous.

Britain now has the rule that all shares of a given company acquired by a taxpayer are pooled if they were acquired after April 6, 1965 and before the introduction of indexation on April 6, 1982.[2] Any form of identification chosen by the taxpayer or the company for individual shares (as, for example, the numbers in a register) is irrelevant under the pooling system. Securities of different classes (as, for example, ordinary shares and convertible preference shares of the same company) are held in separate pools. Shares held in different capacities (as, for example, beneficial ownership and trusteeship) are likewise held in separate pools (Walker 1994: 17).

Shares acquired before April 1965 continue to be held thereafter in the separate parcels by which they were acquired. However, in 1968 Inland Revenue allowed taxpayers the option of electing for post-1968 disposals to have pre-1965 holdings pooled with post-1965 acquisitions of shares of the same class and held in the same capacity. Under this option, the taxpayers are deemed to have sold the shares on April 6, 1965 and to have immediately re-acquired them on the same day at the day's market value. From April 6, 1965 until April 5, 1968 and thereafter, if the election to pool was not made, pre-1965 shares were taken up to meet subsequent disposals on a first-in-first-out basis (FIFO) until 1982 when that basis was reversed to last-in-first-out (LIFO) (Walker 1994: 15, 21).

As noted above, a limited form of indexation was introduced in April 1982 and lasted until April 1985. During this three-year period, pooling was discontinued. Instead, each acquisition of shares was treated separately for purposes of indexation. New identification rules applied during this three-year period to disposals of part, but not all, of post-1982 acquisitions. The general direction of the identification rules of 1982 to 1985 was to work backward (LIFO) until the disposal was satisfied. But, the opposite (FIFO) rule was applied if a part disposal did not use up the whole of the acquisitions in the 12 months immediately preceding the sale (Walker 1994: 22, 23).

Share pooling was reintroduced under the Finance Act, 1985 for shares and securities acquired on or after, for individuals, April 6, 1982 and, for companies, April 1, 1982. In order to take the indexation allowance into account, an addition is made to the pool of expenditure associated with the post-April 5, 1982 holding whenever there is any kind of transaction like an acquisition, disposal, or rights issue of the shares concerned. This addition is computed by multiplying the value of the pool immediately before the transaction by the increase in the Retail Prices Index over the period from the date of the last transaction (*Financial Times Information Capital Gains Tax Service* 1982/1983–1999/2000: xv-xvi).

The introduction of taper relief for individuals and trustees but not for companies meant that pooling must cease for acquisitions on or after April 6, 1998. There are new identification provisions. Disposals on or after April 6, 1998 are now generally to be identified on a LIFO basis. This regulation reduces the advantage of taper relief, which increases the longer the asset is held (Chamberlain 1998: 474).

Capital losses

The end of "the use of indexation to create or increase capital gains tax losses" was announced in the Budget Speech on November 30, 1993. The Budget press release (IR28) notes: "Indexation will continue to be available to reduce a gain to nil if appropriate. But it will not be available to increase, or create, an allowable capital loss." The changes applied to all disposals and to the treatment of "no gain/no loss" transfers, such as between spouses or companies, made on Budget Day or thereafter. In response to representations, a measure of transitional relief was announced on April 15. It provides that up to 10,000 pounds of indexation loss could be used to reduce capital gains tax liabilities for 1993/1994 and 1995/1996 combined.[3]

The scope of indexation relief was extended to losses in 1985. In his Budget speech, Chancellor Lawson said: "(Indexation) relief, valuable though it is, and increasingly valuable as it will become, suffers from three serious limitations ... Second, the indexation does not at present extend to losses. I propose to remove this restriction." The reimposition of the restriction was all the more serious since the rate of tax levied on most individuals' gains had been increased to 40%.

The government always claimed that the restriction of capital loss indexation was an anti-avoidance measure but the nature of this avoidance was disclosed only gradually and with a lag. Thus, the Financial Secretary to the Treasury, Stephen Dorrell, MP, only three and one-half months after the Budget speech identified three types of alleged abuse. The first was the retention of assets of negligible value. The second was the exchange of assets within groups of companies so as to create an indexed loss to which there was no commercial counterpart. The third was the sale and purchase of capital-certain bonds, subject to capital gains taxation even though the gain is predetermined.

The yield of capital gains tax on individuals and trustees was 1.0 billion pounds in 1993/1994 and 1.3 billion pounds in 1994/1995. The restriction of loss relief was estimated to yield 300 million pounds in 1996/1997 and to rise to 3 billion pounds by the end of the decade. Two thirds of the increased yield was expected to come from companies and one third from individuals. The method for computing these figures was not published and they evoked widespread public scepticism.

Few tax changes were so widely and vigorously condemned by business and tax professionals as were the 1993 changes to the indexation of capital losses. It was argued that the alleged abuses should have been targeted, that the 40% rate of capital gains tax paid by most individuals was internationally high, and that the restriction of loss relief made the effective rate far higher. In addition, the restriction increased risk-aversion and passive investment. The capital gains tax was already biased in the government's favour since the yield was always positive even if taxpayers collectively had made a loss. The restriction of loss relief made this bias even worse. In fact, the alleged abuses were economically justifiable methods for even-handed treatment of gains and losses.

The government argued that it was impossible to have a system of indexation that preserved the neutrality of gains and losses: "I am presenting a critique of the 1985 loss indexation provisions, not on the grounds that they are wrong in principle, but that when they are applied in practice, they create opportunities for exactly the sort of abuse that I have described" (The Financial Secretary to the Treasury in Standing Committee on March 15, 1994 [*Hansard*, col. 701]). However, these practical difficulties were never explained and many argued that if they did exist, neutrality should have been achieved by the provision of some other policies and rules.

The restriction of loss relief raises the effective rate of capital gains taxation above the nominal rate for taxpayers in general. In addition, it does so particularly for taxpayers who can least afford it, because they have suffered losses. It therefore turns the concept of taxable capacity upside down. It violates horizontal equity by different treatment of taxpayers in like situations and it violates vertical equity by taxing the poorer taxpayer more heavily than the richer.

Capital gains and income

The Haig-Simons definition of income, in which capital gains are income as much as personal income or dividends, is, in theory, based on the accrual of capital gains. In practice, it is based on the realization of gains. According to Simons: "A solid structure of income-tax legislation must ultimately reach all gains in the hands of the person to whom they accrue." However, "the proper underlying conception of income cannot be directly and fully applied in the determination of year-to-year assessments. Outright abandonment of the realization criterion would be utter folly." But, Simons accepted the realization criterion reluctantly and grudgingly: "The real culprit here is the realization criterion ... One may complain of this practice; but to demand that it be abandoned outright is to display little regard for practical considerations ... Unfortunately, the realization criterion must be accepted as a practical necessity" (Simons 1938: 168, 207, 153).

Realization rather than accrual is responsible for the propensity of investors to hold on to appreciated assets with lower yields than are available through alternative investments. This effect is due to the reduction in the investible sums caused by the payment of the tax on the capital gains. Thus, capital gains taxation results in the so-called lock-in effect, which leads to inefficiencies in the allocation of capital.

There is another important reason why accrued capital gains are a poor basis for taxation. Without the sale of an asset, it is very difficult to establish the value of such assets as paintings, antiques, and similar unique goods. Only arms-length transactions can reveal the true market prices of such assets. The valuation of financial assets is complicated by the purchase of shares at different times and prices and increases in value due to rights issues, takeovers, amalgamations, and the like.

Under expenditure taxation, both investment income and capital gains are excluded from the tax base and tax is payable only on the amount spent on goods and services. Under income taxation, investment income is included in the taxable base. Capital gains taxation goes one stage further than the income tax. It includes not only the income stream from capital but also the capital value of any increase in the income stream. Capital taxation thus involves the anticipation of the additional income tax that would be payable in due time on the additional income. In this sense, it amounts to the confiscation of a substantial part of what would otherwise be an increase of capital in private hands.

I have argued elsewhere (Bracewell-Milnes 1982: 24) that, as income and wealth increase, consumption increases less rapidly. Wealth in private hands becomes less and less a source of future spending power and more and more a form of ownership of productive assets. Saving for future consumption is gradually replaced by saving in perpetuity. Individuals do not generally lose interest in additional wealth merely because they already have all they require for consumption.

The foregoing differences between income and capital gains lead to a wide difference between the revenue-maximizing rates for income and capital gains taxes. In Bracewell-Milnes (1993), I used the concepts of the Dupuit or Laffer curve to estimate that the revenue-maximizing rate of capital gains tax in the United Kingdom is of the order of 15%. The revenue-maximizing rate of income tax must be considerably higher. As Hesiod says, “Fools, and they know not how much the half exceeds the whole” (*Works and Days* 40).

Income and capital gains are as distinct as day and night, even though there are short periods of ambiguity at dawn and dusk. If it were right to tax capital gains as income, indexation would merely remove the additional burden imposed by price rises. But, I believe that it is not right to tax capital gains as income. In my view, therefore, indexation lightens the burden of an excessive and damaging tax. As such, it reduces public demands for the elimination of the unjust tax and it prevents to adoption of superior alternative methods like tapering for reducing the burden.

Indexation and tapering

Indexation was frozen in the Budget of March 1998 for individuals and trustees, though not for companies, and retirement relief was phased out. Introduced was a system of tapering, which reduced the rate of capital gains charged the longer an asset was held. In practice, this effect is achieved by reductions in the percentage of capital gains subject to tax. The exact rate of tapering in 1995 is given in table 1.

In the Budget of March 2000, the taper was shortened for business assets disposed of after April 5, 2000, although the finishing rate remained the same.[4] Table 2 shows these new tapering rates and the effective taxation rates they give rise to.

From April 6, 2000 onward, employee shareholdings in all trading companies and all shareholdings in unquoted trading companies qualify for the business-asset taper. There is a 5% minimum qualifying holding for quoted trading companies. The previous 5% minimum for unquoted trading companies is abolished.

The relative merits of indexation and tapering have been discussed publicly for more than 20 years, even before the October 1977 publication of the Inland Revenue's note. Some business groups, like the Institute of Directors, had supported tapering against indexation throughout this period. The Conservative government of 1979 to

Table 1: The taper of capital gains taxes in 1998

Holding period (years)	Percentage of gain chargeable on personally held business assets	Percentage of gain chargeable on personally held non-business assets
0	100.0	100
1	92.5	100
2	85.0	100
3	77.5	95
4	70.0	90
5	62.5	85
6	55.0	80
7	47.5	75
8	40.0	70
9	32.5	65
10+	25.0	60

Table 2: Taper on capital gains taxes on business assets in 2000

Holding period (years)	Percentage of gain chargeable on personally held business assets	Effective tax rate (%)	
		Higher rate taxpayer	Basic-rate taxpayer
0	100	40	20
1	87.5	35	17.5
2	75	30	15
3	50	20	10
4+	25	10	5

1997 had not overcome Inland Revenue hostility to tapering and the outgoing Chancellor in 1997, Kenneth Clarke, was particularly unsympathetic. (For a longer history of this controversy, see Bracewell-Milnes 1978.)

The economically most important effects of tapering are that it increases the lock-in effect during the period of taper but reduces it thereafter. This analysis suggests that to minimize the harmful effect of tapering, the rate of tapering should be rapid and end in a zero rate of tax.

Critics of indexation fall into two categories. First, there are the supporters of comprehensive income taxation who regard indexation as an unnecessary complication. For example, in a passage that encapsulates his confusing position on the subject of taxing capital gains, Henry Simons says: “Considerations of justice demand that changes in monetary conditions be taken into account in the measurement of gain and loss. As soon as one begins to translate this generalization into actual procedures, however, one comes quickly to the conviction that some things are well let alone” (Simons 1938: 155). In a similar vein, Leonard Burman devotes a chapter of a work on capital gains taxation to arguing against indexing capital gains for inflation.

Indexation is also criticized by a second group of analysts who have little or no sympathy for comprehensive income taxation. These analysts argue that the indexation of capital gains tax makes a bad tax seem less burdensome and economically damaging. It thus increases its public acceptability. This group also opposes indexing on the grounds that it is a substitute for other measures to account for inflation, especially tapering, which encourage abolition.[5]

Friends and enemies of a capital gains tax based on comprehensive income taxation are found at all points of the political spectrum. There are few topics on which supporters and opponents of the free market are so much at odds among themselves.

Difficulties of the present system

Difficulties inherent in the present system of capital gains taxation are discussed above under the headings *Indexation, Pooling,* and *Capital losses*. Capital gains taxation has never been a tax at ease with itself and its history since the 1960s has been one of changes leading to demands for further changes.

Capital gains taxation has always caused difficulties for the choice of business organization, be it a sole ownership, partnership, or a corporation, privately held or publicly traded. The corporate type of organization leaves the proprietors subject to unrelieved double taxation, first, at the level of the corporation and, then, at the level of the proprietors. Special problems arise from the fact that corporate gains are indexed while gains accruing to individuals are subject to tapering, and at different rates for business and non-business assets to boot. This different treatment of income from corporations and individuals conflicts with the long-standing principle of British tax law that corporations and individuals should as far as possible be subject to the same or similar regimes.

There was a temporary but serious difficulty when tapering was brought in for individuals but retirement relief was removed. The combination of these measures was to the advantage of taxpayers at the higher end of the capital scale but substantially to the disadvantage of taxpayers in the middle. The problem was mitigated when the period of taper was shortened for business assets in March 2000.

The changes in capital gains taxation over the years have added layer after layer of complexity. The tax is unintelligible to the general public, and it is the only tax on which many tax professionals regularly seek professional advice from a few highly specialized colleagues.

Capital gains taxation does not yield much revenue and does not affect many taxpayers, partly because it is avoided by many through proper tax planning. Past experience suggests that there would be little political reaction to the abolition of the tax or substantial changes to measures that reduce the effective tax burden through indexing, tapering, or other such policies.

Business and the professions, including professionals who make money from the tax, are widely critical of the complexity and administrative costs of the tax. They are sympathetic to a variety of measures aimed at reducing the tax and administrative burden. Unfortunately, however, there is little consensus about specific policy changes.

The direction of reform

The main thesis of this chapter is that capital gains taxation is an economically damaging tax. There is growing international consensus that it should be abandoned. If such a radical solution is not possible, it is better to have measures to reduce its burden and inefficiencies, like indexation or tapering.[6]

However, these two measures do not have equal merit. Those who view capital gains as necessary for reasons of equity and efficiency consider indexation desirable. Indexation makes the tax fairer and less distorting. Tapering generally appeals to those who believe it desirable to have low rates of taxation to minimize the efficiency cost, especially the lock-in effect. Tapering, which ultimately lowers the tax to zero, appeals most to those who oppose the Simons definition of income. These analysts, including myself, believe that capital gains are distinctly different from other sources of income and, in particular, that all certain gains should be taxed and uncertain gains should not.

Notes

1 According to Anne Segall, in an article written for *The Daily Telegraph* (June 8, 2000),

> [t]he ability of politicians to fudge figures or bury uncomfortable facts should become a thing of the past after the launch yesterday of National Statistics, an umbrella body which will take control of all the statistics produced by government departments as well as those currently produced by the Office for National Statistics.
>
> The aim is to end controversy over the reliability of sensitive data on issues such as hospital waiting lists, classroom sizes and crime levels. Despite initial reservations, ministers have agreed to relinquish control over the data collected within their departments to Britain's first ever National Statistician.
>
> Len Cook, a 50-year-old New Zealander with ambitions to make British statistics "among the best in the world," has been recruited. He will review the way government departments collect, analyse and publish figures to ensure that they meet the standards demanded by National Statistics. Only then will departments be allowed to publish their findings under the National Statistics brand, which is intended to be a symbol of integrity and reliability.

2 For companies the date is April 1, 1982. It does not matter whether the shares were acquired through purchase or inheritance.

3 This section of the paper is based on the more extensive treatment of capital losses in Bracewell Milnes 1994.

4 From 1999/2000, gains are charged at 20% where the gains when added to total income are below the basic rate limit and at 40% where they exceed that limit.

5 Tapering is one of six "reductions in capital gains tax compatible with its abolition" mentioned in Bracewell-Milnes 1992.

6 For elaboration on these points, see Barry Bracewell-Milnes 1992.

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