

Clause 6, Schedules 1 and 2: Disposals of assets by non-UK residents and payments on account etc

Summary

1. This clause and Schedule 1 introduce from 6 April 2019 new provisions to bring gains on interests in UK land by non-UK residents into charge, to charge non-UK resident companies to corporation tax (CT) on their gains from disposals of interests in UK land, and to abolish the charge to tax on ATED-related gains. The clause and Schedule 2 extend from 6 April 2019 existing reporting and payment on account obligations on non-UK residents disposing of UK property to include the new interests chargeable to tax; and also introduce from 6 April 2020 capital gains tax (CGT) reporting and payment on account obligations for residential property gains chargeable on UK resident persons and branches and agencies of non-UK resident persons.

Details of the clause and Schedules

2. Clause 6 introduces new Schedules. Schedule 1 relates to disposals of interests in assets relating to UK land by non-UK residents and the abolition of charge to tax on ATED-related gains. Schedule 2 relates to payments on account in respect of liabilities arising from chargeable gains.
3. Subsections (1) and (2) describe what Schedule 1 does and how, explaining that the new Part 1 substituted by Schedule 1 gives effect to the changes relating to non-UK residents' gains and the abolition of ATED-related CGT, and that Schedule 1 restates the effects of the repealed provisions in a rewritten form.
4. Subsection (3) describes what Schedule 2 does and who is affected.

Schedule 1: Part 1: Extending cases in which non-residents are charged to tax etc

5. Paragraphs 1 and 2 of Schedule 1 substitutes a new Part 1 of Taxation of Chargeable Gains Act 1992 (TCGA 1992). The new Part 1 restates the existing law from Part 1 and Chapters 5, 6, and 7 of Part 2 of the of that Act, and also includes new provisions to bring disposals by non-UK residents of UK land into charge.
6. A Table of Destinations will be published when the Bill is introduced showing where the old Part 1 and Chapters 5, 6, and 7 of Part 2 have been incorporated into the new Part 1.
7. The majority of the provisions in Schedule 1 relate to restatement of the current law, and are not explained in this note.
8. The following sections in the new Part 1 are new provisions relating to the disposals of

interests in assets relating to UK land by non-UK residents.

- a. Section 1A(3)(b) of the new Part 1 charges CGT on non-UK resident persons who make gains on disposals of 'interests in UK land', which is defined in new section 1C. This subsection is not engaged if the gain would fall into section 1A(3)(a) of the new Part 1 as arising to a branch or agency. See new section 2B(4)(a) with regard to similar gains by companies, which in accordance with the changes enacted in this Schedule are now chargeable to CT on their gains.
 - b. Section 1A(3)(c) of the new Part 1 charges CGT on non-UK resident persons' gains on disposals of interests in rights to assets that derive at least 75% of their value from UK land, and where the person has a substantial indirect interest in that land. The supporting provisions to this charge are the new section 1D and in the new Schedule 1A to TCGA 1992. This subsection is not engaged if the gain would fall into section 1A(3)(a) of the new Part 1 as arising to a branch or agency. See new section 2B(4)(b) with regard to gains by companies, which in accordance with the changes enacted in this Schedule are now chargeable to CT on their gains.
 - c. Section 1C of the new Part 1 defines an interest in UK land for the purposes of new section 1A(3)(b).
 - d. Section 1D of the new Part 1 defines the conditions for section 1A(3)(c) to apply, and refers to the new Schedule 1A to TCGA 1992 for the application of the charge.
 - e. Section 1E(2) of the new Part 1 restates the provisions on availability of losses against gains arising from disposals of assets by non-UK residents liable to CGT (now under new section 1A(3)) and extends them to gains brought into charge by this Schedule.
 - f. Section 2B(4)(a) of the new Part 1 charges CT on non-UK resident companies who make gains on disposals of interests in UK land, as defined in section 1C. This subsection is not engaged if the gain would fall into section 2B(4)(a) of the new Part 1 as arising to a UK permanent establishment of a non-UK resident company.
 - g. Section 2B(4)(b) of the new Part 1 charges CT on non-UK resident companies' gains on disposals of interests in rights to assets that derive at least 75% of their value from UK land, and where the person has a substantial indirect interest in that land. The supporting provisions to this charge are in the new Schedule 1A to TCGA 1992. This subsection is not engaged if the gain would fall into section 2B(4)(a) of the new Part 1 as arising to a UK permanent establishment of a non-UK resident company.
9. Paragraph 3 omits sections 16ZB to 16ZD of TCGA 1992 (losses of non-UK domiciled individuals), which are then incorporated by paragraph 12 into a new Schedule 1 to TCGA 1992 consolidating together the core rules pertaining to non-UK domiciled individuals.
 10. Paragraph 4 inserts section 36A into TCGA 1992, which refers to the new Schedule 4AA dealing with the calculation of gains and losses on disposals of interests in assets relating to interests in UK land by non-UK residents after 6 April 2019.
 11. Paragraphs 5, 6, and 7 omit Chapters 5, 6, and 7 respectively of Part 2 of TCGA 1992. These Chapters are restated and incorporated into the new Part 1 substituted by paragraphs 1 and 2.

12. Paragraph 8 inserts new sections 271ZA and 271ZB into TCGA 1992, restating provisions previously contained section 11 of the old Part 1 of TCGA 1992.
13. Paragraphs 9, and 10 omit Schedules B1 and BA1 to TCGA 1992 respectively, which contained definitional and other provisions relating to charging disposals of interests in residential land. The rules for calculating a residential property gain are now contained in the new Schedule 1B inserted by paragraph 14 of this Schedule.
14. Paragraph 11 omits Schedule C1 to TCGA 1992, which contained definitional and other provisions relating to the repealed sections 14F and 14G of TCGA 1992, which related to elections for non-resident CGT not to apply. These definitions are still relied upon in the new Schedule 4AA, as they applied on 5 April 2019, to establish which rebasing provisions will apply.
15. Paragraph 12 substitutes a new Schedule 1 to TCGA 1992, restating the existing law relating to UK resident individuals not domiciled in the UK.
16. Paragraph 13 inserts a new Schedule 1A to TCGA 1992, which contains the provisions relating to disposals by non-UK residents of assets deriving 75% or more of their value from UK land. This is relevant for the new sections 1A(3)(c), 1C, and 2B(4)(c), which bring into charge gains on assets that derive at least 75% of their value from UK land where the person has a substantial indirect interest in that land.
 - a. Paragraph 1 of the new Schedule 1A introduces the Schedule and indicates what each Part provides for.
 - b. Paragraph 2 of Schedule 1A contains the basic provisions defining whether an asset derives 75% of its value from UK land using tracing and attribution provisions. This is drafted with reference to a company, as this is the most common case,
 - c. The final draft will adapt the application in the case of certain collective investment schemes, and where necessary for other non-corporate cases.
 - d. Paragraph 3 of Schedule 1A defines which assets of a company are “qualifying assets” to consider for the 75% property richness test in paragraph 2. This is all of the assets apart from those where the matching liability is being disposed of in the same arrangement, such as the creditor balance of an inter-company loan. UK land is always a qualifying asset, even if matched.
 - e. Paragraph 4 of Schedule 1A is an exemption in the form of a test, which will prevent the need to consider the other provisions in this Schedule if the party making the disposal can reasonably conclude that the UK land in an entity being disposed of is, to all but an insignificant degree, used in the course of a trade.
 - f. The trade must have been ongoing for 12 months prior to the disposal, and must be expected to continue.
 - g. Paragraph 5 of Schedule 1A applies in the circumstances where two or more companies that are linked are disposed of as part of an arrangement, and some but not all of those companies would meet the 75% property richness test in paragraph 4.

- h. If, when the assets of the companies are aggregated, the 75% property richness test in paragraph 4 is not met, none of those companies will be taken to meet that test. The arrangement must involve a disposal by one person or by one set of connected persons, to another person or set of connected persons. In order to gain the effect of this paragraph, the same effect should in principle be achievable by placing a holding company above the entities being disposed of in the arrangement and disposing of the interests in that holding company.
- i. Paragraph 6 provides that a person disposing of a right or interest in an entity that meets the 75% property richness test in paragraph 4 has a “substantial indirect interest” in UK land if they have a 25% investment in that company at any point in the two years ending with the disposal, including on the day of disposal.
- j. Paragraph 7 defines the ways in which a 25% investment may be achieved for the purposes of the provision in the new section 1D(1)(b) and in this Part.
- k. Paragraph 8 attributes rights and interests of certain connected parties of a person when considering whether that person meets the test in section 1D(1)(b) and in this Part.
 - l. Paragraph 9 contains anti-avoidance provisions relating to this Schedule.
- 17. Paragraph 14 inserts a new Schedule 1B to TCGA 1992, which contains rules for calculating a residential property gain for the purposes of the rate applied to such gains by section 1H of the new Part 1.
- 18. Paragraph 15 inserts Schedule 1C to TCGA 1992, containing rules relevant to section 1K of the new Part 1 for the Annual Exempt Amount for settled property cases.
- 19. Paragraph 16 inserts a new Schedule 4AA to TCGA 1992, which replaces the existing rules for non-UK residents relating to calculation of gains and losses which were in the omitted Schedule 4ZZB to TCGA 1992, and provides calculation methods for disposals by non-UK residents of interests in asset relating to UK land on or after 6 April 2019.
 - a. Part 1 of Schedule 4AA outlines the contents of the Schedule.
 - b. Part 2 of Schedule 4AA covers cases where all of the assets being disposed of came into charge under the provisions coming into force on 6 April 2019 –that is those disposals made chargeable on non-UK residents by Schedule 1 to the Finance (No.3) Bill 2018.
 - i. The default position in this Part 2 under paragraph 3 of Schedule 4AA is rebasing to the market value of the asset at 5 April 2019, but an election can be made under paragraph 4 for the default rules for calculating a gain in TCGA 1992 to be used instead.
 - ii. Paragraph 4(2) of Schedule 4AA provides that if the election is made in the case of an indirect disposal under new sections 1A(3)(c) or 2B(4)(b) and a loss accrues, that loss is not an allowable loss.
 - iii. Paragraph 5 of Schedule 4AA indicates how the element of the gain that is a

residential property gain is calculated in accordance with the new Schedule 1B.

- c. Part 3 of Schedule 4AA covers cases where all of the assets being disposed of came into charge under the provisions coming into force on 6 April 2015.
 - i. The default position in this Part under paragraph 7 of Schedule 4AA is rebasing to the market value of the asset at 5 April 2019, but an election can be made under paragraph 8 for the default rules for calculating a gain in TCGA 1992 to be used instead, or under paragraph 9 for a time-apportionment method to be used.
 - ii. Paragraph 10 of Schedule 4AA indicates how the element of the gain that is a residential property gain is calculated in accordance with the new Schedule 1B.
- d. Part 4 of Schedule 4AA covers cases to which Parts 2 or 3 do not apply, because the land being disposed of had days of both residential and non-residential use.
 - i. The default position in this Part, under paragraph 13 of Schedule 4AA is rebasing to the market value of the asset at 5 April 2015 and 5 April 2019. If the asset was acquired between those dates, the rebasing to 5 April 2015 does not apply. The relevant commencement provisions interact to bring the relevant gains into charge, or allows the relevant loss to accrue, from the appropriate date.
 - ii. An election can be made under paragraph 14 for the default rules for calculating a gain in TCGA 1992 to be used instead.
 - iii. *The final provisions will consider the application of an election for time-apportionment where there is only partly residential use.*
 - iv. Paragraph 15 of Schedule 4AA indicates how the element of the gain that is a residential property gain is calculated in accordance with the new Schedule 1B.
- e. Paragraph 16 of Schedule 4AA retains the application of Parts 2 to 4 of this Schedule for certain companies that become UK resident after 5 April 2019.
- f. Paragraph 17 of Schedule 4AA deals with trustees that become non-UK resident on or after 5 April 2018, and provides that Parts 2 to 4 of the Schedule do not apply. Sub-paragraph (3) disapplies deemed disposal and re-acquisition rules where the relevant person becomes non-UK resident.
- g. Paragraphs 18 of Schedule 4AA deals with companies that become non-UK resident on or after 5 April 2018, and provides that Parts 2 to 4 of the Schedule do not apply. Sub-paragraph (3) disapplies deemed disposal and re-acquisition rules where the relevant person becomes non-UK resident.
- h. Paragraph 19 of Schedule 4AA provides that if a rebasing date is used in accordance with this Schedule then that date is not to be used for the purposes of a wasting asset

determination under Chapter 2 of Part 2 of TCGA 1992.

- i. Paragraph 20 of Schedule 4AA provides that if a valuation is used in accordance with this Schedule, then that valuation should be the basis for capital allowances claims.
 - j. Paragraph 21 of Schedule 4AA provides for how elections can be made and that once made they are irrevocable.
 - k. Paragraph 22 of Schedule 4AA provides interpretation for the Schedule.
20. Paragraph 17 of Schedule 1 omits Schedule 4ZZA to TCGA 1992, which contained rules relating to the tax on ATED-related chargeable gains that are abolished by clause 6.
 21. Paragraph 18 omits Schedule 4ZZB to TCGA 1992, as the provisions therein are now adapted for the inclusion of the new assets and people in charge and incorporated in the new Schedule 4AA.
 22. Paragraph 19 omits Schedule 4ZZC to TCGA 1992. The relevant provisions still applicable are adapted into the new Schedule 1B inserted by paragraph 14.

Schedule 1: Part 2: Consequential amendments

23. Paragraph 20 restates the repealed section 3A of TCGA 1992 in a new section 8C to the Taxes Management Act 1970.
24. Further consequential amendments will be published when the Bill is introduced.

Schedule 1: Part 3: Commencement and transitional provisions etc

25. Paragraph 25 contains the commencement provisions for this Schedule.
26. Paragraph 26(2) allows that allowable NRCGT losses or ring-fenced allowable ATED-related CGT losses accruing to a company before 6 April 2019 are allowable losses for CT to the extent they have not already been deducted from gains. Under paragraph 94(4) the definitions in the repealed Schedule 4ZZB and section 2B apply as they did before repeal.
27. Paragraph 27 is a continuity provision relating to the repealed parts of TCGA 1992 and the restatements enacted by this Schedule.
28. Paragraph 28 empowers the Treasury to make Regulations to return the effect of the law if its effects are changed by this Schedule.

Schedule 2: Part 1: Returns and payments on account: Disposals of land etc

29. Paragraph 1 of Schedule 2 prescribes the disposals to which the Schedule applies.
30. Paragraph 1(1)(a) with paragraph 10(3) provide that for non-UK residents and UK residents making a disposal in the overseas part of a tax year the Schedule applies to direct and indirect disposals of UK land made on or after 6 April 2019 (whether or not a gain arises).

31. Paragraph 1(1)(b) with paragraphs 10(4) and (5) provide that for UK residents that do not have a split tax year or make a disposal in the UK part of a split year, and for non-UK residents that dispose of assets connected to a UK branch or agency through which they carry on a trade, profession or vocation, the Schedule applies to disposals on which a residential property gain arises on or after 6 April 2020.
32. Paragraph 1(2) prescribes disposals that the Schedule does not apply to. Paragraphs 1(2)(a) and (b) are of relevance to disposals falling within either paragraph 1(1)(a) or (b). They exclude disposals in certain circumstances where neither a gain nor a loss arises. Paragraphs 1(2)(c) and (d) are of relevance to disposals falling within paragraph 1(1)(b). They exclude disposals of residential property situated outside of the UK where some or all the gain qualifies for double taxation relief or is taxed on the remittance basis. The excluded disposals may be amended by Treasury order.
33. Paragraph 2 provides an obligation for a person to make a return in respect of a disposal to which the Schedule applies. This is to be made within 30 days of the day following completion of the disposal (as defined at subparagraph 10(2)).
34. Paragraphs 2(2) and (3) provide that a return is not required to be made when either the disposal is one to which paragraph 1(1)(b) applies and, under paragraph 3, no amount is due to be paid on account; or the filing date for the return is after a time when a self-assessment return that takes account of the disposal is due to be, or has been, delivered.
35. Paragraph 2(4) provides that a single return is to be made when two or more disposals to which the Schedule apply were made in the same tax year and complete on the same day.
36. Paragraph 3 provides that a person who has to make a return under paragraph 2 also has to make a payment on account by the due date for the return where an amount of tax is notionally chargeable (as determined by paragraph 4). The amount payable is the amount of tax notionally chargeable that exceeds any previous amounts paid under paragraph 3 in respect of the tax year. For companies liable to corporation tax, paragraph 3(4) provides that commencement of this obligation is subject to an appointed day order.
37. Paragraph 4 provides that the amount of tax notionally chargeable is the amount of tax that would be due if, under existing rules for calculating chargeable gains for a tax year, the tax year ended at the time the disposal is completed. In calculating the amount, only gains on disposals to which the Schedule applies are taken into account but any unused allowable losses for capital gains purposes that have accrued by the time the disposal is completed can be used.
38. Paragraph 5 provides that where an amount of tax notionally chargeable (as determined by paragraph 4) is less than the amounts previously paid on account for the tax year concerned then the difference is repayable to the person.
39. Paragraph 6 provides that where an allowable loss arises on a disposal that would have been a disposal within paragraph 1(1)(b) were it not made for a loss, a return may be made under paragraph 2 securing the application of the repayment provisions at paragraph 5.
40. Paragraph 7 provides that any obligation under the Schedule to have delivered a return or made a payment on account following the grant of an option remains in place on the exercise

of the option. This is notwithstanding any treatment of the grant as the same transaction as the disposal occurring on the exercise for the purpose of determining the liability to tax for the combined consideration.

41. Paragraph 8 provides for the making of reasonable expectations and estimates.
42. Paragraph 8(1) provides that anticipated future events can be taken into account when determining whether the Schedule applies to a disposal.
43. Paragraphs 8(2), (3) and (5) deal with changes in a person's anticipated residence status for the tax year. Where the change increases the amount of tax that would be payable on account, an additional return and payment becomes due. For the purpose of determining the amount of tax notionally chargeable under paragraph 4 a new disposal is deemed to take place and the actual disposal is ignored.
44. Paragraphs 8(4) and (5) provide that where a disposal becomes eligible for a relief, when at the time of the completion of the disposal that was not the case, a further return may be delivered under paragraph 2 securing the application of the repayment provisions at paragraph 5. For the purpose of determining the amount of tax notionally chargeable under paragraph 4 a new disposal is deemed to take place and the actual disposal is ignored.
45. Paragraph 8(6) provides that a reasonable estimate may be made of an individual's taxable income for the year for purpose of determining the rate of CGT that is applicable.
46. Paragraph 9 prescribes the contents of a return made under this Schedule.
47. Paragraph 10 provides definitions for Part 1. Paragraph 10(8) ensures that concepts (such as 'disposal') within, and reliefs provided by, the Taxation of Chargeable Gains Act (TCGA) 1992 apply to disposals to which the Schedule applies. It also ensures that definitions within TCGA 1992 also apply to the Schedule. This includes "connected" (at TCGA 1992, section 286); "chargeable period" (at section 288(1)) and "the no gain/no loss provisions" (at section 288(3A)).

Schedule 2: Part 2: Notification of chargeable amounts, amendments of returns, enquiries etc

48. Paragraph 11 provides that a person is not required to give HM Revenue and Customs (HMRC) notice of liability to capital gains tax or corporation tax by virtue of a chargeable gain arising on a disposal to which the Schedule applies. This is provided that a return under paragraph 2 has been made and delivered to HMRC by the end of the notification period mentioned at section 7(1C) of the Taxes Management Act (TMA) 1970 or paragraph 2 of Schedule 18 to the Finance Act 1998.
49. Paragraph 12 provides for the amendment of self-assessment returns to returns made under paragraph 2. Amendments are permitted only so far as the return could have included the amendment by reference to things already done.
50. Paragraph 13 provides for enquiries into self-assessment returns and repayments during an enquiry in a similar way to returns made under paragraph 2 and repayments under paragraph 5.

51. Paragraph 14 provides for the amendment of returns during an enquiry and the making of payments after an amendment or correction in a similar way to returns made under paragraph 2 and amendments or corrections of such returns.
52. Paragraph 15 provides for the determination of tax by HMRC where no self-assessment return is delivered to returns that are not delivered under paragraph 2.
53. Paragraph 16 provides for assessments where a loss of tax is discovered to returns made under paragraph 2.
54. Paragraph 17 provides definitions for Part 2.

Schedule 2: Part 3: Consequential amendments

55. Paragraph 18 makes consequential amendments to TMA 1970.
56. Paragraph 19 makes consequential amendments to TCGA 1992.
57. Paragraph 20 makes consequential amendments to Schedule 24 to the Finance Act 2007 (penalties for errors).
58. Paragraph 21 makes consequential amendments to Schedule 36 to the Finance Act 2008 (information and inspection powers).
59. Paragraph 22 makes consequential amendments to Schedule 55 to the Finance Act 2009 (penalty for failure to make returns).
60. Paragraph 23 provides that interest applies to late payments on account and amounts that are repayable under paragraph 5.
61. Paragraph 24 provides for the commencement of Part 3. Paragraph 24(2) maintains for disposals in tax year 2019-20 an exception for non-residents to make a payment on account when they make self-assessment returns to HMRC; thereafter the exception will cease.

Background note

62. This clause and these Schedules build on recent changes to the taxation of gains arising on the disposal of land and property.
63. Since April 2015, certain non-resident persons (including individuals, trustees and closely-held companies) have been generally chargeable to capital gains tax (NRCGT) on gains arising on the disposal of UK residential property interests.
64. Prior to that, certain persons (mainly companies), wherever resident, became chargeable to CGT on gains arising on disposals of residential property that were chargeable to the annual tax on enveloped dwellings (ATED-related gains).
65. In March 2017, in its consultation *Non-resident companies chargeable to income tax and non-resident CGT*, the government explored bringing non-UK resident companies with gains from the disposal of UK residential property interests within the scope of corporation tax (rather than NRCGT). This clause and Schedule 1 give effect to that.

66. In November 2017, in its consultation *Taxing gains made by non-residents on UK immovable property*, the government consulted on proposals to extend the UK's tax base to gains arising to all non-UK residents on direct and indirect disposals of all forms of UK land, and to harmonise the rules relating to ATED-related CGT. This clause and Schedule 1 give effect to these proposals, including the abolition of the charge to ATED-related CGT.
67. The existing administration of NRCGT requires affected persons to:
- make a return (a NRCGT return) when a UK residential property interest is disposed of (whether or not a gain arises),
 - deliver the return to HMRC within 30 days of the completion of the disposal, and
 - where the disposal is made for a gain, to make a payment on account. A payment on account is not required where the person makes self-assessment returns, such as in relation to chargeable income.
68. In its summary of responses to its consultation *Taxing gains made by non-residents on UK immovable property*, the government confirmed the extension of the existing NRCGT reporting and payment on account principles to disposals with chargeable gains covered by the consultation. This clause and Schedule 2 give effect to these proposals.
69. At Autumn Statement 2015 the government announced the introduction from April 2019 of a requirement on UK residents to make payments on account of CGT for residential property gains. Budget 2017 announced deferral of its introduction until April 2020.
70. In April 2018, in its consultation *Payment window for residential property gains*, the government conducted a technical consultation on the proposals announced at Autumn Statement 2015 and removing the exceptions from making a payment on account that apply to non-residents. This clause and Schedule 2 give effect to these proposals.
71. This legislation is published in draft, and further provisions will be made as noted in the body of the Explanatory Notes. Specific provision will also be made by a separate Schedule to TCGA 1992 for how the rules for charging non-UK residents' gains on interests in UK land will apply to collective investment vehicles.
72. If you have any questions about the changes made by Schedule 1, or comments on the legislation, please contact James Konya on 03000 544525 (email: james.konya@hmrc.gsi.gov.uk)
73. If you have any questions about the changes made by Schedule 2, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk)

