

Profits from a trade of dealing in or developing UK land: BIM60510: Guidance

This document provides guidance on the legislation introduced in the Finance Act 2016 on dealing in and developing UK land, both on the territorial scope and on the provisions in Part 8ZB CTA 2010 and Part 9A ITA 2007.

8th December 2016

Foreword

In the 2016 Budget, the Government announced changes designed to counter the use of offshore structures, in order to disguise what is in essence a trade in land or a trade in developing land, and ensure the taxation of onshore and offshore property developers was put on a level playing field. These rules do not alter the treatment of or recharacterise investment activities, except where they are part of such a wider trading activity. The legislation was introduced in the Finance Act 2016, and applies from 5 July 2016.

This guidance note should be read alongside the legislation, and the Explanatory Notes which were published on 6th July.

HMRC will review and periodically update this guidance in light of experience and comments made by businesses, advisers and other interested parties. It will, in due course, be incorporated into HMRC's Business Income Manual (BIM). Any comments on the guidance should be sent to lindsay.mckenzie@hmrc.gsi.gov.uk.

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Chapter 1 - Introduction to manual: Introduction and overview

BIM60515: Overview

This guidance covers:

- Amendments to Section 5 CTA 2009, and the introduction of new Sections 5A and 5B;
- Amendments to Section 6 ITTOIA 2005, and the introduction of new Sections 6A and 6B;
- Repeal of Part 18 CTA 2010 and insertion of Part 8ZB CTA 2010: "Transactions in UK land";
- Repeal of Chapter 3 Part 13 ITA 2007 and insertion of Part 9A ITA 2007: "Transactions in UK land";
- Commencement and transitional provisions (Sections 80 and 81 FA 2016);
- Notification, assessment and payment.

The amendments to Section 5 CTA 2009 and Section 6 ITTOIA 2005 extend the scope of UK taxation to profits from a trade of dealing in or developing UK land, regardless of the residence of the person making the disposal.

The transactions in land legislation is repealed and replaced by new legislation with additional provisions, including specific rules with regard to fragmentation, enveloping and anti-avoidance.

One aspect of the commencement and transitional provisions is to prevent tax avoidance between Budget Day (16 March 2016), when the changes were announced, and the introduction of the legislation.

The legislation applies from 5 July 2016 and the anti-forestalling rules apply to transactions on or after 16 March 2016.

Who is affected?

The rules apply to resident and non-resident companies and individuals carrying on a trade of dealing in or developing UK land either directly or indirectly through, for example, holding an interest in a partnership that carries on a trade of dealing in or developing UK land. Where the income or profits are already fully chargeable to tax as income in the UK there will be no double charge. This means there will be no impact on UK businesses if profits are already fully taxed as income in the UK.

Customer engagement with HMRC

HMRC is committed to helping its customers get their tax affairs right. Companies and individuals affected are encouraged to engage with HMRC in an open and transparent way. Where a customer has a CRM they should be their first point of contact. Guidance on the non-statutory clearance service offered by HMRC can be found at the following link: <https://www.gov.uk/guidance/non-statutory-clearance-service-guidance>

Process and procedure

Profits from disposals are to be treated as trading profits. The profits should be calculated under normal computational rules under Part 3 CTA 2009 or Part 2 ITTOIA 2005. See [here](#).

Both resident and non-resident companies and individuals will need to notify of chargeability and register to pay tax.

No challenge on the basis of this legislation should be made unless approval has been sought from CTIS. Where a challenge is being considered, a submission should be made to Lindsay McKenzie, Ryan McMahon or Sam El-Grew.

DPT notification requirements

Companies must notify HMRC if they are potentially within the scope of DPT. The DPT guidance provides details on when a notification is required at DPT2010.

The guidance explains a company must notify where it is potentially within the scope of DPT. Where UK tax is paid on all profits from dealing in or developing UK land it would be unlikely for any of the notification conditions to be met.

Introduction to manual: contact point

If you have any comments on this guidance, or suggestions for improvement, please send them to:

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Introduction to manual: abbreviations used

PE – Permanent Establishment

CTA – Corporation Tax Act

ITA – Income Tax Act

ITTOIA – Income Tax (Trading and Other Income) Act

TIOPA - Taxation (International and Other Provisions) Act

Chapter 2 - Profits from a trade of dealing in or developing UK land

BIM60520: Profits from a trade of dealing in or developing UK land: Overview

All profits from a trade of dealing in or developing UK land are now specifically subject to tax in the UK.

The new rules have been brought in through amendments to Section 5 CTA 2009 and Section 6 ITTOIA 2005, repeal of Part 18 CTA 2010 and Chapter 3 Part 13 ITA 2007, and the introduction of Part 8ZB CTA 2010 and Part 9A ITA 2007.

The amendments to Section 5 CTA 2009 and Section 6 ITTOIA 2005 expand the scope of the UK legislation, to include dealing in and developing UK land regardless of the residence of the company or individual, or whether that company or individual is trading in the UK through a permanent establishment.

Section 5B CTA 2009 and Section 6B ITTOIA 2005 set out what is meant by a trade of dealing in or developing UK land.

Part 8ZB CTA 2010 and Part 9A ITA 2007 prescribe the treatment of certain transactions or arrangements that will form part of profits of a trade of dealing in or developing UK land.

The commencement and transitional provisions set out the treatment of transactions in the period between Budget day (16 March 2016) and the introduction of the legislation on 5 July 2016; and of transactions that straddle 5 July 2016.

BIM60525: Profits from a trade of dealing in or developing UK land: Expansion of territorial scope of Corporation Tax and Income tax: Overview

The UK's territorial scope of charge to corporation tax and income tax is set out in Section 5 CTA 2009 and Section 6 ITTOIA 2005.

Prior to the changes in the Finance Act 2016 a non-resident company was chargeable to UK Corporation Tax, only to the extent that the profits were attributable to a UK Permanent Establishment. In circumstances where its arrangements met the specific conditions in Part 3 Finance Act 2015 it may have been charged to Diverted Profits Tax.

The territorial restriction has been removed for UK land transactions. Section 5 CTA 2009 and Section 6 ITTOIA 2005 have been amended to the effect that non-resident companies, and non-resident non corporates are now within the charge to corporation tax or income tax (as appropriate) on the full profit, from carrying on a trade of dealing in or developing UK land.

It is not necessary for them to be trading through a permanent establishment in the UK or for them to be resident in the UK.

The expansion of the territorial scope does not impact the treatment of rental income to non-resident landlords. Where a non-resident company which does not carry on a trade in the United Kingdom through a permanent establishment in the United Kingdom is within the new CT charge and holds investment properties or derives rental income from properties in the UK such rental income remains subject to income tax and is not taxed as part of the new trade.

Where a non-resident company is within the new CT charge and it derives rental income from properties it holds as part of its trade, the rental income will be subject to corporation tax if it is derived from a permanent establishment in the United Kingdom. If the non-resident company has no permanent establishment in the UK the rental income will be subject to income tax.

Where a non-resident company within the new CT charge, holds properties on trading account and also derives rental income from those properties, the rental income will be within the CT charge if it is derived from a permanent establishment in the United Kingdom - otherwise, the rental income will be charged to IT.

Example

Company X is not resident in the UK. It purchases a block of flats in the UK to develop and sell as part of a trading business. As Company X carries on a trade of developing UK land it is within the charge to UK corporation tax. All of the profits from the trade of developing UK land will be subject to corporation tax regardless of the place of residence of the company, or the amount of profit that would be attributed to a UK PE of Company X.

BIM60530: Profits from a trade of dealing in or developing UK land: Expansion of scope of Corporation Tax and Income tax: Trade of dealing in or developing UK land

The meaning of trade of dealing in or developing UK land is set out in Section 5B CTA 2010 and Section 6B ITTOIA 2005.

A non-UK resident's trade of dealing in or developing UK Land consists of:

- dealing in [UK land](#) or developing UK land for the purpose of disposing of it, this includes redeveloping, or
- any activities which are [treated as profits of a trade of dealing in or developing UK land](#) by virtue of Part 8ZB CTA 2010 or Part 9A ITA 2007.

A trade of dealing in land exists where land and/or property is acquired or developed with a view to profit on disposal. This is in contrast to the situation where property is acquired for investment, usually rental income, but over time that property may increase in value and a profit may therefore be realised from its eventual disposal. This increase in value may arise as a result of movement in the property market or from action taken by an owner to enhance the value of the property for investment purposes.

To establish if an individual or company is trading, the facts of each case are key. The list below gives some factors which could have an impact when considering if the business is carrying on a trade or investment in respect of land. This list is not definitive and each case will depend on its individual facts and circumstances.

- Length of time the land is owned.
- Intention at purchase date.
- Any change of intention.
- How the acquisition is funded.
- The usage of the property by the owner.
- Whether it is developed or improved (rather than repaired) before disposal.
- Whether there is a connection with an existing trade – for example a builder buying a property to renovate and sell.

The anti-fragmentation rule needs to be taken into account when considering whether a person is trading ([BIM60600](#)); slice of the action contracts and similar arrangements ([BIM60645](#)) are also to be considered as trading.

Guidance on the meaning of trade is at [BIM20000](#)

BIM60535: Profits from a trade of dealing in or developing UK land: Expansion of scope of Corporation Tax and Income tax: Exclusion of charge to income tax

The provisions of the Income Tax Acts which relate to the charge to income tax on non-resident companies, do not apply to income of a company where the company is not a UK resident, and the income is profits of a trade of dealing in or developing UK land (Section 5B(6) CTA 2009).

BIM60540: Profits from a trade of dealing in or developing UK land: Expansion of scope of Corporation Tax and Income tax: Permanent Establishment exemption

Section 18A (2A) CTA 2009 sets out how the Permanent Establishment exemption applies to a foreign Permanent Establishment carrying out a trade of dealing in or developing UK land.

Where a company makes an election for foreign Permanent Establishment exemption, profits from a company's trade of dealing in or developing UK land will not benefit from exemption. This means the full amount of the profits or losses relating to the UK property trade should be taxed or allowed.

Example

UK resident Company X has a non UK Permanent Establishment (PE) which is developing a property in the UK. The PE has a total profit of 100 and 40 relates to the UK property trade. For the purposes of PE exemption the 40 relating to the UK property trade should not be left out of account and should be taxed in the UK.

BIM60545: Profits from a trade of dealing in or developing UK land: Overview of legislation

The legislation in Part 8ZB CTA 2010 and Part 9A ITA 2007 sets out conditions which, if met, result in profits from a disposal being treated as profits from a trade of dealing in or developing UK land.

The 'Transactions in land' legislation (Part 18 CTA 2010 and Chapter 3 Part 13 ITA 2007) has been repealed and replaced. The legislation is now in Part 8ZB CTA 2010 for corporation tax, and Part 9A ITA 2007 for income tax.

To the extent that profits or gains from a land disposal would be brought into account as income by other sections of legislation, it will not be taxed again by Part 8ZB CTA 2010 or Part 9A ITA 2007.

BIM60550: Profits from a trade of dealing in or developing UK land: Transactions in UK land: Amounts treated as trading profits

The transactions in UK land provisions only apply when certain gateway conditions are satisfied.

Section 356OB CTA 2010 sets out the conditions for corporation tax, and Section 517B ITA 2007 sets out the conditions for income tax.

The conditions which must be met are:

- A [person](#) realises a profit or gain from the [disposal](#) of all or part of any [UK land](#)

and

- Any one of [conditions A to D](#) apply.

Where the conditions are met the profit or gain is to be treated as a profit of a trade of dealing in or developing UK land, and arising to the [chargeable company or person](#).

The profit or gain will only be chargeable/ allowable if it would not already have been brought into account as income in calculating profits in another section of legislation. See: [Profit already brought into account](#)

The profits should be treated as arising in the period in which the profit or gain from the disposal are realised. Where there is a deemed disposal (for example, an appropriation from trading stock to investment) or write up which would be taxed under Part 3 CTA 2009 if the company was UK Resident, it will be taxed under the transactions in UK land rules.

If property is appropriated into trading stock, account must be taken of Chapter 10 of Part 3 CTA 2009 for corporation tax and Chapter 11A of Part 2 ITTOIA 2005 for income tax. The profits should be calculated based on the amount which the stock would have realised if sold in the open market at the time of the appropriation. S161 TCGA 1992 will apply where these conditions are met.
<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg69200>

All references to profits or gains also apply in situations where there is a loss.

The meaning of realising a gain can be found [here](#).

BIM60555: Profits from a trade of dealing in or developing UK land: Amounts treated as profits of a trade of dealing in UK land: Conditions

The purpose of this legislation is to ensure that profits from activities which, when looked at in the round, amount to (i) a trade in land or (ii) a trade of developing land, are taxed as trading profits. It is not the purpose of these rules to alter the treatment of activity that is clearly investment.

The rules effectively look through structures or arrangements which might allow an argument, that on a strict legal analysis, the transactions in question do not amount to a trade.

These rules do not alter the treatment of or recharacterise investment activities, except where they are part of such a wider trading activity. In particular, they do not apply to transactions such as buying or repairing a property for the purpose of earning rental income, **or** as an investment to generate rental income and enjoy capital appreciation.

The legislation should always be understood in the context that it is taxing only what are, in substance, trading profits.

Amounts are treated as profits of a trade of dealing in or developing UK land where one or more of Conditions A to D are met. The conditions are set out in Section 356OB (4)-(7) CTA 2010 and Sections 517B (4)-(7) ITA 2007.

If any of the conditions are met and a person realises a profit or gain from a disposal of UK land, the profits should be treated as profits of a trade of dealing in or developing UK land.

The conditions are as follows:

Condition A: the [main purpose, or one of the main purposes](#), of acquiring the land was to realise a profit or gain from disposing of the land.

Condition B: the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.

For example, if an individual purchases shares and the reason for acquiring the shares was to dispose of land held by the company and make a profit.

Condition C: the land is held as trading stock.

Condition D: (where the land has been developed) the main purpose or one of the main purposes of developing the land was to realise a profit or gain from disposing of the land.

BIM60560: Profits from a trade of dealing in or developing UK land: Amounts treated as profits of a trade of dealing in UK land: Main purpose or one of the main purposes

Conditions A, B and D contain a test of whether the “main purpose or one of the main purposes” for acquiring or developing the land, or the property deriving its value from land, was to make a profit or gain from disposal of land. This is a test of purpose, not of benefit or expectation.

The concepts of ‘the main purpose’ and ‘a main purpose’ are used widely in UK tax law. A person may have more than one main purpose in entering into a transaction, and ‘a main purpose’ is a wider test than requiring something to be ‘the main purpose’. It is therefore important to consider the question of trading alongside a main purpose test when considering whether or not this legislation applies, to ensure that what are genuinely non-trading transactions are not brought within its scope.

An example of a type of arrangement where a main purpose test might be invoked would be a fact pattern similar to that in **Ransom v Higgs** [1974] 50TC1.

If a person buys land with the intention of building on part of it to retain for their own purposes, and of building on the rest of it for sale at a profit [in a manner consistent with trading activity], it is clear that one of their main purposes is to make a trading profit from development and disposal. In this instance at the point of acquisition the precise section of the land to be disposed of and the costs relating to that section may not be known. If this is the case profits should be calculated using the original cost of the land apportioned on a just and reasonable basis, subject to the anti-fragmentation provisions.

It may be the case that an investor in UK property expects primarily to benefit from capital growth over time, in addition to obtaining rental yield. The legislation requires that a main purpose of the arrangement is to obtain a gain from disposing of the property. This condition will not be met in the case of straightforward long-term investment, where the economic benefit arising to the owner is the result of market movement from holding that asset rather than transactions that are in the nature of trading.

An owner may also seek to increase the value of their property through improving the quality and security of the property’s rental income, for example by negotiating longer leases. Alternatively, they may improve the property through some form of refurbishment in order to attract higher paying tenants, or subdivision of the property to attract more tenants, which again would increase the value of the property. Rental income is often an indicator that the asset is held as an investment, although this is not conclusive - an asset held for trading purposes could produce rental income over a relatively short period, equally an asset held over a longer period may for a number of reasons not produce income but could still be seen as an investment. The facts of each case will determine whether or not one of the main purposes is to make a trading profit from development and disposal.

It is possible for the intention to change over time, at which point the main purpose test would need to be reconsidered (see examples 3, 4 and 5 below).

Example 1

A non-resident property investor purchases a property with the primary purpose of realising rental income from the land purchased. When the investor purchased the land one of the factors they considered was likely capital appreciation of the land. After letting out the property for 7 years they make some repairs and dispose of the land. This is an example of an investment not trading transaction. The main purpose of the transaction is the rental income. Whilst the long term capital appreciation could be a reasonable expectation, it is clearly not a profit from a disguised trading transaction and would not therefore meet condition A.

Example 2

A non-resident property investor purchases a property with the intention of developing then selling the property. After developing the property they let it out for 6 months while they wait for the market to pick up. In this instance a main purpose of acquiring the land, was to realise a profit from disposing of the land and condition A would be met.

Example 3

An individual property investor acquires an old block of flats. They rent the flats out for several years then decide to build new flats on the site. They obtain planning permission for a new development which they complete and sell.

In this example there has been a [change of intention](#) and Section 517L ITA 2007 will apply. Only the profit relating to the period after the change of intention should be taxed as a trading profit. The portion relating to the period where there was an investment intention should not be included in the tax calculation.

Please see [BIM60825](#) for details on [apportionment](#).

Example 4

Company X purchases 100% of the share capital of company Y, which owns a UK property on investment account. Company X has the intention of realising a profit in a manner consistent with trading activity, by procuring company Y that sells the property.

This would fall under Condition B.

In this example there has been a [change of intention](#) and Section 356OL CTA 2010 will apply. Only the profit relating to the period after the change of intention should be taxed as a trading profit. The portion relating to the period where there was an investment intention should not be included in the tax calculation.

Please see [BIM60825](#) for details on [apportionment](#).

Example 5

An individual purchases a rundown block of flats. They intend to develop the flats into luxury apartments. After development they intend to keep 55 for rental and sell 45. In this instance a main purpose of acquiring the land was to realise a profit or gain from disposing of it so condition A would be met. The profit relating to the 45 apartments should be taxed as trading income. Where it is not possible to specifically identify costs relating to the 45 apartments just and reasonable apportionment should be used.

Example 6

A non-resident property investor purchases an ageing block of offices in a prime location with the primary purpose of realising rental income from the land purchased. In order to achieve a higher rate of rent and a better quality of tenant, the investor redevelops the offices soon after the acquisition and then lets out the redeveloped offices for a period of 5 years. After such time they dispose of the land at a gain. In this instance the main purpose of the transaction is the rental income. Whilst the office block is redeveloped, the primary purpose for doing so is to improve the yield from the investment rather than realise a gain.

Example 7

A non-resident property investor purchases a property with a view to realising rental income from the land purchased. At the time that the investor purchased the land it anticipated holding the property for over 5 years. In fact, after 2 years, the investor suffers a liquidity event and is forced to sell the property. The main purpose of the transaction is the rental income and the sale was motivated by a sudden unforeseen emergency. Condition A would not be met in this instance.

Example 8

A non-resident property investor purchases a property with a view to realising long term capital appreciation from the land purchased. The company will have to wait a significant number of years before the lease ends, or the tenant is prepared to surrender the lease. During the time that the property is held, the rental profits are poor, perhaps due to a rent-free period or vacancy arising from unexpected occupier insolvency. The investor sells the property after 5 years for a significant profit due to a market increase in the value of the land. This is an example of an investment and not trading transaction and condition A would not be met.

Example 9

A non-resident property investor purchases a property with a view to realising rental income from the land purchased. At the time that the investor purchased the land it anticipated holding the property for over 5 years. In fact, after 18 months, the investor sells the property early as a result of unforeseen circumstances. In this instance the main purpose of the transaction is the rental income and the sale was motivated by unforeseen circumstances so condition A would not be met.

BIM60565: Profits from a trade of dealing in or developing UK land: Amounts treated as profits of a trade of dealing in UK land: Person realising a profit or gain

The legislation applies where the person, or persons, who obtain the profit or gain meets one of the conditions in Section 356OB(2) CTA 2010 or Section 517B(2) ITA 2007.

The person must be either:

- The person acquiring, holding or developing the land.
- A person who is [associated](#) with that person, at a [relevant time](#) or
- A person who is party to, or concerned in an [arrangement](#).

An arrangement is covered by Section 356OB(3) CTA 2010 or Section 517B(3) ITA 2007, if it is carried out with respect to all or part of the land, and enables a profit or gain to be realised by an indirect method or a series of transactions.

Any number of transactions can be a single arrangement where they have a common purpose or there is sufficient evidence of a common purpose.

The definition of chargeable person is at [BIM60820](#).

BIM60570: Profits from a trade of dealing in or developing UK land: Disposals of land: profits treated as trading profits

Where the conditions in Section 356OB CTA 2010 or Section 517B ITA 2007 have been met, the profits are treated as trading profits by Section 356OC CTA 2009 or Section 517C ITA 2007.

The amounts should be treated for corporation tax or income tax purposes as profits of a trade carried on by the [chargeable company or person](#).

If the company or person are not UK resident then the company or individual's trade is that of dealing in or developing UK land.

Any profits or gains which have already been brought into account, for income tax or corporation tax purposes, by another Section of legislation should not be included.

The profits should be treated as arising in the accounting period in which the profit or gain is realised.

BIM60575: Profits from a trade of dealing in or developing UK land: Disposals of property deriving its value from land

It is possible to realise profits from the disposal of any property that derives its value from land rather than from the land itself. There are rules in the legislation to ensure the right amount of tax is paid where any property which derives its value from land is disposed of.

Example

A new company is setup to acquire land which will be developed. The intention is to sell the shares in the company when the land is developed rather than the land itself. If all of the conditions are met the rules will apply to tax the profit on disposal of the shares.

BIM60580: Profits from a trade of dealing in or developing UK land: Disposals of property deriving its value from land

Section 356OD CTA 2010 and Section 517D ITA 2007 set out the conditions which, if met, mean profits on the disposal of property which derives its value from land should be treated as trading profits. Section 356OD CTA 2010 and Section 517D ITA 2007 differ from condition B which applies where it is the land which is disposed of not the property which derives its value from the land.

All of the following conditions must be met for Section 356OD CTA 2010 and Section 517D ITA 2007 to apply:

- A person realises a profit or gain from a disposal of any property which (at the time of the disposal) derives at least 50% of its value from land in the United Kingdom, and
- The person is a party to, or concerned in, an arrangement concerning some or all of the project land, and
- The main purpose or one of the main purposes of the arrangement, is to deal in or develop the project land and realise a profit or gain from a disposal of property deriving the whole or part of its value from that land.

[Property deriving its value from land](#) is widely defined and is set out at Section 356OR CTA 2010 and Section 517S ITA 2007.

Where a company or individual are charged by virtue of S356OD CTA 2010 or Section 517D ITA 2007, they may not have started a trade prior to the point of disposal. If this is the case the obligation to notify will arise when the shares are disposed of.

Example 1

Company X owns 100% of Company Y. Company Y purchases a piece of UK land and carries out the development of a block of flats. Company Y has no other substantial assets so over 50% of the company's value relates to the land. The intention of Company X is for Company Y to develop the land and to immediately dispose of their shares in Company Y when the land is developed. When the development is completed Company X sells the shares in Company Y to a third party.

In this example the disposal meets the conditions and is a disposal of property deriving its value from land. The profits should be treated as trading profits of Company X.

Example 2

Company X purchases 100% of the share capital of Company Y, whose only asset is a dated office block that is held on investment account. Company X purchased the shares in company Y to hold as an investment and yield income.

After a period of rental there is a change of intention and a decision to redevelop and sell the office block. To carry out this disposal it is agreed Company X will dispose of its shares in company Y when the redevelopment is complete.

In this example there has been a [change of intention](#) and Section 356OL CTA 2010 will apply. Only the profit relating to the period after the change of intention should be taxed as a trading profit. The portion relating to the period where there was an investment intention should not be included in the tax calculation.

Please see [BIM60825](#) for details on [apportionment](#).

BIM60585: Profits from a trade of dealing in or developing UK land: Disposals of property deriving its value from land – profits treated as trading profits

Where the [conditions](#) are met, Section 356OE CTA 2010 and Section 517E ITA 2007 set out the profits that should be treated as trading profits.

The [relevant amount](#) should be treated as profits of a trade carried on by the [chargeable company or person](#).

If the chargeable company or person is non-UK resident, then their trade is dealing in or developing UK land.

The relevant amount should not be treated as a profit or gain for corporation tax or income tax purposes under these provisions, if it [would already be brought into account](#) as income for corporation tax or income tax [under another piece of legislation].

The profits are treated as arising in the accounting period in which they are realised.

BIM60590: Profits from a trade of dealing in or developing UK land: Relevant amount and relevant assets

Under the rules covering disposals of property deriving its value from land it is the 'relevant amount' which is subject to UK taxation. Section 356OE (5) CTA 2010 and Section 517E (5) ITA 2007 set out how to compute the relevant amount.

The 'relevant amount' is – on a just and reasonable [apportionment](#) – the amount of the profit or gain which is attributable to the relevant UK assets.

A 'relevant UK asset' is any [UK land](#) from which the property derives its value.

In all calculations, a just and reasonable basis should be used for apportionment.

Example 1

A company disposes of its shareholding in a company. The shares were purchased with the intention of dealing in the project land and making a profit from disposing of the shares which derives their value from the land. The shares are worth £10m, £6m of the value relates to a block of flats based in the UK and £4m to a housing development outside the UK. In this instance, and assuming that the acquisition costs of the shares is nil, the block of flats is the relevant UK asset and the relevant amount is £6m. If consideration paid for the shares was £5m, and 60% of that cost related to the UK development, the relevant amount would be £3m (£6m less 60% of £5m).

Example 2

An individual purchases shares in a company which is developing a large housing estate. The shares were valued at £10m and the value is derived entirely from UK Land. When the individual purchased the shares they intended to dispose of 40% of the shares to an individual who wished to purchase the land after development and hold on to the remaining 60% for the capital appreciation. In this instance the relevant UK assets are the £4m of land. The remaining £6m are investment assets, and not subject to the new legislation.

BIM60595: Profits from a trade of dealing in or developing UK land: Profit already brought into account

To the extent that profits or gains from a land disposal would be brought into account as trading income by other sections of UK legislation they will not be taxed again by Part 8ZB CTA 2010 or Part 9A ITA 2007 (Section 356C (3) CTA 2010, Section 356OE (3) CTA 2010, Section 517C (3) ITA 2007 and Section 517E (3) ITA 2007).

These sections seek to prevent double UK taxation. The provisions mean the legislation will not include profits that are already taxable as income within the UK.

Where shares in a trading company are disposed of and all of the land is held as trading stock there will be no charge as profits from disposal of the land will be chargeable on the company in the absence of avoidance arrangements.

Where the fragmented activities provisions apply, if a relevant contribution is made by an associated party and the profit would already be fully brought into account as income in calculating profits for UK corporation tax or income tax purposes, the new rules should not apply, and there will be no need to adjust taxable profits of those involved in the property transaction, as there will be no extra profit to assess.

Example

Mr A holds the shares in a family land development business. The company holds the land as a trading asset. There are no avoidance arrangements. The company pays the tax on the profit from disposing of the land so the profits are not included in any computation of charge in respect of any profits from disposal of the shares held by Mr A.

BIM60600: Profits from a trade of dealing in or developing UK land: Anti-fragmentation: Fragmented activities overview

The legislation contains specific provisions to prevent profits being fragmented between associated parties and placed outside the charge to corporation tax or income tax. The anti-avoidance provisions to prevent fragmentation are located at Section 356OH CTA 2010 and Section 517H ITA 2007.

The rules are aimed at a situation where a number of connected persons act together to carry out development activity that amounts in substance to a single trade of UK property development.

Where the conditions are met the profits or gains of the connected parties will be combined and the person making the disposal will be taxed on the whole amount.

If a relevant contribution is made by an associated party and the profit will already be brought into account as income in calculating profits, for UK corporation tax or income tax purposes there will be no extra profit to [assess](#).

Where an amount is taxed by another jurisdiction unilateral relief may be available and/or an application for MAP may be made.

Guidance on the Mutual Agreement Procedure (MAP) can be found at INTM423000.

BIM60605: Profits from a trade of dealing in or developing UK land: Anti-fragmentation: Fragmented activities rules

The fragmented activities rules apply where all of the following conditions are met:

- A company ('C') or a person chargeable to income tax ('P') disposes of land in the UK,
- Any of [conditions](#) A to D in S356OB CTA 2010 or S517B ITA 2007 are met in relation to that land, and
- A person ('R') who is [associated](#) with C/P at a [relevant time](#) has made a [relevant contribution](#) to:
 - The development of land.
 - Any other activities directed towards realising a profit or gain from the disposal of the land.

Where the fragmented activities rules apply, C/P and R will be considered as though they were the same person. This means, any profit or gain realised by C/P will be calculated as if C/P and R were one.

The fragmentation rules will bite when the land disposal is made. This means that C/P would be taxed on R's contributions at this point. If any of those contributions have already been taxed in the UK, HMRC would not look to tax them again.

Only profits of R that are directly attributable to C/P are taxed in that entity, while R's other [unrelated] profits remain taxable in R.

Where any amount is paid by R to C/P for the purpose of meeting or reimbursing the cost of corporation tax which C/P is liable to pay as a result of this rule:

- The amount will not be taken into account in calculating profits or losses of R or C/P for the purposes of income tax or corporation tax; and
- Will not for any purpose of the Corporation Tax Acts be regarded as a distribution.

BIM60610: Profits from a trade of dealing in or developing UK land: Anti-fragmentation: Relevant Contribution

The anti-fragmentation rules address the risk that a developer carrying on a trade of dealing in or developing UK land could enter into arrangements to move profits to a connected party, where the connected party is not chargeable to UK tax on the profit that they realise. This could, for example, arise where a firm supplying professional services is allocated a share of the profit from the disposal of the land. It could also arise where interest is paid to a connected party based to any extent on sharing profits from the development.

The anti-fragmentation rules apply where there is a relevant contribution. The definition of relevant contribution is wide and means any kind of contribution including but not limited to:

- The provision of professional or other services.
- A financial contribution (including the assumption of a risk).

All contributions are considered to be relevant contributions unless they are insignificant when considered in relation to the size of the [project](#).

The significance of a contribution in relation to the size of a project will depend on the facts and circumstances of each instance.

One situation where a contribution is likely to be considered insignificant is if it is a Low Value Added Service (LVAS). This is because the mark-up for a LVAS is typically low, so the cost is not likely to be material in respect of the project.

Example 1

Company X carries on a trade of dealing in or developing UK land. It receives admin services from a group company and pays a mark-up of 2% on the costs. In this instance the contribution would be regarded as insignificant and the fragmentation rules would not apply.

Example 2

Company Y carries on a trade of dealing in or developing UK land. A group company (Company Z) designs all of the buildings. Company Y pays Company Z 10% of the profits for the provision of architectural services. In this instance the profit made by Y would not be regarded as insignificant with regards to the size of the project and the fragmentation rules will apply.

Example 3

Company A carries on a trade of dealing in or developing UK land. The group has an intra group service centre run by Company B which provides IT and HR services. The costs which relate to Company A are recharged by Company B. In this instance any profit in Company B is likely to be minimal so the contribution will be insignificant.

BIM60611: Profits from a trade of dealing in or developing UK land: Anti-fragmentation: Interest

A financial contribution is considered a relevant contribution where it includes the assumption of risk by the lender. The rules are targeted at loans which aim to transfer a portion of the project profit from the company making the disposal to an associated company.

There is a relevant contribution where there is an intra group loan which results in the lender being entitled to a proportion of the profit or gain from the project (e.g. via a profit participating loan), or an intra group loan which results in the lender taking on a portion of the risk from the project. In both of these instances the interest payments may result in profits being fragmented to the lender.

Whilst interest payments may be at arm's length, they may still be relevant contributions. For example, if there is a mezzanine loan with an interest rate which is high - due to the lender taking on project risk - the loan could be arm's length, but as the high interest rate is linked to the risk of the project, it would be a relevant contribution.

Anti-fragmentation does not relate to senior lending with terms and interest rates commensurate with those available in the open market or to mezzanine debt where there is no participation in the profits/gains and/or no risk premium element; it only applies where and to the extent that significant project risk is taken on by the lender.

It is likely that if the profit is insignificant then this will be because, for example, the other party has not taken on a significant level of risk in relation to the overall project, although - as with all aspects - this has to be considered in the round.

Where a loan is from an unconnected party the anti-fragmentation rules will not apply. The rules will also not apply where lending from an unconnected party has been on-lent in whole or in part on materially the same terms.

Any loan where there is no risk premium reflected in the interest and where the interest is not linked to the profit from the disposal will not be considered a relevant contribution. In these instances the interest payments will be allowable deductions unless they are disallowed by other legislation.

Where there is a loan between connected parties which has both a portion with a risk premium and a portion without a risk premium, only the portion with the risk element will be considered to be a relevant contribution.

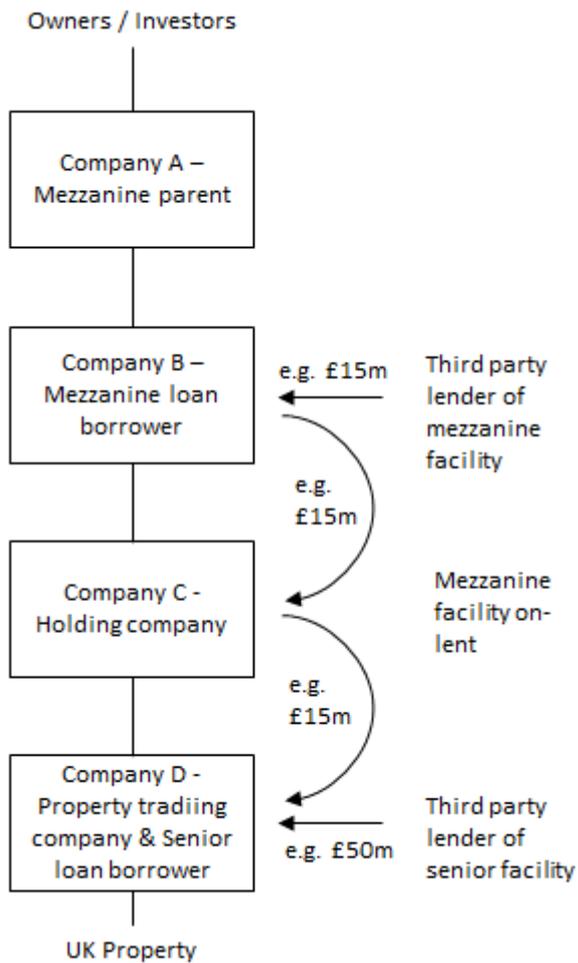
Example 1

Company C has raised as much bank finance as it can, at normal rates, to finance an apartment development. R makes a loan of £300m to Company C with a high interest rate to reflect taking on part of the risk of the project. In this instance the loan is a relevant contribution.

Example 2

R makes a loan of £100m to Company C, at normal senior rates, and this is 30% of the cost of the land. The loan is made for the initial acquisition of land and there are no unusual terms in the loan. In this instance the loan would not be considered to be a relevant contribution.

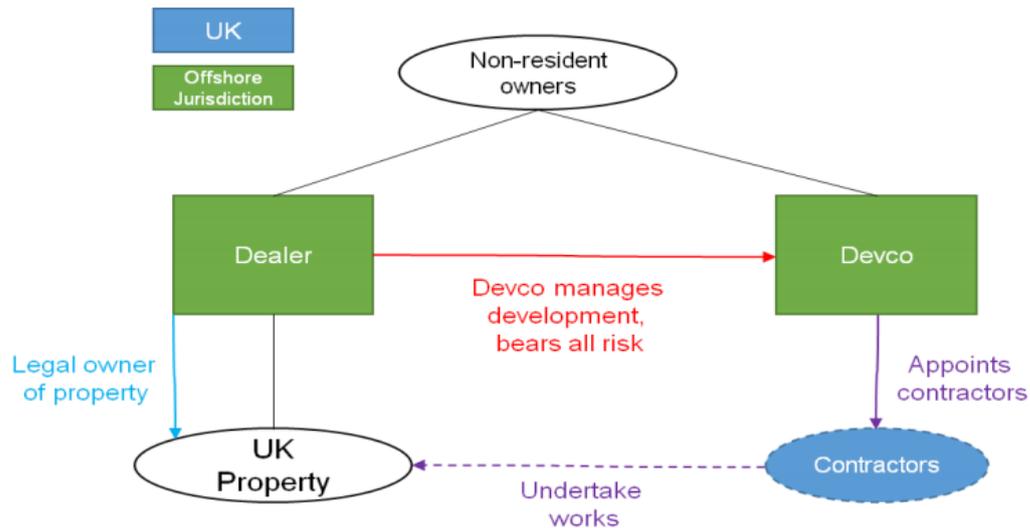
Example 3



In the example above the interest deductions would not be considered to be relevant contributions as they are all on-lending of external finance. Where there is external funding this can be traced through any number of companies.

BIM60615: Profits from a trade of dealing in or developing UK land: Anti-fragmentation: Example

Example



In the situation above, 'Dealer' is subject to the new charge, as 'Dealer' will realise a profit from the disposal of UK Land.

In this case 'Dealer' does not have the assets (e.g. cash) or employees to manage the risk comprised in the development. Instead, the risks associated with the development are funded by 'Devco'.

The significant people functions (SPFs) are performed by 'Devco', and as such, 'Devco' is paid the majority of the profits realised from the sale of the UK property. This is done in a manner that is designed to be compliant with UK transfer pricing methodologies.

As the majority of the profits are paid to 'Devco' the profit made by R is likely to be significant, so the anti-fragmentation rules will apply in this case.

- 'Dealer' has disposed of land in the UK,
- Condition A is met in relation to the land, and
- 'Devco' has made a relevant contribution to the development of the land by assuming the risk.

Any profit realised by 'Devco' will be taxed on 'Dealer' as if 'Dealer' and 'Devco' were one entity. Only profits of 'Devco' that are directly attributable to Dealer are taxed in that entity, while Devco's other [unrelated] profits remain taxable in 'Devco.'

If 'Devco' is a UK resident Section 356OC(3) would provide relief, so far as the profits would be brought into account as income in calculating profits (of any other person).

BIM60620: Profits from a trade of dealing in or developing UK land: Calculation of profit or gain

After it has been determined that the profits should be treated as trading profits, Section 356OI CTA 2010 and Section 517I ITA 2007 determine how the profit or loss from the disposal should be calculated.

The profits should be calculated in accordance with the normal principles for calculating profits of a trade. These principles can be found at Part 2 ITTOIA 2005 for income tax and Part 3 CTA 2009 for corporation tax.

Where a deduction would be allowable or receipt taxable, if a UK resident business was carrying out the trade, then the same should apply to a non-resident which has a trade of dealing in or developing UK land.

Where a non-resident company comes within the scope of corporation tax, stock should be recognised at 'carrying value'.. Where an asset is not held as a trading asset the asset should also be brought in at cost. The deeming provisions in Section 41 CTA 2009 are not sufficient to invoke the provisions of Section 158/160 CTA 2009, in order to determine the opening value of stock.

The trading profits of the development activity should be calculated based on UK GAAP or any other acceptable GAAP.

Where the non-resident business disposes of UK land as only part of a trade, or if it carries on more than one trade, the profit or loss should be [apportioned](#) between the UK land trade and the other trade on a just and reasonable basis.

Where there was not a permanent establishment in the UK prior to the commencement of the new legislation, Section 61 CTA 2009 will apply and allow pre-trading expenses. If the conditions of Section 61 CTA 2009 are met, expenses incurred not more than 7 years before the company comes into charge of the new legislation will be permissible as a deduction. For this part, an election under Section 330 CTA 2009 is not required for loan relationship debits, the debit will be permissible so long as it falls within Section 61 CTA 2009.

Where there was a permanent establishment in the UK prior to the commencement of the new legislation the '[Pre trading expenses](#)' rules in [Section 79 of FA 2016] will apply.

No equivalent rules concerning pre-trading expenses are necessary for income tax.

Losses

Carried forward trade losses will be available for use in the normal way. If a company was carrying on a trade of developing UK land - prior to enactment of the new legislation on 5 July 2016 - and was within the charge to CT by virtue of having a permanent establishment in the UK, Section 45 CTA 2010 applies, as the company will be carrying on the same trade [albeit not within the charge to CT under Section 5B CTA 2009]. Therefore, trading losses that accrued before 5 July 2016 will continue to be available to offset future income of the same trade under Section 45 CTA 2010.

Group Relief

Group relief will be permissible in the normal way. Whilst Section 134 CTA 2010 has a “UK related” condition, Section 1141(1) CTA 2010 provides that a company has a permanent establishment in a territory if it has a fixed place of business there through which the business of the company is wholly, or partly carried on. Section 1141(2)(h) provides that a fixed place of business includes a building site or construction or installation project. HMRC’s position is that most UK property development sites will fall under Section 1141(2)(h) CTA 2010 and meet the “UK related” condition at Section 134 CTA 2010.

BIM60625: Profits from a trade of dealing in or developing UK land: Period in which the gain is taxed

The profit or gain is chargeable in the:

- tax year in which the gain arises (where the person liable for the tax is an individual, a trustee or a personal representative), or
- accounting period in which the gain arises (where the person liable for the tax is a company).
Guidance on accounting periods can be found at [CTM01410](#)

Example 1

Company X has an accounting period ending on 31 December 2017. It disposes of a property on 12 May 2017. The profit will be taxable in the accounting period ending 31 December 2017.

Example 2

Non-resident Company X was not within the charge to UK taxation prior to the new legislation. At the date the new legislation came into force they were carrying on a trade of dealing in or developing UK land. As the company has first come into charge to corporation tax on the date of the introduction of the new legislation (5th July 2016) a new accounting period will begin on that date.

Example 3

Non-resident Company Y had a permanent establishment in the UK prior to the introduction of the new legislation. As the company has been chargeable to CT throughout this will not cause the cessation of a tax accounting period and the commencement of a new one.

BIM60630: Profits from a trade of dealing in or developing UK land: Profit attributable to period before intention to develop formed

It is possible that when land is acquired the intention was not to realise a gain from its disposal, but this intention changes. The treatment of situations where the intention has not always been to deal in or develop the land is set out in Section 356OL CTA 2010 and Section 517L ITA 2007.

Where [condition D](#) applies (because the land has been developed with a purpose of realising a gain and the initial intention was not to realise a gain from its disposal), only the profits relating to the period after the intention to develop should be taxed.

The [apportionment](#) between the two periods should be made on a just and reasonable basis. What is just and reasonable will vary depending on the facts of the case.

The requirement to register for UK corporation tax arises at the point that a trading intention is formed.

BIM60635: Profits from a trade of dealing in or developing UK land: Tracing value

Tracing value is set out in Section 356OM CTA 2010 and Section 517N ITA 2007.

The legislation explains how to determine the value of a property or right that derives from any other property or right.

Where it is necessary, value can be traced through companies, partnerships or trusts, and property should be attributed to shareholders, partners and beneficiaries in a way that is consistent with the circumstances.

'Partnership' includes a non-UK entity which is of a similar nature to a UK partnership.

'Trust' includes arrangements that have effect under the law of a country outside the UK, and are a vehicle in which persons acting in a fiduciary capacity hold and administer property on behalf of beneficiaries.

BIM60640: Profits from a trade of dealing in or developing UK land: Relevance of transactions and arrangements

The relevance of transactions, arrangements etc. is set out in Section 356ON CTA 2010 and Section 517O ITA 2007.

In order to determine whether there is a charge to tax in Section 356OC(1), 356OE(1) CTA 2010 or Section 517 C(1) or 517E(1) ITA 2007 you must consider any method (however indirect this might be) by which:

- Any property or right over property is transferred or transmitted, or
- The value of any property or right over property is enhanced or diminished.

This means that any occasion in which property is transferred or transmitted, or, the value of property is enhanced may be an occasion on which the transactions in UK land rules apply, resulting in a charge under Section 356OC(1), 356OE(1) CTA 2010 or Section 517 C(1) or 517E(1) ITA 2007.

BIM60645: Profits from a trade of dealing in or developing UK land: 'Slice of the action' contracts and overage arrangements

The transactions in UK land rules can be applied to 'slice of the action' contracts.

'Slice of the action' contracts are so called because they confer upon a landowner (who holds the land as an investment), the right to share in the proceeds of any subsequent development by the purchaser. In these cases, the contract for sale of the land to a builder or developer provides for consideration that is, in whole or in part, contingent upon the successful development of the land.

A common arrangement is for the landowner to receive a fixed sum at the time of the disposal, plus a percentage of the sale proceeds of each building subsequently constructed by the purchaser on the land.

Such 'slice of the action' contracts, and other overage arrangements where the landowner is entitled to receive consideration, if a specified condition is satisfied often fall within the transactions in UK land rules for the following reasons:

- The landowner is included under the definitions of '[person](#)' as the 'slice of the action' contract or other specified contractual condition is an arrangement with the person holding the land.
- The land has been developed with the main purpose of realising a profit or gain from disposing of the land when developed (condition D in Section 356OB(4) CTA2010).

Example 1

A landowner sells land to a developer for £10m. At the date of sale the land is valued at the same amount. The contract of sale specifies that if the developer makes profits in excess of £5m from developing the land the landowner will receive 10% of subsequent profits. The developer makes £8m profit and pays the landowner £300k. In this instance the landowner is concerned in an arrangement to develop the land and condition D is met. The £300k will be taxed as trading income.

Example 2

A landowner sells land to a developer for £6m. The developer's intention is to build a block of flats. The contract stipulates that £3m will be paid to the landowner immediately, and £3m will be paid to landowner at the earlier of 4 years after the date of sale or when 20 of the flats have been sold. Here the landowner is not concerned in an arrangement to develop the land. The £3m is deferred consideration receivable regardless of whether the land will be developed or not.

BIM60650: Profits from a trade of dealing in or developing UK land 'Slice of the action' contracts: Portion of gain relating to period before relevant activities commenced may be exempt

In a 'slice of the action' contract the following legislation may be relevant:

- Section 356OL CTA 2010 (for corporation tax)
- Section 517L ITA 2007 (for income tax)

Where either of these sections is in point the portion of the gain attributable to the period prior to the intention being formed may be exempted from the transactions in UK land rules.

Any gain which has accrued whilst the land functioned as a capital asset will not therefore be charged to income tax or corporation tax as income under the transactions in UK land rules. Only the gain arising after the intention to develop has been formed will be taxed as income under those rules.

The 'first intention date' is a question of fact, which should, if possible, be agreed at an early stage in any enquiry. It is expected to be the date at which it was first intended that the land would be developed or sold, for the purpose of subsequent development. When the 'first intention date' has been established you should obtain a valuation of the land from the District Valuer at that date.

CG72856 deals with the taxation of the gain attributable to the period before the intention to develop the land was formed.

BIM60655: Profits from a trade of dealing in or developing UK land: 'Slice of the action' contracts: Portion of charge may be exempt: Example

In a 'slice of the action' contract the effect of the exemption from the transactions in UK land rules can be significant. Normally, it removes an amount equal to the value of the land at the first intention date from the calculation of income chargeable to tax under those rules.

Example

A landowner agrees to sell some fields to a land developer for a fixed payment of £1m and a further payment of £0.5m which is contingent on the properties being built on the site being sold.

- The initial fixed payment of £1m is made on 5/8/2016 ,
- Further payments of £0.5m contingent on the development are agreed , and
- The value when the contract is signed on 5/8/2016 (the first intention date) is £1.2m.

The amount excluded from the calculation of the chargeable income is £1.2m. The amount of income subject to income tax or corporation tax is £0.3m: the total payments received (£1.5m) less the value of the land at the first intention date (£1.2m). The balance of the gain is taxed as a chargeable gain.

If, exceptionally, the first intention date value is less than the fixed initial payment, the amount of the gain taxed as income is the entirety of the contingent payments. The fixed initial payment is not within the calculation of the income since it is not contingent upon the development.

Example A landowner sells land held for investment purposes to a developer for £5.2m. The developer intends to build 10 houses on the land. At the date of sale the land is valued at £5m and in this case this is the first intention date. The contract of sale specifies that £1m will be paid to the landowner when the first house is sold. At the date of sale £5.2m is recognised for capital gains tax purposes. Three years later the first house is sold. At this point condition D is met and the £1m will be taxed as trading income.

BIM60660: Pre-trading expenses – Overview

The normal rules apply when determining if a company has started to trade. This means a company is treated as starting to carry on a trade when it starts to be within the charge to corporation tax (S41 CTA 2009). To determine if the company has started to trade the same factors should be considered as would be considered with a UK resident company.

Where there are write-downs in the value of a property before 5th July 2016 - and the company then falls within the new charge - the opening value of the property would follow UK GAAP or IFRS. Subsequently, the opening value of the property would take into account the write-down, but the costs represented by the write-downs are to be treated as pre-trading expenses if incurred in the seven years prior to the deemed commencement of a trade. To the extent that the write-down is reversed, there should be a corresponding adjustment to the value of pre-trading expenses.

Expenditure may have been incurred prior to this date and in most instances relief for pre trading expenditure will be obtained under the normal rules in S57 Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) or S61 Corporation Tax Act 2009 (CTA 2009)). Guidance on these rules can be found at [BIM46350](#).

Where a company was already within the charge to corporation tax as a result of carrying on the **relevant trade** through a permanent establishment in the UK, a deduction would not have been given to any element of expenditure which was not related to the UK PE. Without the introduction of specific rules no relief would be given under the pre trading rules as the trade would have already commenced.

Specific rules have been introduced in Section 80 of FA 2016 to ensure Section 61 will apply provide relief for this expenditure.

Where the conditions listed below are met, Section 61 CTA 2009 will apply as if the company had started to carry on the relevant trade at the point the company is first within the charge to corporation tax.

The following conditions must be met:

- No deduction would otherwise be available for the expenses in question.
- The company would have been eligible for a deduction under Section 41 or 61 of CTA 2009, if it had not been carrying on a **relevant trade** before coming within the charge to corporation tax as a consequence of dealing in or developing UK land.
- No relief can have been obtained for these expenses under the law of any other country other than the UK. HMRC consider relief to have been given where there is any reduction in the tax payable in any country other than the UK.

For the purposes of this legislation 'The relevant trade' means the trade of dealing in or developing UK land – see Section 5(2) and Section 5B of CTA 2009.

Example

Company A has been developing land in the UK for many years through a UK permanent establishment.

In 2014, Company A commenced 'Project X' in the UK. Company A incurred employee expenses of £2m in respect of Project X in 2014, none of which were attributable to the UK permanent establishment. Company A disposes of Project X in August 2016.

Because Company A already had a UK permanent establishment, it fell within the charge to corporation tax. Because Company A was trading prior to the introduction of the new legislation on 5 July 2016, the £2m employee expenses would not be 'pre-trading expenditure' were it not for special provisions.

So long as relief has not already been given, Company A can have relief for the £2m, to be taken into account as pre-trading expenditure under the assumption that Company A had first started trading in the UK from the commencement date of the new legislation (5 July 2016).

BIM60665: Commencement and transitional provisions: Overview

The commencement and transitional rules are in Section 80 of FA 2016 for corporation tax and Section 81 of FA 2016 for income tax.

The commencement and transitional provisions contain Targeted Anti-Avoidance Rules which prevent avoidance between the date the legislation was announced (16 March 2016) and the date the legislation was introduced (5th July 2016).

The anti-forestalling provisions apply where a person disposes of a [relevant asset](#) to an [associated person](#) between 16th March 2016 and 5th July 2016 and the company obtains a [relevant tax advantage](#) as a result of the disposal.

For the rules to apply the person must be associated at the relevant time. The relevant time is the time period which begins when the activities of the project begin and ends 6 months after the disposal.

For example, Company A makes a contract on 1 April 2016 to dispose of development property to a related party, Company B, with a view to crystallising the profit inherent in the development project before the new rules come into force. Company A will be charged on this disposal to its related party, under the transitional rules. When the property is ultimately disposed of to a third party on or after 5 July 2016, there is another disposal, and Company B will be charged under Section 5(2A) on any additional profit.

For corporation tax purposes a relevant tax advantage is a tax advantage in relation to the tax which would have been chargeable as a result of Section 5(2A) CTA 2009, which also includes profits charged as a result of Part 8ZB CTA 2010.

For income tax purposes a relevant tax advantage is a tax advantage in relation to the tax which would have been chargeable as a result of Section 6(1A) ITTOIA 2005, which also includes profits charged as a result of Part 9A ITA 2007.

Where the commencement and transitional rules apply, if a property is disposed of under a contract, the date for disposal should be treated as the date the contract was made and not the date of the property transfer. This includes conditional contracts.

Where there is a tax advantage the advantage should be counteracted by means of adjustments. The adjustments can be made by way of an assessment, the modification of an assessment or disallowance of a claim or otherwise.

Chapter 3 – Avoidance

BIM60700: Avoidance provisions

The legislation contains anti-avoidance provisions for both individuals and companies. These provisions can be found at Section 5A CTA 2009 and Section 356OK CTA 2010 for corporation tax, and at Section 6A ITTOIA 2005 and Section 517K ITA 2007 for income tax.

The provisions apply if the company or individual enters into an arrangement where the main purpose, or one of the main purposes is to obtain a [relevant tax advantage](#). Where this is the case the relevant tax advantage should be countered by means of adjustment.

An arrangement includes any agreement, understanding or scheme, transaction or series of transactions. It is not necessary for the arrangement to be legally enforceable. The definition of 'arrangement' does not include a double tax arrangement

Where there is a tax advantage adjustments should be made to counter it. How this should be done will be dependent on the circumstances. The adjustments can include assessment, the modification of an assessment, amendment or disallowance of a claim or another method.

Example

An individual is contemplating disposal of shares which derive 60% of their value from land. Just prior to the disposal the individual injects additional capital into the company to ensure the 50% test at Section 517OD (1)(a) ITA 2007 is not met. The individual argues the profits should not be treated as trading profits as the 50% condition is not met. In this instance the individual has entered into an arrangement with a main purpose of obtaining a relevant tax advantage. The tax which would have been chargeable as a result of Part 9A ITA 2007 has been reduced so an adjustment should be made to counter the tax advantage.

Chapter 4 - Definitions

BIM60800:

This chapter provides the definitions for various words used in the legislation.

BIM60805: Definitions: UK Land and property deriving its value from land

This legislation applies to UK land. UK land is described as any land situated in the United Kingdom.

The definition of 'land' is very wide and includes buildings and other structures, land covered with water (including seabed) and any estate interest, easement, servitude or right in or over land. This could include, but is not limited to, licenses and security interests over land.

The definition of 'property deriving its value from land' includes:

- Any shareholding in a company deriving its value directly or indirectly from land,
- Any partnership interest deriving its value directly or indirectly from land,
- Any interest in settled property deriving its value directly or indirectly from land, and
- Any option, consent or embargo affecting the disposition of land.

See Section 5A(3) CTA 2009, Section 356OR CTA 2010, Section 6B(3) ITTOIA 2005 and Section 517S ITA 2007.

BIM60806: Definitions: Development

Whether the land has been developed is a question of fact.

'Development' for this purpose is not defined but is interpreted to mean any change from the lands position at purchase. This could include obtaining planning permission.

When considering if obtaining planning permission is sufficient for a main purpose to be developing UK land, all of the facts of the case will need to be considered.

Example 1

A farmer has decided to sell one of his fields, he realises it will be worth more if it has planning permission so obtains planning permission prior to sale. In this instance it is unlikely a main purpose is developing UK land.

Example 2

A company carried out research and decided to purchase a plot of land as they have identified the land will be worth significantly more with planning permission. After acquisition they obtain this planning permission and sell the land. In this instance it is likely a main purpose is developing UK land.

BIM60810: Definitions: The project

For the purposes of the legislation, 'the project' is defined as:

- all activities carried out for the purpose of dealing in or developing land

- and

- all activities carried out for the purposes of any of [conditions A to D](#) (listed in Section 356OB (4)-(7) CTA 2010 and Section 517B (4)-(7) ITA 2007).

See Section 356OH(10) CTA 2010 and Section 517H(10) ITA 2007.

BIM60815: Definitions: Relevant time

The rules apply to associated parties who are connected at a 'relevant time'. Relevant time is defined at Section 356OB (8) CTA 2010 and Section 517B (8) ITA 2007.

The 'relevant time' is the time period beginning when the activities of the [project](#) begin and ending 6 months after the [disposal](#) of the land.

'The project' is all activities carried out for the purposes of dealing in or developing land and any other purposes listed at [conditions A to D](#).

BIM60820: Definitions: The chargeable company or person

The profits should be treated as profits of a trade carried on by the chargeable company or chargeable person. Generally, the person who realises the gain is the person who is liable for the tax due (Section 356OG CTA 2010 and Section 517G ITA 2007).

A different treatment applies in some particular circumstances, this special treatment does not apply where the [fragmented activities](#) rules apply.

The special rules apply where there is another person providing the value from which the gain is derived, or the opportunity to derive that value.

Where this is the case, it is that other person who is treated as receiving the income subject to tax under these provisions.

Since the tax charge is raised on the third party (i.e. someone who is not a party to the transaction in land), clear and convincing evidence is needed to show that this person, as a matter of fact, is the provider of value or the opportunity for gain. The third party may transmit the value or opportunity directly or indirectly.

Example 1

Mr B transfers developed land at £1m, which is £9m undervalue, to Company A a non UK resident company in which he is the sole shareholder. Company A immediately sells the land realising a £9m profit and immediately goes into liquidation. In this scenario Mr B could be the chargeable person in respect of that £9m gain.

Example 2

Company B - a wholly owned subsidiary of company A - develops a property as an investment. Company A sells the shares in company B to company C as soon as the development is complete, and the transaction is caught by the enveloping rules. In this situation, company A would remain the chargeable person - not company B (merely because it had developed the property), nor, company C (as the acquirer of the shares).

BIM60825: Definitions: Apportionment

The legislation requires apportionments to be made at various Sections. Where an apportionment is required Section 356OE and 356OJ CTA 2010 and Section 517E and 517JITA 2007 explain it should be made on a just and reasonable basis.

This just and reasonable method must:

- Take into account the value of what is obtained for disposing of the land, and
- Allow only such expenses as are properly attributable to the land which is subject to the disposal.

This covers apportionments of overheads, expenditure, consideration and any other amount which needs to be considered for the purposes of this legislation.

There may also be a need for apportionment when a company deals in UK land, partly for investment purposes, and partly as a trade.

BIM60830: Definitions: Realising a gain

'Realising a gain' is set out in Section 356OT CTA 2010 and Section 517T ITA 2007. The meaning of 'realising a gain' is extended to include realising a gain for another person.

Example

Person A ("A") and person B ("B") are related.

If, by a premature sale, A directly or indirectly transmits the opportunity of realising a profit or gain to another B, then A realises B's profit or gain for B.

BIM60835: Definitions: Disposal

For the purposes of this legislation the definition of 'disposal' can be found in Section 356OQ CTA 2010 and Section 517R ITA 2007.

A disposal is any case where the property is effectively disposed of either in whole or in part by one or more transactions or arrangements.

In a straightforward sale this will be the date of completion. If the date of completion is delayed but the property has effectively been disposed of an earlier date may be applied.

The definition includes part disposals. There is a part disposal where the person disposing of the asset retains any form of property derived from the asset.

Where a lease is granted with a premium the treatment of the premium will follow the rules as set out at [PIM1200](#).

Example

A developer sets up a company to complete a housing development. The developer intends to dispose of 40% of the properties to a third party and retain 60% of the properties as a longer term investment. When the properties are finished they sell 40% of their shares to the third party. In this instance the 40% is a disposal of property deriving its value from land.

Disposal: Commencement and anti-forestalling rules

As described above, there is a specific anti-forestalling rule for disposals made to associates during the period between 16 March 2016 and 5 July 2016.

For the purpose of the commencement and anti-forestalling rules, where any property is disposed of under a contract, the time the disposal is made is the time the contract is made. It is not, if different, the time the property is conveyed or transferred.

The references to 'contract' includes conditional contracts.

The main commencement and transitional provisions exclude cases where a contract for disposal was made prior to 5 July 2016. The anti-forestalling rule will not apply where the contract was made before 16 March 2016.

Example

A property is purchased off plan in February 2016, when the buyer pays an initial fee to the seller - to reserve the property - which locks in the price and takes the property off the market. The buyer performs the necessary due diligence and searches in March 2016, and subsequently enters into a binding contract for the sale/purchase of the property. Legal title will not pass until the purchase price is paid, and the contract is completed in August 2016.

Subject to there being no conditions that allowed for the agreement to be cancelled unilaterally, the contract is 'made' in March 2016, which would be the date of disposal under the commencement and transitional provisions.

BIM60840: Definitions: Relevant asset

A relevant asset is defined for the purposes of Section 356OE(6) and Section 517E(6) as land, or property which derives the whole or part of its value from land.

BIM60845: Definitions: Arrangement

An 'arrangement' includes any scheme agreement or understanding, and does not need to be legally enforceable (Section 356OP CTA 2010 and Section 517Q ITA 2007).

Any number of transactions can be regarded as a single arrangement if a common purpose can be recognised.

To be concerned in an arrangement it is necessary to be acting together in some way or to have knowledge of the purpose of the arrangement. Where there is a small shareholder who has no or little input into the company which is developing the land, it is unlikely they will be concerned in an arrangement. There is a large spectrum of situations and the specific circumstances will determine whether an individual or company is concerned in an arrangement.

Example 1

An individual shareholder purchases a small number of shares in one of the UK's largest house builders. After holding these shares for a period they decide to dispose of the shares. In this instance it is unlikely the individual is concerned in an arrangement. They are unlikely to be acting together with the house builder to deal in or develop UK land.

Example 2

An individual purchases 60% of the shares in a company which has been set up to purchase and develop a piece of land. The company will not be selling the land but will be sold to the person who wants to acquire the land. The reason for purchasing the shares was to purchase a portion of the land which will be disposed of after it is developed. When the land is developed they dispose of their shares to a third party. In this instance it is likely the individual has been concerned in an arrangement to develop the land.

BIM60850: Definitions: Associated persons

The term 'associated persons' is used in various parts of the legislation. For example, the legislation applies to persons who are 'associated' to the person acquiring, holding or developing the land, and the commencement and transitional provisions legislation applies, where a person disposes of a relevant asset to a person who is 'associated' with that person at the relevant time.

The definition of associated person is wider than the definition of [related person](#). The definition of related person is set out in Section 356OT CTA 2010 and Section 517U ITA 2007.

Companies

For companies a person is associated with the other person if they are connected by virtue of subsections (5)-(7) of Section 1122 CTA 2010, or if one is related to the other.

Individuals

For individuals a person is associated with the other person if they are connected by virtue of subsections (2)-(4) of Section 993 ITA 2007, or if one is related to the other.

BIM60855: Definitions: Related parties

The definition of related party is narrower than the definition of associated party. Section 356OT CTA 2010 and Section 517U ITA 2007 define related parties for the purposes of this legislation.

A person is related to the person acquiring, holding or developing land in the three circumstances:

- Throughout any period for which they are consolidated for accounting purposes,
- On any day on which the participation condition is met in relation to them, or
- On any day on which the 25% investment condition is met in relation to them.

Consolidation for accounting purposes

Consolidation for accounting purposes occurs in the following three circumstances:

- (a) The companies' financial results for a period are required to be comprised in group accounts,
- (b) The companies' financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
- (c) The companies' financial results for a period are in fact comprised in group accounts.

"Group accounts" means accounts prepared under Section 399 of the Companies Act 2006, or any corresponding provision of the law of a territory outside the United Kingdom.

Participation condition

The participation condition is met in relation to A and B ("the relevant parties") on a day if, [within the period of 6 months beginning with that day]—

- (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
- (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.

Sections 157 to 163 TIOPA 2010 define participation in the management, control or capital of a person. Guidance on these Sections can be found at

<http://internal.active.hmrci/manual/international-manual/intm412060>

25% investment condition

The 25% investment condition is met if:

- (a) One of them has a 25% investment in the other, or
- (b) A third person has a 25% investment in each of them.

Attributing rights

The rights of one person should be attributed to another in the following circumstances

- Members of the same family (spouse, civil partner, brother, sister, child, parent, grandparent or grandchild).
- One person regularly acts in accordance with the wishes of the other person.
- They have entered into an agreement which has a material impact on the value or control of relevant rights or interests.
- The ownership or control of rights or interests is managed by the same person or persons.

BIM60860: Definitions: Another person

In order to decide who should be taxed on the profit or gain under the rules, it is important to identify the parties to the transaction and whether it is appropriate to tax a third party to the transaction ('another person'), if that person provided the value or the opportunity for the person who receives the consideration.

Sometimes it may be difficult to differentiate the person receiving the consideration from the person providing the value or opportunity. For the avoidance of doubt, the legislation sets out a number of situations in which persons can be distinguished:

- A partnership (or partners in partnership) may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being trustees.
- Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

See Section 356OO CTA 2010 and Section 517P ITA 2007.

BIM60865: Definitions: Profits and losses

Throughout the legislation any references to a profit or gain also include a loss. Section 356OF CTA 2010 and Section 517F ITA 2007.

BIM60870: Definitions: Relevant tax advantage

The term 'relevant tax advantage' is used at various points of the legislation.

Corporation Tax

'Tax advantage' has the meaning given in Section 1139 of CTA 2010.

A relevant tax advantage is a tax advantage in relation to the corporation tax to which the company is chargeable, or would be chargeable without the tax advantage, by virtue of Section 5(2A) CTA 2009 or Part 8ZB of CTA 2010.

A relevant tax advantage includes exploiting a double tax arrangement in a way which was not intended by a treaty. For example, if on or after 16 March 2016, a company were to migrate with a view to sheltering the development profit from the new charge, a relevant tax advantage would arise.

The adjustments which should be used to counter the relevant tax advantage include assessment, the modification of an assessment, amendment or disallowance of a claim of another method.

Income Tax

'Tax advantage' has the meaning given in Section 6A(6) ITTOIA 2005.

A relevant tax advantage is a tax advantage in relation to the income tax to which the person is chargeable, or would be chargeable without the tax advantage, by virtue of Section 6(1A) ITTOIA 2005 or Part 9A of ITA 2007.

A relevant tax advantage includes exploiting a double tax arrangement in a way which was not intended by the treaty.

The adjustments which should be used to counter the relevant tax advantage include assessment, the modification of an assessment, amendment or disallowance of a claim, or another method.

Chapter 5 - Notification, assessment & payment

BIM60900:

Where the legislation applies to a non-UK resident company the company will be treated as having a trade of dealing in or developing UK land. Both resident and non-resident companies and individuals will need to notify chargeability and register to pay tax.

There are no separate filing or payment rules for this legislation. The normal self-assessment regime for income tax and corporation tax will apply.

Guidance can be found at the following places:

Individuals: <https://www.gov.uk/topic/personal-tax/self-assessment>

Companies: <https://www.gov.uk/topic/business-tax/corporation-tax>