

New Clause 13: Income 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 income tax for non-resident persons to specifically tax profits from dealing in and developing UK land. Where a non-resident person has a trade of dealing in or developing UK land they will now be fully subject to tax in the UK on all the profits of that trade, instead of being taxable only on profits attributable to the part of the trade carried on 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 prevent arrangements that aim to avoid the new rules. Related changes are made by new clauses 11, 12, 14, 15, 16 and 17.

Details of the clause

1. Subsection (1) amends section 6 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). This extends the scope of the charge to income tax to specifically include profits of a trade of dealing in or developing UK land when the profits arise to a non-UK resident, regardless of where the trade is carried on.
2. Subsection (2) introduces new Sections 6A and 6B of ITTOIA.
3. New Section 6A is an anti-avoidance provision to counter arrangements that aim to avoid profits being brought into charge by virtue of section 6(1A) of ITTOIA.
4. New Section 6A(1) sets out that the rule applies if the company enters into "avoidance arrangements" with the main purpose or a main purpose of obtaining a relevant tax advantage.
5. New Section 6A(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.
6. New Section 6A(3) sets out that if section 6A(1) applies, the tax advantage is to be counteracted by adjustments.
7. New Section 6A(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.
8. New Section 6A(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 6(1A).
9. New Section 6A(6) and (7) provides definitions.
10. New Section 6B of ITTOIA sets out the meaning of a trade of dealing in or developing UK land.
11. New Section 6B(1) sets out that a trade of dealing in or developing land consists of activities

where the conditions in Part 9A of ITTOIA are met, or the person carries on any activities of dealing in UK land or developing UK land with the purpose of disposing of it.

12. New Section 6B(2) sets out the "activities" that are within the scope of subsection (1).
13. New Section 6B(3) sets out the definition of "land" for the purpose of these provisions.
14. New Section 6B(4) provides further definitions.
15. Subsection (3) amends section 3 of ITTOIA to include references to the amended section 6.
16. Subsection (4) amends section 243 of ITTOIA to ensure that post-cessation receipts arising to a non-resident from a trade of dealing in or developing UK land are not excluded from the charge to UK income tax.
17. Subsection (5) inserts the definition of 'trade of dealing in or developing UK land' into the table of definitions in section 989 of ITA 2007.

Background note

18. 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.
19. 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.