

## Clause 36 and Schedule 15: Payment of CGT exit charges

### Summary

1. Clause 36 and Schedule 15 introduce CGT exit charge payment plans allowing:

- trusts ceasing to be UK resident **or**
- non-UK resident individuals who trade through a UK branch or agency

to defer, in certain cases, payment of the capital gains tax (CGT) that may arise when, for example, a trust ceases to be tax resident in the UK or, in the case of a non-UK resident individual who trades through a UK branch, assets cease to be used in that UK trade. The deferred CGT will be subject to interest under the usual rules. The change ensures that UK rules taxing such gains are compatible with EU law.

### Details of the clause and schedule

2. Clause 36 introduces Schedule 15 which makes various changes to the Taxes Management Act (TMA) 1970.

### Schedule 15: CGT Exit charge payment plans

3. Paragraphs 1 and 2 of the Schedule amend TMA 70 by introducing a new section 59BB and new Schedule 3ZAA.
4. New section 59BB introduces the new Schedule 3ZAA.
5. Paragraph 1 of new Schedule 3ZAA explains that persons liable to pay an exit charge for the purposes of either section 25 or 80 Taxation of Chargeable Gains Act (TCGA) 1992 can defer payment by entering into a CGT exit charge payment plan (ECPP). Paragraphs 2 and 3 of the new Schedule 3ZAA set out the eligible persons and circumstances.
6. Paragraph 2 of new Schedule 3ZAA applies to European Economic Area (EEA) resident individuals who have been carrying on a trade in the UK through a branch or agency and transfer assets out of the UK, resulting in an exit charge arising under section 25(1) or (3) TCGA 92. Broadly these provisions deem a disposal and reacquisition to occur when the trade ceases or the assets become situated outside the UK.
7. Non-resident individuals are eligible to enter into an ECPP where they can demonstrate a right to freedom of establishment or carry on that trade in an EEA state other than the UK.
8. Paragraph 3 of new Schedule 3ZAA applies to the trustees of a settlement who have ceased to be resident in the UK resulting in a charge arising under section 80 TCGA 92. Broadly this

provision deems a disposal and reacquisition at market value when trustees cease to be resident in the United Kingdom. Where the trustees can show that when they ceased to be resident they had a right to freedom of establishment and the assets subject to the charge have been, and will be, used for an economically significant economic activity the trustees are eligible to enter into an ECPP.

9. Paragraph 4 of new Schedule 3ZAA explains that the ECPP may apply to all the tax that is due under the exit charge or just part of it. It also defines various terms.
10. Paragraph 5 of new Schedule 3ZAA provides that the amount deferred is payable in six equal instalments; the first payment being due on the day the full amount would have due without entering into an ECPP.
11. Paragraph 6 of new Schedule 3ZAA explains the ECPP application process. In particular an application must be made before the tax would normally fall to be payable. The applicant must also agree to pay the deferred tax, and any interest due on it, in accordance with the plan.
12. An ECPP is void, and no deferral will apply, if the information provided to HMRC does not disclose all material facts, or where a deferral of tax payments is the main purpose, or one of the main purposes of arrangements that include the change of residence or the transfer of the assets that are the subject of exit charges.
13. Paragraph 7 of new Schedule 3ZAA sets out the information the ECPP must contain. This includes details of residency and the amount of tax being deferred. Security may be required where HMRC considers that there would be a serious risk to the collection of tax.
14. Paragraph 8 of new Schedule 3ZAA explains that once the ECPP is entered into the deferred exit charge still remains payable but HMRC will not seek its payment, other than in accordance with the plan.
15. Whilst the ECPP is in place the normal penalty provisions are overridden and will only be activated if the taxpayer fails to make payment under its terms. However, interest is still due. Therefore each time a payment is made under the terms of the plan it should be paid together with the interest due on it. The taxpayer is free to pay any outstanding balance, with interest, before the end of the ECPP period.
16. Where a taxpayer becomes bankrupt, or resident in a country that is not part of the EEA, the full outstanding balance is due on the date the next instalment would have been due.
17. Paragraph 9 of new Schedule 3ZAA provides that where for the purposes of a double taxation agreement a person is treated as being resident in a country outside the EEA, then that person is treated as being resident there for the purposes of this schedule.
18. Paragraph 10 of new Schedule 3ZAA defines various phrases.
19. Paragraphs 3 to 5 insert references to CGT ECPPs into Schedule 56 to Finance Act 2009, which sets out when a taxpayer may incur a penalty for late payment of tax. They also make various consequential amendments.
20. Paragraph 6 makes various amendments to TMA70 to distinguish between the CGT ECPP

introduced by this schedule and the existing corporation tax exit charge payment plan at Schedule 3ZB.

21. Paragraph 7 provides that the amendments made by this Schedule take effect on or after 6 April 2019.

## Background note

22. The proposed changes set out in the schedule implement recent decisions of the Court of Justice of the European Union where the compatibility of member state exit charges with Article 49 of the Treaty on the Functioning of the European Union was considered. Article 49 is concerned with the Freedom of Establishment of EU nationals.
23. The changes apply only to individuals that are nationals of the EU or EEA, who trade through a branch or agency in the UK, and trustees of UK resident trusts both of whom are seeking to exercise their rights of establishment within the EU/EEA.
24. Where after exercising those rights:
- the individuals cease trading in the UK or move trading assets outside of the UK;  
or
  - the UK resident trust moves its residence out of the UK,
- a charge, “the exit charge”, may arise on any unrealised gains on assets they hold. This provision allows, in certain circumstances, for those persons to defer payment of that charge and to opt to pay it in six equal instalments, with interest.
25. If you have any questions about this change, or comments on the legislation, please contact Nick Williams on 03000 585660 (email: [nicholas.williams@hmrc.gsi.gov.uk](mailto:nicholas.williams@hmrc.gsi.gov.uk))

