



# Finance Act 2016

## 2016 CHAPTER 24

### PART 3

#### INCOME TAX AND CORPORATION TAX

##### *Transactions in UK land*

#### **79 Income tax: transactions in UK land**

(1) In ITA 2007, after Part 9 insert—

#### **“PART 9A**

#### TRANSACTIONS IN UK LAND

##### *Introduction*

#### **517A Overview of Part**

This Part contains provision about the income tax treatment of certain profits and gains realised from disposals concerned with land in the United Kingdom.

##### *Amounts treated as profits of a trade*

#### **517B Disposals of land in the United Kingdom**

- (1) Section 517C(1) applies (subject to subsection (3) of that section) if—
- (a) a person within subsection (2)(a), (b) or (c) realises a profit or gain from a disposal of any land in the United Kingdom, and
  - (b) any of conditions A to D is met in relation to the land.

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- (2) The persons referred to in subsection (1) are—
  - (a) the person acquiring, holding or developing the land,
  - (b) a person who is associated with the person in paragraph (a) at a relevant time, and
  - (c) a person who is a party to, or concerned in, an arrangement within subsection (3).
- (3) An arrangement is within this subsection if—
  - (a) it is effected with respect to all or part of the land, and
  - (b) it enables a profit or gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (4) Condition A is that the main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land.
- (5) Condition B is that the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.
- (6) Condition C is that the land is held as trading stock.
- (7) Condition D is that (in a case where the land has been developed) the main purpose, or one of the main purposes, of developing the land was to realise a profit or gain from disposing of the land when developed.
- (8) In this section “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal mentioned in subsection (1).
- (9) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D.
- (10) For the purposes of this section a person (“A”) is associated with another person (“B”) if—
  - (a) A is connected with B by virtue of any of subsections (2) to (4) of section 993 (read in accordance with section 994), or
  - (b) A is related to B (see section 517U).

### **517C Disposals of land: profits treated as trading profits**

- (1) The profit or gain is to be treated for income tax purposes as profits of a trade carried on by the chargeable person.
- (2) If the chargeable person is non-UK resident, that trade is the person's trade of dealing in or developing UK land (as defined in section 6B of ITTOIA 2005).
- (3) But subsection (1) does not apply to a profit or gain so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for income tax purposes, or

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- (b) for corporation tax purposes.
- (4) The profits are treated as arising in the tax year in which the profit or gain is realised.
- (5) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

#### **517D Disposals of property deriving its value from land in the United Kingdom**

- (1) Section 517E(1) applies (subject to subsection (3) of that section) if—
  - (a) a person realises a profit or gain from a disposal of any property which (at the time of the disposal) derives at least 50% of its value from land in the United Kingdom,
  - (b) the person is a party to, or concerned in, an arrangement concerning some or all of the land mentioned in paragraph (a) (“the project land”), and
  - (c) the arrangement meets the condition in subsection (2).
- (2) The condition is that the main purpose, or one of the main purposes, of the arrangement is to—
  - (a) deal in or develop the project land, and
  - (b) realise a profit or gain from a disposal of property deriving the whole or part of its value from that land.

#### **517E Disposals within section 517D: profits treated as trading profits**

- (1) The relevant amount is to be treated for income tax purposes as profits of a trade carried on by the chargeable person.
- (2) If the chargeable person is non-UK resident, that trade is the chargeable person's trade of dealing in or developing UK land.
- (3) But subsection (1) does not apply to an amount so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for income tax purposes, or
  - (b) for corporation tax purposes.
- (4) The profits are treated as arising in the tax year in which the profit or gain is realised.
- (5) In this section the “relevant amount” means so much (if any) of the profit or gain mentioned in section 517D(1) as is attributable, on a just and reasonable apportionment, to the relevant UK assets.
- (6) In this section “the relevant UK assets” means any land in the United Kingdom from which the property mentioned in section 517D(1) derives any of its value (at the time of the disposal mentioned in that subsection).
- (7) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

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### 517F Profits and losses

- (1) Sections 517B to 517E have effect as if they included provision about losses corresponding to the provision they make about profits and gains.
- (2) Accordingly, in the following sections of this Part references to a “profit or gain” include a loss.

#### *Person to whom profits attributed*

### 517G The chargeable person

- (1) For the purposes of sections 517C and 517E the general rule is that the “chargeable person” is the person (“P”) that realises the profit or gain (as mentioned in section 517B(1) or 517D(1)).
- (2) The general rule in subsection (1) is subject to the special rules in subsections (4) to (6).
- (3) But those special rules do not apply in relation to a profit or gain to which section 517H(3) (fragmented activities) applies.
- (4) If all or any part of the profit or gain accruing to P is derived from value provided directly or indirectly by another person (“B”), B is the “chargeable person”.
- (5) Subsection (4) applies whether or not the value is put at the disposal of P.
- (6) If all or any part of the profit or gain accruing to P is derived from an opportunity of realising a profit or gain provided directly or indirectly by another person (“D”), D is “the chargeable person” (unless the case falls within subsection (4)).
- (7) For the meaning of “another person” see section 517P.

#### *Anti-fragmentation*

### 517H Fragmented activities

- (1) Subsection (3) applies if—
  - (a) a person (“P”) disposes of any land in the United Kingdom,
  - (b) any of conditions A to D in section 517B is met in relation to the land, and
  - (c) a person (“R”) who is associated with P at a relevant time has made a relevant contribution to activities falling within subsection (2).
- (2) The following activities fall within this subsection—
  - (a) the development of the land,
  - (b) any other activities directed towards realising a profit or gain from the disposal of the land.

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- (3) For the purposes of this Part, the profit or gain (if any) realised by P from the disposal is to be taken to be what that profit or gain would be if R were not a distinct person from P (and, accordingly, as if everything done by or in relation to R had been done by or in relation to P).
- (4) Subsection (5) applies to any amount which is paid (directly or indirectly) by R to P for the purposes of meeting or reimbursing the cost of income tax which P is liable to pay as a result of the application of subsection (3) in relation to R and P.
- (5) The amount—
  - (a) is not to be taken into account in calculating profits or losses of either R or P for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (6) In subsection (1) “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal.
- (7) For the purposes of this section any contribution made by P to activities falling within subsection (2) is a “relevant contribution” unless the profit made or to be made by P in respect of the contribution is insignificant having regard to the size of the project.
- (8) In this section “contribution” means any kind of contribution, including, for example—
  - (a) the provision of professional or other services, or
  - (b) a financial contribution (including the assumption of a risk).
- (9) For the purposes of this section R is “associated” with P if—
  - (a) R is connected with P by virtue of any of subsections (2) to (4) of section 993 (read in accordance with section 994), or
  - (b) R is related to P (see section 517U).
- (10) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D in section 517B.

### *Calculation of profit or gain on disposal*

#### **517I Calculation of surplus on a disposal of land**

For the purposes of this Part, the profit or gain (if any) from a disposal of any property is to be calculated according to the principles applicable for calculating the profits of a trade under Part 2 of ITTOIA 2005, subject to any modifications that may be appropriate (and for this purpose the same rules are to apply in calculating losses from a disposal as apply in calculating profits).

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### 517J Apportionments

Any apportionment (whether of expenditure, consideration or any other amount) that is required to be made for the purposes of this Part is to be made on a just and reasonable basis.

#### *Arrangements for avoiding tax*

### 517K Arrangements for avoiding tax

- (1) Subsection (3) applies if an arrangement has been entered into the main purpose or one of the main purposes of which is to enable a person to obtain a relevant tax advantage.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means an advantage in relation to income tax charged (or which would, if the tax advantage were not obtained, be charged) in respect of amounts treated as profits of a trade by virtue of this Part.
- (6) In this section “advantage” includes—
  - (a) a relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.

#### *Exemptions*

### 517L Gain attributable to period before intention to develop formed

- (1) Subsection (2) applies if—
  - (a) subsection (1) of section 517C applies because Condition D in section 517B is met (land developed with purpose of realising a gain from its disposal when developed), and
  - (b) part of the profit or gain mentioned in that subsection is fairly attributable to a period before the intention to develop was formed.

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- (2) Section 517C(1) has effect as if the person mentioned in section 517B(1) had not realised that part of the profit or gain.
- (3) Subsection (4) applies if—
  - (a) section 517E(1) applies, and
  - (b) part of the profit or gain mentioned in section 517E(5) is fairly attributable to a period before the person mentioned in section 517D(1) was a party to, or concerned in, the arrangement in question.
- (4) Section 517E has effect as if the person had not realised that part of the profit or gain.
- (5) In applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading income) of a person who appropriates land as trading stock.

#### **517M Private residences**

No liability to income tax arises under this Part in respect of a gain accruing to an individual if—

- (a) the gain is exempt from capital gains tax as a result of sections 222 to 226 of TCGA 1992 (private residences), or
- (b) it would be so exempt but for section 224(3) of that Act (residences acquired partly with a view to making a gain).

#### *Other supplementary provisions*

#### **517N Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.
- (2) Value may be traced through any number of companies, partnerships, trusts and other entities or arrangements.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners, beneficiaries or other participants at each stage in whatever way is appropriate in the circumstances.
- (4) In this section—
  - “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar nature to a partnership; and “partners”, in relation to such arrangements, is to be construed accordingly;
  - “trust” includes arrangements—
    - (a) which have effect under the law of a country or territory outside the United Kingdom; and
    - (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

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and “beneficiaries”, in relation to such arrangements, is to be construed accordingly.

### **517O Relevance of transactions, arrangements, etc**

- (1) In determining whether section 517C(1) or 517E(1) applies, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right, however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion on which section 517C(1) or 517E(1) applies.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

### *Interpretation*

#### **517P “Another person”**

- (1) In this Part references to “other” persons are to be interpreted in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.



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### 517Q “Arrangement”

- (1) In this Part “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable.
- (2) For the purposes of this Part any number of transactions may be regarded as constituting a single arrangement if—
  - (a) a common purpose can be discerned in them, or
  - (b) there is other sufficient evidence of a common purpose.

### 517R “Disposal”

- (1) In this Part references to a “disposal” of any property include any case in which the property is effectively disposed of (whether wholly or in part, as mentioned in subsection (2))—
  - (a) by one or more transactions, or
  - (b) by any arrangement.
- (2) For the purposes of this Part—
  - (a) references to a disposal of land or any other property include a part disposal of the property, and
  - (b) there is a part disposal of property (“the asset”) where on a person making a disposal, any form of property derived from the asset remains undisposed of (including in cases where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal).

### 517S “Land” and related expressions

- (1) In this Part “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (2) In this Part references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.

### 517T References to realising a gain

- (1) For the purposes of sections 517B(1) and 517D(1) it does not matter whether the person (“P”) realising the profit or gain in question realises it for P or another person.

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- (2) For the purposes of subsection (1), if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a profit or gain to another person (“B”), A realises B’s profit or gain for B.

### 517U Related parties

- (1) For the purposes of this Part a person (“A”) is related to another person (“B”)—
- (a) throughout any period for which A and B are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 25% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
- (a) their financial results for a period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for a period are in fact comprised in group accounts.
- (3) In subsection (2) “group accounts” means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with that day—
- (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
- (5) The 25% investment condition is met in relation to A and B if—
- (a) one of them has a 25% investment in the other, or
  - (b) a third person has a 25% investment in each of them.
- (6) Section 259NC of TIOPA 2010 applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of this section as it applies for the purposes of section 259NB(2) of that Act.
- (7) In Chapter 2 of Part 4 of TIOPA 2010, sections 157(2), 158(4), 159(2) and 160(2) (which are about the interpretation of references to direct and indirect participation) apply in relation to subsection (4) as they apply in relation to subsection (4) of section 259NA of that Act.”
- (2) In section 2 of ITA 2007 (overview of Act)—
- (a) after subsection (9) insert—

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- “(9A) Part 9A is about the treatment of certain transactions in UK land.”,  
and
- (b) in subsection (13), omit paragraph (c).
- (3) In section 482 of ITA 2007 (types of amount to be charged at special rates for trustees), in the words relating to Type 11, for “Chapter 3 of Part 13 of this Act (tax avoidance: transactions in land)” substitute “ Part 9A of this Act (transactions in land) ”.
- (4) In section 527 of ITA 2007 (exemption from charges under provisions to which section 1016 applies), in subsection (2)—
- (a) insert “ and ” at the end of paragraph (d), and
- (b) omit paragraph (e).
- (5) In Part 13 of ITA 2007, omit Chapter 3 (transactions in land).
- (6) In section 944 of ITA 2007 (tax avoidance: directions for duty to deduct to apply), in subsection (1)—
- (a) omit paragraph (a), and
- (b) in paragraph (b) for “that Part” substitute “ Part 13 ”.
- (7) In section 1016 of ITA 2007 (table of provisions to which that section applies), in Part 2 of the table in subsection (2), omit the entry relating to Chapter 3 of Part 13 of that Act.
- (8) In section 37 of TCGA 1992 (consideration chargeable to tax on income), in subsection (5)(a), for the words from “759(4)” to “is” substitute “ 517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of ”
- (9) In section 39 of TCGA 1992 (exclusion of expenditure by reference to tax on income), in subsection (4)(a), for the words from “759(4)” to “is” substitute “ 517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of ”.
- (10) In section 161 of TCGA 1992 (appropriations to and from stock), in subsection (5), for paragraph (a) substitute—
- “(a) any person is charged to income tax by virtue of sections 517B and 517C of [<sup>F1</sup>ITA 2007] (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 517B(7) of that Act is met, and”.
- (11) In section 830 of ITTOIA 2005, in subsection (3), for the words from “of” to the end substitute “of—
- (a) section 844 (unremittable income: income charged on withdrawal of relief after source ceases), or
- (b) section 517C or 517E of ITA 2007 (profits on certain disposals concerned with land in the United Kingdom treated as trading profits).”

#### Textual Amendments

**F1** Words in s. 79(10) substituted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 39\(3\)\(4\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)