

2019 No.

CAPITAL GAINS TAX

CORPORATION TAX

The UK Property Rich Collective Investment Vehicles
(Amendment of the Taxation of Chargeable Gains Act 1992)
Regulations 2019

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 48 of Schedule 5AAA to the Taxation of Chargeable Gains Act (a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2019 and come into force on [xxxx].

(2) The amendments made by regulations 3(b), 8, 10(b) and (c) and 11 have effect in relation to disposals made on or after the day on which these Regulations come into force.

(3) The amendment made by regulation 7 has effect in relation to elections made on or after that day.

(4) The amendments made by the other provisions of these Regulations have effect in relation to disposals made on or after 6 April 2019.

Amendment of Schedule 5AAA to the Taxation of Chargeable Gains Act 1992

2. Schedule 5AAA to the Taxation of Chargeable Gains Act 1992 (UK property rich collective investment vehicles etc) is amended as follows.

3. In paragraph 1 (meaning of collective investment vehicle etc)—

(a) in sub-paragraph (1)(c), for “a UK REIT” substitute “a company UK REIT or is the principal company of a group UK REIT”,

(b) in sub-paragraph (1), for paragraph (d) (and the “or” before it) substitute—

(a) 1992 c. 12; Schedule 5AAA was inserted by paragraph 21 of Schedule 1 to the Finance Act 2019 (c. 1).

- “(d) a company which is resident outside the United Kingdom, is not a member of a group (as determined in accordance with section 170) and meets the property income condition, or
- (e) a company which is resident outside the United Kingdom, is the principal company of a group (as determined in accordance with that section) and meets the property income condition.”,
- (c) in sub-paragraph (2)(b), for “is” substitute “derives directly or indirectly from”, and
- (d) in sub-paragraph (7), for the definition of “UK REIT” (and the “and” before it) substitute—
 - ““company UK REIT” has the same meaning as in Part 12 of CTA 2010(a), and
 - “the principal company of a group UK REIT” has the same meaning as in that Part.”.
- 4.** In paragraph 6(8) (disposals by non-UK residents), for “schemes” substitute “vehicles”.
- 5.** In paragraph 7(5) (disposals by non-UK residents)—
 - (a) in paragraph (a), for “conditions A to C of regulation 75” substitute “the conditions in regulation 75(2), (3) and (4)(a)”,
 - (b) in paragraph (b), at the end insert “(assuming for this purpose that regulation 75(4)(b) is omitted)”, and
 - (c) in the words after that paragraph, at the end insert “(and see also paragraphs 46A and 51)”.
- 6.** In paragraph 8, (election for collective investment vehicle to be treated as partnership) for sub-paragraph (4) substitute—
 - “(4) Section 12AA of the Management Act(b) applies as a result of sub-paragraph (2) but as if—
 - (a) that section authorised the giving of a notice under subsection (2) or (3) of that section to the manager of the vehicle,
 - (b) that section authorised the notice to be given only with respect to disposals of partnership property, and
 - (c) that section authorised a single notice under subsection (2) or (3) of that section requiring the making and delivery, in accordance with the notice, of a return every year (whether or not any partnership property has been disposed of).”.
- 7.** In paragraph 9 (further provision about election), at the end insert—
 - “(4) An election under paragraph 8 must include the following information in the case of each participant in the vehicle—
 - (a) the participant’s name and, if the participant has one, the participant’s unique taxpayer reference,
 - (b) the participant’s usual or last known place of residence or the participant’s place of business, and
 - (c) in the case of a participant who is an individual, the participant’s date of birth.”.
- 8.** In paragraph 12 (exemption for qualifying offshore CIV that is UK property rich etc)—
 - (a) in sub-paragraph (3)(a), for “wholly (or almost wholly) owned” substitute “wholly and directly”, and
 - (b) after sub-paragraph (3) insert—

(a) 2010 c. 4.

(b) Section 288 of the Taxation of Chargeable Gains Act provides that “the Management Act” means The Taxes Management Act 1970 (1970 c. 9).

“(3A) In sub-paragraph (3)(a) the reference to direct ownership by a collective investment scheme is to ownership otherwise than through—

- (a) a company, or
- (b) a partnership, trust or other entity or arrangements.”.

9. In paragraph 13 (qualifying conditions)—

(a) in sub-paragraph (1), after paragraph (a) insert—

“(ab) it is a collective investment scheme and it is wholly (or almost wholly) owned by another collective investment scheme which meets the genuine diversity of ownership condition,”,

(b) in sub-paragraph (2), for paragraph (b) substitute—

“(b) the collective investment scheme directly owning the company, or any other collective investment scheme which wholly (or almost wholly) owns the company, meets the genuine diversity of ownership condition.”,

(c) in sub-paragraph (3)—

- (i) in paragraph (a), for “conditions A to C of regulation 75” substitute “the conditions in regulation 75(2), (3), and (4)(a)”,
- (ii) in paragraph (b), at the end insert “(assuming for this purpose that regulation 75(4)(b) is omitted)”, and
- (iii) in the words after that paragraph, at the end insert “(and see also paragraphs 46A and 51)”, and

(d) at the end insert—

“(8) If any of the proceeds arise to a company which is wholly (or almost wholly) owned by one or more investors to which paragraph 33 applies, the company is to be treated for the purposes of sub-paragraph (7) as if it were exempt from corporation tax in respect of chargeable gains accruing to it otherwise than as a result of double taxation arrangements.”.

10. In paragraph 21 (deemed disposal: payments not otherwise taxable where value derived from direct or indirect disposals of UK land)—

(a) in sub-paragraph (1)(c), at the end insert “(whether in the case of the participant or anyone else)”,

(b) in sub-paragraph (3)(a), for “the company” substitute “the relevant entity”, and

(c) at the end insert—

“(5) In this paragraph “the relevant entity” means—

- (a) in a case where the relevant fund is constituted by a CoACS (within the meaning of paragraph 12), the CoACs, and
- (b) in any other case, the qualifying company.”.

11. In paragraph 22 (deemed disposal if election ceases to have effect)—

(a) in sub-paragraph (3)(a), for “the company” substitute “the relevant entity”, and

(b) at the end insert—

“(4) In this paragraph “the relevant entity” has the same meaning as in paragraph 21.”.

12. In paragraph 33 (exemption for disposals by companies wholly owned by certain investors)—

(a) for sub-paragraphs (1) and (2) substitute—

“(1) This paragraph applies in the case of—

- (a) a collective investment vehicle (“a transparent fund”) in respect of which an election under paragraph 8 has been made,

- (b) a qualifying fund or qualifying company in respect of which an election under paragraph 12 has been made, or
- (c) an open-ended investment company (a “PAIF”) to which Part 4A of the Authorised Investment Funds (Tax) Regulations 2006^(a) applies and which is UK property rich;

and a reference in the remainder of this paragraph to the fund concerned is to the transparent fund, the relevant fund or the PAIF (as the case may be).

(2) If—

- (a) a participant in the fund concerned disposes of a unit in the fund concerned, and
- (b) the participant is a company which is wholly (or almost wholly) owned by one or more investors to which this paragraph applies,

any gain accruing on the disposal is not a chargeable gain.”,

(b) after sub-paragraph (2) insert—

“(2A) If a company which is wholly (or almost wholly) owned by one or more investors to which this paragraph applies disposes of a right or interest in a company whose assets consist wholly of units in the fund concerned, any gain accruing on the disposal is not a chargeable gain.”, and

(c) for sub-paragraph (3) substitute—

“(3) Nothing in paragraph 21 is to result in a deemed disposal of an asset held by—

- (a) an investor to which this paragraph applies who is not an insurance company, or
- (b) a company which is wholly (or almost wholly) owned by one or more investors to which this paragraph applies each of whom is not an insurance company.”.

13. After paragraph 33 insert—

“Disapplication of paragraphs 5 and 6 of Schedule 1A

33A.—(1) This paragraph applies if an election under paragraph 12 has been made in respect of a qualifying fund or a qualifying company.

(2) Nothing in paragraph 5 or 6 of Schedule 1A (exemptions) applies to a disposal of a unit in the relevant fund.”

14. In paragraph 39(1)(b) (meaning of “the relevant fund”), omit “(or almost wholly)”.

15. In paragraph 46 (meaning of close company etc)—

(a) in sub-paragraph (2), omit the “and” before paragraph (d) and after that paragraph insert—

“, and

(e) a company (“C”) is not to be regarded as a close company only because a person possesses or is entitled to acquire the greater part of the voting power in C as a result of being—

- (i) a manager of a collective investment vehicle, or
- (ii) a general partner in a limited partnership which is a collective investment scheme.”,

(b) in sub-paragraph (4)—

(i) in paragraph (a), for “conditions A to C of regulation 75” substitute “ the conditions in regulation 75(2), (3) and (4)(a)”,

(a) S.I. 2006/964.

- (ii) in paragraph (b), at the end insert “(assuming for this purpose that regulation 75(4)(b) is omitted)”, and
- (iii) in the words after that paragraph, at the end insert “(and see also paragraphs 46A and 51)”, and
- (c) at the end insert—
 - “(12) For the purposes of this paragraph any reference to a body corporate includes—
 - (a) an offshore collective investment vehicle which is, as a result of paragraph 4, assumed to be a company for the purposes of this Schedule, and
 - (b) anything else which is, as a result of provision made elsewhere by this Act, assumed to be a company for the purposes of this Act.”.

16. After paragraph 46 insert—

“References to regulation 75(3) of the Offshore Funds (Tax) Regulations 2009(a)

46A.—(1) This paragraph applies, in the case of a collective investment vehicle, for the purpose of determining whether the vehicle meets the genuine diversity of ownership condition referred to in any provision of this Schedule.

(2) The fact that (for any reason) the capacity of the vehicle to receive investments is limited does not prevent regulation 75(3) of the Offshore Funds (Tax) Regulations 2009 (including as it applies for the purposes of regulation 75(5)(b) of those Regulations) from being met.

(3) Sub-paragraph (2) does not apply if—

- (a) the limited capacity of the vehicle to receive investments is fixed by the documents of the vehicle (or otherwise), and
- (b) a pre-determined number of specific persons, or specific groups of connected persons, make investments in the vehicle that collectively exhausts all, or substantially all, of that capacity.”.

17. After paragraph 50 insert—

“Genuine diversity of ownership condition in case of existing funds

51.—(1) This paragraph applies in the case of a collective investment vehicle constituted before 6 April 2019, for the purpose of determining whether the vehicle meets the genuine diversity of ownership condition referred to in any provision of this Schedule.

(2) It is to be assumed that regulation 75(2) of the Offshore Funds (Tax) Regulations 2009 (including as it applies for the purposes of regulation 75(5) of those Regulations) has effect as if it referred to a statement prepared by the manager of the vehicle, available to HMRC, which—

- (a) specifies the intended categories of investor when the vehicle was marketed,
- (b) confirms that the interests in the vehicle were made widely available, and
- (c) confirms that interests in the vehicle were marketed and made available in accordance with the requirements of regulation 75(4)(a) of those Regulations (and that provision is to be read accordingly).”.

Name
Name

date Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2009/3001.
(b) Regulation 75(5) was inserted by S.I. 2011/1211.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Schedule 5AAA to the Taxation of Chargeable Gains Act 1992 (c. 12) (TCGA 1992). Schedule 5AAA (the Schedule) was inserted in TCGA 1992 by Schedule 1 to the Finance Act 2019 (c. 1) which concerns the capital gains tax treatment of disposals of interests in UK land by non-UK residents and contains provisions relating to UK property rich collective investment vehicles (CIVs) and their investors.

Regulation 1 sets out when these Regulations come into force and specifies the date on which individual regulations will take effect.

Regulations 2 and 3 amend paragraph 1 of the Schedule to clarify the meaning of “collective investment vehicle” for the purposes of the Schedule.

Regulation 4 makes a minor amendment to paragraph 6(8) of the Schedule.

Regulation 5 makes amendments to paragraph 7 (5) of the Schedule which sets out when a CIV will meet the genuine diversity of ownership condition for the purposes of paragraph 7.

Regulation 6 amends paragraph 8 of the Schedule to clarify HMRC’s obligations in respect of giving notice to provide partnership returns where a CIV has made an election to be treated as a partnership under that paragraph.

Regulation 7 amends paragraph 9 of the Schedule to introduce a requirement that an election under paragraph 8 must contain specified information relating to each participant in the CIV.

Regulation 8 amends paragraph 12 of the Schedule which concerns the making of elections by a CIV to be exempt from corporation tax on chargeable gain accruing to it on direct and indirect disposals of UK land.

Regulation 9 amends paragraph 13 of the Schedule which sets out the qualifying conditions which a CIV must meet in order to make an election under paragraph 12.

Regulation 10 makes minor amendments to paragraph 21 of the Schedule which provides that, where a CIV has made a paragraph 12 election, there is a deemed disposal where a participant in a fund receives an amount which represents, in substance, value derived from a direct or indirect disposal of UK land.

Regulation 11 make amendments to paragraph 22 of the Schedule, which provides that a participant makes a deemed disposal at the point at which a paragraph 12 election ceases to have effect.

Regulation 12 amends paragraph 33, which disapplies the provisions of paragraph 21 where a CIV is wholly owned by certain investors, so that it encompasses further alternative holding structures not currently falling within that paragraph.

Regulation 13 inserts new paragraph 33A into the Schedule, which provides that where a CIV has made an election under paragraph 12, paragraphs 5 and 6 of Schedule 1A to TCGA 1992 will be disapplied with regard to disposals of any company covered by such election.

Regulation 14 makes a minor amendment to paragraph 39 of the Schedule.

Regulation 15 makes amendments to paragraph 46 of the Schedule to clarify the meaning of “a close company”, “qualifying investor” and references to “a body corporate”.

Regulation 16 inserts new paragraph 46A into the Schedule which makes provision about references to regulation 75(3) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), in order to determine whether the CIV meets the genuine diversity of ownership condition for the purposes of the Schedule.

Regulation 17 inserts new paragraph 51 into the Schedule which makes provision relating to CIVs constituted before 6 April 2019 to clarify whether or not they meet the genuine diversity of ownership condition for the purposes of the Schedule.

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