

Clause 1: Share exchanges involving non-UK incorporated close companies

Summary

1. This clause introduces a new rule to ensure that UK tax cannot be avoided on chargeable gains made on the disposal of a UK business, or income received in respect of shares or securities held in a UK business, by exchanging securities in a UK company for securities in a non-UK holding company. The new rules have effect where securities are exchanged on or after 17 November 2022.

Details of the clause

2. Subsections (1) and (2) amend the Taxation of Chargeable Gains Act 1992 (TCGA 1992) by introducing new sections 138ZA to 138ZC.
3. New section 138ZA applies to company reorganisations involving the exchange of securities. Ordinarily company reorganisations involving the exchange of securities are not treated for capital gains purposes as disposals of the old securities and acquisitions of new securities. Instead, the new securities are treated as though they were the original securities. The rules for this can be found in Chapter II, Part IV, TCGA 1992.
4. New subsection 138ZA(1) sets out when new section 138ZB applies.
5. New subsections 138ZA(2) to (5) set out the conditions that need to be met for new section 138ZB to apply. Generally, new section 138ZB will apply where a person to whom the shares are issued has a material interest in companies A and B, is a participator in company A and would be a participator in company B if it was a UK resident close company.
6. New subsection 138ZA(6) explains that the meaning of “close company” and other related terms in Chapter 2 of Part 10 of CTA 2010 applies for the purposes of new section 138ZB but with the omission of section 442(a) (exclusion of non-UK resident companies).
7. New subsection 138ZA(7) explains how new section 138ZA applies in relation to a company that has no share capital.
8. New subsection 138ZB(1) explains that where the conditions in new section 138ZA are met then a security issued by a company not resident in the United Kingdom is to be treated as if it were a security of a company resident in the United Kingdom. If a person transfers the shares they received in exchange to a spouse or civil partner, in circumstances where section 58 TCGA 1992 applies, then this treatment will also

apply to the shares transferred to the spouse or civil partner.

9. New subsection 138ZB(2) explains that the securities that are to be treated as being situated in the UK are those actually received by the person involved in the exchange, including those transferred to their spouse or civil partner. In addition, the treatment will apply where those securities are replaced by others in the circumstances set out in subsections (2)(b) to (h).
10. New subsection 138ZB(3) makes clear that, for the purposes of subsections 138ZB(2)(b) and (d), it does not matter whether consideration is given for the securities affected by this rule, nor whether the additional or replacement securities are of a different class to those originally issued by the non-UK resident company.
11. New subsection 138ZB(4) provides that where the term “securities” is used, it applies to both shares and debentures of a company and also applies new section 138ZB to a company that has no share capital.
12. New section 138ZC explains that a person may elect to disapply sections 135 and 136 TCGA 1992 where section 138ZB would otherwise apply. The effect of making this election is that the person will be treated as disposing of the old securities and acquiring the new securities in the tax year in which the company reorganisation takes place. The election must be made on or before the first anniversary of the 31 January following the tax year in which the new securities are issued.
13. Subsection (3) amends the meaning of close company in section 288(1) in TCGA 1992 to apply to a non-UK resident company for the purposes of new section 138ZA.
14. Subsection (4) provides that new sections 138ZA to 138ZC apply to issues of shares or securities made on or after 17 November 2022 and the amendment to section 288 TCGA 1992 comes into force on 17 November 2022.
15. Subsection (5) amends the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) by introducing a new section 830(3A). This sets out the circumstances in which income paid on a security that falls within section 138ZB is not relevant foreign income for the purposes of section 830 ITTOIA 2005.
16. Subsection (6) provides that new section 830(3A) ITTOIA 2005 comes into force on 17 November 2022.

Background note

17. This clause concerns the situation where an individual with a degree of control in a UK company exchanges their securities for securities in a new non-UK holding company. Under the current legislation this means that if the individual is a UK resident non-domicile, then they will be able to claim the remittance basis on any chargeable gain made on the disposal of the non-UK company securities, or on any income received in respect of the offshore company securities.

18. This legislation will deem the securities acquired in a non-UK company in exchange for securities in a UK company to be located in the UK for the purpose of the Capital Gains Tax (CGT) rules. This means that if a UK resident non-domiciled individual makes a chargeable gain when they dispose of the securities in the non-UK company, they will pay any CGT due on the arising basis. The measure will apply to UK and non-UK domiciled individual but will only have tax implications for UK resident non-domiciled individuals.
19. The legislation applies if the UK company is a close company and the individual has a material interest in it under the rules at Part 10 Corporation Tax Act 2010. The non-UK company must also be a close company (if it were a UK company) and the individual must hold a material interest in it after the point of exchange.
20. The clause also provides that income received in respect of securities that this measure deems to be located in the UK is not relevant foreign income. This means that a UK resident non-domiciled individual who receives such income will also pay any Income Tax due on the arising basis.
21. An election can be made to disapply the usual share reorganisation rules where the new rule would otherwise apply. If such an election is made, then the individual will be treated as disposing of their shares and securities in the UK company at the time of the exchange and will be chargeable to CGT on the resulting gain.