

New Clause 11: Corporation tax: territorial scope etc.

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 extends the charge to UK corporation tax for non-resident companies to specifically tax profits from dealing in and developing UK land. Where a non-resident company has a trade of dealing in or developing UK land they will now be fully subject to tax in the UK on the profits of that trade, instead of being taxable only on profits attributable to a permanent establishment in the UK.
- 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 12, 13, 14, 15, 16 and 17.

Details of the clause

1. Subsection (1) introduces amendments to Section 5 of the Corporation Tax Act 2009 (CTA 2009).
2. Subsection (2) amends section 5(2) of CTA 2009. It extends the scope of the charge for companies not resident in the UK so that a company with a trade of dealing in or developing UK land is within the charge to UK corporation tax irrespective of whether it has a permanent establishment in the UK.
3. Subsection (3) inserts New Section 5(2A) of CTA 2009 which brings into the charge to UK corporation tax all profits of a non-resident company from dealing in or developing UK land, wherever they arise.
4. Subsection (4) makes a consequential amendment arising from the introduction of section 5(2A).
5. Subsection (5) introduces new Sections 5A and 5B of CTA 2009.
6. New Section 5A is an anti-avoidance provision to counter arrangements designed to avoid profits being brought into charge by virtue of section 5(2A) of CTA 2009.
7. New Section 5A(1) sets out that the rule applies if the company enters into arrangements with a purpose or main purpose of obtaining a relevant tax advantage.
8. New Section 5A(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.

9. New Section 5A(3) sets out that if section 5A(1) applies, the tax advantage is to be counteracted by adjustments.
10. New Section 5A(4) sets out how an adjustment can be made. An adjustment can be made by way of assessment, amendment disallowance of a claim or otherwise.
11. New Section 5A(5) sets out the definition of "relevant tax advantage". A relevant tax advantage is a tax advantage in relation to the tax chargeable by virtue of section 5(2A).
12. New Section 5A(6) provides definitions.
13. New Section 5B of CTA 2009 sets out the meaning of a trade of dealing in or developing UK land.
14. New Section 5B(1) sets out that a company has a trade of dealing in or developing land if it meets the conditions in Part 8ZB CTA 2010 or carries on any activities of dealing in UK land or developing UK land with the purpose of disposing of it.
15. New Section 5B(2) sets out the 'activities' that are within the scope of the provision.
16. New Section 5B(3) sets out the definition of 'land' for the purpose of these provisions.
17. New Section 5B(4) provides further definitions.
18. Subsection (6) amends section 3 of CTA 2009 (exclusion of charge to income tax) to ensure that the exclusion interacts correctly with the new provisions. The exclusion from the charge to income tax will apply where a non-resident company has profits chargeable to corporation tax from a trade of dealing in or developing land in the UK.
19. Subsection (7) amends section 18A of CTA 2009. It inserts a new subsection (2A) to ensure that the exemption for profits of a foreign permanent establishment does not apply to profits of a trade of dealing in or developing land in the UK.
20. Subsection (8) amends section 19 of CTA 2009. It introduces a new subsection (2A) which specifically excludes from the scope of section 19 any profits from a trade of dealing in or developing land in the UK. Those profits are now brought into charge by section 5(2A) of CTA 2009.
21. Subsection (9) amends section 189 of CTA 2009. It provides that post-cessation receipts of a non-resident company arising from a trade of dealing in or developing land in the UK are not to be excluded from profits chargeable to UK corporation tax.
22. Subsection (10) amends section 107(1) of CTA 2010 to bring losses arising from a trade of dealing in or developing land in the UK specifically within the scope of the restrictions imposed by section 107.
23. Subsection (11) inserts the definition of 'trade of dealing in or developing UK land' into the table of definitions in section 1119 of CTA 2010.

Background note

24. 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.
25. 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.