

New Clause 12: Corporation 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 8ZB of CTA 2010, which replaces and extends the 'transactions in land' rules in Part 18 of the Corporation Tax Act 2010 (CTA 2010).
- 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, 13, 14, 15, 16 and 17.

Details of the clause

1. Subsection (1) introduces a new Part 8ZB into the Corporation Tax Act 2010 (CTA 2010), comprising new sections 356OA to 356OT inclusive. It replaces and extends Part 18 of CTA 2010. It applies to all companies within the charge to corporation tax, except where specific provisions apply only to non-resident companies.
2. New Section 356OA introduces Part 8ZB.
3. New Section 356OB sets out how the application of certain conditions will bring profits and gains within the meaning of profits from a trade of dealing in or developing land in the UK.
4. New Section 356OB(1) explains that if a person, as described at subsection (2), meets one of the conditions A to D set out at subsections (5) to (7) then the profits will be treated as trading profits.
5. New Section 356OB(2) sets out which persons can fall within the scope of this provision.
6. New Section 356OB(3) provides a definition of which arrangements can bring persons within the scope of this provision by virtue of subsection (2)(c).
7. New Section 356OB(4)-(7) set out the conditions which, if any are met, mean an amount is to be treated as profit from a disposal of land within the meaning of Part 8ZB.
8. New Section 356OB(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 356OB(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 356OB(6) sets out condition C: land is held as trading stock.
11. New Section 356OB(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 356OB(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 356OB(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 356OB(10) sets out the circumstances in which a person is associated with another person.
15. New Section 356OC sets out how the profit or gain should be treated for corporation tax purposes when section 356OB applies.
16. New Section 356OC(1) sets out that the profits should be treated as profits of a trade of the chargeable company (defined in New Section 356OG).
17. New Section 356OC(2) explains that if the company is not UK resident the profits are chargeable as the profits of that company's trade of dealing in and developing UK land.
18. New Section 356OC(3) explains that the profit should not be treated as a profit or gain for corporation 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 356OC(4) explains that the profits are treated as arising in the chargeable period when the profit or gain is realised.
20. New Section 356OC(5) states that this section also applies to gains of a capital nature.
21. New Section 356OD sets out the treatment of disposals of property which derives its value from land in the UK.
22. New Section 356OD(1) sets out that New Section 356OE will apply to treat the relevant amount as profits of a trade carried on by the company if a person realises a profit or gain on the disposal of an asset which derives at least 50% of its value from UK land, the person is concerned in an arrangement concerning the land and the condition at New Section 356OD(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 356OD(2) sets out the conditions which must be met for section 356OD(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 realise a profit or gain from the disposal of the property deriving its value from land.
24. New Section 356OE sets out how the profits or gain should be treated for corporation tax purposes when section 356OD applies.

25. New Section 356OE(1) sets out that the relevant amount should be treated as profits of a trade of the chargeable company (defined in New Section 356OG).
26. New Section 356OE(2) explains that if the company is not UK resident the profits are chargeable as the profits of that company's trade of dealing in and developing UK land.
27. New Section 356OE(3) explains that the relevant amount should not be treated as a profit or gain for corporation 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 356OE(4) explains that the profits are treated as arising in the chargeable period when the profit or gain is realised.
29. New Section 356OE(5) sets out how to compute the 'relevant amount', by reference to the 'relevant UK assets'.
30. New Section 356OE(6) defines 'relevant UK assets' as meaning any land from which the asset within the scope of section 356OD derives its value.
31. New Section 356OE(7) states that this section also applies to gains of a capital nature.
32. New Section 356OF explains that the provisions in Part 8ZB apply in the same way to losses as they do to profits and gains.
33. New Section 356OG sets out the rules to identify the "chargeable company".
34. New Section 356OG(1) gives the general rule. The "chargeable company" is normally the company that realises the profit or gain on the disposal.
35. New Section 356OG(2) provides a signpost to the exceptions to this general rule. These are set out in Subsections (4) to (6).
36. New Section 356OG(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 356OH apply.
37. New Section 356OG(4) explains that if the profit is derived from value provided directly or indirectly by another person then that other person is the 'chargeable company'.
38. New Section 356OG(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 356OG(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 company', unless subsection (4) applies.
40. New Section 356OG(7) provides a signpost to the meaning of "another person" at New Section 356OO.
41. New Section 356OH 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 corporation 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 356OH(1) sets out that the rules apply if a company disposes of land, any of conditions A to D in section 356OB are met, and a person related to the company making the disposal has made a relevant contribution to activities set out in Subsection (2).
43. New Section 356OH(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 356OH(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 356OH(4) and (5) set out what happens if the associated party reimburses some or all of the tax paid by the chargeable company. It is not to be taken into account when calculating the profit or loss of either company and should not be treated as a distribution.
46. New Section 356OH(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 356OH(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 356OH(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 356OH(9) sets out the circumstances in which parties will be treated as associated for the purposes of section 356OH.
50. New Section 356OH(10) provides the definition of "the project".
51. New Section 356OI sets out that any profit or gain arising from the application of this Part is calculated using the rules for the computation of trading profits in Part 3 of CTA 2009, subject to any modifications which may be appropriate.
52. New Section 356OJ directs that apportionments for any part of this legislation should be on a just and reasonable basis.
53. New Section 356OK 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 356OK(1) sets out that the rule applies if the company 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 356OP.
55. New Section 356OK(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 356OK(3) sets out that if subsection (1) applies, the tax advantage is to be

counteracted by adjustments.

57. New Section 356OK(4) sets out how an adjustment can be made.
58. New Section 356OK(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 8ZB.
59. New Section 356OK(6) provides definitions.
60. New Section 356OL 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 356OL(1) sets out that section 356OL applies where the profits are treated as profits of a trade of dealing in or developing UK land due to Condition D of Section 356OB, but the intention was not initially to realise a profit or gain from disposal of the land.
62. New Section 356OL(2) sets out that only the profits relating to the period where the intention was to make a gain should fall within Part 8ZB.
63. New Section 356OL(3) and (4) makes similar provision in relation to profits falling within section 356OE.
64. New Section 356OL(5) explains that when applying this section account must be taken of the treatment under Part 3 of CTA 2009 (trading income) of a company which appropriates land as trading stock.
65. New Section 356OM (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.
66. New Section 356OM(4) provides further explanation of the scope and meaning of "partnership" and "trust" for the purposes of this section.
67. New Section 356ON provides further interpretation to determine whether sections 356OC or 356OE apply.
68. New Section 356ON (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 356ON(3) sets out a non-exhaustive list of examples of such methods.
69. New Section 356OO gives the definition of "another person" for the purposes of Part 8ZB.
70. New Section 356OP gives the definition of "arrangement". It includes any scheme agreement or understanding. It does not need to be legally enforceable.
71. New Section 356OO (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.

72. New Section 356OR provides the definition of "land" and of "property deriving its value from land".
73. New Section 356OS extends the meaning of "realising a gain" to include realising a gain for another person.
74. New Section 356OT sets out the circumstances in which parties will be treated as related for the purposes of Part 8ZB.
75. New Section 356OT (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.
76. New Section 356OT (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.
77. New Section 356OT(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.
78. New Section 356OT(5) and (6) provide the detail of the 25% 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.
79. New Section 356OT(7) applies certain provisions of Chapter 2 of Part 4 of TIOPA to the question of whether the participation condition is met.
80. Subsections (2) to (10) make consequential amendments. In particular, Part 18 of CTA 2010 is repealed, references to Part 18 are replaced with references to Part 8ZB, and relevant references to provisions within Part 18 are amended as required.
81. Subsection (6) makes specific provision in section 14B of TCGA to the effect that gains arising from the application of Part 8ZB are not to be treated as a "non-resident CGT disposal".

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.