



HM Revenue  
& Customs

## **Income tax and corporation tax: taxation of immovable property in the UK**

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### **Who is likely to be affected?**

Businesses that carry on a trade of dealing in or developing land in the UK.

### **General description of the measure**

This measure introduces a specific charge to income tax or corporation tax on trading profits from the disposal of land in the UK.

### **Policy objective**

The government will introduce legislation in Finance Bill 2016 to ensure that offshore structures cannot be used to avoid UK tax on profits that are generated from dealing in or developing land in the UK. This measure ensures that the UK is able to charge tax on the full amount of profits from dealing in or developing land in the UK. It will level the playing field between UK and offshore developers by ensuring that UK and overseas businesses are put on the same tax footing when carrying out the same activities, and by preventing arrangements designed to avoid UK tax on the profits.

### **Background to the measure**

The measure was announced on Budget Day 2016 along with a short period of technical consultation. Ministers intend to introduce legislation during the passage of the 2016 Finance Bill.

## **Detailed proposal**

### **Operative date**

The new rules will take effect from the date that they are introduced into Parliament, apart from an anti-avoidance rule, which applies from Budget day (16 March 2016).

### **Current law**

The UK, unlike a number of other major economies, does not have specific rules to tax trading profits arising from dealing in or developing land in the UK. Instead the UK relies on its general rules, in particular sections 5 and 19 of the Corporation Tax Act 2009 ("CTA 2009"), and section 6 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA"). Those rules tax trading profits in the UK on the basis of the amount that is attributable to work carried out in the UK.

For corporation tax the concept is one of having a "permanent establishment" ("PE") in the UK, and the amount of profits attributable to that PE. Some businesses based overseas have put in place arrangements, arguing that a significant amount of profit from property dealing or development derives from work carried out overseas and is therefore not taxable

in the UK, either because there is no PE in the UK at all, or the profits to be allocated to a UK PE are very small.

The equivalent concept for income tax considers profits arising from the part of the trade that is carried on in the UK.

In practice HMRC considers it has strong arguments that many of the structures used by the developers fail to achieve their intended tax effects.

## **Proposed revisions**

The measure introduces a specific income tax or corporation tax charge on profits from dealing in or developing land and other immovable property in the UK. The charge is income tax or corporation tax depending on which of those charges applies to the business, and the calculation of profits follows the normal rules for calculation of trading profits in Part 3 of CTA 2009 and Part 2 of ITTOIA as appropriate.

The charge overrides the corporation tax rules that charge tax only on profits attributable to a permanent establishment in the UK, or the equivalent for income tax. It does not duplicate existing charges, and there will be specific provision to ensure that it only applies to profits not already charged to income tax or corporation tax as income. It will not, therefore, have any impact on UK trading businesses whose profits are already fully taxed as income in the UK.

The charge will apply to the profits arising when land is disposed of, and it will apply to disposals that take other forms such as a sale of shares in a company or a sale of an interest in a partnership that in substance represents a disposal of the value of the land.

It will also apply to the totality of the profits realised from the disposal, even if some of those are paid to persons related to the entity making the disposal.

To prevent avoidance of the new rules, and attempts to crystallise profits on existing projects before those rules come into force, the legislation contains a targeted anti-avoidance rule that has effect from 16 March 2016.

Some changes are also necessary to the UK's double taxation treaties. Whilst the majority of the UK's treaties attribute full taxing rights to the UK over profits from land in the UK, some older treaties do not. This would mean that the new UK tax charge would not be fully effective as the businesses resident in those particular jurisdictions could claim relief from UK taxation under the treaty. The UK is working with treaty partners to make the necessary changes to the UK's tax treaties to ensure that the new rules work as intended. The treaties with the Crown Dependencies have been changed with effect from Budget day 2016.

## **Summary of impacts**

### **Exchequer impact (£m)**

2016 to 2017	2017 to 2018	2018 to 2019	2019 to 2020	2020 to 2021
+130	+435	+550	+640	+520

These figures are set out in Table 2.1 of Budget 2016 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2016.

## **Economic impact**

By enforcing the international rules on the taxation of trading profits derived from property, this measure will level the playing field between UK and offshore developers. The measure is not expected to have any other significant macroeconomic or long term supply impacts.

## **Impact on individuals, households and families**

This measure applies primarily to non-resident property development businesses and is not expected to significantly impact on individuals, households and families. The measure is not expected to impact on family formation, stability or breakdown.

## **Equalities impacts**

This measure is not expected to impact on any of the groups with protected characteristics.

## **Impact on business including civil society organisations**

This measure will have no impact on businesses and civil society organisations who are undertaking normal commercial transactions; it will only impact on the businesses that are using offshore structures to avoid UK tax on their trading profits from developing property in the UK.

## **Operational impact (£m) (HMRC or other)**

HMRC is setting up a dedicated task force to ensure that there is effective compliance with the new rules and to investigate legacy cases. This is estimated to cost £2.36m pa.

The new rules will bring a number of overseas businesses into the charge to UK income tax or corporation tax. However, it is not anticipated that any material changes are needed to operational processes or IT systems.

## **Other impacts**

Other impacts have been considered and none have been identified.

## **Monitoring and evaluation**

The policy will be monitored through information collected from tax returns and communications with taxpayers and practitioners affected by the measure.

## **Further advice**

If you have any questions about this change, please contact Mark Carnduff on 03000 585608 or email: [mark.carnduff@hmrc.gsi.gov.uk](mailto:mark.carnduff@hmrc.gsi.gov.uk).

## **Declaration**

David Gauke MP, Financial Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.