

Status: Point in time view as at 12/02/2019.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, SCHEDULE 7. (See end of Document for details)

SCHEDULES

SCHEDULE 7

Section 22

PAYMENT OF CGT EXIT CHARGES

CGT exit charge payment plans

- 1 In TMA 1970, after section 59BA insert—

“59BB CGT exit charge payment plans

Schedule 3ZAA contains provision for the payment in instalments of capital gains tax to which liability arises by virtue of section 25 or 80 of the 1992 Act.”

- 2 After Schedule 3ZA to TMA 1970 insert—

“SCHEDULE 3ZAA

Section 59BB

CGT EXIT CHARGE PAYMENT PLANS

Introduction

- 1 (1) This Schedule makes provision for certain persons who are liable to pay an exit charge under section 25 or 80 of the 1992 Act to agree with HMRC to pay the charge in instalments.
- (2) An agreement under this Schedule is called a “CGT exit charge payment plan”.

Eligibility

- 2 (1) This paragraph applies where a person resident in an EEA state outside the United Kingdom is liable to pay an exit charge for a tax year by virtue of section 25(1) or (3) of the 1992 Act (deemed disposals by non-residents).
- (2) The person is eligible to enter into a CGT exit charge payment plan in relation to any one or more of the assets to which the exit charge relates if—
- (a) at the time of the event giving rise to the exit charge, the person had a right to freedom of establishment, or
 - (b) at any time after that event, the person carries on a trade in an EEA state other than the United Kingdom through a branch or agency and the asset or assets is or are—
 - (i) used in or for the purposes of that trade, or
 - (ii) used or held for the purposes of the branch or agency.

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- 3 (1) This paragraph applies where the relevant trustees of a settlement are liable to pay an exit charge for a tax year by virtue of section 80 of the 1992 Act (charge on ceasing to be resident in the UK).
- (2) The relevant trustees are eligible to enter into a CGT exit charge payment plan in relation to any one or more of the assets to which the exit charge relates if—
- (a) at the time the trustees of the settlement ceased to be resident in the United Kingdom for the purposes of that section, they had a right to freedom of establishment,
 - (b) immediately before that time, the trustees of the settlement used the asset or assets for an economically significant activity carried on in the United Kingdom, and
 - (c) immediately after that time, those trustees—
 - (i) become resident in another EEA state for the purposes of the 1992 Act, and
 - (ii) use the asset or assets for an economically significant activity carried on there.

Tax to which a plan relates

- 4 (1) A CGT exit charge payment plan may relate to—
- (a) the whole of the exit charge attributable to the asset or assets to which the plan relates (the “deferrable exit charge”), or
 - (b) only part of the deferrable exit charge.
- (2) In this Schedule—
- “deferred exit charge” means the amount of the exit charge to which a plan relates;
- “taxpayer”, in relation to a plan, means the person eligible under paragraph 2 or 3 to enter into the plan.
- (3) For the purposes of this Schedule the exit charge attributable to an asset is such proportion of the exit charge as any gain accruing to the taxpayer in respect of the asset by virtue of section 25(1) or (3) or 80 of the 1992 Act in the tax year bears to the total gains to which the exit charge relates.

Payment by instalments

- 5 A CGT exit charge payment plan must provide for the deferred exit charge to be payable in 6 equal instalments where—
- (a) the 1st instalment is due on the day on which payment of the exit charge is (apart from the plan) due and payable under section 59B, and
 - (b) the other 5 instalments are due one on each of the first 5 anniversaries of that day.

Entering into a plan

- 6 (1) To enter into a CGT exit charge payment plan, the taxpayer must apply to HMRC.

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- (2) An application for a CGT exit charge payment plan must—
 - (a) be made on or before the date specified in section 59B as the date by which the exit charge is payable, and
 - (b) contain details of all the matters which are required by this Schedule to be specified in the plan.
- (3) A CGT exit charge payment plan is entered into when—
 - (a) the taxpayer agrees to pay the deferred exit charge, and any interest on it, in accordance with the plan, and
 - (b) an officer of Revenue and Customs agrees to accept payment of the deferred exit charge in accordance with the plan.
- (4) A CGT exit charge payment plan is void if—
 - (a) an event giving rise to the exit charge is part of arrangements the main purpose of which, or one of the main purposes of which, is to defer the payment by the taxpayer of the exit charge, or
 - (b) any information furnished by the taxpayer in connection with the plan does not fully and accurately disclose all facts and considerations material to the decision of the officer of Revenue and Customs to accept payment in accordance with the plan.

Contents of a plan

- 7 (1) If the taxpayer is eligible under paragraph 2, a CGT exit charge payment plan must specify—
 - (a) the EEA state in which the person entering into the plan is resident, and
 - (b) if the person has ceased to carry on a trade in the United Kingdom through a branch or agency there, the date on which the person ceased to do so.
- (2) If the taxpayer is eligible under paragraph 3, a CGT exit charge payment plan must specify—
 - (a) the date on which the trustees of the settlement became not resident in the United Kingdom for the purposes of section 80 of the 1992 Act, and
 - (b) the EEA state in which those trustees became resident.
- (3) A CGT exit charge payment plan must specify—
 - (a) the amount of the exit charge which, in the taxpayer's opinion, the taxpayer is liable to pay under section 25 or (as the case may be) section 80 of the 1992 Act in respect of the tax year, and
 - (b) the amount of the deferred exit charge.
- (4) A CGT exit charge payment plan may contain appropriate provision regarding security for HMRC if an officer of Revenue and Customs considers that there would be a serious risk to collection of any amount of deferred exit charge without it.

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Effect of a plan

- 8 (1) This paragraph applies where a CGT exit charge payment plan is entered into by the taxpayer.
- (2) The deferred exit charge remains due and payable under section 59B (payment of income tax and capital gains tax: assessments other than simple assessments).
- (3) However, the Commissioners for Her Majesty's Revenue and Customs—
- (a) may not seek payment of any of the deferred exit charge otherwise than in accordance with the plan, and
 - (b) may make repayments in respect of any of the deferred exit charge paid, or any amount paid on account of the deferred exit charge, before the plan is entered into.
- (4) The deferred exit charge carries interest in accordance with Part 9 as if the plan had not been entered into; and each time a payment is made under the plan, it is to be paid together with any interest payable on it.
- (5) The taxpayer is liable to penalties for late payment of the deferred exit charge only if the taxpayer fails to make payments in accordance with the plan (see item 3C of the Table at the end of paragraph 1 of Schedule 56 to the Finance Act 2009).
- (6) Any of the deferred exit charge which is for the time being unpaid may be paid at any time before it becomes payable under the plan together with interest payable on it to the date of payment.
- (7) If—
- (a) the taxpayer becomes bankrupt under the law of England and Wales or Northern Ireland or the taxpayer's estate is sequestrated under the law of Scotland,
 - (b) an event corresponding to an event in paragraph (a) occurs under the law of an EEA state outside the United Kingdom, or
 - (c) the taxpayer becomes resident in a country or territory that is not an EEA state,
- the outstanding balance of the deferred exit charge is payable on the date on which the next instalment would otherwise have been due under the plan.

Supplementary

- 9 If, for the purposes of any double taxation arrangements, a person is treated at any time as resident in a territory other than an EEA state, the person is also to be treated as resident there at that time for the purposes of this Schedule.
- 10 In this Schedule—
- “deferrable exit charge” has the meaning given by paragraph 4(1)(a);
 - “deferred exit charge” has the meaning given by paragraph 4(2);
 - “double taxation arrangements” means arrangements made by two or more territories with a view to affording relief from double taxation;

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“economically significant activity” has the meaning given by section 13A(4) of the 1992 Act (reading references to a company as references to trustees);

“exit charge” means—

- (a) for the purposes of paragraph 2, any amount of capital gains tax which a person is liable to pay for a tax year which the person would not be liable to pay if gains arising by virtue of section 25 of the 1992 Act in the tax year were ignored;
- (b) for the purposes of paragraph 3, any amount of capital gains tax which the relevant trustees are liable to pay for a tax year which they would not be liable to pay if gains arising by virtue of section 80 of the 1992 Act in the tax year were ignored;

“right to freedom of establishment” means a right protected by—

- (a) Article 49 of the Treaty on the Functioning of the European Union, or
- (b) Article 31 of the EEA agreement;

“taxpayer” has the meaning given by paragraph 4(2);

“trade” includes a profession or vocation.”

Penalties

- 3 (1) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended as follows.
- (2) In the Table at the end of paragraph 1, after entry 3B insert—

“3C	Capital gains tax	Amount payable under a CGT exit charge payment plan entered into in accordance with Schedule 3ZAA to TMA 1970	The later of— <ul style="list-style-type: none">(a) the date falling 30 days after the date specified in section 59B of TMA 1970 as the date by which the amount is due to be paid, and(b) the date on which the amount is payable under the plan.”
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- (3) In paragraph 3(1)(a), after “3B” insert “, 3C”.
- 4 In section 107A of TMA 1970 (relevant trustees), in subsection (3)(c)(i), after “1,” insert “ 3C, ”.
- 5 In paragraph 5(3) of Schedule 11 to F(No.3)A 2010 (penalties for failure to make payments on time), omit “items 1, 3” in both places.

CT exit charge payment plans

- 6 (1) In sections 59FA, 109B and 109E of and Schedule 3ZB to TMA 1970 (including any headings of, and in, those provisions)—
 - (a) for “an exit charge payment plan”, in each case it occurs, substitute “ a CT exit charge payment plan ”,
 - (b) for “exit charge payment plan”, in each case where it occurs without “an” before it, substitute “ CT exit charge payment plan ” (but this does not apply to paragraph 10(2A) or 11(1) of Schedule 3ZB to TMA 1970 as respectively inserted and substituted by Schedule 8 to this Act), and

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- (c) for “exit charge payment plans” in each case it occurs, substitute “ CT exit charge payment plans ”.
- (2) In Schedule 56 to FA 2009 (penalties), in the Table at the end of paragraph 1, in entry 6ZA, in the third column, for “an exit charge payment plan” substitute “ a CT exit charge payment plan ”.

Commencement

- 7 The amendments made by paragraphs 1 and 2 have effect in relation to amounts of capital gains tax which a person is liable to pay by virtue of section 25(1) or (3) or 80 of TCGA 1992 in relation to events occurring on or after 6 April 2019.

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