

EXPLANATORY NOTE

CLAUSE 208: SETTLED EXCLUDED PROPERTY: EFFECT OF CERTAIN ARRANGEMENTS

AMENDMENTS 1 to 6

SUMMARY

1. Clause 208 amends the inheritance tax (IHT) provisions relating to settled excluded property. The clause provides that where a UK domiciled individual acquires an interest in settled excluded property, which as a result of certain arrangements gives rise to a reduction in the value of that individual's estate, the property will cease to be excluded property and a charge to IHT will arise.
2. The anti-avoidance provisions in clause 208 are closely targeted at offshore excluded property with the result that the tax advantage they are designed to curtail could still be achieved with some adjustments to the arrangements concerned. The amendments extend the scope of clause 208 and make it more effective in tackling the avoidance in question. The amendments also restrict the application of the provisions to new arrangements, and they improve the structure of the new provisions.

DETAILS OF THE AMENDMENTS

3. Amendment 1 inserts a new subsection before subsection (2)(a) of clause 208, which inserts a new section 48(1)(d) into Inheritance Tax Act 1984 (IHTA). The amendment provides that where the conditions in paragraphs (a), (b) and (d) of new section 74A(1) are met but the arrangements do not give rise to a reduction in the individual's estate, a reversionary interest will only qualify as excluded property where that is the only interest in settled property that the individual is beneficially entitled to.
4. Amendment 2 revises subsection (2)(b) of clause 208 which inserts new subsections 48(3D) to (3F) into IHTA. The amendment revises new section 48(3D) so that the conditions for the new provisions to apply are now in new section 74A(1), and moves the interpretation subsections 48(3E)(a), 48(3E)(b) and 48(3F) to new subsections 74C(2), (3) and (5) respectively. The amendment extends the time that the new provisions apply to any later time after the conditions are first met. Revised subsection (2)(b) ensures that once settled property ceases to be excluded property because the conditions in section 74A(1) are met, it cannot revert to that status at any later time.

5. Amendment 3 revises subsection (3) of clause 208 which inserts new sections 74A and 74B into IHTA. The amendment revises new subsections 74A(1), (2) and (3) as follows:
 - Subsection 74A(1) contains the revised conditions for the new section 74A to apply. The provisions may now apply to settled property that ceases to be, or never was, excluded property through a new requirement that conditions A or B have to be met. In addition, consideration has to be given by one or more of the persons entering into the arrangements so that voluntary arrangements are not inadvertently caught.
 - Subsection 74A(2) sets out condition A which continues to be met where as sets which were excluded property are brought onshore and hence cease to be excluded property before a relevant reduction. The amendment ensures that the provisions will apply if the property was situated outside the UK at any time during the arrangements.
 - Subsection 74A(3) sets out condition B which is met where UK assets (which are not excluded property) are settled by a corporate settlor other than a close company and brings arrangements involving UK corporate settlors within the scope of the new provisions. The interpretations previously in subsection 74A(3) are moved to new section 74C.
6. Amendment 4 inserts a new section 74C into IHTA which consolidates the interpretation provisions previously in subsections 48(3E)(a) and (b), 48(3F), and 74A(3)(d) and (e), for the purposes of sections 74A and 74B. The circumstances in which an individual has an interest in property comprised in the settlement in subsection 74C(2) are amended to include the situation where a close company of which the individual or their spouse or civil partner is a participator, or a company which is a 51% subsidiary of such a company, may benefit under the arrangements..
7. Amendment 5 revises subsection (4) of clause 208 which inserts new subsection 201(4A) into IHTA. The amendment makes consequential changes and clarifies that these provisions apply where the conditions in section 74A are met, rather than when the settled property ceases to be excluded property.
8. Amendment 6 alters the commencement date in subsection (5) of clause 208 so that the provisions are treated as coming into force on 20 June 2012. It also amends subsection (5) and deletes subsection (6) so that the provisions apply only to arrangements entered into on or after the commencement date and not to existing arrangements.

BACKGROUND NOTE

9. IHT is normally charged on the value of a person's estate at death after deducting reliefs and the nil-rate band. There is a separate relevant property regime that charges IHT on assets held in trusts, which are not included in a person's estate. If a UK-domiciled individual settles assets into an offshore trust, the transfer into trust will be charged to IHT and the value of the trust assets above the nil-rate band will also be subject to IHT. IHT is not charged on those transactions undertaken by companies, other than close companies.
10. Where the settlor is not UK-domiciled, settled property situated outside the UK is excluded from the IHT charge and is referred to as excluded property. If a UK domiciled individual acquires an interest in excluded property which is not an 'interest in possession', there may be no charge to IHT when the interest is acquired. The settled property may escape any subsequent charge to IHT either as part of the individual's estate or under the relevant property regime.
11. The amendments to the settled excluded property provisions in clause 208 will apply to avoidance schemes where arrangements exploit the excluded property rules by converting UK assets to ones that are excluded from the IHT charge and do not give rise to a transfer of value when that conversion occurs. A transfer of value will arise and the assets will no longer be treated as excluded property. Instead, the settled property will fall within the relevant property regime.
12. The amendments extend the scope of clause 208 to arrangements where a UK corporate settlor has settled assets as part of an avoidance scheme and to arrangements where an individual retains the interests in settled property they have acquired. However, the amendments also commence the new provisions from a later date (20 June 2012) and limit the application of clause 208 to new arrangements entered into on or after the new commencement date.

AMENDMENTS

FINANCE BILL

David Gauke

1

Clause 208, page 118, line 7, at end insert—

‘() in subsection (1), after paragraph (c) insert “or,

(d) in a case where paragraphs (a), (b) and (d) of section 74A(1) are satisfied—

(i) it is a reversionary interest, in the relevant settled property, to which the individual is beneficially entitled, and

(ii) the individual has or is able to acquire (directly or indirectly) another interest in that relevant settled property.

Terms used in paragraph (d) have the same meaning as in section 74A.”’.

David Gauke

2

Clause 208, page 118, line 11, leave out from beginning to end of line 13 on page 119 and insert—

“(3D) Where paragraphs (a) to (d) of section 74A(1) are satisfied, subsection (3)(a) above does not apply at the time they are first satisfied or any later time to make the relevant settled property (within the meaning of section 74A) excluded property.”’.

David Gauke

3

Clause 208, page 119, leave out lines 15 to 38 and insert—

“74A Arrangements involving acquisition of interest in settled property etc

(1) This section applies where—

(a) one or more persons enter into arrangements,

(b) in the course of the arrangements—

(i) an individual (“the individual”) domiciled in the United Kingdom acquires or becomes able to acquire (directly or indirectly) an interest in property comprised in a settlement (“the relevant settled property”), and

(ii) consideration in money or money’s worth is given by one or more of the persons mentioned in paragraph (a)

Amendments:

Finance Bill, *continued*

- (whether or not in connection with the acquisition of that interest or the individual becoming able to acquire it),
- (c) there is a relevant reduction in the value of the individual's estate, and
 - (d) condition A or condition B is met.
- (2) Condition A is that—
- (a) the settlor was not domiciled in the United Kingdom at the time the settlement was made, and
 - (b) the relevant settled property is situated outside the United Kingdom at any time during the course of the arrangements.
- (3) Condition B is that—
- (a) the settlor was not an individual or a close company at the time the settlement was made, and
 - (b) condition A is not met.’

David Gauke

4

Clause 208, page 120, leave out line 47 and insert—

‘74C Interpretation of sections 74A and 74B

- (1) Subsections (2) to (4) have effect for the purposes of sections 74A and 74B.
- (2) An individual has an interest in property comprised in a settlement if—
 - (a) the property, or any derived property, is or will or may become payable to, or applicable for the benefit of—
 - (i) the individual,
 - (ii) the individual's spouse or civil partner, or
 - (iii) a close company in relation to which the individual or the individual's spouse or civil partner is a participator or a company which is a 51% subsidiary of such a close company,
 - in any circumstances whatsoever, or
 - (b) a person within sub-paragraph (i), (ii) or (iii) of paragraph (a) enjoys a benefit deriving (directly or indirectly) from the property or any derived property.
- (3) A “relevant reduction” in the value of the individual's estate occurs—
 - (a) if and when the value of the individual's estate first becomes less than it would have been in the absence of the arrangements, and
 - (b) on each subsequent occasion when the value of that estate becomes less than it would have been in the absence of the arrangements and that difference in value is greater than the sum of any previous relevant reductions.
- (4) The amount of a relevant reduction is—
 - (a) in the case of a reduction within subsection (3)(a), the difference between the value of the estate and its value in the absence of the arrangements, and
 - (b) in the case of a reduction within subsection (3)(b), the amount by which the difference in value mentioned in that provision exceeds the sum of any previous relevant reductions.

Amendments:

Finance Bill, *continued*

- (5) In sections 74A and 74B and this section—
- “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations;
 - “close company” has the meaning given in section 102;
 - “derived property”, in relation to any property, means—
 - (a) income from that property,
 - (b) property directly or indirectly representing—
 - (i) proceeds of that property, or
 - (ii) proceeds of income from that property, or
 - (c) income from property which is derived property by virtue of paragraph (b);
 - “operation” includes an omission;
 - “participator” has the meaning given in section 102;
 - “the relevant time” means—
 - (a) the time the relevant reduction occurs, or
 - (b) if later, the time section 74A first applied;
 - “51% subsidiary” has the same meaning as in the Corporation Tax Acts (see Chapter 3 of Part 24 of the Corporation Tax Act 2010).”

David Gauke

5

Clause 208, page 121, leave out lines 2 to 7 and insert—

- “(4A) Where—
- (a) a charge to tax arises under or by virtue of section 74A, or
 - (b) in a case where paragraphs (a) to (d) of section 74A are satisfied, a charge to tax arises under section 64 or 65 in respect of the relevant settled property (within the meaning of section 74A),
- subsection (1) of this section has effect as if the persons listed in that subsection included the individual mentioned in section 74A(1)(b)(i).”

David Gauke

6

Clause 208, page 121, line 8, leave out subsections (5) and (6) and insert—

- ‘(5) The amendments made by this section are treated as having come into force on 20 June 2012 and have effect in relation to arrangements entered into on or after that day.’