



# Capital gains tax: non-UK residents and UK residential property

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## Who is likely to be affected?

Non-UK resident persons that own UK residential property, in particular:

- non-UK resident individuals;
- non-UK resident trusts;
- personal representatives of a deceased person who was non-UK resident; and
- non-UK resident companies controlled by five or fewer persons, except where the company itself, or at least one of the controlling persons, is a 'qualifying institutional investor'.

It will also affect some UK resident individuals disposing of properties overseas, or who spend part of a tax year abroad.

## General description of the measure

The measure will apply a capital gains tax (CGT) charge to gains accruing on the disposal of UK residential property by non-UK resident persons.

## Policy objective

The measure improves the fairness of the tax system by addressing the current imbalance between the treatment of UK residents and non-residents disposing of UK residential property.

## Background to the measure

This measure was announced at Autumn Statement 2013. The consultation "*Implementing a capital gains tax charge on non-residents*" ran between 28 March and 20 June 2014. A summary of responses to the consultation was published on 27 November 2014.

## Detailed proposal

### Operative date

This measure will have effect on and after 6 April 2015.

### Current law

Section 1 of the Taxation of Chargeable Gains Act 1992 (TCGA) provides, broadly, that a company is chargeable to corporation tax, and not CGT, in respect of chargeable gains accruing to them. Section 5 of the Corporation Tax Act 2009 then limits the charge to corporation tax to UK resident companies and non-UK resident companies that carry on a trade in the UK through a UK permanent establishment.

Section 2 of the TCGA provides that a person (other than a company) is chargeable to CGT in respect of chargeable gains accruing to him in a tax year if a residence condition is met. That residence condition limits the charge to CGT to UK residents.

The Taxes Management Act 1970 contains provision about returns and payment of CGT.

Sections 222 to 226B of the TCGA provides relief from CGT for a person's only or main residence ("private residence relief"), which includes allowing a taxpayer with more than one residence for a period to determine which is his main residence.

## Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend sections 1 and 2 of the TCGA and insert new sections to bring non-UK residents within the charge to CGT when they dispose of a UK residential property interest.

Non-UK resident individuals and trustees may be able to benefit from private residence relief if they meet new qualifying conditions. But provisions will also restrict access to private residence relief for properties located in a territory in which the individual is not tax resident where the person does not spend a minimum of 90 midnights in the property over the year.

Non-resident institutional investors that are diversely owned, and companies that are not controlled by five or fewer persons will be exempt from the charge. Companies that are within the new charge and part of a group may treat the assets of the group on a 'pooled' basis, with gains and losses of different non-resident group members being offset in year, unrelieved losses carried forward, and transfers within the group on a tax-neutral basis.

Provisions will make clear that a residential property interest includes an interest in land that has at any time in the person's ownership consisted of or included a dwelling. The meaning of 'dwelling' will be based on that found within the annual tax on enveloped dwellings (ATED) legislation but will be modified, in recognition of changes to the provision of student accommodation, to make clear that purpose built student accommodation that is not linked to a specific institution is one of the classes of use not regarded as use as a dwelling.

Provisions will make clear that the CGT charge will be due to be paid within 30 days of the property being conveyed, unless the person has a current self-assessment record with HM Revenue & Customs (HMRC) when payment will be at the normal due date for the tax year in which the disposal is made.

## Summary of impacts

<b>Exchequer impact (£m)</b>	2014-15	2015-16	2016-17	2017-18	2018-19
	-	nil	+15	+45	+70
	These figures are set out in Table 2.2 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2013.				
<b>Economic impact</b>	The measure is not expected to have any significant economic impacts. Most non-residents will be subject to tax on their gains in their country of residence. This measure merely alters the balance of taxing rights, aligning the UK with most other countries.				
<b>Impact on individuals, households and families</b>	The measure will increase the CGT liability for non-residents disposing of UK residential property and will create parity between UK residents and non-residents disposing of UK residential property.  The measure is not expected to impact on family formation, stability or breakdown.				
<b>Equalities impacts</b>	This measure is not expected to have a disproportionate impact on any protected group.				

<p><b>Impact on business including civil society organisations</b></p>	<p>This measure will affect non-resident businesses. It is likely to mostly affect small non-resident property rental and investment businesses. It is estimated that there will be negligible one off costs for businesses making property disposals in future needing to familiarise themselves with the new legislation and reporting requirements.</p> <p>It is assumed that the majority of businesses will dispose of at most one residential property per annum. There will be additional administrative burdens each time a non-resident business makes a disposal of a property – they will need to complete a new return and pay within 30 days unless they already complete self–assessment returns for other reasons. These burdens are expected to be approximately £0.3 million per annum for approximately 4,000 property disposals in total per annum, if all non-resident businesses comply with their obligations.</p> <p>The measure will not impact on charities as they are exempt under the current legislation.</p> <p>Estimates of compliance costs are shown in the table below, including an estimate of total costs for a five year period at present value.</p> <table border="1" data-bbox="400 846 1385 1693"> <thead> <tr> <th></th> <th>Cost</th> <th>Time Period (yrs)</th> </tr> </thead> <tbody> <tr> <td><b>Compliance Costs</b></td> <td></td> <td></td> </tr> <tr> <td>One off costs</td> <td>negligible</td> <td>N/A</td> </tr> <tr> <td>Average annual costs</td> <td>£0.3m</td> <td>5 years</td> </tr> <tr> <td>Total Costs (PV)</td> <td>£2.3m</td> <td>N/A</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td><b>Compliance Benefits</b></td> <td></td> <td></td> </tr> <tr> <td>One off benefit</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>Average annual benefit</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>Total Benefit</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td><b>Net Benefit</b></td> <td>-£2.3m</td> <td></td> </tr> <tr> <td>Impact on Administrative Burden (included in Net Benefit)</td> <td></td> <td></td> </tr> <tr> <td>Increase</td> <td>Decrease</td> <td>Net Impact</td> </tr> <tr> <td>£0.3m</td> <td>£0m</td> <td>£0.3m</td> </tr> </tbody> </table>		Cost	Time Period (yrs)	<b>Compliance Costs</b>			One off costs	negligible	N/A	Average annual costs	£0.3m	5 years	Total Costs (PV)	£2.3m	N/A				<b>Compliance Benefits</b>			One off benefit	N/A	N/A	Average annual benefit	N/A	N/A	Total Benefit	N/A	N/A	<b>Net Benefit</b>	-£2.3m		Impact on Administrative Burden (included in Net Benefit)			Increase	Decrease	Net Impact	£0.3m	£0m	£0.3m
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<p><b>Operational impact (£m) (HMRC or other)</b></p>	<p>HMRC will incur costs in implementing this measure of approximately £3.2 million. This will be additional work because these are a new group of customers with a possible increase in calls to the self-assessment help line from customers.</p>																																										
<p><b>Other impacts</b></p>	<p><u>Small and micro business assessment</u>: the impact of this measure on small businesses is not anticipated to differ from large businesses.</p> <p>Other impacts have been considered and none have been identified.</p>																																										

## **Monitoring and evaluation**

The measure will be monitored through information collected by tax returns.

## **Further advice**

If you have any questions about this change, please contact:

Ursula Falconer on 020 7270 1264 (email: [Ursula.Falconer@HMTreasury.gsi.gov.uk](mailto:Ursula.Falconer@HMTreasury.gsi.gov.uk)),

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## **1 Disposals of UK residential property interests by non-residents etc**

Schedule 1 contains provision about capital gains tax on the disposal of UK residential property interest –

- (a) by a person who is not resident in the United Kingdom, or
- (b) by an individual, in the overseas part of a split year.

## SCHEDULES

### SCHEDULE 1

Section 1

#### DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC

##### PART 1

##### AMENDMENTS OF THE TAXATION OF CHARGEABLE GAINS ACT 1992

- 1 TCGA 1992 is amended in accordance with paragraphs 2 to 17.
- 2 In section 1 (the charge to tax), in subsection (2A), for the words from “gains are” to the end substitute “gains are—
  - (a) ATED-related gains in respect of which the companies are chargeable to capital gains tax under section 2B, or
  - (b) relevant gains on chargeable non-resident disposals of UK residential property interests.”
- 3 (1) Section 2 (persons meeting residence condition: amount charged) is amended as follows.
  - (2) After subsection (2) insert—
 

“(2A) The amounts that may be deducted under subsection (2)(b) include any allowable relevant losses accruing to a person on a chargeable non-resident disposal of a UK residential property interest in a year of assessment (“year P”) previous to the year mentioned in subsection (2)(a) (so far as those losses have not been allowed as a deduction from chargeable gains accruing in year P or any previous year).”
  - (3) After subsection (7A) insert—
 

“(7B) Except where otherwise specified (see subsection (2A)), nothing in this section applies in relation to a chargeable relevant gain, or an allowable relevant loss, on a chargeable non-resident disposal of a UK residential property interest.”
- 4 Before section 8 (and its italic heading) insert—

*“Capital gains tax: disposals of UK residential property by non-residents etc*

#### **7AA Capital gains tax on gains on disposals of UK residential property interests by non-residents etc**

- (1) A person (other than a company) is chargeable to capital gains tax in respect of a chargeable relevant gain accruing to the person in a tax year on a disposal of a UK residential property interest if the residence condition is not met (see subsection (7)).

- (2) In addition, an individual is chargeable to capital gains tax in respect of a chargeable relevant gain accruing to the individual on a disposal of a UK residential property interest in the overseas part of a tax year which is a split year as regards the individual.
- (3) Subsections (1) and (2) do not apply to chargeable gains in respect of which a person is chargeable to capital gains tax under section 10 (non-resident with UK branch or agency).
- (4) A company is chargeable to capital gains tax in respect of a chargeable relevant gain accruing to it in a tax year on a disposal of a UK residential property interest if the residence condition is not met.
- (5) Subsection (4) does not apply to a chargeable gain included in the chargeable profits (for corporation tax purposes) of the company as a result of section 10B (non-resident company with UK permanent establishment).
- (6) Subsection (4) does not apply if the company makes a claim under this subsection and is –
  - (a) a diversely-held company at the time of the disposal,
  - (b) a unit trust scheme which meets the widely-marketed fund condition in relation to the disposal, or
  - (c) an open-ended investment company which meets the widely-marketed fund condition in relation to the disposal.
- (7) The residence condition is –
  - (a) in the case of an individual, that the individual is resident in the United Kingdom for the tax year,
  - (b) in the case of personal representatives of a deceased person, that the single and continuing person mentioned in section 62(3) is resident in the United Kingdom,
  - (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is resident in the United Kingdom during any part of the tax year, and
  - (d) in any other case, that the person is resident in the United Kingdom when the gain accrues.
- (8) A disposal by a person of a UK residential property interest is a “chargeable non-resident disposal” for the purposes of this Act if the circumstances in which it is made are such that, were a relevant gain to accrue on the disposal, the person would be chargeable to capital gains tax under this section in respect of that gain.
- (9) In this Act, “UK residential property interest”, in relation to a disposal of an interest in UK land, has the meaning given by Schedule B1.
- (10) Part 2 of Schedule C1 sets out how to determine whether or not a unit trust scheme, or a company which is an open-ended investment company, meets the widely-marketed fund condition in relation to the disposal mentioned in subsection (4).
- (11) In this section –

“closely-held company”, in relation to a disposal of a UK residential property interest, is to be interpreted in accordance with Part 1 of Schedule C1;

“diversely-held company” means a company which is not a closely-held company;

“open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act).

- (12) See section 57B and Schedule 4ZZB for how to determine –
- (a) whether a relevant gain (or loss) accrues on a chargeable non-resident disposal of a UK residential property interest, and
  - (b) the amount of any relevant gain (or loss) so accruing.

#### **7AB Amount of gains chargeable under section 7AA**

- (1) Capital gains tax is charged under section 7AA(1), (2) or (4) on the total amount of relevant gains on chargeable non-resident disposals of a UK residential property interest accruing to the person in the tax year (or, in the case of the charge under section 7AA(2), the overseas part of the tax year), after deducting –
  - (a) allowable relevant losses accruing to the person in the tax year (or that part, as the case may be) on any chargeable non-resident disposal of a UK residential property interest,
  - (b) where section 7AA(2) applies, allowable relevant losses accruing to the person on any chargeable non-resident disposal of a UK residential property interest in the UK part of the tax year, so far as those losses have not been allowed as a deduction from chargeable gains accruing to the person in the UK part of the year, and
  - (c) so far as they have not been allowed as a deduction from chargeable gains accruing to the person in any previous tax year, allowable losses accruing to the person on any disposal in a previous tax year (not earlier than the year 1965-66) of a UK residential property interest.
- (2) The only deductions that can be made from chargeable gains in respect of which a person is within the charge to capital gains tax under section 7AA are those permitted by this section.  
 This is subject to section 62(2AA) (carry-back of losses accruing in year of death).

#### **7AC Further provision about use of relevant losses on disposals of UK residential property interests**

- (1) Subsections (2) to (4) apply in relation to a relevant loss accruing to a person in a tax year on a chargeable non-resident disposal of a UK residential property interest.
- (2) The loss is not allowable as a deduction from chargeable gains accruing in any earlier tax year.  
 This is subject to section 62(2) and (2AA) (carry-back of losses accruing in year of death).
- (3) Relief is not to be given under this Act more than once in respect of the loss or any part of the loss.



- (4) Relief is not to be given under this Act in respect of the loss if, and so far as, relief has been or may be given in respect of it under the Tax Acts.”
- 5 In section 8 (company’s profits for corporation tax purposes to include chargeable gains), in subsection (4A), for the words from “in relation to” to the end substitute “in relation to –
- (a) an ATED-related gain chargeable to, or an ATED-related loss allowable for the purposes of, capital gains tax by virtue of section 2B, or
  - (b) a chargeable relevant gain, or an allowable relevant loss, on a chargeable non-resident disposal of a UK residential property interest.”
- 6 In section 10A (temporary non-residents), as that section has effect where the year of departure (as defined in Part 4 of Schedule 45 to FA 2013) is the tax year 2012-13 or an earlier tax year, in subsection (5) for “section 10” substitute “section 7AA, 10”.
- 7 In section 13 (attribution of gains to members of non-resident companies), in subsection (1A), for the words from “an ATED-related gain” to the end substitute –
- “(a) an ATED-related gain chargeable to capital gains tax by virtue of section 2B (capital gains tax on ATED-related gains), or
  - (b) a relevant gain on a disposal of a UK residential property interest chargeable to capital gains tax by virtue of section 7AA (disposals of UK residential property interests by non-residents etc).”
- 8 In Part 2, after Chapter 5 insert –

## “CHAPTER 6

### COMPUTATION OF GAINS AND LOSSES: RELEVANT UK LAND DISPOSALS

#### **57B Gains and losses on disposals by non-residents etc of UK residential property interests**

Schedule 4ZZB makes provision about the computation of –

- (a) relevant gains or losses (see section 7AA), and
  - (b) other gains or losses,
- on chargeable non-resident disposals of UK residential property interests.”
- 9 (1) Section 62 (death: general provisions) is amended as follows.
- (2) In subsection (2A), for the words from “are gains” to the end substitute “are –
- (a) gains that are treated as accruing by virtue of section 87 or 89(2) (read, where appropriate, with section 10A), or
  - (b) relevant gains on chargeable non-resident disposals of a UK residential property interest.”
- (3) After subsection (2A) insert –

- “(2AA) Where allowable relevant losses on the disposal of a UK residential property interest are sustained by an individual in the year of assessment in which the individual dies, the losses may, so far as they cannot be deducted from chargeable gains accruing to the individual in that year, be deducted from any gains such as are mentioned in subsection (2A)(b) that accrued to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.
- (2AB) The same loss (or part of a loss) may not be relieved under both subsection (2) and subsection (2AA).”
- 10 In section 86 (attribution of gains to settlors with interest in non-resident or dual-resident settlements), after subsection (4) insert –
- “(4ZA) An amount in relation to which the condition in subsection (1)(e) is met is to be disregarded for the purposes of this section, so far as tax is chargeable on the amount under section 7AA (tax on disposals of UK residential property interests by non-residents etc).”
- 11 In section 87 (non-UK resident settlements: attribution of gains to beneficiaries), after subsection (5) insert –
- “(5A) In determining the section 2(2) amount for a settlement for a tax year –
- (a) an amount is to be disregarded for the purposes of subsection (4)(a) so far as tax is chargeable on the amount under section 7AA (tax on disposals of UK residential property interests by non-residents etc);
  - (b) the reference in subsection (4)(b) to chargeable gains treated under section 86 as accruing in that year is to be taken to include gains on which tax would have been charged under that section but for section 86(4ZA).”
- 12 In section 88 (gains of dual resident settlements), after subsection (5) insert –
- “(5A) In determining under subsection (3) the assumed chargeable amount in respect of a tax year, an amount on which the trustees would be chargeable as mentioned in paragraph (a) or (b) of that subsection is to be disregarded so far as tax is chargeable on the amount under section 7AA (tax on disposals of UK residential property interests by non-residents etc).”
- 13 In section 288 (interpretation), in subsection (1), at the appropriate place insert –
- ““chargeable non-resident disposal”, in relation to a UK residential property interest, has the meaning given by section 7AA(8);”
- ““relevant gain” and “relevant loss”, in relation to a chargeable non-resident disposal of a UK residential property interest, are to be construed in accordance with section 57B and Schedule 4ZZB;”
- ““UK residential property interest” has the meaning given by Schedule B1;”
- 14 After Schedule A1, insert –

“SCHEDULE B1

MEANING OF “UK RESIDENTIAL PROPERTY INTEREST”

*Meaning of “UK residential property interest”*

- 1 (1) Where a person (“P”) disposes of an interest in UK land (“the interest”), that interest in UK land is a UK residential property interest if the first or second condition is met.
- (2) The first condition is met if –
  - (a) the land has at any time in the relevant ownership period consisted of or included a dwelling, or
  - (b) the interest subsists for the benefit of land that has at any time in the relevant ownership period consisted of or included a dwelling.
- (3) The second condition is met if the interest in UK land subsists under a contract for an off-plan purchase.  
For this purpose, “contract for an off-plan purchase” means a contract for the acquisition of land consisting of, or including, a building or part of a building that is to be constructed or adapted for use as a dwelling.
- (4) “Relevant ownership period” means the period –
  - (a) beginning with the day on which P acquired the interest or 6 April 2015 (whichever is later), and
  - (b) ending with the day before the day on which the disposal occurs.
- (5) If the interest results from interests in UK land which P has acquired at different times (“the acquired interests”), P is regarded for the purposes of sub-paragraph (4)(a) as having acquired the interest when P first acquired any of the acquired interests.
- (6) In this paragraph “dwelling” has the meaning given by paragraph 3.
- (7) See also paragraph 1(2) of Schedule 4ZZB.

*“Interest in UK land”*

- 2 (1) “Interest in UK land” means –
  - (a) an estate, interest, right or power in or over land in the United Kingdom, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,other than an excluded interest.
- (2) The following are excluded interests –
  - (a) any security interest;
  - (b) a licence to use or occupy land;
  - (c) in England and Wales or Northern Ireland –
    - (i) a tenancy at will;

(ii) a manor.

- (3) In sub-paragraph (2) “security interest” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any other obligation.
- (4) In relation to land in Scotland the reference in sub-paragraph (3) to a rentcharge is to be read as a reference to a feu duty or a payment mentioned in section 56(1) of the Abolition of Feudal Tenure etc (Scotland) Act 2000 (asp 5).
- (5) The Treasury may by regulations provide that any other description of interest or right in relation to land in the United Kingdom is an excluded interest.
- (6) Regulations under sub-paragraph (5) may make incidental, consequential, supplementary or transitional provision or savings.

*Meaning of “dwelling”*

- 3 (1) A building counts as a dwelling at any time when –
  - (a) it is used or suitable for use as a dwelling, or
  - (b) it is in the process of being constructed or adapted for such use.
- (2) Land that at any time is, or is intended to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling at that time.
- (3) For the purposes of sub-paragraph (1) a building is not used (or suitable for use) as a dwelling if it is used as –
  - (a) residential accommodation for school pupils;
  - (b) residential accommodation for members of the armed forces;
  - (c) a home or other institution providing residential accommodation for children;
  - (d) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
  - (e) a hospital or hospice;
  - (f) a prison or similar establishment;
  - (g) a hotel or inn or similar establishment.
- (4) For the purposes of sub-paragraph (1) a building is not used (or suitable for use) as a dwelling if it is an institution (not falling within any of paragraphs (c) to (f) of sub-paragraph (3)) which is used, or suitable for use, as the sole or main residence of its residents.
- (5) For the purposes of sub-paragraph (1) a building is not used (or suitable for use) as a dwelling if it falls within –

- (a) paragraph 4 of Schedule 14 to the Housing Act 2004 (certain buildings occupied by students and managed or controlled by their educational establishment etc),
  - (b) any corresponding provision having effect in Scotland, or
  - (c) any corresponding provision having effect in Northern Ireland.
- (6) In sub-paragraph (5) “corresponding provision” means provision designated by regulations made by the Treasury as corresponding to the provision mentioned in sub-paragraph (5)(a).
- (7) If, in any tax year, the accommodation provided by a building –
- (a) meets the conditions in sub-paragraph (8), or
  - (b) forms part of accommodation that does so,
- then for the purposes of sub-paragraph (1) the building is not, at any time in the tax year, used or suitable for use as a dwelling.
- (8) The conditions are that the accommodation –
- (a) includes at least 15 bedrooms,
  - (b) is purpose-built for occupation by students, and
  - (c) is occupied by students on more than half the days in the tax year.
- (9) For the purposes of sub-paragraph (8) accommodation is occupied by students if it is occupied exclusively or mainly by persons who occupy it for the purpose of undertaking a course of education (otherwise than as school pupils).
- (10) A building which (for any reason) becomes temporarily unsuitable for use as a dwelling is treated for the purposes of sub-paragraph (1) as continuing to be suitable for use as a dwelling; but see also the special rules in –
- (a) paragraph 5 (damage to a dwelling), and
  - (b) paragraph 7(7) (periods before or during certain works).
- (11) In this paragraph “building” includes a part of a building.

*Power to modify meaning of “use as a dwelling”*

- 4
- (1) The Treasury may by regulations amend paragraph 3 for the purpose of clarifying or changing the cases where a building is or is not to be regarded as being used as a dwelling (or suitable for use as a dwelling).
  - (2) The provision that may be made under sub-paragraph (1) includes, in particular, provision omitting or adding cases where a building is or is not to be regarded as being used (or as suitable for use) as a dwelling.
  - (3) Regulations under this paragraph may make incidental, consequential, supplementary or transitional provision or savings.
  - (4) In this paragraph “building” includes a part of a building.

*Damage to a dwelling*

- 5 (1) Sub-paragraph (2) applies where a person disposes of an interest in UK land and a building that forms, or has formed, part of the land has at any time in the relevant ownership period been temporarily unsuitable for use as a dwelling.
- (2) Paragraph 3(10) (disregard of temporary unsuitability) does not apply in relation to the building's temporary unsuitability for use as a dwelling if –
- (a) the temporary unsuitability resulted from damage to the building, and
  - (b) the first and second conditions are met.
- (3) The first condition is that the damage was –
- (a) accidental, or
  - (b) otherwise caused by events beyond the control of the person disposing of the interest in UK land.
- (4) The second condition is that, as a result of the damage, the building was unsuitable for use as a dwelling for a period of at least 90 consecutive days.
- (5) Where the first and second conditions are met, work done in the 90-day period to restore the building to suitability for use as a dwelling does not count, for the purposes of paragraph 3(1), as construction or adaptation of the building for use as a dwelling.
- (6) The first condition is regarded as not being met if the damage occurred in the course of work that –
- (a) was being done for the purpose of altering the building, and
  - (b) itself involved, or could be expected to involve, making the building unsuitable for use as a dwelling for 30 days or more.
- (7) The 90-day period mentioned in sub-paragraph (4) must end at or before the end of the relevant ownership period but may begin at any time (whether or not within the ownership period).
- (8) In this paragraph –
- (a) references to alteration include partial demolition;
  - (b) “building” includes a part of a building;
  - (c) “relevant ownership period” has the meaning given by paragraph 1(4).

*Demolition of a building*

- 6 (1) A building is regarded as ceasing to exist from the time when it has either –
- (a) been demolished completely to ground level, or
  - (b) been demolished to ground level except for a single facade (or, in the case of a building on a corner site, a double facade) the retention of which is a condition or requirement of planning permission or development consent.

- (2) In this paragraph –  
“development consent” means development consent under the Planning Act 2008;  
“planning permission” has the meaning given by the relevant planning enactment.
- (3) In sub-paragraph (2) “the relevant planning enactment” means –
- (a) in relation to land in England and Wales, section 336(1) of the Town and Country Planning Act 1990;
  - (b) in relation to land in Scotland, section 227(1) of the Town and Country Planning (Scotland) Act 1997;
  - (c) in relation to land in Northern Ireland, Article 2(2) of the Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11)).

*Disposal of a building that has undergone works*

- 7 (1) This paragraph applies where a person disposes of an interest in UK land, and a building which is (or was formerly) on the land and has at any time in the relevant ownership period been suitable for use as a dwelling –
- (a) has undergone complete or partial demolition or any other works during the relevant ownership period, and
  - (b) as a result of the works, has, at or at any time before the completion of the disposal, either ceased to exist or become unsuitable for use as a dwelling.
- (2) If the conditions in sub-paragraph (4) are met at, or at any time before, the completion of the disposal, the building is taken to have been unsuitable for use as a dwelling throughout the part of the relevant ownership period when the works were in progress.
- (3) If the conditions in sub-paragraph (4) are met at, or at any time before, the completion of the disposal, the building is also taken to have been unsuitable for use as a dwelling throughout any period which –
- (a) ends immediately before the commencement of the works, and
  - (b) is a period throughout which the building was, for reasons connected with the works, not used as a dwelling.
- (4) The conditions are that –
- (a) as a result of the works the building has (at any time before the completion of the disposal) either ceased to exist or become suitable for use otherwise than as a dwelling,
  - (b) any planning permission or development consent required for the works, or for any change of use with which they are associated, has been granted, and
  - (c) the works have been carried out in accordance with any such permission or consent.
- (5) If at the completion of the disposal the conditions in sub-paragraph (4) have not been met, the works are taken not to have affected the building’s suitability for use as a dwelling (at any time before the disposal).

- (6) Sub-paragraph (2) does not apply in relation to any time when –
- (a) the building was undergoing any work, or put to a use, in relation to which planning permission or development consent was required but had not been granted, or
  - (b) anything was being done in contravention of a condition or requirement attached to a planning permission or development consent relating to the building.
- (7) Where a building is treated under sub-paragraph (2) or (3) as unsuitable for use as a dwelling, the unsuitability is not regarded as temporary for the purposes of paragraph 3(10).
- (8) For the purposes of this paragraph the time of the completion of a disposal of an interest in UK land is –
- (a) the time of the disposal, or
  - (b) if the disposal is under a contract which is completed by a conveyance, the time when the interest is conveyed.
- (9) In this paragraph –
- “building” includes a part of a building;
  - “conveyance” includes any instrument (and “conveyed” is to be construed accordingly);
  - “development consent” has the same meaning as in paragraph 6;
  - “planning permission” has the same meaning as in paragraph 6;
  - “relevant ownership period” has the meaning given by paragraph 1(4).

### *Interpretation*

- 8            In this Part of this Schedule –
- “interest in UK land” has the meaning given by paragraph 2;
  - “land” includes a building.”
- 15          After Schedule B1 (as inserted by paragraph 14), insert –

#### “SCHEDULE C1

#### SECTION 7AA: MEANING OF “CLOSELY-HELD COMPANY” AND HOW TO MEET THE “WIDELY-MARKETED FUND” CONDITION

#### PART 1

#### MEANING OF “CLOSELY-HELD COMPANY”

### *Introduction*

- 1            This Part of this Schedule sets out the rules for determining, for the purposes of section 7AA, whether or not a company which disposes of a UK residential property interest is a closely-held company in relation to the disposal.



*Main definition*

- 2 (1) “Closely-held company” means a company in relation to which condition A or B is met.  
But see also the exception in paragraph 5.
- (2) Condition A is that the company is under the control of 5 or fewer participators.
- (3) Condition B is that 5 or fewer participators together possess or are entitled to acquire –
  - (a) such rights as would, in the event of the winding up of the company (“the relevant company”) on the basis set out in paragraph 3, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
  - (b) such rights as would, in that event, so entitle them if there were disregarded any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company).
- 3 (1) This paragraph applies for the purposes of paragraph 2(3).
- (2) In the notional winding up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of –
  - (a) any part of those assets which the person would be entitled to receive in the event of the winding up of the relevant company, and
  - (b) any part of those assets which the person would be entitled to receive if –
    - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding up were also wound up on the basis set out in this paragraph, and
    - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.
- (3) In the application of sub-paragraph (2) –
  - (a) to the notional winding up of the other company mentioned in paragraph (b) of that sub-paragraph, and
  - (b) to any further notional winding up required by that paragraph (or by any further application of that paragraph),references to “the relevant company” are to be read as references to the company concerned.
- 4 (1) This paragraph applies for the purpose of determining whether, under sub-paragraph (3) of paragraph 2, 5 or fewer participators together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that sub-paragraph.

- (2) A person is to be treated as a participator in the relevant company if the person is a participator in any other company which would be entitled to receive assets in the notional winding up of the relevant company on the basis set out in paragraph 3.
  - (3) No account is to be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.
  - (4) But sub-paragraph (3) does not apply for the purposes of paragraph 3.
- 5
- (1) A company is not to be treated as a closely-held company if condition A or B is met.
  - (2) Condition A is that the company cannot be treated as a closely-held company except by taking, as one of the 5 or fewer participators requisite for its being so treated, a person who is –
    - (a) a diversely-held company, or
    - (b) a qualifying institutional investor.
  - (3) Condition B is that the company –
    - (a) would not be a closely-held company were it not for paragraph (a) of paragraph 2(3) or paragraph (d) of paragraph 12(2), and
    - (b) would not be a closely-held company if the references in paragraphs 2(3)(a) and 12(2)(d) to participators did not include loan creditors which are diversely-held companies or qualifying institutional investors.
  - (4) In this paragraph “qualifying institutional investor” means any of the following persons –
    - (a) a unit trust scheme which meets the widely-marketed fund condition in relation to the disposal,
    - (b) a company which is an open-ended investment company and meets the widely-marketed fund condition in relation to the disposal,
    - (c) the trustee or manager of a pension scheme (as defined in section 150(1) of FA 2004), or
    - (d) a person who cannot be liable for corporation tax or income tax (as relevant) on the ground of sovereign immunity.
  - (5) The Treasury may by regulations amend sub-paragraph (4).
  - (6) Regulations under sub-paragraph (5) may make incidental, consequential, supplementary or transitional provision or savings.
  - (7) References in sub-paragraph (4) to meeting the widely-marketed fund condition are to be interpreted in accordance with Part 2 of this Schedule, but for this purpose that Part is modified as follows –
    - (a) for paragraph 8 substitute –
      - “8 This Part of this Schedule –

- (a) applies where a company (“C”) disposes of a UK residential property interest at a time when a unit trust scheme or a company which is an open-ended investment company (“the scheme”) is a participator in C, and
  - (b) sets out the rules for determining whether or not the scheme is to be regarded, in relation to that disposal, as meeting the widely-marketed fund condition.”;
- (b) for paragraph 9(7) substitute –
- “(7) In this paragraph, “the relevant ownership period” means whichever of the following is the shortest –
- (a) the period beginning with the day on which C acquired the UK residential property interest which, or a part of which, is the subject of the disposal and ending with the day on which the disposal occurs;
  - (b) the period of 5 years ending with the day on which the disposal occurs;
  - (c) the period beginning when the scheme first became a participator in C and ending with the day on which the disposal occurs.”

#### *Divided companies*

- 6 (1) This paragraph applies where the company which makes the disposal mentioned in paragraph 1 –
- (a) is a divided company,
  - (b) is not a unit trust scheme, or an open-ended investment company, which meets the widely-marketed fund condition in relation to the disposal, and
  - (c) would not, without this paragraph, be regarded as a closely-held company.
- (2) The company is treated as if it were a closely-held company if the conditions in sub-paragraph (3) are met.
- (3) The conditions are that –
- (a) the gain or loss accruing on the disposal is primarily or wholly attributable to a particular division of the company, and
  - (b) if that division were a separate company, that separate company would be a closely-held company.
- (4) For the purposes of this paragraph a company is a “divided company” if, under the law under which the company is formed, under the company’s articles of association or other document regulating the company or under arrangements entered into by or in relation to the company –
- (a) some or all of the assets of the company are available primarily, or only, to meet particular liabilities of the company, and

- (b) some or all of the members of the company, and some or all of its creditors, have rights primarily, or only, in relation to particular assets of the company.
- (5) References in this paragraph to a “division” of a divided company are to an identifiable part of the company that carries on distinct business activities and to which particular assets and liabilities of the company are primarily or wholly attributable.
- (6) The reference in sub-paragraph (1)(b) to meeting the widely-marketed fund condition in relation to the disposal is to be interpreted in accordance with Part 2 of this Schedule.

*Arrangements for avoiding tax*

- 7 (1) This paragraph applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 7AA(4) as a result of a company’s being a closely-held company at the time of the disposal mentioned in paragraph 1.
- (2) The arrangements (or part of the arrangements) are to be disregarded in determining whether or not the company is a closely-held company at that time.
- (3) In this paragraph “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

PART 2

UNIT TRUST SCHEMES AND OEICs: THE WIDELY-MARKETED FUND CONDITION

*Introduction*

- 8 This Part of this Schedule—
  - (a) applies where a unit trust scheme, or a company which is an open-ended investment company (“the scheme”), disposes of a UK residential property interest, and
  - (b) sets out the rules for determining, for the purposes of section 7AA(6), whether or not the scheme meets the widely-marketed fund condition in relation to that disposal.

*Widely-marketed fund condition*

- 9 (1) The scheme meets the widely-marketed fund condition in relation to the disposal if—
  - (a) the scheme has met conditions A to C throughout the relevant ownership period, or
  - (b) the alternative conditions in paragraph 10 are met.
- (2) Condition A is that the scheme produces documents, available to investors and to HMRC, which contain—
  - (a) a statement specifying the intended categories of investor,

- (b) an undertaking that units in the scheme will be widely available, and
    - (c) an undertaking that units in the scheme will be marketed and made available in accordance with the requirements of sub-paragraph (5)(a).
  - (3) Condition B is that –
    - (a) the specification of the intended categories of investor does not have a limiting or deterrent effect, and
    - (b) any other terms or conditions governing participation in the scheme do not have a limiting or deterrent effect.
  - (4) In sub-paragraph (3) “limiting or deterrent effect” means an effect which –
    - (a) limits investors to a limited number of specific persons or specific groups of connected persons, or
    - (b) deters a reasonable investor falling within one of (what are specified as) the intended categories of investor from investing in the scheme.
  - (5) Condition C is that –
    - (a) units in the scheme are marketed and made available –
      - (i) sufficiently widely to reach the intended categories of investors, and
      - (ii) in a manner appropriate to attract those categories of investors, and
    - (b) a person who falls within one of the intended categories of investors can, upon request to the manager of the scheme, obtain information about the scheme and acquire units in it.
  - (6) A scheme is not regarded as failing to meet condition C at any time by reason of the scheme’s having, at that time, no capacity to receive additional investments, unless –
    - (a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise), and
    - (b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhaust all, or substantially all, of that capacity.
  - (7) In this paragraph, “the relevant ownership period” means –
    - (a) the period beginning with the day on which the scheme acquired the UK residential property interest which, or a part of which, is the subject of the disposal mentioned in paragraph 8, and ending with the day on which the disposal occurs, or
    - (b) if shorter, the period of 5 years ending with the day on which the disposal occurs.
- 10 (1) The alternative conditions (see paragraph 9) are met if –
- (a) at the time of the disposal mentioned in paragraph 8, an investor in the scheme is an offshore fund, an open-ended investment company or an authorised unit trust (“the feeder fund”),

- (b) conditions A to C are met in relation to the scheme throughout the alternative period, after taking into account—
    - (i) the scheme documents relating to the feeder fund, and
    - (ii) the intended investors in the feeder fund, and
  - (c) the scheme and the feeder fund have the same manager.
- (2) For the purposes of sub-paragraph (1), the alternative period is the shorter of—
- (a) the relevant ownership period (as defined in paragraph 9(7)), and
  - (b) the period beginning when the feeder fund first became an investor in the scheme and ending with the day on which the disposal occurs.

*Arrangements for avoiding tax*

- 11 (1) This paragraph applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party entering into them (or any part of them) is to avoid capital gains tax being charged under section 7AA(4) as a result of the failure by a unit trust scheme or an open-ended investment company to meet the widely-marketed fund condition in relation to the disposal mentioned in paragraph 8.
- (2) The arrangements (or part of the arrangements) are to be disregarded in determining whether or not the unit trust scheme or open-ended investment company meets the widely-marketed fund condition in relation to the disposal.
- (3) In this paragraph, “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

PART 3

INTERPRETATION OF SCHEDULE

*Meaning of “control”*

- 12 (1) For the purposes of this Schedule, a person (“P”) is treated as having control of a company (“C”) if P—
- (a) exercises,
  - (b) is able to exercise, or
  - (c) is entitled to acquire,
- direct or indirect control over C’s affairs.
- (2) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
- (a) the greater part of the share capital or issued share capital of C,
  - (b) the greater part of the voting power in C,

- (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or
    - (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.
  - (3) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subparagraph (2)(c).
  - (4) If two or more persons together satisfy any of the conditions in sub-paragraphs (1) and (2), they are treated as having control of C.
- 13 (1) This paragraph applies for the purposes of paragraph 12.
- (2) If a person –
    - (a) possesses any rights or powers on behalf of another person (“A”), or
    - (b) may be required to exercise any rights or powers on A’s direction or on A’s behalf,those rights or powers are to be attributed to A.
  - (3) There are also to be attributed to P all the rights and powers of any associate of P (including rights and powers exercisable jointly by any two or more associates of P).
  - (4) In this paragraph “associate”, in relation to P, means –
    - (a) any relative of P,
    - (b) the trustees of any settlement in relation to which P is a settlor, and
    - (c) the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor.
  - (5) In this paragraph “relative” means –
    - (a) a spouse or civil partner,
    - (b) a parent or remoter forebear,
    - (c) a child or remoter issue, or
    - (d) a brother or sister.

#### *Other definitions*

- 14 In this Schedule –
- “diversely-held company” means a company which is not a closely-held company;
  - “loan creditor” has the meaning given by section 453 of CTA 2010;
  - “open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act);
  - “participator”, in relation to a company, has the meaning given by section 454 of CTA 2010;

“units” means the rights or interests (however described) of the participants in a unit trust scheme or open-ended investment company.”

16 (1) Schedule 4ZZA (relevant high value disposals: gains and losses) is amended as follows.

(2) In paragraph 5, after sub-paragraph (3) insert –

“(3A) An election made in relation to an asset under paragraph 2(1)(b) of Schedule 4ZZB (disposals by non-residents etc of UK residential property interests: gains and losses) also has effect as an election made under this paragraph in relation to the asset.”

(3) After paragraph 6 insert –

*“Special rule for certain disposals to which both this Schedule and Schedule 4ZZB relate*

6A (1) This paragraph applies where conditions A and B are met.

(2) Condition A is that the relevant high value disposal is –

- (a) a chargeable non-resident disposal of a UK residential property interest, or
- (b) one of two or more disposals which are (by virtue of section 2C and this Schedule) treated as comprised in a chargeable non-resident disposal of a UK residential property interest.

(3) Condition B is that –

- (a) the interest disposed of by the relevant high value disposal was held by P on 5 April 2015,
- (b) neither Case 2 nor Case 3 applies, and
- (c) no election under paragraph 5 of this Schedule (or paragraph 2(1)(b) of Schedule 4ZZB) is or has been made in relation to the chargeable interest which, or a part of which, is the subject of the relevant high value disposal.

(4) The ATED-related gain or loss accruing on the relevant high value disposal is computed as follows.

*Step 1*

Determine the amount of the post-April 2015 ATED-related gain or loss.

*Step 2*

Determine the amount of the pre-April 2015 ATED-related gain or loss.

*Step 3*

Add –

- (a) the amount of any gain or loss determined under Step 1, and
- (b) the amount of any gain or loss determined under Step 2, (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the ATED-related gain on the relevant high value disposal.



If the result is a negative amount, that amount (expressed as a positive number) is the ATED-related loss on the relevant high value disposal.

- (5) The post-April 2015 ATED-related gain or loss is equal to the amount that would be given by paragraph 3(1) as the amount of the ATED-related gain or loss if the relevant year for the purposes of that paragraph were 2015.
- (6) The “pre-April 2015 ATED-related gain or loss” means the relevant fraction of the notional pre-April 2015 gain or loss.
- (7) “The relevant fraction” is –

$$\frac{CD}{TD}$$

where –

“CD” is the number of days in the relevant ownership period which are ATED chargeable days;

“TD” is the total number of days in the relevant ownership period.

- (8) If the interest disposed of was not held by P on 5 April 2013, the “notional pre-April 2015 gain or loss” is the gain or loss which would have accrued on 5 April 2015 had the interest been disposed of on that date for a consideration equal to its market value on that date.
- (9) If the interest disposed of was held by P on 5 April 2013, the “notional pre-April 2015 gain or loss” is the gain or loss which would have accrued on 5 April 2015 if P had –
  - (a) acquired the interest on 5 April 2013 for a consideration equal to its market value on that date, and
  - (b) disposed of it on 5 April 2015 for a consideration equal to its market value on that date.
- (10) Paragraph 3(3) applies for the purposes of sub-paragraphs (8) and (9) as for the purposes of paragraph 3(2).
- (11) In sub-paragraph (7) “relevant ownership period” means the period –
  - (a) beginning with the day on which P acquired the chargeable interest or, if later, 6 April 2013, and
  - (b) ending with 5 April 2015.
- (12) For how to compute the amount of the gain or loss on the relevant high value disposal that is neither ATED-related nor a relevant gain or loss (for the purposes of Schedule 4ZZB) see paragraph 15 to 18 of Schedule 4ZZB.”

“SCHEDULE 4ZZB

DISPOSALS BY NON-RESIDENTS ETC OF UK RESIDENTIAL PROPERTY INTERESTS:  
 GAINS AND LOSSES

PART 1

INTRODUCTION

*Introduction*

- 1 (1) This Schedule applies for the purpose of determining, in relation to a chargeable non-resident disposal by a person (“P”) of a UK residential property interest—
  - (a) whether a relevant gain or loss accrues to P on the disposal, and the amount of any such gain or loss, and
  - (b) whether a gain other than a relevant gain or loss accrues to P on the disposal, and the amount of any such gain or loss.
- (2) Where the disposal counts as a disposal of a UK residential property interest only because of the second condition in paragraph 1 of Schedule B1 (disposal of interest subsisting under a contract for an off-plan purchase), the land that is the subject of the contract concerned is treated for the purposes of this Schedule as consisting of, or (as the case requires) including, a dwelling throughout P’s period of ownership of the UK residential property interest.
- (3) In this Schedule—
  - (a) Part 2 is about elections to vary the method of computation of gains and losses;
  - (b) Part 3 contains the main rules for computing the gains and losses;
  - (c) Part 4 contains separate rules for computing, in a case where the disposal also either is or involves a relevant high value disposal (as defined in section 2C)—
    - (i) the amount of any relevant gains or losses accruing on the disposal, and
    - (ii) the amount of any gains or losses accruing on the disposal that are neither ATED-related nor relevant gains or losses.
  - (d) Part 5 contains special rules for chargeable non-resident disposals of UK residential property interests made by companies;
  - (e) Part 6 contains definitions for the purposes of this Schedule.

PART 2

ELECTIONS FOR ALTERNATIVE METHODS OF COMPUTATION

- 2 (1) A person (“P”) making a chargeable non-resident disposal of the whole or part of a UK residential property interest which (or any part of which) P held on 5 April 2015 may—

- (a) make an election for straight-line time apportionment in relation to the UK residential property interest;
    - (b) make an election for the retrospective basis of computation to apply in relation to that interest,  
(but may not do both).
  - (2) P may not make an election under sub-paragraph (1)(a) if the disposal is one to which Part 4 of this Schedule applies (cases involving relevant high value disposals).
  - (3) For the effect of making an election under sub-paragraph (1)(a), see paragraph 8.
  - (4) For the effect of making (or not making) an election under sub-paragraph (1)(b), see paragraphs 5(1)(b), 9(1)(b), 12(1)(b), 13(1)(a) and 14(1)(c) (and paragraph 6A(3)(c) of Schedule 4ZZA).
  - (5) An election made in relation to an asset under paragraph 5 of Schedule 4ZZA (relevant high value disposals: gains and losses) has effect as if also made under sub-paragraph (1)(b) (and for this purpose it does not matter if the election was made before this paragraph was in force).
- 3
- (1) Sub-paragraphs (2) to (5) apply to elections under paragraph 2(1).
  - (2) An election is irrevocable (and precludes the making of any further election under that paragraph in relation to the same UK residential property interest).
  - (3) An election must be made by being included in –
    - (a) the NRCGT return relating to the disposal, or
    - (b) a tax return under the Management Act for the tax year in which the first chargeable non-resident disposal by P of the UK residential property interest (or any part of it) is made.
  - (4) The reference in sub-paragraph (3) to an election being included in a return includes an election being included by virtue of an amendment of the return.
  - (5) All such adjustments are to be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election.

### PART 3

#### MAIN COMPUTATION RULES

##### *Disposals to which this Part applies*

- 4
- (1) This Part of this Schedule applies where a person (“P”) makes a chargeable non-resident disposal of a UK residential property interest (“the disposed of interest”).
  - (2) But this Part of this Schedule does not apply if the disposal is –
    - (a) a relevant high value disposal, or
    - (b) a disposal in which a relevant high value disposal is comprised (see paragraph 11(2)).

*Introduction to paragraphs 6 to 8*

- 5 (1) Paragraphs 6 to 8 apply where –
- (a) the disposed of interest was held by P on 5 April 2015, and
  - (b) P has not made an election under paragraph 2(1)(b) in relation to the disposed of interest (or in relation to an asset of which the disposal is a part disposal).
- (2) In paragraphs 6 and 7 –
- (a) “notional post-April 2015 gain or loss” means the gain or loss which would have accrued on the disposal had P acquired the UK residential property interest on 5 April 2015 for a consideration equal to its market value on that date;
  - (b) “notional pre-April 2015 gain or loss” means the gain or loss which would have accrued on 5 April 2015 had the UK residential property interest been disposed of for a consideration equal to its market value on that date;
- but see also paragraph 8(1).

*Assets held at 5 April 2015: default method*

- 6 (1) The relevant gain or loss accruing on the disposal is equal to the relevant fraction of the notional post-April 2015 gain or loss (as the case may be).  
 But see also sub-paragraph (3).
- (2) “The relevant fraction” is –

$$\frac{RD}{TD}$$

where –

“RD” is the number of days in the post-commencement ownership period on which the subject matter of the UK residential property interest consists solely or partly of a dwelling;

“TD” is the total number of days in the post-commencement ownership period.

- (3) If there has been mixed use of the subject matter of the UK residential property interest on one or more days in the post-commencement ownership period, the relevant gain or loss accruing on the disposal is the fraction of the amount that would (apart from this sub-paragraph) be given by sub-paragraphs (1) and (2) that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.
- (4) For the purposes of this paragraph there is “mixed use” of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.
- (5) “The post-commencement ownership period” means the period beginning with 6 April 2015 and ending with the day before the day on which the disposal occurs.

- 7 The gain or loss accruing on the disposal which is not a relevant gain or loss is computed as follows.

*Step 1*

Determine the amount of the notional pre-April 2015 gain or loss.

*Step 2*

In a case where there is a notional post-April 2015 gain, determine the amount of that gain remaining after the deduction of the relevant gain determined under paragraph 6.

*Step 3*

In a case where there is a notional post-April 2015 loss, determine the amount of that loss remaining after the deduction of the relevant loss determined under paragraph 6.

*Step 4*

Add—

- (a) the amount of any gain or loss determined under Step 1, and
  - (b) the amount of any gain determined under Step 2 or (as the case may be) any loss determined under Step 3,
- (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the gain on the disposal which is not a relevant gain.

If the result is a negative amount, that amount (expressed as a positive number) is the loss on the disposal which is not a relevant loss.

*Case where election made for straight-line time apportionment*

- 8 (1) Where the chargeable non-resident disposal is of (or of part of) a UK residential property interest in respect of which P makes, or has made, an election for straight-line time apportionment under paragraph 2(1)(a)—

- (a) paragraphs (a) and (b) of paragraph 5(2) do not apply in relation to the disposal, and
- (b) for the purposes of paragraphs 6 and 7, the “notional pre-April 2015 gain or loss” and the “notional post-April 2015 gain or loss” are to be determined in accordance with the following steps.

*Step 1*

Determine the amount of the gain or loss which accrues to P on the disposal.

*Step 2*

An amount equal to the post-commencement fraction of that gain or loss is the notional post-April 2015 gain or (as the case may be) loss.

*Step 3*

An amount equal to the pre-commencement fraction of that gain or loss is the notional pre-April 2015 gain or (as the case may be) loss.

- (2) The “post-commencement fraction” is—

$$\frac{\text{PCD}}{\text{TD}}$$

where –

“PCD” is the number of days in the post-commencement ownership period;

“TD” is the total number of days in the ownership period.

- (3) The “pre-commencement fraction” is –

$$\frac{\text{TD} - \text{PCD}}{\text{TD}}$$

where “PCD” and “TD” have the same meanings as in subparagraph (2).

- (4) In this paragraph –

“ownership period” means the period beginning with the day on which P acquired the UK residential property interest or, if later, 31 March 1982 and ending with the day before the day on which the disposal of the UK residential property interest occurs;

“post-commencement ownership period” has the meaning given by paragraph 6(5).

*Cases where asset acquired after 5 April 2015 or election made under paragraph 2(1)(b)*

- 9 (1) This paragraph applies if –
- (a) the disposed of interest was not held by P throughout the period beginning with 5 April 2015 and ending with the disposal, or
  - (b) the chargeable non-resident disposal is a disposal of, or part of, a UK residential property interest in respect of which P makes, or has made, an election under paragraph 2(1)(b).

- (2) The relevant gain or loss accruing on the disposal is computed as follows.

*Step 1*

Determine the amount of the gain or loss which accrues to P.

*Step 2*

The relevant gain or loss accruing on the disposal is an amount equal to the relevant fraction of that gain or loss (but see Step 3).

*Step 3*

If there has been mixed use of the subject matter of the UK residential property interest on one or more days in the relevant ownership period, the relevant gain or loss accruing on the disposal is an amount equal to the appropriate fraction of the amount given by Step 2.

- (3) For the purposes of this paragraph there is “mixed use” of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.
- (4) In Step 3 “the appropriate fraction” means the fraction that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.
- (5) The gain or loss accruing on the disposal that is not a relevant gain or (as the case may be) loss is to be computed as follows.

*Step 1*

In a case where there is a gain under Step 1 of sub-paragraph (2), determine the amount of the gain remaining after the deduction of the relevant gain determined under that sub-paragraph.

That remaining gain is the gain accruing on the disposal which is not a relevant gain.

*Step 2*

In a case where there is a loss under Step 1 of sub-paragraph (2), determine the amount of the loss remaining after deduction of the relevant loss determined under that sub-paragraph.

That remaining loss is the loss accruing on the disposal which is not a relevant loss.

- (6) For the purposes of sub-paragraph (2), “the relevant fraction” is –

$$\frac{RD}{TD}$$

where –

“RD” is the number of days in the relevant ownership period on which the subject matter of the UK residential property interest consists solely or partly of a dwelling;

“TD” is the total number of days in the relevant ownership period.

- (7) “The relevant ownership period” means the period –
  - (a) beginning with the day on which P acquired the UK residential property interest or, if later, 31 March 1982, and
  - (b) ending with the day before the day on which the disposal of the UK residential property interest occurs.

#### PART 4

##### CASES INVOLVING RELEVANT HIGH VALUE DISPOSALS

###### *Overview*

- 10 (1) This Part is about chargeable non-resident disposals which are, or involve, relevant high value disposals (see section 2B, which charges capital gains tax on ATED-related gains on relevant high value disposals).
- (2) Paragraphs 11 to 14 contain provision about how any relevant gains and losses on such a disposal are computed, including provision –

- (a) for the relevant gains or losses to be computed for each relevant high value disposal (or disposal treated as a relevant high value disposal) comprised in the chargeable non-resident disposal (paragraphs 12 to 14), and
  - (b) for the results to be added (where necessary) to find the relevant gain or loss on the chargeable non-resident disposal (see paragraph 11).
- (3) For provision about how to compute any ATED-related gains or losses accruing on the relevant high value disposals, see Schedule 4ZZA.
- (4) Paragraphs 15 to 18 contain provisions for computing any gains or losses accruing on the disposals mentioned in sub-paragraph (1) which are neither ATED-related nor relevant gains or losses, including provision –
- (a) for such balancing gains or losses to be computed for each relevant high value disposal (or disposal treated as a relevant high value disposal) comprised in the disposal of a UK residential property interest, and
  - (b) for the results to be added together (where necessary) to find the relevant gain or loss on the disposal of the UK residential property interest (see paragraph 15).

*Disposal involving one or more relevant high value disposals*

- 11 (1) This Part of this Schedule applies where –
- (a) a person (other than an excluded person) (“P”) makes a chargeable non-resident disposal of a UK residential property interest (“the disposed of interest”), and
  - (b) that disposal (“the disposal of land”) is a relevant high value disposal or a relevant high value disposal is comprised in the disposal of land.

In this sub-paragraph “excluded person” has the meaning given by section 2B(2).

- (2) A relevant high value disposal is “comprised in” the disposal of land if –
- (a) the disposal of land is treated for the purposes of section 2C and Schedule 4ZZA as two or more disposals, and
  - (b) the relevant high value disposal is one of those.
- (3) The relevant gain or loss accruing on the disposal of land is computed as follows.

*Step 1*

Determine in accordance with paragraphs 12 to 14 the amount of the relevant gain or loss accruing on each relevant high value disposal.

*Step 2*

Add together the amounts of any gains or losses determined under Step 1 (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the relevant gain on the disposal of land.



If the result is a negative amount, that amount (expressed as a positive number) is the relevant loss on the disposal of land.

- (4) See paragraphs 15 to 19 for how to compute the gain or loss on the disposal of land which is neither ATED-related nor a relevant gain or loss.
- (5) For the purposes of this Part of this Schedule a day is a “non-ATED chargeable day” in relation to a relevant high value disposal if –
  - (a) it is a day on which the subject matter of the relevant high value disposal consists wholly or partly of a dwelling, but
  - (b) it is not an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).

*Assets held at 5 April 2015 (where no election made and no additional rebasing required)*

- 12 (1) This paragraph applies where –
  - (a) the disposed of interest was held by P on 5 April 2015,
  - (b) P has not made an election under paragraph 2(1)(b) (or paragraph 5 of Schedule 4ZZA) in relation to the disposed of interest or any asset of which the disposal of land is a part disposal, and
  - (c) paragraph 14 does not apply.
- (2) The relevant gain or loss accruing on the relevant high value disposal is equal to the special fraction of the notional post-April 2015 gain or loss (as the case may be) on that disposal.
- (3) “Notional post-April 2015 gain or loss” means the gain or loss which would have accrued on the relevant high value disposal had P acquired the subject matter of that disposal on 5 April 2015 for a consideration equal to its market value on that date.
- (4) “The special fraction” is –

$$\frac{SD}{TD}$$

where –

“SD” is the number of non-ATED chargeable days in the post-commencement ownership period;

“TD” is the total number of days in the post-commencement ownership period.

- (5) “The post-commencement ownership period” means the period beginning with 6 April 2015 and ending with the day before the day on which the relevant high value disposal occurs.

*Asset acquired after 5 April 2015 or election made under paragraph 2(1)(b) (but no additional rebasing required)*

- 13 (1) This paragraph applies where –

- (a) P makes, or has made, an election under paragraph 2(1)(b) (or paragraph 5 of Schedule 4ZZA) in respect of the disposed of interest (or a UK residential property interest of which the disposal of land is a part disposal), or
  - (b) the disposed of interest was not held by P throughout the period beginning with 5 April 2015 and ending with the disposal.
- (2) But this paragraph does not apply if paragraph 14 applies.
- (3) The relevant gain or loss accruing on the relevant high value disposal is computed as follows.
- Step 1*  
Determine the amount of the gain or loss which accrues to P.
- Step 2*  
The relevant gain or loss accruing on the relevant high value disposal is an amount equal to the special fraction of that gain or loss.
- (4) For this purpose “the special fraction” is –

$$\frac{SD}{TD}$$

where –

“SD” is the number of non-ATED chargeable days in the relevant ownership period;

“TD” is the total number of days in the relevant ownership period.

- (5) “The relevant ownership period” means the period –
- (a) beginning with the day on which P acquired the disposed of interest or, if later, 31 March 1982, and
  - (b) ending with the day before the day on which the relevant high value disposal occurs.

*Certain disposals after 5 April 2016 (computation involving additional rebasing)*

- 14 (1) This paragraph applies where –
- (a) the disposed of interest was held by P on 5 April 2016,
  - (b) the relevant high value disposal falls within Case 3 for the purposes of Schedule 4ZZA, and
  - (c) no election is or has been made (or treated as made) by P under paragraph 2(1)(b) in respect of the chargeable interest which (or a part of which) is the subject of the relevant high value disposal.
- (2) The relevant gain or loss accruing to P on the relevant high value disposal is computed as follows.
- Step 1*  
Determine the amount equal to the special fraction of the notional post-April 2016 gain or loss (as the case may be).
- Step 2*

Determine the amount equal to the special fraction of the notional pre-April 2016 gain or loss (as the case may be).

Step 3

Add—

- (a) the amount of any gain or loss determined under Step 1, and
- (b) the amount of any gain or loss determined under Step 2, (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the relevant gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the relevant loss on the relevant high value disposal.

- (3) “The special fraction” is—

$$\frac{SD}{TD}$$

where—

“SD” is the number of non-ATED chargeable days in the relevant ownership period;

“TD” is the total number of days in the relevant ownership period.

- (4) The “relevant ownership period” is—
- (a) for the purpose of computing the amount of the post-April 2016 relevant gain or loss, the period beginning with 6 April 2016 and ending with the day on which the relevant high value disposal occurs;
  - (b) for the purpose of computing the amount of the pre-April 2016 relevant gain or loss, the period beginning with the day on which P acquired the interest or, if later, 6 April 2015 and ending with 5 April 2016.
- (5) The “notional post-April 2016 gain or loss” is the amount of the gain or loss which would have accrued on the relevant high value disposal had P acquired the subject-matter of that disposal on 5 April 2016 for a consideration equal to its market value on that date.
- (6) If the interest disposed of by the relevant high value disposal was not held by P on 5 April 2015, the “notional pre-April 2016 gain or loss” means the gain or loss which would have accrued on 5 April 2016 had the subject-matter of the relevant high value disposal been disposed of for a consideration equal to its market value on that date.
- (7) If the interest disposed of by the relevant high value disposal was held by P on 5 April 2015 “notional pre-April 2016 gain or loss” means the gain or loss which would have accrued on 5 April 2016 had P acquired the subject-matter of the relevant high value disposal on 5 April 2015 for a consideration equal to its market

value on that date and disposed of it on 5 April 2016 for a consideration equal to its market value on that date.

*Amount of gain or loss that is neither ATED-related nor a relevant gain or loss*

- 15 (1) The gain or loss on the disposal of land which is neither ATED-related nor a relevant gain or loss (“the balancing gain or loss”) is computed as follows.

*Step 1*

Determine in accordance with paragraphs 16 to 18 the amount of the gain or loss accruing on each relevant high value disposal which is neither ATED-related nor a relevant gain or loss.

This is the “balancing” gain or loss for each such disposal.

*Step 2*

Add together the amounts of any balancing gains or losses determined under Step 1 (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the disposal of land.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the disposal of land.

- (2) In relation to a relevant high value disposal, “balancing day” means a day which is neither –
- (a) a day on which the subject matter of the relevant high value disposal consists wholly or partly of a dwelling, nor
  - (b) an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).
- 16 (1) This paragraph applies where a person makes a relevant high value disposal to which paragraph 12 applies.
- (2) Sub-paragraph (3) applies if paragraph 6A of Schedule 4ZZA does not apply.
- (3) The amount of the balancing gain or loss on the relevant high value disposal is found by adding –
- (a) the amount of the balancing gain or loss belonging to the notional post-April 2015 gain or loss, and
  - (b) the amount of the notional pre-April 2015 gain or loss, (treating any amount which is a loss as a negative amount).
- If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.
- If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.
- (4) If paragraph 6A of Schedule 4ZZA applies, the amount of the balancing gain or loss on the relevant high value disposal is found by adding –
- (a) the amount of the balancing gain or loss belonging to the notional post-April 2015 gain or loss,

- (b) the amount of the balancing gain or loss belonging to the notional pre-April 2015 gain or loss, and
- (c) if P held the disposed of interest on 5 April 2013, the amount of the notional pre-April 2013 gain or loss, (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.

- (5) The balancing gain or loss belonging to the notional post-April 2015 gain or loss is equal to the balancing fraction of the notional post-April 2015 gain or loss.
- (6) The balancing gain or loss belonging to the notional pre-April 2015 gain or loss is equal to the balancing fraction of the notional pre-April 2015 gain or loss.
- (7) “The balancing fraction” is—

$$\frac{BD}{TD}$$

where—

“BD” is the number of balancing days in the appropriate ownership period;

“TD” is the total number of days in the appropriate ownership period.

- (8) “Appropriate ownership period” means—
  - (a) for the purpose of computing the balancing gain or loss belonging to the notional post-April 2015 gain or loss, the post-commencement ownership period mentioned in paragraph 12(5);
  - (b) for the purpose of computing the balancing gain or loss belonging to the notional pre-April 2015 gain or loss, the relevant ownership period defined in paragraph 6A(11) of Schedule 4ZZA.
- (9) In this paragraph—
  - (a) “the notional post-April 2015 gain or loss” has the same meaning as in paragraph 12;
  - (b) “the notional pre-April 2015 gain or loss” has the same meaning as in paragraph 6A of Schedule 4ZZA;
  - (c) “notional pre-April 2013 gain or loss” means the gain or loss which would have accrued on 5 April 2013 had the subject matter of the relevant high value disposal been disposed of for a consideration equal to its market value at that date.

- 17 (1) In the case of a relevant high value disposal to which paragraph 13 applies, the amount of the balancing gain or loss is determined as follows.
- (2) Determine the number of balancing days in the relevant ownership period.
- (3) The balancing gain or loss on the disposal is equal to the balancing fraction of the amount of the gain or (as the case may be) loss determined under Step 1 of paragraph 13(3).
- (4) “The balancing fraction” is –

$$\frac{BD}{TD}$$

where –

“BD” is the number of balancing days in the relevant ownership period;

“TD” is the total number of days in the relevant ownership period.

- (5) In this paragraph “relevant ownership period” has the same meaning as in paragraph 13.
- 18 (1) Where a person (“P”) makes a relevant high value disposal to which paragraph 14 applies, the amount of the balancing gain or loss on the disposal is determined as follows.
- (2) To find the amount of the balancing gain or loss on the relevant high value disposal, add –
- (a) the amount of the balancing gain or loss belonging to the notional post-April 2016 gain or loss,
  - (b) the amount of the balancing gain or loss belonging to the notional pre-April 2016 gain or loss, and
  - (c) if P held the disposed of interest on 5 April 2015, the amount of the notional pre-April 2015 gain or loss,
- (treating any amount which is a loss as a negative amount).

If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.

If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.

- (3) The balancing gain or loss belonging to the notional post-April 2016 gain or loss is equal to the balancing fraction of the notional post-April 2016 gain or loss.
- (4) The balancing gain or loss belonging to the notional pre-April 2016 gain or loss is equal to the balancing fraction of the notional pre-April 2016 gain or loss.
- (5) “The balancing fraction” is –

$$\frac{BD}{TD}$$

where –

“BD” is the number of balancing days in the appropriate ownership period;

“TD” is the total number of days in the appropriate ownership period.

- (6) The appropriate ownership period is –
- (a) for the purpose of computing the balancing gain or loss belonging to the notional post-April 2016 gain or loss, the relevant ownership period mentioned in paragraph 14(4)(a);
  - (b) for the purpose of computing the balancing gain or loss belonging to the notional pre-April 2016 gain or loss, the relevant ownership period mentioned in paragraph 14(4)(b).
- (7) In this paragraph –
- (a) “notional post-April 2016 gain or loss” and “notional pre-April 2016 gain or loss” mean the same as in paragraph 14;
  - (b) “the notional pre-April 2015 gain or loss” means the gain or loss which would have accrued on 5 April 2015 if the subject matter of the relevant high value disposal had been disposed of for a consideration equal to its market value on that date.

*Where relevant high value disposal and “other” disposal are comprised in the disposal of land*

- 19 (1) This paragraph applies where –
- (a) part only of the subject matter of the disposal of land is treated under section 2C and Schedule 4ZZA as disposed of by one or more relevant high value disposals, so that,
  - (b) the remaining subject matter of the disposal is treated as disposed of by a disposal which is not a relevant high value disposal (the “non-ATED related disposal”).
- (2) Where this paragraph applies this Part of this Schedule (apart from this paragraph) applies in relation to the non-ATED related disposal as if it were a relevant high value disposal.
- (3) If there has been mixed use of the subject matter of the non-ATED related disposal at any time in the relevant ownership period, then the amount of any relevant gain or loss on that disposal computed under this Part of this Schedule is taken to be the appropriate fraction of the amount that it would otherwise be.
- (4) For the purposes of this paragraph there is mixed use of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.

- (5) In sub-paragraph (3) “the appropriate fraction” means the fraction that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.
- (6) In sub-paragraph (3) “the relevant ownership period” means, as applicable –
- (a) the post-commencement period, as defined in paragraph 12(2);
  - (b) the relevant ownership period, as defined in paragraph 13(5), or
  - (c) the relevant ownership period as defined in paragraph 14(4).

## PART 5

### SPECIAL RULES FOR COMPANIES

- 20 This Part of this Schedule applies where the person disposing of the interest in residential property is a company.
- 21 The following amounts are computed as if the computation were for corporation tax purposes –
- (a) the notional post-April 2015 gain or loss for the purposes of paragraphs 6 and 7;
  - (b) the notional pre-April 2015 gain or loss for the purposes of paragraphs 6 and 7;
  - (c) the gain or loss determined under Step 1 of paragraph 9(2);
  - (d) the notional post-April 2015 gain or loss for the purposes of paragraph 12;
  - (e) the gain or loss determined under Step 1 of paragraph 13(3);
  - (f) the notional post-April 2016 gain or loss for the purposes of paragraph 14;
  - (g) the notional pre-April 2016 gain or loss for the purposes of paragraph 14;
  - (h) the notional post-April 2015 gain or loss, the notional pre-April 2015 gain or loss and the notional pre-April 2013 gain or loss for the purposes of paragraph 16;
  - (i) the notional post-April 2016 gain or loss, the notional pre-April 2016 gain or loss and the notional pre-April 2015 gain or loss for the purposes of paragraph 18.

## PART 6

### INTERPRETATION

- 22 (1) In this Schedule –
- “chargeable interest” has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act);
- “dwelling” has the meaning given by paragraph 3 of Schedule B1.
- (2) In this Schedule “subject matter” –



- (a) in relation to a UK residential property interest (or a disposal of such an interest), means the land (mentioned in paragraph 1(2) or (3) of Schedule B1) to which the interest relates, and
- (b) in relation to a relevant high value disposal, has a corresponding meaning.”

## PART 2

### OTHER AMENDMENTS

- 18 (1) The Corporation Tax Act 2009 is amended as follows.
- (2) In section 2 (charge to corporation tax), in subsection (2A), for the words from “under” to the end substitute “under –
- (a) section 2B of TCGA 1992 (companies etc chargeable to capital gains tax on ATED-related gains on relevant high-value disposals), or
  - (b) section 7AA of that Act (capital gains tax on gains on disposals of UK residential property interests by non-residents etc).”

## PART 3

### COMMENCEMENT

- 19 (1) The amendments made by this Schedule have effect in relation to disposals made on or after 6 April 2015.

## EXPLANATORY NOTE

### DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC.

#### SUMMARY

1. Clause [X] introduces Schedule [A] which extends capital gains tax (CGT) from 6 April 2015 to chargeable gains accruing to non-UK resident persons on the disposal of an interest in UK residential property. As well as individuals, trustees and other persons that are normally chargeable to CGT when UK resident, the charge to CGT will also apply to certain non-resident companies (and not corporation tax).

#### DETAILS OF THE CLAUSE AND SCHEDULE

##### *Clause [X]*

2. Clause [X] introduces Schedule [A], which makes amendments in respect of capital gains tax.

##### *Schedule [A] Part 1*

3. Paragraph 1 of Schedule [A] introduces changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992).

4. Paragraph 2 of Schedule [A] amends section 1 of TCGA 1992 to charge companies to capital gains tax (CGT), and not corporation tax, to the extent that their gains are chargeable non-resident disposals of UK residential property interests.

5. Paragraph 3 of Schedule [A] inserts new subsections (2A) and (7B) into section 2 of TCGA 1992. These treat unused losses accrued by a person on chargeable non-resident disposals of UK residential property interests when non-UK resident to be general allowable losses for use against chargeable gains when UK resident.

6. Paragraph 4 of Schedule [A] inserts new sections 7AA to 7AC into TCGA 1992.

7. New section 7AA holds that a person who does not meet the UK residence condition is chargeable to CGT in respect of a relevant gain on a chargeable non-resident disposal of a UK residential property interest. However, a company is not chargeable if it is a diversely-held company, or a qualifying unit trust scheme or an open-ended investment company that meets the widely-marketed fund condition. Where the gain on disposal of a UK residential property interest would be chargeable as part of the corporation tax profits of a UK permanent establishment of a company, then it is not chargeable to CGT on that gain.

8. New section 7AB provides that a person is charged CGT on the total amount of the gains on chargeable non-resident disposals of a UK property interest accruing in a tax year after deducting losses on similar disposals.
9. New section 7AC holds that a loss on a chargeable non-resident disposal of a UK property interest (when non-UK resident) is not allowable as a deduction from chargeable gains (when UK resident) in a previous year.
10. Paragraph 5 of Schedule [A] amends section 8 of TCGA 1992, which provides certain rules for taxing gains, and relieving losses, of companies chargeable to corporation tax. The amended subsection 8(4A) prevents these rules from applying to chargeable gains and allowable losses on a chargeable non-resident disposal of a UK residential property interest.
11. Paragraph 6 of Schedule [A] inserts new subsection (1A) into section 10A of TCGA 1992. This disapplies rules that tax gains accruing to temporary non-residents in the year of their return to the UK in relation to gains on disposals of UK residential property interests.
12. Paragraph 7 of Schedule [A] amends section 13 of TCGA 1992, which treats gains accruing to non-UK resident companies as if a proportionate amount had accrued to UK participators in the company. The amended subsection 13(1A) prevents these rules from applying to gains on a disposal of a UK residential property interest that is chargeable to CGT by virtue of new section 7AB.
13. Paragraph 8 of Schedule [A] inserts new section 57B into TCGA 1992, which introduces new Schedule 4ZZB.
14. Paragraph 9 of Schedule [A] amends section 62 of TCGA 1992, which, amongst other things, allows unused losses to be carried back for the 3 tax years prior to the year in which a person dies, to include unused losses on the disposal of a UK residential property interest.
15. Paragraph 10 of Schedule [A] inserts new subsection (4ZA) into section 86 of TCGA 1992. Section 86 attributes gains accruing to a non-resident trust to the settlor of the trust; and new subsection (4ZA) prevents a double charge by disapplying that rule to the extent that a gain accrues on the disposal of a UK residential property interest and the trustees are chargeable under new section 7AA.
16. Paragraph 11 of Schedule [A] inserts new subsection (5A) into section 87 of TCGA 1992. Section 87 attributes gains accruing to non-resident trusts to the beneficiaries of the trust; and new subsection (5A) prevents a double charge by disapplying that rule to the extent that a gain accrues on the disposal of a UK residential property interest and the trustees are chargeable under new section 7AA.

17. Paragraph 12 of Schedule [A] inserts new subsection (5A) into section 88 of TCGA 1992. Section 88 ignores for the purpose of section 87 amounts that are chargeable to another country under a double taxation agreement. New subsection (5A) disapplies that rule to the extent that a gain accrues on the disposal of a UK residential property interest and the trustees are chargeable under new section 7AA.
18. Paragraph 13 of Schedule [A] inserts interpretive provisions into section 288 of TCGA 1992.
19. Paragraph 14 of Schedule [A] inserts new Schedule B1 into TCGA 1992.
20. Paragraph 1 of new Schedule B1 defines “UK residential property interest” as, broadly, an interest in UK land that has consisted of or included a dwelling at any time during the relevant ownership period, being the period from acquisition or 6 April 2015 (whichever is later) to the day before the date of disposal.
21. Paragraph 2 of new Schedule B1 defines “interest in UK land”.
22. Paragraph 3 of new Schedule B1 defines “dwelling” and provides that a building counts as a dwelling at any time when it is used or suitable for use as a dwelling or in the process of being constructed or adapted for such use. Sub-paragraphs 3(3) to (11) prescribe occasions when a building does not count as a dwelling.
23. Paragraph 4 of new Schedule B1 provides HM Treasury with the power to amend by regulations the cases where a building is or is not be regarded as being used as a dwelling.
24. Paragraph 5 of new Schedule B1 provides that temporary unsuitability for use as a dwelling as a result of damage is taken into account in applying the definition of “dwelling” only if certain conditions are met.
25. Paragraph 6 of new Schedule B1 provides that a building “ceases to exist” when demolished completely to ground level or to ground level except for a façade retained as a condition of planning consent.
26. Paragraph 7 of new Schedule B1 provides that works to demolish or convert a building to a use other than use as a dwelling, and any period immediately prior to then when the building was not used as a dwelling, are periods when the building is to be regarded as unsuitable for use as a dwelling provided that the works are completed by the time the property is conveyed and are performed in accordance with any necessary planning permission or development consent.
27. Paragraph 8 of new Schedule B1 contains definitions for paragraphs 1 to 7.
28. Paragraph 15 of Schedule [A] inserts Schedule C1.

29. New Schedule C1, Part 1 consists of paragraphs 1 to 7, which makes provision about the meaning of “closely-held company”. A company that is not closely-held is a diversely-held company for the purpose of new section 7AA to TCGA 1992.
30. Paragraph 1 of new Schedule C1 explains the purpose of Part 1.
31. Paragraph 2 of new Schedule C1 defines a closely held company as one that is either under the control of five or fewer persons that have an interest in the company (“participators”), or where those five or fewer persons would be entitled to the greater part of the assets of the company were it to be wound up.
32. Paragraph 3 of new Schedule C1 ensures that when assessing the interests a person has in the assets of a company being wound up, regard is to be had to both direct and indirect interests.
33. Paragraph 4 of new Schedule C1 ensures that when assessing who are the participators in a company for the purposes of the assets test in paragraph 2, participators in other companies that have an interest in the company notionally wound up are also included.
34. Paragraph 5 of new Schedule C1 provides for certain companies not to be treated as closely held companies. The first group are companies that can only be regarded as closely held by including in the group of controlling participators a company which is itself either a diversely held company or a qualifying institutional investor as defined in sub-paragraph (4). The second group are those where it is only possible to regard a company as closely held by including a company as a participator that is a loan creditor of the company, and which is itself a diversely held company or a qualifying institutional investor. The Treasury may vary the types and descriptions of entities that are treated as qualifying institutional investors by Statutory Instrument.
35. Paragraph 6 of new Schedule C1 deals with a special type of company (“divided company”) sometimes called a protected cell company. This ensures that the closely held company test is applied to each individual cell or division of the company, rather than just at the level of the whole company.
36. Paragraph 7 of new Schedule C1 is an anti-avoidance rule which ensures that companies cannot escape a charge to capital gains tax by entering into arrangements to manipulate the control of the company at the time of a disposal of a UK residential property interest.
37. New Schedule C1, Part 2 consists of paragraphs 8 to 11 which makes provision about the “widely-marketed fund condition”.
38. Paragraph 8 of new Schedule C1 explains that the purpose of Part 2 is to determine whether a (variable capital) fund making a disposal is widely-marketed and so can be a qualifying institutional investor.

39. Paragraph 9 of new Schedule C1 sets out the conditions to be satisfied for a fund to be widely-marketed.
40. Paragraph 10 of new Schedule C1 sets out how a feeder fund can be taken into consideration to enable a fund to meet the widely-marketed test.
41. Paragraph 11 of new Schedule C1 is an anti-avoidance rule which ensures that a tax charge cannot be avoided by artificial arrangements to meet the widely marketed rule or by artificial inclusion of a fund in the arrangements for property ownership and disposal.
42. New Schedule C1, Part 3 consists of paragraphs 12 to 14 which contain interpretative provisions for new Schedule C1.
- Paragraph 16 of Schedule [A] amends Schedule 4ZZA to TCGA 1992, which determines whether an Annual Tax on Enveloped Dwellings (ATED)-related gain or loss accrues to a person. Paragraph 5 of the Schedule is amended to provide that an election under paragraph 2(1)(b) of Schedule 4ZZB to compute gains or losses on the basis of the position over their whole period of ownership applies for the purpose of Schedule 4ZZA as well as for Schedule 4ZZB. New paragraph 6A applies where the gain on a disposal is potentially liable to both CGT as an ATED-related disposal and to CGT under new section 7AB. It provides for the ATED-related gain to be the sum of two components derived from periods before and after 5 April 2015.
43. Paragraph 17 of Schedule [A] inserts Schedule 4ZZB, which makes provision about the computation of the amount of gain or loss that accrues to a person in relation to a chargeable non-resident disposal of a UK residential property interest.
44. New Schedule 4ZZB, Part 1 consists of paragraph 1, which introduces the Schedule.
45. New Schedule 4ZZB, Part 2 consists of paragraphs 2 and 3, which provide for when a person may elect not use the default computation in Part 3 for computing relevant gains and losses (i.e. the amount of gains or losses accruing on the disposal of assets that are chargeable to the extended CGT charge) and the amount of gains or losses that are not a relevant gains or losses.
46. Paragraph 2 of new Schedule 4ZZB provides that a person may elect to determine the amount of post 5 April 2015 gain or loss by using the straight-line time apportionment method provided by paragraph 8 unless the disposal is one to which ATED-related CGT applies; or to elect to compute gains or losses on the basis of the position over their whole period of ownership, when such an election would apply also for the purpose of ATED-related CGT.
47. Paragraph 3 of new Schedule 4ZZB provides how an election made under paragraph 2 is to be made and that it is irrevocable.

48. New Schedule 4ZZB, Part 3 consists of paragraphs 4 to 9, which contain the main rules for computing relevant gains and losses and the amount of a gain or loss that is not a relevant gain or loss.
49. Paragraph 4 of new Schedule 4ZZB provides that Part 3 applies when the disposal is of a chargeable non-resident disposal of a UK property interest that is not also chargeable to ATED-related CGT.
50. Paragraph 5 of new Schedule 4ZZB introduces paragraphs 6 to 8.
51. Paragraphs 6 and 7 of new Schedule 4ZZB provide the default computation to apply where the asset was held at 5 April 2015. The relevant gain or loss is that proportion of the post 5 April 2015 gain (as determined by the gain or loss from the asset's market value as at 5 April 2015) that represents the amount of days in the post 5 April 2015 period in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned. Paragraph 7 determines the gain or loss that is not a relevant gain or loss.
52. Paragraph 8 of new Schedule 4ZZB modifies the computations at paragraphs 6 and 7 where the asset was held at 5 April 2015 and an election is made, under sub-paragraph 2 of this Schedule, to determine the amount of post 5 April 2015 gain or loss by using the straight-line time apportionment method. The relevant gain or loss is that proportion of the post 5 April 2015 gain that reflects the amount of days in the post 5 April 2015 period in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned.
53. Paragraph 9 of new Schedule 4ZZB provides the computation to apply where the asset was acquired after 5 April 2015; or was held on 5 April 2015 and an election is made, under sub-paragraph 2 of this Schedule, to compute gains or losses on the basis of the position over the whole period of ownership. Here the relevant gain or loss is that proportion of the gain or loss over the period of ownership (since 31 March 1982) that reflects the amount of days in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned. Sub-paragraph 9(5) provides for the amount of pre-6 April 2015 gain or loss that is not a relevant gain or loss.
54. New Schedule 4ZZB, Part 4 consists of paragraphs 10 to 19, which contain separate computation rules where the disposal also either is or involves a disposal that is chargeable to ATED-related CGT.
55. Paragraph 10 of new Schedule 4ZZB provides an overview to Part 4. Paragraphs 12 to 14 contain provisions about calculating relevant gains and losses. ATED-related gains or losses are to be computed in accordance with Schedule 4ZZA. Paragraphs 15 to 18 contain provision about computing any gains or losses that are neither ATED-related nor relevant gains or losses.
56. Paragraph 11 of new Schedule 4ZZB provides that the amount of relevant gain or loss is the sum of the amounts determined under paragraphs 12 to 14; and defines “non-

ATED chargeable day” for the purposes of the special fraction at sub-paragraphs 12(4), 13(4) and 14(3).

57. Paragraph 12 of new Schedule 4ZZB provides for the case where an asset is held at 5 April 2015, no election has been made under paragraph 2 (or its equivalent ATED-related CGT provision) to compute gains or losses on the basis of the position over the whole period of ownership and no additional rebasing is required (when paragraph 14 applies instead).

58. Paragraph 13 of new Schedule 4ZZB provides for the case where an asset is acquired after 5 April 2015 or an election is made under sub-paragraph 2 (or its equivalent ATED-related CGT provision) to compute gains or losses on the basis of the position over the whole period of ownership and no additional rebasing is required (when paragraph 14 applies instead).

59. Paragraph 14 of new Schedule 4ZZB provides for the case where an asset is rebased to its open market value at 5 April 2016 for the purposes of ATED-related CGT.

60. Paragraph 15 of new Schedule 4ZZB provides that the amount of gain or loss that is neither ATED-related nor a relevant gain or loss is the sum of the amounts determined in accordance with paragraphs 16 to 18; and defines “balancing day” for the purposes of the balancing fractions at sub-paragraphs 16(7), 17(4) and 18(5).

61. Paragraph 16 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor relevant gains or losses when paragraph 12 applies.

62. Paragraph 17 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor relevant gains or losses when paragraph 13 applies.

63. Paragraph 18 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor relevant gains or losses when paragraph 14 applies.

64. Paragraph 19 of new Schedule 4ZZB provides that where part only of the land disposed of is a relevant high value disposal such that the gains that accrue on its disposal is wholly or in part chargeable to ATED-related CGT, the remaining part of the land is treated for Part 4 in the same way as if it formed part of the relevant high value disposal.

65. New Schedule 4ZZB, Part 5 consists of paragraphs 20 and 21.

66. Paragraph 20 of new Schedule 4ZZB provides that Part 5 applies where a company disposes of a residential property interest.

67. Paragraph 21 of new Schedule 4ZZB provides for indexation to apply when calculating the amount of a relevant gain or loss.

68. New Schedule 4ZZB, Part 6 consists of paragraph 22 and contains interpretative definitions for the purposes of the Schedule.



***Schedule [A] Part 2***

69. Paragraph 18 of Schedule [A] contains minor and consequential amendments to the Corporation Tax Act 2009 that flow from this new legislation.

***Schedule [A] Part 3***

70. Paragraph 19 of Schedule [A] contains commencement provisions.

**BACKGROUND NOTE**

71. A person is not generally chargeable to CGT unless they are resident in the UK; and companies have been chargeable to corporation tax, and not CGT, in respect of chargeable gains accruing to them. Some exceptions exist (for example where a non-resident trades through a UK branch or agency; or where they are necessary to prevent tax avoidance).

72. This measure brings the UK into alignment with most other countries who charge non-residents in relation to immovable property located in their country.

73. It provides a number of exemptions for communal residential accommodation such as purpose built student accommodation, hospices etc. and also exempts non-resident companies that are diversely owned.

If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: [alan.mcguinness@hmrc.gsi.gov.uk](mailto:alan.mcguinness@hmrc.gsi.gov.uk)).

## **1 Private residence relief**

Schedule 1 contains amendments of the TCGA 1992 in connection with private residence relief.

## SCHEDULES

### SCHEDULE 1

Section 1

#### PRIVATE RESIDENCE RELIEF

- 1 The TCGA 1992 is amended in accordance with this Schedule.
- 2 (1) Section 222 (relief on disposal of private residence) is amended as follows.
  - (2) After subsection (5) insert –
    - “(5A) Where the whole or part of the gain mentioned in subsection (1) is chargeable (in whole or in part) to capital gains tax under section 7AA(1) or (2) –
      - (a) the individual may cancel any notice which the individual has given at any time in relation to the dwelling-house or the part of the dwelling-house, and
      - (b) subsection (5B) applies to any determination the individual makes under subsection (5) in relation to the dwelling-house or the part of the dwelling-house.
    - (5B) A determination to which this subsection applies –
      - (a) must be made in the NRCGT return relating to the disposal,
      - (b) may be made with respect to any past period within the individual’s period of ownership, and
      - (c) is irrevocable.
    - (5C) The right under subsection (5B)(b) may be exercised so as to vary a notice given in accordance with subsection (5)(a) in respect of another dwelling-house or part of a dwelling-house (but this does not apply so far as the individual has already disposed of the asset to which the notice related).”
  - (3) In subsection (7), for “223” substitute “222A”.
- 3 After section 222 insert –

**“222A Non-qualifying tax years**

  - (1) For the purposes of sections 222 to 226 the dwelling-house or part of a dwelling-house mentioned in section 222(1) is treated as not being occupied as a residence by the individual (“P”) at any time in P’s period of ownership which falls within –
    - (a) a non-qualifying tax year, or
    - (b) a non-qualifying partial tax year.In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

- (2) A tax year the whole of which falls within P’s period of ownership is “a non-qualifying tax year” in relation to the dwelling-house if P –
  - (a) was not resident for that tax year in the territory in which the dwelling-house is situated, and
  - (b) did not meet the day count test in respect of the dwelling-house in that tax year (see section 222B).
- (3) A partial tax year is “a non-qualifying partial tax year” in relation to the dwelling-house if P –
  - (a) was not resident for the tax year in question in the territory in which the dwelling-house is situated, and
  - (b) did not meet the day count test in respect of the dwelling-house in that partial tax year.
- (4) Where part only of a tax year falls within P’s period of ownership, that part is a “partial tax year” for the purposes of this section.
- (5) Where a gain to which section 222 applies is not a NRCGT gain, subsection (1) does not apply in respect of a tax year or partial tax year before the tax year 2015-16.
- (6) In subsection (5) a “NRCGT gain” is a gain in respect of which an individual is (in whole or in part) chargeable to capital gains tax under section 7AA(1) or (2).
- (7) For the purposes of this section an individual is resident in a territory other than the United Kingdom (“the overseas territory”) for any period in relation to which the condition in subsection (8) is met.
- (8) The condition is that the individual is liable to tax in the overseas territory under the law of that territory by reason of the individual’s domicile or residence.
- (9) But the condition in subsection (8) is not treated as met if the individual’s liability to tax in the overseas territory is in respect only of income from sources in that territory or capital situated there.
- (10) Where an individual is resident in the overseas territory for part, but not the whole, of a tax year, then for the purposes of this section –
  - (a) if the individual is resident in the overseas territory for half or more than half of the tax year, the individual is counted as being resident in the overseas territory for the tax year, but
  - (b) otherwise, the individual is counted as not being resident in the overseas territory for the tax year.
- (11) Section 11(1)(a) (visiting forces etc) is to be disregarded in determining for the purposes of this section whether or not an individual is resident in the United Kingdom.
- (12) Subsection (1) is subject to –
  - (a) section 222(8) (job-related accommodation), and
  - (b) section 223(3) (absence reliefs).

#### **222B Day count test**

- (1) This section explains how P meets the day count test (see section 222A) with respect to the dwelling-house or part of a dwelling-house mentioned in section 222(1) in a full or partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

- (2) In a full tax year, P meets that test with respect to the dwelling-house if, during that year, P spends at least 90 days in the dwelling-house or in one or more other qualifying units.
- (3) In a partial tax year, P meets that test with respect to the dwelling-house if, during that partial tax year, P spends at least the relevant fraction of 90 days in the dwelling-house or in one or more other qualifying units.
- (4) The relevant fraction is the number of days in the partial tax year divided by the number of days in the tax year, rounded up to the nearest whole number if necessary.
- (5) For the purposes of subsections (2) and (3) the days need not be consecutive, and days spent in different qualifying units may be aggregated.
- (6) A day spent by P’s spouse or civil partner in the dwelling-house, or in a dwelling-house or part of a dwelling-house which is a qualifying unit in relation to P, counts as a day spent by P in the dwelling-house or qualifying unit (but no day is to be counted twice as a result of this subsection).
- (7) For the purposes of the day count test, if an individual is present in a qualifying unit at the end of a day, that day counts as a day spent by the individual in the qualifying unit.
- (8) For the purposes of this section a dwelling-house or part of a dwelling-house is a qualifying unit in relation to P if –
  - (a) P has an interest in it, and
  - (b) it is situated in the same territory as the dwelling-house mentioned in subsection (1).
- (9) In this section “partial tax year” has the meaning given by section 222A(4).”

4 (1) Section 223 (amount of relief) is amended as follows.

(2) After subsection (4) insert –

“(4A) An individual is not to be allowed both of the following in respect of the same period –

- (a) relief under subsection (3) in respect of the dwelling-house or the part of the dwelling-house, and
- (b) relief under this section in respect of another dwelling-house or part of a dwelling-house of the individual.

But paragraph (b) does not include relief for the last part of the period of ownership referred to in subsections (1) and (2).”

(3) For subsection (7) substitute –

“(7) In this section “period of ownership” –

- (a) does not include any period before 31 March 1982, and
- (b) where the gain to which section 222 applies is one in respect of which the individual is (in whole or in part) chargeable to

capital gains tax under section 7AA(1) or (2), does not include any period before 6 April 2015 (but see subsection (7A)).

- (7A) Paragraph (b) of the definition of “period of ownership” does not apply in a case where paragraph 9 of Schedule 4ZZB applies by virtue of sub-paragraph (1)(b) of that paragraph (the individual has made an election for the retrospective basis of computation to apply).
- (7B) In this section “period of absence” means a period during which the dwelling-house or the part of the dwelling-house was not an individual’s only or main residence.”

5 After section 223 insert—

**“223A Amount of relief: disposals chargeable under section 7AA**

- (1) This section applies where—
- (a) the individual mentioned in section 223(1) (“P”) acquired the asset to which the gain mentioned in section 222(1) is attributable before 6 April 2015, and
  - (b) P’s period of ownership for the purposes of section 223 begins on that date because of paragraph (b) of the definition of “period of ownership” in section 223(7).
- (2) Times before 6 April 2015 are to be ignored in determining whether or not condition A in section 223 is met in relation to a period of absence, unless P elects that this subsection is not to apply in relation to the period.
- (3) An election under subsection (2) must specify which day before 6 April 2015 P relies on in relation to the period of absence for the purpose of meeting condition A in section 223.
- (4) Where P has made an election under subsection (2), section 223 applies as if relevant prior periods of absence counted towards the maximum periods (and maximum aggregate periods) specified in subsection (3)(a), (c) and (d) of that section.
- (5) In relation to a maximum period (or maximum aggregate period) specified in paragraph (a), (c) or (d) of section 223(3), “relevant prior period of absence” means a period of absence which would have counted towards that maximum period (or maximum aggregate period) if the bridge period were included in the period of ownership.
- (6) In subsection (5) “the bridge period” means the period beginning with the day specified in the election and ending with 5 April 2015.”

6 (1) Section 225 (private residence occupied under terms of settlement) is amended as follows.

(2) Renumber the section as subsection (1) of that section.

(3) In subsection (1) (as so renumbered)—

- (a) in the words before paragraph (a), after “person” insert “(“B”);
- (b) in paragraph (a), for “the occupation of the dwelling-house or part of the dwelling-house,” substitute “the matters dealt with in subsection (2).”

- 
- (4) After subsection (1) insert –
- “(2) In sections 222 to 224, as applied by subsection (1), references to the individual, in relation to –
- (a) the occupation of the dwelling-house or part of the dwelling-house,
  - (b) residence in a territory, or
  - (c) meeting the day count test,
- are to be taken as references to B.”
- 7 (1) Section 225A (private residence held by personal representatives) is amended as follows.
- (2) In subsection (5) –
- (a) in paragraph (a), for the words from “the occupation” to the end substitute “the matters dealt with in paragraph (aa),”;
  - (b) after paragraph (a) insert –
    - “(aa) in relation to the occupation of the dwelling-house or part of the dwelling-house, residence in a territory, or meeting the day count test, references to the individual are to be taken as references to a qualifying individual or qualifying individuals, and”.
- (3) After subsection (6) insert –
- “(7) In subsection (5)(aa) “a qualifying individual” means an individual by virtue of whom the first and second conditions are satisfied and “qualifying individuals” means two or more individuals by virtue of all of whom (taken together) the first and second conditions are satisfied.”
- 8 The amendments made by this Schedule have effect in relation to disposals made on or after 6 April 2015.

## EXPLANATORY NOTE

### PRIVATE RESIDENCE RELIEF

#### SUMMARY

1. Clause [X] introduces Schedule [A], which restricts access to capital gains tax (CGT) private residence relief when the residence is in a country where the person making the disposal is not also tax resident. The changes apply to disposals made on or after 6 April 2015.

#### DETAILS OF THE SCHEDULE

##### *Clause [X]*

2. Clause [X] introduces Schedule [A], which amends capital gains tax private residence relief.

##### *Schedule [A]*

3. Paragraph 1 of Schedule [A] introduces changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992).

4. Paragraph 2 of Schedule [A] inserts new subsections (5A) to (5C) into section 222 of TCGA 1992. These provide that a non-UK resident person may determine which of two or more residences their main residence is for any period at the time of disposal.

5. Paragraph 3 of Schedule [A] inserts new sections 222A and 22B into TCGA 1992. These treat a residence as not being occupied as a residence for a tax year (the “deeming” rule) when it is located in a territory in which the person is not tax resident and the person is not present in it for at least 90 midnights during the year (the “90-day” rule). Where the property is owned for part of a year the 90-day rule is reduced by a proportionate amount. Where more than one residence is owned in the same territory during the year, the 90-day rule applies across the properties.

6. Paragraph 4 of Schedule [A] inserts new subsection (4A) into section 223 of TCGA 1992 and amends the definitions of “period of ownership” and “period of absence” in consequence of the deeming rule. They ensure that an individual does not obtain relief in respect of more than one residence for the same period.

7. Paragraph 5 of Schedule [A] inserts new section 223A into TCGA 1992. This holds that where a non-UK resident person disposes of a dwelling-house, the use of the property prior to 6 April 2015 is ignored in determining eligibility to private residence relief unless the



person otherwise elects and specifies the date as to when, prior to then, the property was the person's only or main residence. Any absence from that date to 5 April 2015 is deducted from the amount of absence available for relief for periods after 5 April 2015.

8. Paragraph 6 of Schedule [A] amends section 225 of TCGA 1992 to make corresponding changes in respect of beneficiaries of a trust occupying a dwelling-house under the terms of the settlement.

9. Paragraph 7 of Schedule [A] amends section 225A of TCGA 1992 to make corresponding changes in respect of legatees of a deceased person occupying a dwelling-house under an entitlement as legatee.

10. Paragraph 8 of Schedule [A] contains commencement provisions.

## **BACKGROUND NOTE**

11. No capital gains tax (CGT) is due on gains accruing on the disposal of a dwelling-house if the person making the disposal has used it as their only or main residence throughout their period of ownership.

12. Where a dwelling-house was the person's only or main residence for part of their period of ownership only an appropriate fraction of the gain is not chargeable to CGT. The remaining portion of the gain is chargeable to CGT subject to final period relief (which takes out of charge the last 18 months of ownership); relief for certain types of absences; and lettings relief.

13. Where a person has more than one residence, he may determine for any period which of them is his main residence by making an election.

13. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: [alan.mcguinness@hmrc.gsi.gov.uk](mailto:alan.mcguinness@hmrc.gsi.gov.uk)).