

Clause 37 and Schedule 16: ATAD: corporation tax exit charges

Summary

1. This clause makes changes to corporation tax exit charges, including the rules for deferred payment of exit charges on a transfer of assets or tax residence between the UK and an EEA state by companies resident in the UK or an EEA state. The changes adapt existing rules to implement the EU Anti-Tax Avoidance Directive. These changes have effect from 1 January 2020.

Details of the clause and Schedule

2. The clause introduces [Schedule 16](#) which makes provision to amend the rules for corporation tax exit charge payment plans, repeal provisions that provide for the postponement of exit charges and introduce rules to ensure that market value is used as the starting value for corporation tax purposes where certain assets have been subject to an exit charge in an EEA state. The Schedule is made up of three Parts.

Part 1: CT exit charge payment plans

3. [Paragraph 1](#) introduces changes to Schedule 3ZB of the Taxes Management Act 1970 (TMA), which contains the rules for the deferred payment of exit charges where companies or their assets transfer to an EEA state. Companies can elect to defer their tax payment where they meet the conditions for entering into a corporation tax exit charge payment plan (CT ECPP).
4. [Paragraphs 2 and 3](#) introduce the concept of a 'relevant EEA state' into Part 1 and Part 2 of Schedule 3ZB to the TMA. The effect is that a CT ECPP will only be available if the transfer is to an EU state, or a non-EU state that is a member of the EEA which has entered into an agreement concerning the mutual collection of tax debts with the EU or the UK. This ensures that the power for HMRC to collect any outstanding tax that has been deferred under a CT ECPP is protected.
5. [Paragraphs 4 and 5](#) makes changes consequential upon the removal of the option to choose between the standard instalment and the realisation methods for deferring tax under a CT ECPP.
6. [Paragraph 6](#) provides for the replacement of the two optional methods for a CT ECPP with a single payment method that is described in [new paragraphs 11 to 14 of Schedule 3ZB to the TMA](#).
7. [New paragraph 11 of Schedule 3ZB to the TMA](#) provides for tax deferred under a CT ECPP to be initially payable in six equal annual instalments, starting with the normal due date for the payment of corporation tax, for a company that is not in the quarterly instalments system, of

nine months after the end of the accounting period for which the liability is incurred. Unless the assets are later sold or otherwise realised, or one of the events set out in the following paragraphs occur, this pattern of payment matches that which would have been paid under the standard instalment method.

8. New paragraph 12 of Schedule 3ZB to the TMA sets out the circumstances where the full balance outstanding under a CT ECPP may become payable before the end of the initial deferral period. These match those that previously existed under the standard instalment or realisation methods, with the addition of a continuing failure to make a payment that is due under the CT ECPP, in new subparagraph 12 (2)(e). The unchanged circumstances include insolvency, administration or the appointment of a liquidator, or where a company that has entered into the CT ECPP transfers its residence outside a relevant EEA state.
9. New paragraph 13 of Schedule 3ZB to the TMA sets out circumstances where a proportion of the tax outstanding under a CT ECPP that is attributable to a particular asset will become payable. It includes a formula to determine the amount that becomes due as a result; future instalments of any CT ECPP tax are reduced accordingly to take account of any part that becomes immediately due. A trigger event occurs where there is a disposal or other realisation of an asset or liability to which a part of the total CT ECPP tax was attributable. A disposal or realisation for these purposes includes where a company ceases to hold an asset for business purposes in a relevant EEA state, or to be party to a loan relationship or derivative contract.
10. New paragraph 14 of Schedule 3ZB to the TMA adapts the rules in paragraph 13 to deal with situations where only part of an asset or liability is subject to a trigger event. As well as the part disposal of an asset, a partial trigger event will include circumstances where the accounting value of an intangible asset is reduced, but where it is still recognized on the company's balance sheet. It also includes the disposal of a right or liability under a loan relationship or derivative contract which is treated as a 'related transaction' by section 304 or section 596 of CTA 2009. The CT ECPP tax attributable to a partial trigger event is to be determined on a just and reasonable basis.
11. Paragraph 7 of the Schedule makes a change to paragraph 4 of Schedule 56 to Finance Act 2009 (FA 2009), the effect of which is to set an amount of a penalty that a company may incur in respect of a failure to make a payment at the time set out in a CT ECPP. That amount is 5% on the late paid tax with a further 5% on tax paid more than 3, or more than 9 months late. The corporation tax entries on the table in Schedule 56 to FA 2009 are subject to commencement on or after an appointed day.
12. Paragraph 8 is the commencement rule for the changes set out in paragraphs 1 to 6 of the Schedule. These changes have effect for company accounting periods ending on or after 1 January 2020. The migration of a UK resident company will generally cause its accounting period to come to an end for corporation tax purposes.

Part 2: Repeal of certain postponement provisions

13. Paragraph 9 repeals section 187 of the Taxation of Chargeable Gains Act 1992 (TCGA), and makes further changes consequent upon that repeal. Section 187 provides for the postponement of an exit charge under section 185 TCGA, subject to certain conditions, where

a UK resident company ceases to be resident here, but its UK resident parent company assumes the liability to pay the exit charge at a future date on the occurrence of certain events. This repeal applies to companies that cease to be UK resident on or after 1 January 2020.

14. Paragraph 10 provides for a similar repeal of sections 860 to 862 of CTA 2009, and consequential amendments. Sections 860 to 862 CTA 2009 provide for the postponement of an exit charge under section 859 CTA 2009, subject to certain conditions, where a chargeable intangible asset ceases to be chargeable on the occasion of a UK resident company ceasing to be resident here, but its UK resident parent company assumes the liability to pay the exit charge at a future date on the occurrence of certain events. This repeal applies to companies that cease to be UK resident on or after 1 January 2020.

Part 3 Treatment of assets subject to EU exit charges

15. Paragraph 11(1) of the Schedule inserts new section 184J of TCGA.
16. New section 184J of TCGA provides a rule to ensure that there is no double taxation of gains on the disposal of an asset that has previously been subject to an exit charge in an EU Member State when the asset came within the charge to UK corporation tax on chargeable gains.
17. Any potential double taxation at the time of disposal will be relieved by treating the asset as having been acquired for its market value at the time that the other state levied an EU exit charge. The amount of any gain or loss accruing before that time will therefore be exempted from UK tax.
18. The rule applies to charges that are levied by an EU Member State in accordance with their obligations under the EU Anti Tax Avoidance Directive.
19. Paragraph 11(2) of the Schedule is the commencement rule for new section 187J TCGA, which applies to assets that are subject to an EU exit charge on or after 1 January 2020.
20. Paragraph 12 amends Part 8 of CTA 2009 to provide a similar market value rule for assets that are intangible fixed assets within Part 8 of CTA 2009, and have been subject to an EU exit charge on or after 1 January 2020. It amends section 863 CTA 2009, making it subject to the market value rule which is inserted as new section 863A of CTA 2009.

Background note

21. The changes made by this clause and Schedule are part of the UK's implementation of the EU Anti Tax Avoidance Directive (Directive (EU) 2016/1164 of the European Parliament and of the Council of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market). Article 5 of the Directive deals with the subject of exit taxation, for which Member States will have implementing legislation in effect as from 1 January 2020.
22. If you have any questions about this change or comments on the legislation, please contact Philip Donlan on 03000 585504 or email Philip.donlan@hmrc.gsi.gov.uk.

