

New Clause 14: Income tax: transactions in UK land

Summary

- This clause is part of new legislation that introduces a specific charge to tax on the profits of non-residents from a trade of dealing in or developing land in the UK.
- The clause introduces a new Part 9A of the Income Tax Act 2007 (ITA 2007), which replaces and extends the 'transactions in land' rules in Chapter 3 of Part 13 of ITA 2007.
- The new legislation has effect for disposals made on or after 5 July 2016. An anti-avoidance rule applies from 16 March 2016 to counteract arrangements that aim to avoid the new rules. Related changes are made by new clauses 11, 12, 13, 15, 16 and 17.

Details of the clause

1. Subsection (1) introduces new Part 9A into ITA 2007, comprising new sections 517A to 517U inclusive. It replaces and extends Chapter 3 of Part 13 of ITA 2007. It applies to all persons within the charge to income tax, except where specific provisions apply only to non-residents.
2. New Section 517A introduces New Part 9A.
3. New Section 517B sets out how the application of certain conditions will bring profits within the meaning of profits from a trade of dealing in or developing land in the UK.
4. New Section 517B(1) explains that if a person, as described at Subsection (2), meets one of the conditions A to D set out at Subsections (4) to (7) then the profits will be treated as trading profits.
5. New Section 517B(2) sets out which persons can fall within the scope of this provision.
6. New Section 517B(3) provides a definition of which arrangements can bring persons within the scope of this provision.
7. New Section 517B(4)-(7) set out the conditions which, if any are met, mean an amount is to be treated as profit or gain from a disposal of land within the meaning of Part 9A.
8. New Section 517B(4) sets out condition A: land is acquired with the main or one of the main purposes of realising a profit or gain from its disposal.
9. New Section 517B(5) sets out condition B: property deriving its value from land is acquired with the sole or main purpose of realising a profit or gain from disposing of the

land.

10. New Section 517B(6) sets out condition C: land is held as trading stock.
11. New Section 517B(7) sets out condition D: land is developed with the sole or main purpose of realising a profit from disposing of the developed land.
12. New Section 517B(8) provides a definition of "relevant time" for the purposes of this legislation. Relevant time runs from the date the activities of the project begin until 6 months after the disposal.
13. New Section 517B(9) provides a definition of "the project" for the purposes of this legislation. The project is all activities carried out for dealing in or developing land, or for the purposes of any of conditions A to D.
14. New Section 517B(10) provides the meaning of "associated" for the purposes of this section.
15. New Section 517C sets out how the profits or gain should be treated for income tax purposes when section 517B applies.
16. New Section 517C(1) sets out that the profits should be treated as profits of a trade carried on by the chargeable person (defined in new section 517G).
17. New Section 517C(2) explains that if the person is not UK resident the profits are chargeable as the profits of that persons trade of dealing in and developing UK land.
18. New Section 517C(3) explains that the profit should not be treated as a profit or gain for income tax purposes by these provisions if it has already been brought into account as income for corporation tax or income tax purposes.
19. New Section 517C(4) explains that the profits are treated as arising in the tax year when the profit or gain is realised.
20. New Section 517C(5) states that this section also applies to gains of a capital nature.
21. New Section 517D sets out the treatment of disposals of property which derives its value from land in the United Kingdom.
22. New Section 517D(1) sets out that New Section 517E will apply to treat the "relevant amount" as profits of a trade carried on by the chargeable person if a person realises a profit or gain on the disposal of an asset which derives at least 50% of its value from land, the person is concerned in an arrangement concerning the land, and the condition at Section 517D(2) is met. This could arise, for example, from the disposal of shares in a company that holds the land or from the disposal of an interest in a partnership.
23. New Section 517D(2) sets out the conditions which must be met for section 517D(1) to apply. The condition is that the main or one of the main purposes is to deal in or develop the project land, and to obtain a financial advantage from the disposal of the property deriving its value from land.
24. New Section 517E sets out how the profits or gain should be treated for income tax purposes when section 517D applies.

25. New Section 517E(1) sets out that the relevant amount should be treated as profits of a trade of the chargeable person (defined in New section 517G).
26. New Section 517E(2) explains that if the chargeable person is not UK resident the profits are chargeable to income tax as the profits of that person's trade of dealing in or developing UK land.
27. New Section 517E(3) explains that the relevant amount should not be treated as a profit or gain for income tax purposes by these provisions if it has already been brought into account as income for corporation tax or income tax purposes.
28. New Section 517E(4) explains that the profits are treated as arising in the tax year when the profit or gain is realised.
29. New Section 517E(5) sets out how to compute the 'relevant amount', by reference to the 'relevant UK assets'.
30. New Section 517E(6) defines 'relevant UK assets' as meaning any land from which the asset within the scope of section 517D derives its value.
31. New Section 517E(7) states that this section also applies to gains of a capital nature.
32. New Section 517F explains that the provisions in new Part 9A apply in the same way to losses as they do to profits and gains.
33. New Section 517G sets out the rules to identify the 'chargeable person'.
34. New Section 517G(1) gives the general rule. The 'chargeable person' is normally the person that realises the profit or gain on the disposal.
35. New Section 517G(2) provides a signpost to the exceptions to this general rule. These are set out in Subsections (4) to (6).
36. New Section 517G(3) explains that the rules in subsections (4) to (6) do not apply to a profit or gain where the anti-fragmentation rules in Section 517H apply.
37. New Section 517G(4) explains that if the profit is derived from value provided directly or indirectly by another person then that other person is the 'chargeable person'.
38. New Section 517G(5) explains that subsection (4) will apply regardless of whether the value is put at the disposal of the person that realises the profit or gain on the disposal.
39. New Section 517G(6) explains that if the profit is derived from an opportunity of realising a profit or gain provided directly or indirectly by another person then that other person is the 'chargeable person', unless subsection (4) applies.
40. New Section 517G(7) provides a signpost to the meaning of "another person" at New section 517P.
41. New Section 517H sets out rules for fragmented activities. These are anti-avoidance rules which prevent profits being fragmented between associated parties with the aim of placing those profits outside the charge to income tax, for example by moving some or all of the profit to a person not carrying on a trade of dealing in or developing land in the

UK.

42. New Section 517H(1) sets out that the rules apply if a person disposes of land, any of conditions A to D in section 517B are met, and a person related to the person making the disposal has made a relevant contribution to activities set out in Subsection (2).
43. New Section 517H(2) sets out the activities which are covered by this section. The activities are the development of the land and any other activities which contribute to a profit or gain from the disposal.
44. New Section 517H(3) explains that if the conditions at subsection (1) are met, the profits from the disposal are to be calculated as if the two persons were one.
45. New Section 517H(4) and (5) set out what happens if the associated party reimburses some or all of the tax paid. It is not to be taken into account when calculating the profit or loss of either person and should not be treated as a distribution.
46. New Section 517H(6) explains that the legislation applies if the persons are associated at any point from when the project begins until six months after the disposal of the land.
47. New Section 517H(7) explains that all contributions made by the associated party are 'relevant contributions', unless the profit made as a result of the contribution is insignificant when considered in relation to the size of the project.
48. New Section 517H(8) provides the definition of 'contribution'. The definition is wide and means any kind of contribution. It includes the provision of professional and other services and a financial contribution but the list provided is not exhaustive.
49. New Section 517H(9) provides the meaning of 'associated' for the purposes of this section.
50. New Section 517H(10) provides the definition of 'the project'.
51. New Section 517I sets out that any profit or gain arising from the application of this Part is calculated using the rules for the computation of the profits of a trade under Part 2 of ITTOIA 2005, subject to any modifications which may be appropriate.
52. New Section 517J directs that apportionments required for any part of this legislation should be made on a just and reasonable basis.
53. New Section 517K is an anti-avoidance provision. If there is an arrangement with a main purpose of obtaining a "relevant tax advantage", that advantage should be counteracted by means of adjustments.
54. New Section 517K(1) sets out that the rule applies if the person enters into arrangements where the main purpose or a main purpose is to obtain a relevant tax advantage. The scope and meaning of "arrangements" is set out in New section 517Q.
55. New Section 517K(2) provides that "obtaining a relevant tax advantage" also includes obtaining an advantage through exploiting a double taxation agreement, unless the advantage is intended by the terms of the treaty.
56. New Section 517K(3) sets out that if subsection (1) applies, the tax advantage is to be counteracted by adjustments.

57. New Section 517K(4) sets out how an adjustment can be made.
58. New Section 517K(5) sets out the definition of "relevant tax advantage" as a tax advantage in relation to tax chargeable as a result of applying the provisions of Part 9A.
59. New Section 517K(6) sets out the definition of 'advantage' for the purposes of this section.
60. New Section 517L applies to situations where some of the gain may be attributable to a period before the intention to develop the land was formed.
61. New Section 517L(1) sets out that New section 517L(2) applies where the profits are included as profits of a trade of dealing or developing UK land due to Condition D of Section 517B, but the intention was not initially to realise a profit or gain from disposal of the land.
62. New Section 517L(2) provides that only the profits relating to the period where the intention was to make a gain should fall within Part 9A.
63. New Section 517L(3) and (4) makes similar provision in relation to profits falling within section 517E.
64. New Section 517L(5) explains that when applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading income) of a company which appropriates land as trading stock.
65. New Section 517M provides an exemption for a gain arising on a disposal by an individual of a personal private residence that is exempt under the rules in the Taxation of Chargeable Gains Act 1992.
66. New Section 517N(1) to (3) explains how to determine the value of a property or right that derives from any other property or right. The value can be traced through any number of companies, partnerships or trusts. Property should be attributed to shareholders, beneficiaries or partners in a way which is appropriate in the circumstances.
67. New Section 517N(4) provides further explanation of the scope and meaning of "partnership" and "trust" for the purposes of this section.
68. New Section 517O provides further interpretation to determine whether sections 517C or 517E apply.
69. New Section 517O(1) and (2) directs that account is to be taken of any method, however indirect, by which property or rights are transferred, or by which their value is enhanced or diminished. New section 517O(3) sets out a non-exhaustive list of examples of such methods.
70. New Section 517P gives the definition of "another person" for the purposes of Part 9A.
71. New Section 517Q gives the definition of "arrangement". It includes any scheme agreement or understanding. It does not need to be legally enforceable.
72. New Section 517R(1) and (2) provides the definition of "disposal". A disposal of land or property deriving its value from land can be through one or more transactions or by any

arrangement, and it includes a part disposal.

73. New Section 517S provides the definition of "land" and of "property deriving its value from land".
74. New Section 517T extends the meaning of "realising a gain" to include realising a gain for another person.
75. New Section 517U sets out the circumstances in which parties will be treated as related for the purposes of Part 9A.
76. New Section 517U(1) sets out the basic conditions which are then set out in more detail in the rest of the section. The three conditions are if the parties are consolidated for accounting purposes, if the participation condition is met or if the 25% investment condition is met.
77. New Section 517U(2) and (3) provides the details of the accounting condition. The parties are consolidated for accounting purposes if the financial results are required to be in the group accounts, if they would be in the group accounts but for an exemption, and if they are in the group accounts. The group accounts are accounts prepared under Section 399 of the Companies Act 2006, or any corresponding law of another country.
78. New Section 517U(4) provides detail on the participation condition. The participation condition is met if one party directly or indirectly participates in the management, control or capital of the other or if the same person participates in the management, control or capital of both parties. The condition is tested by reference to the period of six months ending on the day in question.
79. New Section 517U(5) and (6) provide the detail of the investment condition. The condition is met if one person has a 25% investment in the other, or if a third party has a 25% investment in them both. To determine if there is a 25% investment, section 259NC of the Taxation (International and Other Provisions) Act 2010 (TIOPA) applies in the same way as it applies for the purposes of section 259NB of TIOPA.
80. New Section 517U(7) applies certain provisions of Chapter 2 of Part 4 of TIOPA to determine whether there is a 25% investment.
81. Subsections (2) to (11) make necessary consequential amendments arising as a result of the new Part 9A of ITTOIA. In particular, Chapter 3 of Part 13 of ITA 2007 is repealed, references to Chapter 3 of Part 13 are replaced with references to Part 9A, and relevant references to provisions within Chapter 3 of Part 13 are amended as required.

Background note

82. The UK's corporation tax system charges non-resident companies to corporation tax on their profits from a trade carried on through a permanent establishment in the UK, and only on the profits attributable to that permanent establishment. The equivalent rules for income tax operate on a broadly similar basis.
83. This change will bring non-resident developers of UK property fully into UK tax on their

profits from dealing in or developing land in the UK. This will ensure a level playing field between UK developers and those based in offshore jurisdictions.