

SCHEDULES

SCHEDULE 1

CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS ETC

PART 1

EXTENDING CASES IN WHICH NON-RESIDENTS ARE CHARGED TO TAX ETC

14 After Schedule 1 insert—

“SCHEDULE 1A

ASSETS DERIVING 75% OF VALUE FROM UK LAND ETC

PART 1

INTRODUCTION

- 1 This Schedule makes provision, for the purposes of section [1A\(3\)\(c\)](#) or [2B\(4\)\(b\)](#), for determining in the case of any disposal of any asset—
 - (a) whether the asset derives at least 75% of its value from UK land (see Part [2](#) of this Schedule), and
 - (b) whether the person making the disposal has a substantial indirect interest in the UK land (see Part [3](#) of this Schedule).
- 2 The provision made by this Schedule needs to be read together with—
 - (a) paragraph [5](#) of Schedule 5AAA (which treats units in a CoACS as shares for the purposes of this Schedule), and
 - (b) paragraph [6](#) of that Schedule (which treats certain disposals of interests in collective investment vehicles as meeting the conditions in Part [3](#) of this Schedule).

PART 2

WHETHER ASSET DERIVES AT LEAST 75% OF ITS VALUE FROM UK LAND

The basic rule

- 3 (1) An asset derives at least 75% of its value from UK land if—
 - (a) the asset consists of a right or an interest in a company, and

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- (b) at the time of the disposal, at least 75% of the total market value of the company’s qualifying assets derives (directly or indirectly) from interests in UK land.
- (2) Market value may be traced through any number of companies, partnerships, trusts and other entities or arrangements but may not be traced through a normal commercial loan.
- (3) It is irrelevant whether the law under which a company, partnership, trust or other entity or an arrangement is established or has effect is—
 - (a) the law of any part of the United Kingdom, or
 - (b) the law of any territory outside the United Kingdom.
- (4) The assets held by a company, partnership or trust or other entity or arrangement must be attributed to the shareholders, partners, beneficiaries or other participants at each stage in whatever way is appropriate in the circumstances.
- (5) For the purposes of this paragraph—
 - “normal commercial loan” means a loan which is a normal commercial loan for the purposes of section 158(1)(b) or 159(4)(b) of CTA 2010, and
 - “qualifying assets” has the meaning given by paragraph 4.
- (6) The provision made by this paragraph is subject to exceptions provided by—
 - (a) paragraph 5 (interests in UK land used for trading purposes), and
 - (b) paragraph 6 (certain disposals of rights or interests in connected companies).

Meaning of “qualifying assets”

- 4 (1) Subject as follows, all of the assets of the company are qualifying assets.
- (2) An asset of the company is not a qualifying asset so far as it is matched to a related party liability.
- (3) But an interest in UK land is a qualifying asset of the company even if it is matched to any extent to a related party liability.
- (4) An asset of the company is matched to a related party liability if—
 - (a) the asset consists of a right under a transaction (for example, a right under a loan relationship or derivative contract),
 - (b) the right entitles the company to require another person to meet a liability arising under the transaction, and
 - (c) the other person is relevant to the paragraph 3 tracing exercise or is a related party of the company on the day of the disposal.
- (5) For the purposes of this paragraph a person is relevant to the paragraph 3 tracing exercise if—
 - (a) the person has assets that fall to be taken into account in the tracing exercise mentioned in paragraph 3, or

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- (b) the person has obligations (whether as a trustee or otherwise) in relation to the holding of assets comprised in any trust or other arrangement that fall to be taken into account in that exercise.
- (6) Whether, for the purposes of this paragraph, a person is a related party of the company on any day is determined in accordance with the rules in Part 8ZB of CTA 2010 but as if, in section 356OT(4) of that Act, the words “, within the period of 6 months beginning with that day” were omitted.
- (7) In this paragraph a liability includes a contingent liability (such as one arising as a result of the giving of a guarantee, indemnity or other form of financial assistance).

Exception in relation to interests in UK land used for trading purposes

- 5 (1) A disposal of a right or interest in a company is not to be regarded as a disposal of an asset deriving at least 75% of its value from UK land if it is reasonable to conclude that, so far as the market value of the company’s qualifying assets derives (directly or indirectly) from interests in UK land—
 - (a) all of the interests in UK land are used for trading purposes, or
 - (b) all of the interests in UK land would be used for those purposes if low-value non-trade interests in UK land were left out of account.
- (2) An interest in UK land is “used for trading purposes” for the purposes of this paragraph if (and only if), at the time of the disposal—
 - (a) it is being used in, or for the purposes of, a qualifying trade, or
 - (b) it has been acquired for use in, or for the purposes of, a qualifying trade.
- (3) A trade is a “qualifying” trade for the purposes of this paragraph if—
 - (a) it has been carried on by the company, or by a person connected with the company, throughout the period of one year ending with the time of the disposal on a commercial basis with a view to the realisation of profits, and
 - (b) it is reasonable to conclude that the trade will continue to be carried on (for more than an insignificant period of time) on a commercial basis with a view to the realisation of profits.
- (4) For the purposes of this paragraph, “low-value non-trade interests in UK land” means interests in UK land—
 - (a) which are not used for trading purposes, and
 - (b) the total market value of which is, at the time of the disposal, no more than 10% of the total market value at that time of the interests in UK land that are used for trading purposes.

Exception for certain disposals of rights or interests under same arrangements etc

- 6 (1) This paragraph applies if—

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- (a) there are two or more disposals of rights or interests in companies,
 - (b) the disposals are linked with each other,
 - (c) some but not all of the disposals would, apart from this paragraph, be disposals of assets deriving at least 75% of their value from UK land, and
 - (d) if one of the companies included all of the assets of the others, a disposal of a right or interest in it would not be a disposal of an asset deriving at least 75% of its value from UK land.
- (2) None of the disposals are to be regarded as disposals of assets deriving at least 75% of their value from UK land.
- (3) In determining whether the condition in sub-paragraph (1)(d) is met in the case of a disposal of a right or interest in a company, it is to be assumed that, for the purposes of paragraph 4, each of the other companies in which rights or interest are disposed of is (so far as this would not otherwise be the case) a related party of the company on the day of the disposal.
- (4) For the purposes of this paragraph a disposal of a right or interest in a company is linked with a disposal of a right or interest in another company if—
- (a) the disposals are made under the same arrangements,
 - (b) the disposals are made by the same person or by persons connected with each other,
 - (c) the disposals are made to the same person or to persons connected with each other, and
 - (d) in the case of each disposal, the person making the disposal is connected with the company in which the right or interest is disposed of.
- (5) For the purposes of this paragraph, the question whether or not a person is connected with another is to be determined immediately before the arrangements are entered into.
- (6) Section 286 (connected persons: interpretation) has effect for the purposes of this paragraph as if, in subsection (4), the words “Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements,” were omitted.

Meaning of “interest in UK land”

- 7 For the purposes of this Part of this Schedule “interest in UK land” has the meaning given by section 1C.

PART 3

WHETHER PERSON HAS SUBSTANTIAL INDIRECT INTEREST IN UK LAND

Basic rule

- 8 (1) If—
- (a) a person disposes of an asset consisting of a right or an interest in a company, and
 - (b) the asset derives at least 75% of its value from UK land,
- the person has a substantial indirect interest in UK land if, at any time in the period of 2 years ending with the time of the disposal, the person has a 25% investment in the company.
- (2) But a person is not to be regarded as having a 25% investment in the company at times falling in the person's qualifying ownership period if, having regard to the length of that period, the times (taken as whole) constitute an insignificant proportion of that period.
- (3) The "person's qualifying ownership period" means the period throughout which the person has held an asset consisting of a right or an interest in the company, but excluding times that fall before the beginning of the 2 year period mentioned in sub-paragraph (1).

Meaning of "25% investment"

- 9 (1) A person ("P") has a 25% investment in a company ("C") if—
- (a) P possesses or is entitled to acquire 25% or more of the voting power in C,
 - (b) in the event of a disposal of the whole of the equity in C, P would receive 25% or more of the proceeds,
 - (c) in the event that the income in respect of the equity in C were distributed among the equity holders in C, P would receive 25% or more of the amount so distributed, or
 - (d) in the event of a winding-up of C or in any other circumstances, P would receive 25% or more of C's assets which would then be available for distribution among the equity holders in C in respect of the equity in C.
- (2) In this paragraph references to the equity in C are to—
- (a) the shares in C other than restricted preference shares, or
 - (b) loans to C other than normal commercial loans.
- (3) For this purpose "shares in C" includes—
- (a) stock, and
 - (b) any other interests of members in C.
- (4) For the purposes of this paragraph a person is an equity holder in C if the person possesses any of the equity in C.
- (5) For the purposes of this paragraph—

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“normal commercial loan” means a loan which is a normal commercial loan for the purposes of section 158(1)(b) or 159(4)(b) of CTA 2010, and

“restricted preference shares” means shares which are restricted preference shares for the purposes of section 160 of CTA 2010.

- (6) In a case where C is a company which does not have share capital, in applying for the purposes of this paragraph the definitions of “normal commercial loan” and “restricted preference shares”—
- (a) sections 160(2) to (7) and 161 to 164 of CTA 2010, and
 - (b) any other relevant provisions of that Act,
- have effect with the necessary modifications.
- (7) In this paragraph references to a person receiving any proceeds, amount or assets include—
- (a) the direct or indirect receipt of the proceeds, amount or assets, and
 - (b) the direct or indirect application of the proceeds, amount or assets for the person’s benefit,
- and it does not matter whether the receipt or application is at the time of the disposal, distribution, winding-up or other circumstances or at a later time.
- (8) If—
- (a) there is a direct receipt or direct application of any proceeds, amount or assets by or for the benefit of a person (“A”), and
 - (b) another person (“B”) directly or indirectly owns a percentage of the equity in A,
- there is, for the purposes of sub-paragraph (7), an indirect receipt or indirect application of that percentage of the proceeds, amount or assets by or for the benefit of B.
- (9) For this purpose the percentage of the equity in A directly or indirectly owned by B is to be determined by applying the rules in sections 1155 to 1157 of CTA 2010 with such modifications (if any) as may be necessary.
- (10) Sub-paragraph (7) is not to result in a person being regarded as having a 25% investment in another person merely as a result of their being parties to a normal commercial loan.
- (11) Any reference in this paragraph, in the case of a person who is a member of a partnership, to the proceeds, amount or assets of the person includes the person’s share of the proceeds, amount or assets of the partnership (apportioning those things between the partners on a just and reasonable basis).

Attribution of rights and interests

- 10 (1) In determining for the purposes of paragraph 9 the investment that a person (“P”) has in a company, P is to be taken to have all of the rights and interests of any person connected with P.

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- (2) A person is not to be regarded as connected with another person for the purposes of this paragraph merely as a result of their being parties to a loan that is a normal commercial loan for the purposes of paragraph 9.
- (3) Section 286 (connected persons: interpretation) has effect for the purposes of this paragraph—
 - (a) as if, in subsection (2), for the words from “; or is a relative” to the end there were substituted “or is a lineal ancestor or lineal descendant of the individual or of the individual’s spouse or civil partner”, and
 - (b) as if subsections (4) and (8) were omitted.

PART 4

ANTI-AVOIDANCE

- 11 (1) This paragraph applies if a person has entered into any arrangements the main purpose, or one of the main purposes, of which is to obtain a tax advantage for the person as a result (wholly or partly) of—
 - (a) a provision of this Schedule applying or not applying, or
 - (b) double taxation arrangements having effect despite a provision of this Schedule in a case where the advantage is contrary to the object and purpose of the double taxation arrangements.
- (2) The tax advantage is to be counteracted by the making of such adjustments as are just and reasonable.
- (3) The adjustments may be made (whether by an officer of Revenue and Customs or the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (4) The counteraction has effect in a treaty shopping case regardless of section 6(1) of TIOPA 2010.
- (5) This paragraph applies by reference to—
 - (a) arrangements entered into on or after 22 November 2017 in a treaty shopping case, and
 - (b) arrangements entered into on or after 6 July 2018 in any other case.
- (6) In this paragraph—
 - “arrangements” (except in the expression “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
 - “double taxation arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010,
 - “tax” means capital gains tax or corporation tax,
 - “tax advantage” includes—
 - (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,

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- (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, and
- “treaty shopping case” means a case where this paragraph applies as a result of sub-paragraph (1)(b).”