

Clause 7 and Schedule 3: Non-UK resident companies carrying on UK property businesses

Summary

1. This clause charges the profits of a UK property business and other UK property income of non-UK resident companies to Corporation Tax rather than to Income Tax as at present. The change has effect from 6 April 2020.

Details of the clause and Schedule

2. The clause introduces Schedule 1 which makes provision to extend the scope of Corporation Tax for non-UK resident companies. The Schedule is made up of three Parts.

Part 1: Extension of Scope of Charge

3. Paragraphs 1 to 5 set out what changes are to be made to section 5 of the Corporation Tax Act 2009 (CTA 2009) (Territorial scope of charge) to bring a non-UK resident company carrying on a UK property business or which has other UK property income within the charge to Corporation Tax.
4. Paragraph 2 adds two further circumstances to subsection (2) of section 5 of CTA 2009 in which a non-UK resident company is within the charge to Corporation Tax:– where it carries on a UK property business and where it has other UK property income.
5. Paragraph 3 defines the profits of the UK property business or other UK property income of a non-UK resident company that are within the charge to Corporation Tax. They include the profits of loan relationships or derivative contracts that the company is a party to for the purpose of the property business or generating the income.
6. Paragraph 5 defines the meaning of “other UK property income”.

Part 2: Supplementary & Consequential Amendments

Income Tax (Trading and Other Income) Act 2005 (ITTOIA)

7. Paragraph 6 amends section 362 of ITTOIA so that it does not have effect when an existing UK property business is taken out of the charge to Income Tax and brought into the charge to Corporation Tax. This will mean that this change of tax regime will not be regarded as a disposal event under section 61 of the Capital Allowances Act 2001.

Income Tax Act 2007 (ITA)

8. Paragraph 7 amends section 5 of ITA to exclude from the charge to Income Tax a non-UK resident company in receipt of income that is chargeable to Corporation Tax.

Corporation Tax Act 2009 (CTA 2009)

9. Paragraphs 8 to 22 contain consequential amendments to CTA 2009, in particular:

Part 2 of CTA 2009: Chargeable profits

10. Paragraph 9 amends section 3 of CTA 2009 to make clear that where a company is not UK resident and is in receipt of income that is (or would be but for an exemption) chargeable to Corporation Tax, that income is not chargeable to Income Tax.
11. Paragraph 10 amends section 18A of CTA 2009 (Exemption for profits or losses of foreign permanent establishments) so that the description of profits or losses not to be left out of account is widened for a non-UK resident company to include:
 - Profits or losses of the company's UK property business
 - Other UK property income of the company
 - Profits arising from loan relationships or derivative contracts that the company is a party to in relation to the UK property business or UK property income

This ensures that the UK continues to retain its taxing rights over UK immovable property.

12. Paragraph 11 replaces the existing wording of subsection (2A) of section 19 CTA 2009 to make clear that the chargeable profits of a UK permanent establishment of a non-UK resident company, as defined at subsection (3) of section 19, do not include the types of income set out in that paragraph. Such profits are chargeable instead under section 5 or section 5B of CTA 2009.

Part 5 of CTA 2009: Loan Relationships

13. Paragraph 12 amends section 333(2) of CTA 2009 so that an asset held or liability owed for the purposes of the activities set out in that paragraph is excluded from the deemed realisation rules where a company ceases to be UK resident but continues to be within the charge to Corporation Tax in respect of those activities.
14. Paragraph 13 amends section 334 of CTA 2009 to reflect the changes made to section 333(2) of CTA 2009 with regard to a non-UK resident company which ceases to hold a loan relationship for the purposes of the activities mentioned in that amended subsection.

Part 7 of CTA 2009: Derivative Contracts

15. Paragraphs 14 and 15 make similar changes to sections 609 and 610 of CTA 2009 in respect of the rights and liabilities under a derivative contract in the same circumstances.
16. Paragraph 16 amends section 697 of CTA 2009 (Exceptions to section 696) so that where a non-resident person is party to a derivative contract and is chargeable to Corporation Tax or

Income Tax on the income arising on that derivative contract, then the debits for notional interest payments as provided under that contract and attributable to company A are not excluded by section 696 of CTA 2009 (Derivative contracts with non-UK residents).

Part 8 of CTA 2009: Intangible Fixed Assets

17. Paragraphs 17 to 20 amend the rules relating to elections for the transfer of a degrouping charge on a chargeable intangible fixed asset from one group company, (A), to another group company, (B), where B is a non-UK resident company. The changes insert new section 793A of CTA 2009 which sets out how the resulting credit is to be dealt with depending on whether company B:
 - carries on a trade in the UK through a permanent establishment,
 - carries on a trade of dealing in or developing UK land, or
 - carries on a UK property business.
18. Paragraph 21 amends section 795 of CTA 2009 so that in the event that a non-UK resident company does not meet its liability to a degrouping charge, and recoverability is sought from a controlling director as specified in that section, the activities of the company also include a trade of dealing in or developing UK land, or carrying on a UK property business.
19. Paragraph 22 amends section 863 of CTA 2009 so that the deemed acquisition of a chargeable intangible fixed asset at its accounting value at that time also applies where the asset of a non-UK resident company begins to be held for the purpose of:
 - a trade in dealing in or developing UK land,
 - carrying on a UK property business, or
 - generating other UK property income.

Corporation Tax Act 2010 (CTA 2010)

20. Paragraphs 23 to 28 make consequential amendments to CTA 2010, in particular:
21. Paragraph 24 amends section 9 of CTA 2010 so that it applies in respect of return of accounts for all activities of a non-UK resident company that are within the charge to CT and the company prepares its accounts in a currency other than sterling.
22. Paragraphs 25 to 28 amend the group relief rules to include a loss arising from all activities of a non-UK resident company that are within the charge to CT.

Part 3 Commencement and Transitional Provisions

23. Paragraph 29 provides the date on which the Schedule comes into force.
24. The effect of Paragraph 30 is that where a period of account straddles the commencement date, the profits or loss arising in the first period (ending on 5 April 2020) will remain chargeable to Income Tax and the profits or loss arising in the second period (commencing on 6 April 2020) will be within the charge to CT.

25. Paragraph 31 provides for the “grandfathering” of losses which have arisen within the Income Tax regime and remain unused at the commencement date. These income tax losses can be carried forward to the CT regime and offset against future UK property business profits for so long as the company continues to carry on the UK property business.
26. Profits of an earlier accounting period are to be relieved in priority to a later accounting period. The loss will not be available for offset against other types of income receivable by the non-UK resident company that are also chargeable to CT. It will not be possible to surrender these income tax losses as group relief.
27. Where a non-UK resident company is a partner in a firm and that firm carries on a trade and has untaxed income or relievable losses from a UK property business, the UK property business is regarded as a notional business and the basis period for the notional business usually follows that of the trade. Paragraph 32 provides that the basis period of the notional business (i.e. the UK property business) for the tax year immediately preceding the commencement date (2019/20) is deemed to end on 5 April 2020 for Income Tax purposes.
28. Paragraph 33 prevents a deduction for an amount of loss arising under a derivative contract which is wholly or partly referable to a period of time when the derivative contract was not within the charge to CT so that the company was not chargeable to CT on any profits arising from the contract. This prohibition also applies where the company was not a party to the contract at the time to which the loss is referable. Sub-paragraphs 5 and 6 ensure that any such non-deductible losses cannot be deducted under any other provision.
29. Paragraphs 34 and 35 make provision for dealing with any asymmetries in the taxation of debits and credits arising from derivative contracts entered into for the purpose of a UK property business where the period of the contract straddles the commencement date.
30. Paragraph 34 provides that just and reasonable adjustments are to be made where fair value amounts in relation to the derivative contract have been brought into account for Income Tax but, due to an election being made under regulation 9 of the Disregard Regulations, these amounts are not similarly brought into account under the derivative contract regime for Corporation Tax (Part 7 of CTA 2009). An adjustment will be made in each period for an amount to be brought into account over the remaining term of the derivative contract so that symmetry is achieved.
31. Paragraph 35 provides that, where fair value movements in relation to a derivative contract have not been brought into account for Income Tax purposes as a result of being capital in nature, an election under regulation 6A of the Disregard Regulations is treated as having been made in respect of that derivative contract. This will ensure that the debits and credits over the period of the derivative contract are brought into account on a consistent basis.
32. In addition, where regulations 7 or 8 of the Regulations are subsequently in point after the commencement date, regulation 10 of the Disregard Regulations will apply to bring an amount back into account if previously recognised in the company’s financial statements but it was not brought into account at that time under the Income Tax rules.
33. Paragraph 36 provides that an asset which is held by a non-UK resident company for the purposes of its UK property business or held for the purpose of generating other UK property income and which becomes a chargeable intangible asset when it comes within the charge to

CT on the commencement date will be deemed to have acquired the asset immediately on the commencement date at its accounting value at that time.

34. Paragraph 37 makes provision that an election to reallocate a degrouping charge under section 792 of CTA 2009 cannot be made where company B is a non-UK resident company and the relevant time (the date a company ceased to be a member of the group or the principal company became a member of another group) is as follows:
- before 3 July 2016 where the non-UK resident company carries on a trade of dealing in or developing UK land
 - before the commencement date where the non-UK resident company carries on a UK property business
35. Paragraph 38 makes provision that relief for past expenditure on contaminated or derelict land by a non-UK resident company carrying on a UK property business at a time when the company was not within the charge to CT will not count as qualifying land remediation expenditure. Relief under section 1147 of CTA 2009 for later capital expenditure on contaminated or derelict land will be available for the CT accounting period in which the expenditure is incurred subject to the required election being made.

Background note

36. Following announcement at Autumn Statement 2016, the government consulted in March 2017 on the case and options for bringing non-resident companies' UK property income and gains (previously chargeable to Income Tax and non-resident CGT respectively) into CT. At Autumn Budget 2017, the government published a response document to the consultation and announced that it would make this change in April 2020.
37. This clause and schedule focuses solely on UK property income. It will deliver more equal tax treatment for UK and non-UK resident companies in receipt of similar income, and take steps to prevent those that use this difference to reduce their tax bill on UK property through offshore ownership.
38. If you have any questions about this change, or comments on the legislation, please contact Susan Gardner on 03000 563815 (email: susan.m.gardner@hmrc.gsi.gov.uk).

