

## Clause 1 and Schedule 1: Non-UK resident companies carrying on UK property businesses etc

### 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

#### Finance Act 1998

7. Paragraph 6 amends Paragraph 2 of Schedule 18 to the Finance Act 1998 so that a company is not required to give notice of chargeability to Corporation Tax for an accounting period if its liability to that tax is fully offset by tax deducted at source

from its income within the charge to Corporation Tax and it has no chargeable gains for that period.

## Finance Act 2004

8. Paragraph 7 inserts new section 55A of Finance Act 2004 which makes provision for a company to be excluded from the obligation to notify its chargeability to Corporation Tax for an accounting period if its liability to that tax is fully offset by tax deducted at source from its income within the charge to Corporation Tax and it has no chargeable gains for that period.

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

9. Paragraph 8 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)

10. Paragraph 9 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)

11. Paragraphs 10 to 27 contain consequential amendments to CTA 2009, in particular:

### **Part 2 of CTA 2009: Chargeable profits**

12. Paragraph 11 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.
13. Paragraph 12 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.

14. Paragraph 13 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 4 of CTA 2009: Property Income**

15. Paragraph 14 amends section 289 of CTA 2009 so that the profits of a UK property business carried on by a non-UK resident company coming within the scope of Corporation Tax at commencement date will not be regarded as a deemed commencement of the business and will not trigger a disposal event for Capital Allowances purposes.

#### **Part 5 of CTA 2009: Loan Relationships**

16. Paragraph 15 amends section 301 of CTA 2009 to make clear that the non-trading debits and credits to be brought into account for a non-UK resident company under Part 5 of CTA 2009 are those in respect of loan relationships that the company is a party to for the purpose of its UK property business or the generation of other UK property income. This is achieved by inserting new subsection (1A) of section 301 of CTA 2009.
17. Paragraph 16 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.
18. Paragraph 17 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**

19. Paragraph 18 amends section 574 of CTA 2009 to make clear that the non-trading debits and credits to be brought into account for a non-UK resident company under Part 5 of CTA 2009 are those in respect of derivative contracts that the company is a party to for the purpose of its UK property business or the generation of other UK property income. This is achieved by inserting new subsection (2A) of section 574 of CTA 2009.
20. Paragraphs 19 and 20 make similar changes to sections 609 and 610 of CTA 2009 as those set out at paragraphs 17 and 18 above in respect of the rights and liabilities under a derivative contract in the same circumstances.
21. Paragraph 21 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**

22. Paragraphs 22 to 25 amend the rules relating to elections for the transfer of a

degrouching 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.
23. Paragraph 26 amends section 795 of CTA 2009 so that in the event that a non-UK resident company does not meet its liability to a degrouching 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.
24. Paragraph 27 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)

25. Paragraphs 28 to 31 make consequential amendments to CTA 2010, in particular:
26. Paragraph 29 amends section 9 of CTA 2010 so that it applies in respect of the return of accounts for all activities of a non-UK resident company that are within the charge to CT where the company prepares its accounts in a currency other than sterling.
27. Paragraphs 30 and 31 amend the group relief rules which place a restriction on losses which are surrenderable by a non-UK resident company if they are relievable in another jurisdiction to include a loss arising to a non-UK resident company carrying on a UK property business that is within the charge to CT.

## Taxation (International and Other Provisions) Act 2010 (TIOPA 2010)

28. Paragraphs 32 to 34 make consequential amendments to the corporate interest restriction rules at Part 10 of TIOPA 2010, in particular:
29. Paragraph 33 introduces new subsection 415(1A) of TIOPA 2010 which applies for the purpose of the group ratio method. This provides that guarantees, indemnities and other financial assistance provided by a related party which were in existence before 29 October 2018 will not be taken into account when determining what amounts can

be included in the qualifying net group interest expense.

30. This applies where the group company in question was a party to the loan or other financial liability for the purpose of its UK property business and that company has not at any time prior to the 29 October 2018 been UK resident.
31. Similarly, Paragraph 34 introduces new subsection 438(5A) of TIOPA 2010 which applies for the purpose of the public infrastructure rules. This provides that guarantees, indemnities and other financial assistance provided to a related party which were in existence before 29 October 2018 will not be taken into account in determining the amounts that can be considered payable to third parties (and hence potentially excluded from the scope of the interest restriction).
32. This applies where the group company in question was a party to the loan or other financial liability for the purpose of its UK property business and that company has not at any time prior to the 29 October 2018 been UK resident.

## Part 3 Commencement and Transitional Provisions

33. Paragraph 35 provides the date on which the Schedule comes into force.
34. The effect of Paragraph 36 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.
35. Paragraph 37 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 (or profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of that business) for so long as the company continues to carry on the UK property business.
36. 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.
37. Paragraph 38 applies 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 for Income Tax purposes. This paragraph 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.
38. Paragraph 39 provides that a loss from a loan relationship that arises after the commencement date but which is wholly or partly referable to a period before that

date, and would have been allowable under the Income Tax rules had it arisen in that period, the loss is not disallowed by section 327 of CTA 2009 because of the fact that it has not been subject to Corporation Tax.

39. Paragraph 40 includes a rule in line with section 327 of CTA 2009 in respect of derivative contracts coming into charge to Corporation Tax as a result of this Schedule. This paragraph prevents a deduction for an amount of loss arising under a derivative contract which is referable to a period of time when the derivative contract was not within the charge to Corporation Tax so that the company would not have been chargeable to Corporation Tax on any profits arising from the contract. In line with the limitation introduced by Paragraph 39 of this Schedule, no restriction applies where the loss arising on the derivative would have been allowable under the Income Tax rules had the loss arisen in a period before commencement date.
40. In particular, this would apply to disallow amounts to be brought into account under regulation 9(4)(d) of the Disregard Regulations (S.I. 2004/3256) in respect of a derivative contract coming to an end before its stated date of maturity, in cases where had the derivatives been closed out before commencement it would not have been deductible under the Income Tax rules.
41. Paragraph 41 limits the application of section 327 of CTA 2009 and Paragraph 40 of this Schedule in respect of financial instruments in cases where there is a credit brought into account on another financial instrument and there is hedging relationship between the two instruments.
42. Where the credit is referable to a period before commencement date and the credit is to be brought into account, the provisions of section 327 of CTA 2009 or Paragraph 40 of this Schedule are disapplied so that the loss can also be brought into account, up to the amount of the credit. Where the one instrument partially hedges the other, then the amount of the loss to be brought into account is adjusted to reflect the extent of the hedging relationship.
43. Paragraphs 42 and 43 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.
44. Paragraph 42 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.
45. Paragraph 43 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 regarded as 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.

46. In addition, where regulations 7 or 8 of the Disregard Regulations are subsequently in point after the commencement date, regulation 10 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.
47. Paragraph 44 modifies the rules for electing into regulations 7, 8 and 9 of the Disregard Regulations where a company comes within the charge to Corporation Tax for the first time by reason of this Schedule.
48. Regulation 6A of the Disregard Regulations provides certain time limits for a 'new adopter'. This would ordinarily apply where a company came into the charge of Corporation Tax for the first time by reason of this Schedule, except for cases where the company had applied fair value accounting in respect of a relevant derivative contract for the first time on or after 1 January 2015 for the purposes of electing into the Disregard Regulations where it had adopted the measure of its relevant derivative contracts at fair value before 1 January 2015. Paragraph 44 extends this treatment for companies coming into the charge of Corporation Tax by reason of this Schedule, so that it also includes cases where the company had measured its relevant derivative contracts at fair value before 1 January 2015.
49. Paragraph 45 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.
50. Paragraph 46 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 5 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
51. Paragraph 47 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.

52. Paragraph 48 concerns a company that comes within the charge to Corporation Tax as a result of this Schedule. The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) ('the QIPs Regulations') will not have effect for its first Corporation Tax accounting period.
53. Paragraph 49 is a targeted anti-avoidance rule ('the TAAR') which applies to arrangements entered into on or after 29 October 2018 where the main purpose or one of the main purpose is to secure a tax advantage related to the coming into force of this Schedule. The tax advantage is to be counteracted by means of adjustments.
54. Paragraph 50 provides that, if in connection with the coming into force of this Schedule, a company enters into ordinary commercial steps in order to secure the benefit of a relief within the corporate interest restriction rules within Part 10 of TIOPA 2010, the tax advantage secured will not be counteracted by means of adjustment under either Paragraph 49 of this Schedule (the TAAR) or by section 461 of TIOPA 2010 (counteracting effect of avoidance arrangements).

## Background note

55. 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.
56. 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.