

Clause 1 and Schedule 1: CT payment plans for tax on certain transactions with EEA residents

Summary

1. This clause and Schedule introduce a new deferred payment option for corporation tax (CT) that is charged on profits or gains arising from certain transactions with a member of the same group of companies resident in another European Union or EEA state. A company can apply to defer payment of that tax over a period of up to five years. The change has effect from 11 July 2019 for transactions occurring in accounting periods ending on or after 10 October 2018.

Details of the clause and Schedule

2. Clause (1) introduces Schedule 1.

Schedule 1

3. Paragraph (1) of Schedule 1 inserts new section 59FB to Taxes Management Act 1970 (TMA), which in turn introduces new Schedule 3ZC to TMA.
4. Paragraph (2), inserts new Schedule 3ZC to TMA.
5. New paragraph 1 of new Schedule 3ZC TMA provides for a company that is due to pay qualifying CT to defer payment of that tax by entering into a CT payment plan.
6. New paragraph 2 defines qualifying CT as the difference between the total CT the company is due to pay for the accounting period, and the amount that would have been due if qualifying transactions were ignored.
7. New paragraph 3 sets out the qualifying transactions. These are transactions involving the disposal or other realisation of taxable assets, loan relationships or derivative contracts by a UK company to another member of the group that is resident in another EEA state and is outside the charge to UK CT in respect of that item following the transaction. In all cases the transaction would have been treated as a tax neutral transfer if the recipient company had been resident in the UK or otherwise within the charge to UK CT in respect of the item after the transaction.
8. A tax neutral transfer is one which means that the transferor company does not incur a tax charge on the disposal, any profit or gain that would otherwise have arisen will instead be taxable on the transferee company on a future disposal or realisation of the item that is not tax neutral. These rules only apply where the transferor and transferee are members of the same group and both are within the charge to UK CT

in relation to the item.

9. The tax neutral provisions to which the Schedule applies are:
 - a. Section 171 or section 139 of the Taxation of Chargeable Gains Act 1992. These sections provide that for tax purposes the actual consideration for a capital asset is replaced by such amount as would result in neither a gain nor a loss arising to the transferor company.
 - b. Section 340(3) of the Corporation Tax Act (CTA) 2009. This provides for the replacement of one group company by another as a party to a loan relationship to be treated as if the transfer occurred at the tax-adjusted carrying value that the loan relationship has at the time of the transfer.
 - c. Section 625(3) of the CTA 2009. This provides for the replacement of one group company by another as a party to a derivative contract to be treated as if the transfer occurred at the tax-adjusted carrying value that the contract has at the time of the transfer.
 - d. Section 775 of the CTA 2009. This provides for the transfer of the asset to be ignored for tax purposes, with the transferee treated as if it had held the asset instead of the transferor and done all actions of the transferor in relation to it.
10. New paragraph 4 provides for a company that is liable to pay an amount of qualifying CT to enter into a CT payment plan in respect of all or part of that CT. A company will enter into a single CT payment plan for an accounting period, irrespective of whether there are qualifying transactions with one or multiple transferee companies.
11. New paragraph 5 states that an application for a CT payment plan must be submitted within nine months of the end of an accounting period for which it is liable to pay qualifying CT, and that application shall include the details required by new paragraph 7. The nine month period after the end of the accounting period means that the application can generally be made at any time before the normal due date for the payment of CT by company that is not a large or very large company that is required to pay its CT in quarterly instalments. This is subject to a transitional rule in section 4(2) of Schedule 1 described below.
12. New paragraph 6 sets out how a CT payment plan is entered into. This involves an undertaking by the company to pay the deferred tax, together with interest, in accordance with new paragraphs 9 to 12, and a corresponding acceptance by an officer of HMRC. Acceptance by HMRC may be subject to the provision of appropriate security from the company if there would otherwise be a serious risk to the collection of the deferred tax.
13. New paragraph 7 sets out the details that a company must supply in its application for a payment plan. It uses a formula to identify the amount of qualifying CT that is attributable to each qualifying transaction. This is needed if there are several qualifying transactions and the deferral period is brought to an end for part of the qualifying CT attributed to particular transactions under the rules in new paragraphs

11 or 12.

14. New paragraph 8 sets out the consequences of entering into a CT payment plan on payment, interest on instalment payments, and penalties for failing to make payments in accordance with the plan. A company can make payments earlier than required by new paragraphs 9 to 12 with a consequent reduction in interest.
15. New paragraph 9 provides for the deferred tax to be payable in six annual instalments, commencing nine months after the end of the accounting period to which the CT payment plan relates. This is subject to rules making the balance of the tax immediately payable in whole or part which are set out in the subsequent paragraphs.
16. New paragraph 10 provides for the whole of the balance of the deferred tax to become payable on the occurrence of various events. This will happen if the company that has entered into the plan becomes insolvent, appoints an administrator or liquidator, if it fails to make the payments due under the plan for a period of twelve months after they become due or if it ceases to be within the charge UK CT.
17. New paragraph 11 sets out when a part of the outstanding deferred tax attributable to a particular qualifying transaction becomes due during the instalment period. This will happen if the transferee company:
 - a. Ceases to be resident in an EEA state; or
 - b. Is no longer a member of the same group as the transferor company; or
 - c. Sells or otherwise disposes of the item that was the subject of the qualifying transaction.

The amount of the outstanding deferred tax that becomes due is calculated using a formula.

18. New paragraph 12 provides a similar rule for part disposals of items that are the subject of a qualifying transaction. Companies may use any method that gives a just and reasonable result to determine the amount of tax attributable to such a part disposal.
19. Paragraph (3) of Schedule 1 amends the list of penalties in Schedule 56 to Finance Act 2009, providing for a penalty to be charged where a company that has entered into a CT payment plan fails to make payments in accordance with paragraphs [8-12] of Schedule 3ZC TMA.
20. Paragraph (4) contains the commencement rule. This clause and schedule comes into force on 11 July 2019, and companies can apply for a CT payment plan if they are liable to pay qualifying CT for an accounting period ended on or after 10 October 2018. This is subject to a transitional rule that allows for an application to be made for any accounting period ending in the period 10 October 2018 to 30 September 2019 at any time until 30 June 2020.

Paragraph (5) creates a power to withdraw the facility to enter into CT payment plans

by Statutory Instrument. The power is intended to be used if the Government determines that CT payment plans are no longer required.

Background note

21. This clause and Schedule is being enacted to remove any doubts about the compatibility of the UK's tax neutral rules for group transfers with European Law governing rights to Freedom of Establishment under Article 49 of the Treaty on the Functioning of the European Union, or Article 31 of the EEA Agreement. This follows a ruling of the First Tier Tax Tribunal in March 2019.
22. If you have any questions about this change, or comments on the legislation, please contact Philip Donlan on 03000 585504 (email: philip.donlan@hmrc.gov.uk).