

*Status: Point in time view as at 12/02/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, Paragraph 15. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

#### CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS ETC

#### PART 1

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

15 After Schedule 1A insert—

#### “SCHEDULE 1B

#### RESIDENTIAL PROPERTY GAINS

#### *Meaning of “residential property gain”*

- 1 (1) For the purposes of Chapter 1 of Part 1 “residential property gain” means so much of a chargeable gain accruing to a person on a disposal of residential property as, in accordance with paragraph 2, is attributable to that property.
- (2) The question whether or not a person disposes of residential property is determined in accordance with paragraphs 3 to 7.

#### *Attribution of gain to residential property*

- 2 (1) The proportion of a chargeable gain attributable to residential property is equal to—
  - (a) the relevant fraction of the gain, and
  - (b) if there has been mixed use of the land to which the disposal relates on one or more days in the applicable period, the relevant fraction of the gain as adjusted, on a just and reasonable basis, to take account of the mixed use on the day or days.
- (2) The relevant fraction is A/B where—
  - A is the number of days in the applicable period on which the land to which the disposal relates consists of or includes a dwelling, and
  - B is the total number of days in the applicable period.
- (3) There is mixed use of land on any day on which the land consists of—
  - (a) one or more dwellings, and
  - (b) other land.
- (4) If the disposal is of an interest in land subsisting under a contract for the acquisition of land consisting of or including a building that is to be

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constructed or adapted for use as a dwelling, that land is taken to consist of or include a dwelling throughout the applicable period.

- (5) In this paragraph “the applicable period” means the period—
- (a) beginning with the day on which the person making the disposal acquired the interest in land being disposed of or, if later, the day from which the interest in land became chargeable, and
  - (b) ending with the day before the day on which the disposal occurs.
- (6) For the purposes of this paragraph an interest in land became “chargeable”—
- (a) in any case where the disposal is of an interest in land in the United Kingdom—
    - (i) by a person in a tax year in which the person is not UK resident, or
    - (ii) by a person in the overseas part of a tax year which is, as respects the person, a split year, from 6 April 2015, and
  - (b) in any other case, from 31 March 1982.
- (7) If the interest in land disposed of by the person results from interests in land acquired by the person at different times, the person is regarded for the purposes of this paragraph as having acquired the interest disposed of at the time of the first acquisition.

*Disposing of residential property*

- 3 (1) For the purposes of this Schedule a person “disposes of residential property” if the person disposes of an interest in land in a case where—
- (a) the land consisted of or included a dwelling at any time falling on or after the date on which the applicable period begins,
  - (b) the interest in land subsisted for the benefit of land that consisted of or included a dwelling at any time falling on or after that date, or
  - (c) the interest in land subsists under a contract for the acquisition of land consisting of or including a building that is to be constructed or adapted for use as a dwelling.
- (2) No account is to be taken for the purposes of this paragraph of any time falling on (or after) the day on which the disposal is made.

*Interest in land*

- 4 (1) For the purposes of this Schedule an “interest in land” means—
- (a) an estate, interest, right or power in or over land, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of an estate, interest, right or power in or over land,
- other than an excluded interest.
- (2) The following interests are “excluded interests”—
- (a) any interest or right held for securing the payment of money or the performance of any other obligation,
  - (b) a licence to use or occupy land,

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- (c) in relation to land in England and Wales or Northern Ireland, a tenancy at will or an advowson, franchise or manor, and
  - (d) such other descriptions of interest or right in relation to land as may be specified in regulations made by the Treasury.
- (3) An interest or right is not within sub-paragraph (2)(a) if it is—
- (a) a rentcharge, or
  - (b) in relation to land in Scotland, a feu duty or a payment mentioned in section 56(1) of the Abolition of Feudal Tenure etc (Scotland) Act 2000.
- (4) The grant of an option by a person binding the person to dispose of an interest in land is (so far as it would not otherwise be the case) regarded as a disposal of an interest in land by the person for the purposes of this Schedule.
- (5) This does not affect the operation of section 144 in relation to the grant of the option (or otherwise).
- (6) In applying the domestic concepts of law mentioned in this paragraph to land outside the United Kingdom, this paragraph is to be read so as to produce the result most closely corresponding with that produced in relation to land in the United Kingdom.
- (7) In this paragraph—
- “franchise” means a grant from the Crown such as the right to hold a market or fair, or the right to take tolls, and
  - “land” includes—
    - (a) buildings and structures, and
    - (b) land under the sea or otherwise covered by water.

*Dwelling: basic meaning*

- 5 (1) For the purposes of this Schedule a building is a dwelling at any time when—
- (a) it is used, or suitable for use, as a dwelling, or
  - (b) it is in the process of being constructed or adapted for use as a dwelling,
- and, in each case, it is not an institutional building.
- (2) Land that at any time is, or is intended to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure) is taken to be part of the dwelling at that time.
- (3) A building is an institutional building if—
- (a) it is used as residential accommodation for school pupils,
  - (b) it is used as residential accommodation for members of the armed forces,
  - (c) it is used as a home or other institution providing residential accommodation for children,
  - (d) it is used as a home or other institution providing residential accommodation with personal care for persons in need of personal care because of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,

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- (e) it is used as a hospital or hospice,
  - (f) it is used as a prison or similar establishment,
  - (g) it is used as a hotel or inn or similar establishment,
  - (h) it is otherwise used, or suitable for use, as an institution that is the sole or main residence of its residents,
  - (i) it falls within—
    - (i) paragraph 4 of Schedule 14 to the Housing Act 2004 (buildings in England or Wales occupied by students and managed or controlled by educational establishment etc), or
    - (ii) any provision having effect in Scotland or Northern Ireland that is designated by regulations made by the Treasury as provision corresponding to paragraph 4 of that Schedule, or
  - (j) it qualifies in accordance with the next sub-paragraph as student accommodation.
- (4) A building qualifies as student accommodation in accordance with this sub-paragraph at any time if the time falls in a tax year in which—
- (a) the accommodation provided by the building includes at least 15 bedrooms,
  - (b) the accommodation is purpose-built, or is converted, for occupation by students, and
  - (c) the accommodation is occupied by students on at least 165 days.
- (5) Accommodation is to be regarded as occupied by persons as students if they occupy it wholly or mainly for undertaking a course of education (otherwise than as school pupils).

*Building temporarily unsuitable for use as a dwelling*

- 6 (1) A building is treated for the purposes of paragraph 5 as continuing to be suitable for use as a dwelling at any time when it has become temporarily unsuitable for use as a dwelling.
- (2) There is an exception to this rule if—
- (a) the temporary unsuitability resulted from accidental damage to the building, and
  - (b) the damage resulted in the building becoming unsuitable for use as a dwelling for a period of at least 90 consecutive days (“the 90 day period”).
- (3) This exception does not apply if the damage occurred in the course of work that—
- (a) was being done for the purpose of altering the building, and
  - (b) itself involved, or could be expected to involve, making the building unsuitable for use as a dwelling for at least 30 consecutive days.
- (4) If the exception applies, work done in the 90 day period to restore the building to suitability for use as a dwelling is not to count for the purposes of paragraph 5 as constructing or adapting the building for use as a dwelling.
- (5) For the purposes of this paragraph—

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- (a) references to accidental damage include damage otherwise caused by events beyond the control of the person disposing of the interest in land,
  - (b) references to alteration of a building include its partial demolition, and
  - (c) the 90 day period does not include the day of the disposal (or later days).
- (6) For the purposes of this paragraph a building's unsuitability for use as a dwelling is not regarded as temporary if paragraph 7 applies (disposal of a building that has undergone works).

*Disposal of a building that has undergone works*

- 7 (1) If—
- (a) a person disposes of an interest in land on which a building has been suitable for use as a dwelling, and
  - (b) as a result of qualifying works, the building has, at or before the time of completion of the disposal, ceased to exist or become unsuitable for use as a dwelling,
- the building is to be regarded for the purposes of paragraph 5 as unsuitable for use as a dwelling throughout the works period.
- (2) For the purposes of this paragraph works are “qualifying” works if—
- (a) any planning permission or development consent required for the works, or for any change of use with which they are associated, has been granted (whether before or after completion), and
  - (b) the works have been carried out in accordance with the permission or consent.
- (3) In this paragraph “the works period” means—
- (a) the period when the works were in progress, and
  - (b) such period (if any) ending immediately before the start of the works throughout which the building was, for reasons connected with the works, not used as dwelling.
- (4) If at any time when qualifying works are in progress—
- (a) the building was undergoing any other work, or put to any other use, in relation to which planning permission or development consent was required but has not (at any time) been granted, or
  - (b) anything else was being done in contravention of a condition or requirement attached to a planning permission or development consent relating to the building,
- the works period does not include that time.
- (5) If sub-paragraph (1) would have applied but for the fact that, at the completion of the disposal, the works are not qualifying works, the works are regarded as not affecting the building's suitability for use as a dwelling at any time before the disposal.

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### *Other definitions*

- 8 (1) For the purposes of this Schedule a building is regarded as ceasing to exist from the time when either—
- (a) it has been demolished completely to ground level, or
  - (b) it has been demolished to ground level except for a single facade (or a double facade if it is on a corner site) the retention of which is a condition or requirement of planning permission or development consent.
- (2) For the purposes of this Schedule the completion of the disposal of an interest in land is regarded as occurring—
- (a) at the time of the disposal, or
  - (b) if the disposal is under a contract which is completed by a conveyance, transfer or other instrument, at the time when the instrument takes effect.
- (3) In this Schedule—
- “building” includes a part of a building,
- “development consent” means—
- (a) in the case of land in the United Kingdom, development consent under the Planning Act 2008, and
  - (b) in the case of land outside the United Kingdom, consent corresponding to development consent under that Act, and
- “planning permission”—
- (a) in the case of land in England or Wales, has the meaning given by section 336(1) of the Town and Country Planning Act 1990,
  - (b) in the case of land in Scotland, has the meaning given by section 227(1) of the Town and Country Planning (Scotland) Act 1997,
  - (c) in the case of land in Northern Ireland, has the meaning given by Article 2(2) of the Planning (Northern Ireland) Order 1991, and
  - (d) in the case of land outside the United Kingdom, means permission corresponding to any planning permission in relation to land anywhere in the United Kingdom.

### *Power to modify meaning of “use as a dwelling”*

- 9 (1) The Treasury may by regulations amend this Schedule for the purpose of clarifying or changing the cases where a building is, or is not, to be regarded as being used, or suitable for use, as a dwelling.
- (2) The provision that may be made by the regulations includes (for example) provision omitting or adding cases where a building is, or is not, to be regarded as being used, or suitable for use, as a dwelling.

### *Regulations*

- 10 Regulations under any provision of this Schedule may make incidental, consequential, supplementary or transitional provision or savings.”

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