

EXPLANATORY MEMORANDUM TO

**THE UK PROPERTY RICH COLLECTIVE INVESTMENT VEHICLES
(AMENDMENT OF THE TAXATION OF CHARGEABLE GAINS ACT 1992)
REGULATIONS 2021**

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Commissioners for Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These regulations amend legislation introduced in Finance Act 2019, as amended by the UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2020 (S.I. 2020/315; "the 2020 regulations"), concerning the tax treatment of capital gains arising on disposals of interests in United Kingdom (UK) land by non-UK residents. Specifically, they amend rules relating to 'UK property rich' collective investment vehicles (CIVs) and their investors.
- 2.2 The amendments address issues raised following implementation of the legislation, and correct minor errors. In particular, the changes provide that for the purposes of section 2B(4)(b) of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) (disposals by non-UK residents of assets deriving 75% of value from UK land etc), specified investors in UK property rich CIVs are (subject to specified conditions) treated as not having a substantial indirect interest in UK land at the time of a relevant disposal.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 These regulations will come into force and take effect from XX April 2021 ("the commencement date"), except as noted below.
- 3.2 The amendments made by regulation 4(a) and (b) have effect in relation to disposals made on or after 6 April 2019. These changes are relieving and apply retrospectively to the date the original rules had effect, under powers provided in paragraph 48(3) of Schedule 5AAA to TCGA 1992.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As this instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of The UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Schedule 1 to the Finance Act 2019 introduced new provisions extending the scope of the UK’s taxation of capital gains arising to non-UK residents on disposals of UK land, to include gains on disposals of interests in non-residential UK property. It also extended the charge on gains on disposals of interests in residential property to include disposals made by widely held companies, investment funds, and life assurance companies. Those rules apply to disposals made on or after 6 April 2019.
- 6.2 Paragraph 14 of Schedule 1 inserted a new Schedule 1A into TCGA 1992, which contains the provisions relating to disposals by non-UK residents of assets that are UK property rich (broadly, assets deriving 75% or more of their value from UK land). This brings into charge gains on disposals of assets that derive at least 75% of their value from UK land where a person has a substantial indirect interest in that land, for example shares in a company that in turn owns UK land.
- 6.3 Paragraph 21 of Schedule 1 inserted a new Schedule 5AAA into TCGA 1992, which contains rules relating specifically to UK property rich CIVs (a defined term encompassing various forms of investment funds), and their investors. Schedule 5AAA interacts with Schedule 1A to make provisions relating to disposals of interests in CIVs, and disposals by CIVs of interests in UK land.
- 6.4 Schedule 5AAA provides that all CIVs, other than partnerships, will by default be treated for the purposes of TCGA 1992 as if they were companies and so chargeable to Corporation Tax on relevant gains. Investors are deemed to hold shares in such a company where that is not already the case, so that where the CIV is UK property rich, a disposal of an interest in it by a non-UK resident investor will be chargeable to UK tax under the provisions in Schedule 1A.
- 6.5 The default treatment described above would result in tax exempt investors such as pension funds suffering indirectly the effect of tax paid by a CIV on disposal of interests in UK land. Non-exempt investors could suffer effective double taxation when disposing of an interest in such a vehicle.
- 6.6 Schedule 5AAA therefore provides that CIVs may, subject to qualifying criteria and conditions, make elections to be treated as either transparent for tax purposes or exempt from tax on disposals of interests in UK land. Making either election will generally have the effect that tax on relevant gains will fall only on non-exempt investors and not on exempt investors or the relevant CIV.
- 6.7 The 2020 regulations addressed issues raised following implementation of the legislation to ensure that it works as intended, and to clarify certain points and correct

minor errors. In particular, the changes ensured that investors who are exempt from the charge to tax on capital gains, such as pension funds, can benefit from that exemption whether directly or indirectly investing in CIVs, and that barriers to eligible CIVs wishing to make certain elections provided for by the rules were removed.

6.8 These further regulations address additional matters raised by industry, and correct minor errors.

6.9 Powers are provided within Schedule 5AAA to enable the Treasury to make regulations to amend provisions within TCGA 1992 in relation to CIVs and their investments, with retrospective effect where necessary. These regulations are made under those powers.

7. Policy background

7.1 These regulations: –

- remove disproportionate administrative burdens for specified investors which, if left unaddressed, could deter investment in UK commercial property; and
- correct minor drafting errors.

7.2 Paragraph 1 of Schedule 5AAA provides the definition of the term ‘collective investment vehicle’. Regulation 3 corrects an error relating to how the property income condition applies for a company coming within the definition of a CIV in paragraph 1(1)(f). A new sub-paragraph (2B) is introduced to apply certain conditions regarding derivation and distribution of income at the level of the sub-group comprising the company and its subsidiaries, instead of at the level of the group of which that company is itself a member. This change has effect from the commencement date and will not apply retrospectively because it potentially has a taxing effect in that, whilst a company now coming within the definition will be able to make an exemption election under paragraph 12(2) (subject to meeting relevant conditions), its investors will now be regarded as holding a substantial indirect interest in UK land no matter the size of their holding (whereas investors in non-CIV entities may otherwise be regarded as having such an interest only if they, broadly, hold an interest of 25% or more in the entity).

7.3 Paragraph 8 of Schedule 1A sets out the basic rule to determine when investors in a UK property rich company hold a substantial indirect interest (SII) in UK land, which states that they hold such an interest when they have a 25% or greater investment in the company. Paragraph 6 of Schedule 5AAA provides an exception to the operation of that rule so that this 25% de minimis provision does not apply to investors in UK property rich CIVs, who are treated as having a SII regardless of the size of their investment in the CIV. Regulation 4(a) and (b) provides that, subject to applicable conditions, non-UK resident life assurance companies and non-UK resident, non-UK property rich CIVs, with less than 10% interests in UK property rich CIVs (wherever resident), are nonetheless to be treated as not holding a SII. This removes disproportionate administrative burdens for such investors. This change is relieving and has effect from 6 April 2019.

7.4 Other changes made by these regulations correct minor errors without changing the way the relevant rules operate, and so have effect from the commencement date.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 These regulations do not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 These regulations are published in draft form and comments are invited by 16 December 2020. This Explanatory Memorandum will be updated following that period of consultation.

11. Guidance

11.1 HMRC published draft guidance on the rules in Schedule 5AAA on [31 December 2018](#), supplemented with further draft guidance on [19 September 2019](#). That draft guidance will be updated and published before this statutory instrument takes effect.

12. Impact

12.1 The impact on business, charities or voluntary bodies is as follows. These regulations correct minor errors and remove disproportionate administrative burdens for specified investors. The regulations are predominantly relieving. Businesses impacted by these changes may incur insignificant one-off costs of familiarisation with the amendments, and specified investors will make administrative savings as a result of the amendment to paragraph 6 of Schedule 5AAA. There are not expected to be any ongoing costs to those businesses from the amendment.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation applies to activities that may be undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that, although the changes do not discriminate between businesses few, if any, small businesses are affected. The impact on small and micro businesses is negligible.

14. Monitoring & review

14.1 The approach to monitoring of the rules set out in Schedule 5AAA is as follows. CIVs making elections for transparency or exemption are required to send notices to HMRC, together with required information, and are both subject to ongoing obligations to report details of disposals and investors annually. This information, together with ongoing engagement with industry, will allow HMRC to closely monitor the operation of the rules and to consider whether further changes may be required to ensure that they are working as intended.

14.2 The regulations do not include a statutory review clause. They amend United Kingdom tax legislation and therefore fall within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Wayne Strangwood at HMRC, Telephone: 03000 585493 or email: wayne.a.strangwood@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Richard Thomas, Head of Financial Products and Services and a Deputy Director of Business, Assets and International at HMRC can confirm that this explanatory memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, can confirm that this explanatory memorandum meets the required standard.

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