

New Clause 15: Pre-trading expenses

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 inserts provisions concerning the corporation tax treatment of pre-trading expenditure in relation to a trade of dealing in or developing land in the UK carried on by a non-resident company.
- 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 11,12, 13, 14,16 and 17.

Details of the clause

1. Subsection (1) sets out the conditions which must be met for certain pre-trading expenditure rules to apply for corporation tax purposes. It defines a time "T" at which a company comes within the charge to UK corporation tax in respect of a trade of dealing in or developing land in the UK because of the changes to section 5 of CTA 2009, whereas before time "T" it was carrying on that trade through a permanent establishment in the UK.
2. Subsection (2) explains that section 61 of CTA 2009, which permits deductions for certain pre-trading expenditure, has effect as if the company had started carrying on the trade at time T.
3. Subsection (3) sets out further conditions for the deduction under section 61 of CTA 2009 to apply. The first is that no deduction would otherwise be available for the expenses in question. The second is that the company would have been eligible for a deduction under section 41 or 61 of CTA 2009 if it had not been carrying on a relevant trade before time "T".

Subsection (4) explains that no relief can be given if relief has already been obtained for these expenses under the law of any country other than the UK.

Background note

4. 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.
5. 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.