

Corporation tax: deferral of payment of exit charges

Who is likely to be affected?

UK resident companies that intend to transfer residence to another EU or European Economic Area (EEA) member state.

General description of the measure

This measure amends legislation governing when corporation tax payments must be made in respect of exit charges. Exit charges are corporation tax charges that arise on certain unrealised profits and gains when a company ceases to be tax resident in the UK. This measure provides that companies can temporarily elect to defer the payment of such charges, subject to conditions, in accordance with recent jurisprudence of the Court of Justice of the European Union (CJEU).

Policy objective

This measure will minimise the relative cash flow disadvantage associated with the transfer of a company's place of management to another EU or EEA member state, when compared to an equivalent intra-UK transfer. This will ensure that UK rules are consistent with a recent ruling by the CJEU.

Under this measure, the ability of a company to elect to defer the payment of certain corporation tax charges will be subject to such conditions as are required to ensure that HM Revenue & Customs (HMRC) receive full payment of the deferred amount over time. Consequently this change is not expected to have any overall Exchequer impact.

Background to the measure

In November 2011, the CJEU ruled that where a company transfers its place of effective management to another member state, then, to ensure its rules do not infringe the right of the freedom of establishment of an EU or EEA incorporated company, a member state must offer a choice between immediate payment or the option of deferral of exit charges, subject to certain conditions. Subsequently, the UK has decided to update its legislation.

Detailed proposal

Operative date

This measure will be included in Finance Act 2013 and apply retrospectively to allow companies to opt for deferred payment arrangements from the publication of the draft legislation on 11 December.

Current law

On migration a company is currently deemed to have disposed of all its assets and immediately reacquired them for their market value. This triggers a corporation tax charge, which, under Section 59D(1) of the Taxes Management Act 1970 is payable nine months and one day after the end of the accounting period.

There are various classes of assets that give rise to such a charge, and which are affected by this measure. Sections 185 and 187 of Chargeable Gains Act 1992 (CGA 1992) provide for general rules on taxation of unrealised capital gains levied on migrating companies.

Sections 859 and 860 of the Corporation Tax Act 2009 (CTA 2009) provide corresponding rules for the taxation of intangible fixed assets. Section 609 CTA 2009 provides for the taxation of the value of rights and liabilities arising from derivative contracts on the occasion of a company migrating, while section 333 CTA 2009 provides corresponding rules for the treatment of loan relationships.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to retain the existing rules that require companies to pay corporation tax on all the profits and gains arising in the period up to the date they cease to be resident in the UK within nine months and a day of the end of that period. However, where a company that is incorporated in the UK or another EEA territory becomes a resident of, and established in, another Member State of the EU (or EEA), it will have two further payment options to manage corporation tax charges that arise in respect of ss. 185 and 187 CGA 1992, ss. 859-860 CTA 2009, s. 609 CTA 2009 and s. 333 CTA.

Both of these new options allow companies to defer the time at which they must settle some or all of the tax they are due to pay under current tax rules.

The first new option is designed to ensure minimal compliance burden. It involves a calculation of the tax due at the time of migration, with staged payments of the tax attributable to exit charges then made in six equal annual instalments starting with the first payment due within nine months and one day of the end of the accounting period. This option allows all assets to be taken together, without distinguishing between different classes, and without the need for them to be tracked individually after migration.

The second new option is more directly related to the economic life of assets. It involves a calculation of the tax due at the time of exit, with the tax attributable to exit charges allocated on an asset by asset basis. Companies would be obliged to provide HMRC with an annual statement identifying the realisations of assets in that period, and the tax would become payable in respect of those realisations. For intangible assets, derivative contract and loan relationship profits, the useful economic life of each asset would be determined at the point of migration. Tax would then be payable in equal annual instalments over the useful life of the asset. Tax related to exit charges on any other assets may be deferred for up a maximum of ten years, or until the disposal of the asset if sooner.

The amounts deferred under either of the above options will be subject to interest.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	negligible	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer. Any impact will be set out at Budget 2013.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	This measure will have no impact on individuals or households.					
Equalities impacts	This measure is not expected to have an equality impact on people with any protected characteristics.					
Impact on business including	This measure is expected to have a negligible impact on businesses or civil society organisations. It will provide migrating companies with an option to elect to defer the payment of certain corporate tax charges, without prejudice					

civil society organisations	<p>to any of their existing rights. The number of companies affected by this measure is expected to be very small; this may be revised after consultation.</p> <p>The impacts on businesses' one-off compliance costs are expected to be negligible as a very small number of businesses will need to familiarise themselves with the change. The impacts on businesses' on-going administrative burdens are also expected to be negligible as a very small number of businesses will be affected. If affected they will either have to make an annual report to HMRC or take advantage of an option to use a simplified method that would greatly reduce these burdens. There will be no impact on companies that do not opt to defer payment.</p>
Operational impact (£m) (HMRC or other)	The operational impact of this measure is expected to be negligible.
Other impacts	Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be kept under review through regular communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Phil Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk) or Michael Contaldo on 020 7270 4745 (email: michael.contaldo@hmtreasury.gsi.gov.uk).

1 Corporation tax: deferral of payment of exit charge

- (1) Schedule 1 contains provision for, and in connection with, deferring the payment by a company of certain tax in circumstances where income, profits or gains arise by virtue of section 185 or 187(4) of TCGA 1992 or section 333, 609, 859 or 862 of CTA 2009.
- (2) The amendments made by Schedule 1 are treated as having come into force on 11 December 2012 in relation to an accounting period if the relevant day, in relation to that period, falls on or after 11 December 2012.
- (3) In subsection (2) “the relevant day”, in relation to an accounting period, means the day following the expiry of the 9 month period beginning on the day after the end of the accounting period.
- (4) But if the relevant day falls between 11 December 2012 and 31 March 2013 (including those dates), section 59FA(3) of TMA 1970 (inserted by Schedule 1) has effect as if for the words from “before the expiry of” to the end, there were substituted “on or before 31 March 2013”.

SCHEDULE 1

Section 1

CORPORATION TAX: DEFERRAL OF PAYMENT OF EXIT CHARGE

- 1 TMA 1970 is amended as set out in paragraphs 1 to 5.
- 2 After section 59F insert –

*“Exit charge payment plans***59FA Exit charge payment plans**

- (1) This section and sections 59FB to 59FM apply where an eligible company –
 - (a) ceases to be resident in the United Kingdom,
 - (b) on ceasing to be so resident, becomes resident in another EEA state, and
 - (c) is liable to pay qualifying tax in respect of the migration accounting period.
- (2) The company may defer payment of an amount of that tax if it enters into an exit charge payment plan in respect of that amount in accordance with section 59FD.
- (3) The company may enter into an exit charge payment plan in respect of an amount of qualifying tax only if it does so before the expiry of the period of 9 months beginning on the day after the end of the migration accounting period.
- (4) The company may enter into an exit charge payment plan only if conditions A and B are met.
- (5) Condition A is that on ceasing to be resident in the United Kingdom, the company carries on a business in an EEA state.
- (6) Condition B is that on becoming resident in the other EEA state, the company is not treated as resident in a territory outside the European Economic Area for the purposes of any double taxation arrangements.
- (7) In this section –
 - “double taxation arrangements” means arrangements which are made by two or more territories with a view to affording relief from double taxation and which have effect on the migration date;
 - “eligible company” means a company that has a right to freedom of establishment protected by article 49 of the Treaty on the Functioning of the European Union.
- (8) In this section and sections 59FB to 59FK –
 - (a) references to the migration date are to the date on which the company ceases to be resident in the United Kingdom, and

- (b) references to the migration accounting period are to the accounting period that includes the migration date.

59FB Qualifying tax

- (1) The company is liable to pay qualifying tax in respect of the migration accounting period if CT1 is greater than CT2 where –
- CT1 is the corporation tax which the company is liable to pay for the accounting period, and
 - CT2 is the corporation tax which the company would be liable to pay for the accounting period if any income, profits, gains, losses or debits arising only by virtue of the exit charge provisions were ignored (which will be zero if the company would not be liable to pay any corporation tax for the period).
- (2) The amount of the qualifying tax which the company is liable to pay is the difference between CT1 and CT2.
- (3) “Exit charge provisions” means –
- (a) section 185 of the 1992 Act,
 - (b) section 187(4) of that Act, where that subsection applies by virtue of section 187(4)(c),
 - (c) section 333 of CTA 2009,
 - (d) section 609 of that Act,
 - (e) section 859 of that Act, where that section applies by virtue of section 859(2)(a), and
 - (f) section 862 of that Act, where that section applies by virtue of section 862(1)(c).
- (4) References in section 59FA and sections 59FC to 59FF to qualifying tax or to an amount of qualifying tax are to be read in accordance with this section.

59FC Interpretation: exit charge assets and liabilities

- (1) This section applies for the purposes of sections 59FG to 59FM.
- (2) “Exit charge assets” and “exit charge liabilities” means assets or liabilities (as the case may be) in respect of which income, profits or gains arise in the migration accounting period by virtue of the exit charge provisions, and in particular –
- (a) “TCGA exit charge assets” means those exit charge assets, other than pre-FA 2002 intangible fixed assets, in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(a) or (b),
 - (b) “loan relationship exit charge assets or liabilities” means those exit charge assets or liabilities in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(c),
 - (c) “derivative contract exit charge assets or liabilities” means those exit charge assets or liabilities in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(d), and
 - (d) “intangible exit charge assets” means –

- (i) those exit charge assets in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(e) or (f), and
 - (ii) those exit charge assets which are pre-FA 2002 intangible fixed assets in respect of which income, profits or gains arise by virtue of the exit charge provisions mentioned in section 59FB(3)(a) or (b).
- (3) In subsection (2) –
- “exit charge provisions” has the meaning given in section 59FB(3);
 - “pre-FA 2002 intangible fixed asset” means an intangible fixed asset which is a pre-FA 2002 asset (as defined in section 881 of CTA 2009).

59FD Entering into an exit charge payment plan

- (1) The company enters into an exit charge payment plan in respect of an amount of qualifying tax in accordance with this section if –
 - (a) the company agrees to pay, and an officer of Revenue and Customs agrees to accept payment of, the amount in accordance with the standard instalment method (see section 59FI) or the realisation method (see sections 59FJ to 59FM),
 - (b) the company agrees to pay interest on the amount in accordance with section 59FE(3), and
 - (c) the plan meets the requirements set out in sections 59FF to 59FH as to the matters that must be specified in it.
- (2) The exit charge payment plan may contain appropriate provision regarding security for Her Majesty’s Revenue and Customs in respect of the deferred payment of the tax in the circumstances mentioned in subsection (3).
- (3) Those circumstances are where an officer of Her Majesty’s Revenue and Customs considers that agreeing to accept payment of an amount of qualifying tax in accordance with the plan would present a serious risk as to collection of the tax in the absence of provision regarding security in respect of that tax.
- (4) An exit charge payment plan is void if any information furnished by the company in connection with the plan does not fully and accurately disclose all facts and considerations material to the decision of the officer of Revenue and Customs to accept payment of qualifying tax in accordance with the plan.

59FE Effect of exit charge payment plan

- (1) This section applies where an exit charge payment plan is entered into by a company in respect of an amount of qualifying tax in accordance with section 59FD.
- (2) As regards when the amount is payable –
 - (a) the plan does not prevent the amount becoming due and payable under section 59D or 59E, but
 - (b) the Commissioners for Her Majesty’s Revenue and Customs will not seek payment of the amount otherwise than in accordance with the plan.

- (3) As regards interest –
 - (a) the amount carries interest in accordance with Part 9 as if the plan had not been entered into, and
 - (b) each time a payment is made under the plan, it is to be paid together with any interest payable on it.
- (4) As regards penalties, the company will only be liable to penalties for late payment of the amount if it fails to make payments in accordance with the plan (see item 6ZA of the Table at the end of paragraph 1 of Schedule 56 to the Finance Act 2009).
- (5) Qualifying tax payable in accordance with an exit charge payment plan which is for the time being unpaid may be paid at any time together with interest payable on it to the date of payment.

59FF Content of exit charge payment plan: general

- (1) An exit charge payment plan entered into by a company must specify –
 - (a) the date on which the company ceased to be resident in the United Kingdom,
 - (b) the EEA state in which the company has become resident,
 - (c) the amount of qualifying tax which, in the company's opinion, is payable by it in respect of the migration accounting period,
 - (d) the amount of that qualifying tax which the company wishes to defer paying ("the deferred tax"), and
 - (e) whether the deferred tax is to be paid in accordance with –
 - (i) the standard instalment method (see section 59FI), or
 - (ii) the realisation method (see sections 59FJ to 59FM).
- (2) But an exit charge payment plan may specify that the deferred tax is to be paid in accordance with the standard instalment method only if the company ceasing to be resident in the United Kingdom is not part of arrangements the main purpose of which, or one of the main purposes of which, is to defer the payment of any qualifying tax payable by it.
- (3) Sections 59FG and 59FH apply if the exit charge payment plan specifies that the deferred tax is to be paid in accordance with the realisation method.

59FG Content: realisation method

- (1) If the exit charge payment plan specifies that the deferred tax is to be paid in accordance with the realisation method, the plan must also specify –
 - (a) the company's exit charge assets or liabilities (see section 59FC(2)),
 - (b) the amount of the deferred tax which is attributable to each exit charge asset or liability, calculated in accordance with subsection (2), and
 - (c) any additional information required by section 59FH in relation to the exit charge assets or liabilities.

- (2) The tax attributable to each exit charge asset or liability is –

$$\frac{A}{B} \times D$$

where –

- (a) A is the income, profits or gains arising in respect of the asset or liability in the migration accounting period by virtue of the relevant exit charge provision,
 - (b) B is the total income, profits or gains arising in respect of all the exit charge assets and liabilities in the migration accounting period by virtue of the exit charge provisions, and
 - (c) D is the deferred tax.
- (3) The plan is to include requirements as to the ongoing provision of information by the company to Her Majesty's Revenue and Customs in relation to each exit charge asset or liability.

59FH Content: additional information relating to assets and liabilities

- (1) This section sets out the circumstances in which additional information (as referred to in section 59FG(1)(c)) must be specified in an exit charge payment plan in relation to exit charge assets and liabilities.
- (2) Subsection (3) applies in the case of a loan relationship exit charge asset or liability if the remaining term of the loan relationship in question is less than 10 years at the time when the plan is entered into.
- (3) The plan must specify, in relation to the asset or liability, how many years of the term of the loan relationship remain (rounded up to the nearest whole year).
- (4) Subsection (5) applies in the case of a derivative contract exit charge asset or liability if the remaining term of the derivative contract in question is less than 10 years at the time when the plan is entered into.
- (5) The plan must specify, in relation to the asset or liability, how many years of the term of the derivative contract remain (rounded up to the nearest whole year).
- (6) Subsection (7) applies in the case of an intangible exit charge asset if the remaining useful life of the asset for accountancy purposes is less than 10 years at the time when the plan is entered into.
- (7) The plan must specify, in relation to the asset, how many years of the useful life of the asset remain (rounded up to the nearest whole year).

59FI Standard instalment method

- (1) This section applies if an exit charge payment plan provides for deferred tax to be paid in accordance with the standard instalment method.

- (2) The deferred tax is payable in 6 instalments of equal amounts as follows –
 - (a) the first instalment is due on the day following the end of the period of 9 months beginning on the day after the end of the migration accounting period, and
 - (b) the other 5 instalments are due on the first 5 anniversaries of that day.
- (3) But if a relevant event occurs, the balance outstanding of the deferred tax is payable on the date on which the next instalment would otherwise have been due under the plan.
- (4) A “relevant event” means –
 - (a) the company becoming insolvent or entering into administration,
 - (b) the appointment of a liquidator,
 - (c) any event under the law of an EEA state outside the United Kingdom corresponding to an event specified in paragraph (a) or (b), or
 - (d) the company ceasing to be resident in an EEA state.

59FJ Realisation method: TCGA exit charge assets

- (1) This section applies if –
 - (a) an exit charge payment plan provides for deferred tax to be paid in accordance with the realisation method, and
 - (b) some or all of the deferred tax is attributable to TCGA exit charge assets.
- (2) The amount of deferred tax attributable to each such asset under section 59FG(2) is payable in relation to whichever is the first to occur of the following events –
 - (a) the disposal of that asset at any time after the company ceases to be resident in the United Kingdom,
 - (b) the tenth anniversary of the date on which the company ceased to be resident there, or
 - (c) a relevant event (as defined in section 59FI(4)).
- (3) The date on which the amount is payable is –
 - (a) in a case falling within subsection (2)(a) or (b), the date of the event referred to, and
 - (b) in a case falling within subsection (2)(c), the relevant date or the next anniversary of that date.
- (4) In subsection (3)(b), “relevant date” means the day following the expiry of the period of 9 months beginning on the day after the end of the migration accounting period.
- (5) Section 21(2) of the 1992 Act (part disposals of assets) applies for the purposes of subsection (2)(a) as it applies for the purposes of that Act.
- (6) Where part of an asset is disposed of at any time after the company ceases to be resident in the United Kingdom, the amount of deferred tax attributable to the asset under section 59FG(2) is to be apportioned on a just and reasonable basis for the purpose of

applying this section to the part of the asset disposed of and the part which remains undisposed of.

59FK Realisation method: other exit charge assets and liabilities: instalments

- (1) This section applies if—
 - (a) an exit charge payment plan provides for deferred tax to be paid in accordance with the realisation method, and
 - (b) some or all of the deferred tax is attributable to—
 - (i) loan relationship exit charge assets or liabilities,
 - (ii) derivative contract exit charge assets or liabilities, or
 - (iii) intangible exit charge assets.
- (2) If a number of years (“U”) is specified in the plan in relation to any such asset or liability by virtue of section 59FH(3), (5) or (7), the amount of deferred tax attributable to the asset or liability under section 59FG(2) is payable in U instalments of equal amounts.
- (3) The instalments under subsection (2) are due as follows—
 - (a) the first instalment is due on the day following the end of the period of 9 months beginning on the day after the end of the migration accounting period, and
 - (b) the other V instalments are due on the first V anniversaries of that day.
- (4) In subsection (3) “V” means U minus 1.
- (5) If no number of years is specified in the plan in relation to any such asset or liability by virtue of section 59FH(3), (5) or (7), the amount of deferred tax attributable to the asset or liability under section 59FG(2) is payable in 10 instalments of equal amounts.
- (6) The instalments under subsection (5) are due as follows—
 - (a) the first instalment is due on the day following the end of the period of 9 months beginning on the day after the end of the migration accounting period, and
 - (b) the other 9 instalments are due on the first 9 anniversaries of that day.
- (7) But see sections 59FL and 59FM for circumstances in which all or part of the balance outstanding of the amount of deferred tax attributable to each asset or liability under section 59FG(2) (“the outstanding balance in respect of the asset or liability”) becomes payable.

59FL Section 59FK: outstanding balance becoming payable in full

- (1) This section applies where the amount of deferred tax attributable to an asset or liability under section 59FG(2) is payable in instalments in accordance with section 59FK(3) or (6).
- (2) All of the outstanding balance in respect of the asset or liability (as defined in section 59FK(7)) is payable in accordance with subsection (3) if—
 - (a) a trigger event occurs in relation to the asset or liability (see subsection (4)), or
 - (b) a relevant event occurs (as defined in section 59FI(4)),

before the last instalment would be payable in accordance with section 59FK(3) or (6).

- (3) The outstanding balance is payable –
 - (a) in a case falling within subsection (2)(a), on the date of the trigger event, and
 - (b) in a case falling within subsection (2)(b), on the date on which the next instalment would otherwise have been due under the plan.
- (4) For the purposes of this section, a trigger event occurs in relation to an asset or liability if –
 - (a) in the case of a loan relationship exit charge asset or liability, the company ceases to be party to the loan relationship in question,
 - (b) in the case of a derivative contract exit charge asset or liability, the company ceases to be party to the derivative contract in question, and
 - (c) in the case of an intangible fixed asset, the asset is disposed of.

59FM Section 59FK: outstanding balance becoming payable in part

- (1) This section applies where the amount of deferred tax attributable to an asset or liability under section 59FG(2) is payable in instalments in accordance with section 59FK(3) or (6).
- (2) Part of the outstanding balance in respect of the asset or liability (as defined in section 59FK(7)) is payable on the occurrence of a partial trigger event in relation to the asset or liability (see subsection (4)) before the last instalment would be payable in accordance with section 59FK(3) or (6).
- (3) The part of the balance payable under subsection (2) is so much of the outstanding balance in respect of the asset or liability as is attributable to the transaction mentioned in subsection (4)(a), (b) or (c) as the case may be.
- (4) For the purposes of subsection (2), a partial trigger event occurs in relation to an asset or liability if –
 - (a) in the case of a loan relationship exit charge asset or liability –
 - (i) there is a disposal of rights or liabilities under the loan relationship in question which amounts to a related transaction (as defined in section 304 of CTA 2009), but
 - (ii) the transaction does not result in the company ceasing to be a party to the relationship,
 - (b) in the case of a derivative contract exit charge asset or liability –
 - (i) there is a disposal of rights or liabilities under the derivative contract in question which amounts to a related transaction (as defined in section 596 of CTA 2009), but
 - (ii) the transaction does not result in the company ceasing to be a party to the contract, and

- (c) in the case of an intangible exit charge asset, there is a transaction which—
 - (i) results in a reduction in the accounting value of the asset, but
 - (ii) does not result in the asset ceasing to be recognised in the company’s balance sheet.
- (5) Where part of the outstanding balance in respect of an asset or liability is paid in accordance with subsections (2) and (3), so much of the remaining instalments due under section 59FK(3) or (6) in respect of the asset or liability as are attributable to the remaining asset or liability continue to be payable (subject to section 59FL and this section).
- (6) In subsection (5), the “remaining asset or liability” means —
 - (a) in the case of a loan relationship exit charge asset or liability, the loan relationship as it exists following the related transaction,
 - (b) in the case of a derivative contract exit charge asset or liability, the derivative contract as it exists following the related transaction, and
 - (c) in the case of an intangible exit charge asset, the asset as it continues to be recognised on the balance sheet following the transaction mentioned in subsection (4)(c).
- (7) For the purposes of subsections (3) and (5) —
 - (a) the outstanding balance in respect of the asset or liability, and
 - (b) the remaining instalments due under section 59FK(3) or (6) in respect of the asset or liability,
 are to be apportioned on a just and reasonable basis between the transaction mentioned in subsection (4)(a), (b), or (c) (as the case may be) and the remaining asset or liability.
- (8) In relation to an intangible exit charge asset that has no balance sheet value (or no longer has a balance sheet value), subsection (4)(c) applies as if, immediately before the transaction, it did have a balance sheet value.”

3 Immediately before section 59G insert —

“Managed payment plans”.

- 4 (1) Section 109B (provision for securing payment by company of outstanding tax) is amended as follows.
 - (2) In subsection (1), at the end insert “, subject to subsection (5A).”
 - (3) In subsection (4)(b), at the end insert “(which may include a proposal to enter into an exit charge payment plan in accordance with section 59FD).”
 - (4) After subsection (5) insert —
 - “(5A) Condition D does not apply to the extent that payment of the tax is to be secured by the company entering into an exit charge payment plan in accordance with section 59FD.”

- 5 (1) Section 109E (liability of other persons for unpaid tax) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) The reference in subsection (1)(b) to the time when tax becomes payable is a reference to –
- (a) in a case where an exit charge payment plan has been entered into in accordance with section 59FD in respect of the tax, the time when the tax becomes payable under the plan, and
 - (b) in any other case, the time when the tax becomes payable in accordance with section 59D or 59E.”
- (3) In subsection (2), for “the time when the amount of the tax is finally determined” substitute “the relevant time”.
- (4) After subsection (2) insert –
- “(2A) In subsection (2) the “relevant time” means –
- (a) in a case where an exit charge payment plan has been entered into in accordance with section 59FD in respect of the tax, the later of –
 - (i) the day following the expiry of the 12 month period beginning on the day after the end of the migration accounting period (as defined in section 59FA(8)), and
 - (ii) the date on which the tax is payable under the plan, and
 - (b) in any other case, the time when the amount of the tax is finally determined.”
- 6 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in the Table at the end of paragraph 1, after entry 6 insert –

“6ZA	Corporation tax	Amount payable under an exit charge payment plan entered into in accordance with section 59FD of TMA 1970	The later of – <ul style="list-style-type: none"> (a) the day following the expiry of the 12 month period beginning on the day after the end of the migration accounting period (as defined in section 59FA(8) of TMA 1970), and (b) the date on which the amount is payable under the plan.”
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EXPLANATORY NOTE

CORPORATION TAX: DEFERRAL OF PAYMENT OF EXIT CHARGE

SUMMARY

1. This clause and Schedule introduce two options for companies to defer payment for UK corporation tax where it arises under provisions taxing unrealised profits or gains when the company ceases to be resident in the United Kingdom. Exit charge payment plans will be available to companies incorporated in the EU or European Economic Area (EEA), including UK companies, which transfer their business and their place of residence for tax purposes to another Member State. Deferred tax payments will be subject to interest under the usual rules. The changes ensure that UK rules taxing such profits and gains are compatible with EU law.

DETAILS OF THE CLAUSE

2. This clause outlines the scope of the changes introduced by the Schedule, and the date from which applications for deferral of tax payments can be made.
3. A company may apply for deferred payment of that part of its corporation tax liability payable in respect of specified unrealised chargeable gains or income profits under an exit charge payment plan. An exit charge is the corporation tax on profits or gains which the company is deemed to have realised when it ceases to be UK resident. Subsection (1) of the clause specifies that the relevant tax provisions are:
 - Sections 185 and 187(4) of the Taxation of Chargeable Gains Act 1992 ('TCGA'), which deem a company to have disposed of all its assets at the time it ceases to be UK resident, and taxes any net chargeable gain.
 - Sections 333 and 609 of the Corporation Tax Act 2009 ('CTA 09') which deem a company to have disposed of all of its loan relationships and derivative contracts at their fair value immediately before ceasing to be UK resident.
 - Section 859 and 862 of CTA 09 which deem a company to have realised its intangible fixed assets for market value at the time that it ceases to be UK resident, and taxes any resulting profit.

4. Subsections (2) and (3) set out the commencement rule. Companies may apply to defer tax payments in respect of an amount of an exit charge arising for accounting periods ended on or after 10 March 2012. For a company that is not in the quarterly instalment payment scheme for large companies, its corporation tax bill for an accounting period ended on that date would be due and payable on or after 11 December 2012. Applications to enter into an exit charge payment plan must be made within nine months and one day of the end of an accounting period.
5. Subsection (4) provides a transitional rule for periods where the relevant day falls between 11 December 2012 and 31 March 2013, in which case an application may be made at any time until 31 March 2013.

DETAILS OF THE SCHEDULE

6. Paragraphs 1 to 3 of the Schedule provide for amendments to be made to Part VA of the Taxes Management Act 1970 (TMA), which sets out the rules for payment of tax.
7. Paragraph 2 inserts the new provisions for exit charge payment plans.
8. New section 59FA TMA specifies the conditions under which a company may apply for an exit charge payment plan. An exit charge payment plan is available for companies that are formed in accordance with the laws of an EU or EEA Member State and who transfer their tax residence from the UK to another EU or EEA State, exercising a right to Freedom of Establishment that is protected by Article 49 of the Treaty on the Functioning of the European Union, or equivalent rights in the EEA.
9. New section 59FB specifies the amount of tax on which the company may defer payment by entering into an exit charge payment plan. This is the difference between the amount of corporation tax that a company is liable to pay for the accounting period, and the amount to which it would be liable for the same period in the absence of the various exit charge provisions in the Taxation of Chargeable Gains Act 1992 (TCGA) and the Corporation Tax Act 2009 (CTA 2009). In respect of income arising on loan relationships and derivative products, this is limited to tax on the amount of profits which would not otherwise have been brought into account if the company had drawn up accounts to the date on which it migrates.
10. New section 59FC defines various terms used in new sections 59FG to 59FM.

11. New sections 59FD and 59FE explain that an exit charge payment plan is an agreement between a company and an officer of HM Revenue & Customs (HMRC) which will override the usual collection and penalty consequences where a company does not pay the full amount of its corporation tax liability at the normal time. Under the agreement, the company agrees to pay the deferred tax liabilities in accordance with the plan, along with interest from the normal due date for payment of the tax to the date it is actually paid. An exit charge payment plan may include provision for HMRC to take security for the deferred payments under the plan where an HMRC officer considers that there would otherwise be a serious risk to the collection of tax. This security would generally take the form of a bank guarantee.
12. New section 59FF sets out the details that the company will need to supply when making an application for an exit charge payment plan. In addition to giving details of when, and to where the company is migrating, it should quantify to the best of its ability, the amount of tax that qualifies for deferral, how much of that qualifying tax it wishes to include in the exit charge payment plan, and the method it will use to determine when the tax is to be paid under the plan. There are two alternative methods that the company may use to determine the period over which tax payments can be deferred. These are the standard instalment method and the realisation method. A company must choose which method to apply for, and apply the same method in respect of all assets and liabilities that give rise to exit charges. It may not adopt the instalment method for certain assets and the realisation method for others. In order to prevent abuse of the deferral arrangements, the company may not use the standard instalment method where the obtaining a deferral of tax payments is the main purpose, or one of the main purposes of the change of residence of the company.
13. New sections 59FG and 59FH set out additional details that the company needs to provide on entering into an exit charge payment plan where it intends to adopt the realisation method.
14. New section 57FG specifies that the company must identify the assets (and, where appropriate, the liabilities) in respect of which income, profits or gains arise under the exit charge provisions, the amount of each item of such income, profits or gains arising under the various exit charges, and the amount of deferred tax that is to be attributed to each of the exit charge assets and liabilities. The attribution of deferred tax is to be made in proportion to the income, profits or gains arising on each of the assets or liabilities. No amount is to be apportioned to an asset or liability that has given rise to a loss.
15. New section 59FH then specifies what further information is required to determine the period over which tax will be payable under the plan

in respect of intangible fixed assets, loan relationships or derivative contracts. Intangible fixed assets for these purposes are defined in new section 59FC(2)(d) and (3) to include assets that are pre-2002 assets for the purposes of Part 8 of CTA 2009. The company must include in the exit charge payment plan details of the remaining term of a financial instrument or the remaining useful life of intangible fixed assets as of the date of migration.

16. New section 59FI sets out how tax may be deferred under the standard instalment method. Any qualifying tax can be paid in six equal annual instalments which commence nine months and one day after the end of the last accounting period in which the company is UK resident for tax purposes. Where a company adopts this method, it is not required to provide HMRC with annual reports on the realisation of its exit charge assets and liabilities. The deferral will run for the full six years unless either the company decides to pay the balance of any unpaid tax and interest, or one of the events specified in new section 59FF(4) occurs. Under any of these circumstances the balance of any deferred tax is payable no later than the next instalment date.
17. New sections 59FJ to 59FM set out how tax may be deferred under the realisation method in respect of different classes of asset or liability. Where a company adopts the realisation method, it will be required to provide HMRC with annual reports detailing the realisation of its exit charge assets and liabilities. Deferral periods will vary depending upon the nature of the asset or liability, and its treatment for tax and accounting purposes. The general scheme is that tax will either be paid in instalments on the basis of how the value of the asset or liability is expected to be realised, either through use or through subsequent disposal. This is specified as being over the useful economic life of an intangible fixed asset, the term of a financial instrument or deferred until a disposal of the asset in any other case. For all assets and liabilities, the maximum period over which payments may be deferred is the shorter of ten years, or until the company ceases to hold the asset or liability.
18. New section 59FJ provides for the deferral of tax attributed to any asset other than an intangible fixed asset, a loan relationship or a derivative contract until disposal, subject to an upper limit of ten years. A disposal for these purposes includes all the matters that would fall to be treated as a disposal by the company for the purposes of chargeable gains, including any occasions when an asset is deemed to have been disposed of, in whole or in part. Where there is a part disposal of the asset, the tax attributable to the part disposed of is payable on the next anniversary of the first potential payment date under the exit charge payment plan. Attribution of the tax is to be made on a just and reasonable basis.

19. New section 59FK sets out the deferral periods applicable to loan relationships, derivative contracts and intangible fixed assets. The general scheme provides for the tax to be paid in equal annual instalments over the expected term or useful economic life of the asset or liability, up to a maximum period of ten annual instalments.
20. New sections 59FL and 59FM modify the general scheme and determine when the balance of tax outstanding in respect of an exit charge asset or liability is to be payable in full, or in part, on the next instalment date following the occurrence of particular events.
21. New section 59FL requires the outstanding balance to be paid in full where either the company no longer holds the exit charge asset or liability, or one of the events listed in new section 59FI(4) occurs.
22. New section 59FM provides equivalent rules to the part disposal rules for chargeable gains assets dealing with instances where an exit charge asset or liability is realised or disposed of in part. A just and reasonable proportion of the tax is attributed to the part realised, which is to be paid on the next instalment date, along with a proportionate part of the tax relating to the balance of the asset or liability. Tax that remains unpaid in respect of the asset continues to be treated in accordance with the exit charge payment plan.
23. Paragraph 4 of the Schedule adds references to exit charge payment plans into section 109B TMA, which is concerned with the obligations imposed on a company intending to cease to be resident in the UK, and which it must comply with prior to migration.
24. Paragraph 5 amends section 109E TMA, which is concerned with the powers to recover tax from an individual involved in the management of a company that has ceased to be resident in the UK and which has failed to pay tax that is owed. The amendments ensure that the provisions are adapted to take account of the revised payable dates for tax that is subject to an exit charge payment plan.
25. Paragraph 6 inserts a reference to corporation tax payable in accordance with an exit charge payment plan into Schedule 56 of Finance Act 2009, which sets out when a taxpayer may incur a penalty for late payment of tax. Although these rules are provided in the statute, they will only apply for corporation tax purposes after such time as an Order to that effect has been made.

BACKGROUND

26. The changes introduced in this clause and Schedule implement recent decisions of the Court of Justice of the European Union in cases where the compatibility of Member State exit charges with Article 49 of the Treaty on the Functioning of the European Union was considered. Article 49 is concerned with ensuring the Freedom of Establishment of EU nationals and is extended by Article 54 to companies or firms formed in accordance with the law of a Member State having their registered office, central administration or principal place of business within the EU or EEA. Consequently, these changes apply only to companies that are nationals of the EU or EEA and who are seeking to exercise their rights of establishment within the EU/EEA.
27. This clause and Schedule were published in draft on 11 December 2012, and its provisions apply to allow applications for exit charge payment plans from that date. A consultation document, including details of the legislation was published on the same date. Consultation on the draft legislation is limited to consideration of matters such as the administrative impacts of the reporting requirements imposed by certain options available under the legislation.
28. If you have any questions about this change, or comments on the legislation, please contact Philip Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk).