

2020 No. 315

CAPITAL GAINS TAX

CORPORATION TAX

**The UK Property Rich Collective Investment Vehicles
(Amendment of the Taxation of Chargeable Gains Act 1992)
Regulations 2020**

<i>Made</i> - - - -	<i>17th March 2020</i>
<i>Laid before the House of Commons</i>	<i>19th March 2020</i>
<i>Coming into force</i> - -	<i>10th April 2020</i>

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 48 of Schedule 5AAA to the Taxation of Chargeable Gains Act 1992(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2020 and come into force on 10th April 2020.

(2) The amendments made by regulations 3(a), 11(b) and (c), 12 and 14 have effect in relation to disposals made on or after the day on which these Regulations come into force.

(3) The amendments made by regulations 5 to 7, 10, 11(a), 13, 15, 16 and 20 have effect in relation to disposals made on or after 6th April 2019.

(4) The amendments made by regulations 8 and 9 have effect in relation to elections made on or after the day on which these Regulations come into force.

Amendment of Schedule 5AAA to the Taxation of Chargeable Gains Act 1992

2. Schedule 5AAA to the Taxation of Chargeable Gains Act 1992 (UK property rich collective investment vehicles etc) is amended as follows.

3. In paragraph 1 (meaning of collective investment vehicle etc)—

(a) in sub-paragraph (1)(c), for “a UK REIT” substitute “a company UK REIT or is the principal company of a group UK REIT”,

(b) in sub-paragraph (1), for paragraph (d) (and the “or” before it) substitute—
“(d) a company which—

(a) 1992 c. 12; Schedule 5AAA was inserted by paragraph 21 of Schedule 1 to the Finance Act 2019 (c. 1).

- (i) is resident outside the United Kingdom,
 - (ii) is not a member of a group, and
 - (iii) meets the property income condition,
- (e) a company which—
 - (i) is resident outside the United Kingdom,
 - (ii) is the principal company of a group,
 - (iii) is not a close company or is a close company but only because it has a qualifying investor as a direct or indirect participator, and
 - (iv) meets the property income condition, or
- (f) a company which—
 - (i) is resident outside the United Kingdom,
 - (ii) is a member of a group but is not the principal company of the group,
 - (iii) is a close company but only because it has a qualifying investor, or a company wholly (or almost wholly) owned by qualifying investors, as a direct participator, and
 - (iv) meets the property income condition.”,
- (c) in sub-paragraph (2)—
 - (i) in the opening words, after “property income condition” insert “for the purposes of sub-paragraph (1)(d)”,
 - (ii) in paragraph (b), for “is property income from long-term investments” substitute “derives directly or indirectly from long-term property investments”,
 - (iii) in paragraph (c), for “property income from long-term investments and does so” substitute “profits from long-term property investments”, and
 - (iv) in paragraph (d) for “that income” to the end substitute “its profits under the law of any territory in which it is resident so far as the profits derive directly or indirectly from long-term property investments.”,
- (d) after that sub-paragraph insert—

“(2A) A company meets the property income condition for the purposes of sub-paragraph (1)(e) or (f) if—

 - (a) at least half of the income of the group derives directly or indirectly from long-term property investments,
 - (b) all, or substantially all, of the group’s profits from long-term property investments are distributed on an annual basis, and
 - (c) the company is not liable to tax on its profits under the law of any territory in which it is resident so far as the profits derive directly or indirectly from long-term property investments.”,
- (e) in sub-paragraph (3) for “sub-paragraph (2)(a)” substitute “this paragraph but, for the purposes of sub-paragraph (1)(f)(iii), paragraph 46 has effect as if sub-paragraph (3)(c) were omitted”,
- (f) in sub-paragraph (4), for the words from the beginning to “deriving from” substitute “For the purposes of this paragraph “long-term property investments” means”,
- (g) in sub-paragraph (7)—
 - (i) after the “and” following the definition of “AIF” insert—

““profits” does not include profits of a capital nature.”

, and
 - (ii) omit the definition of “UK REIT”, and
- (h) after that sub-paragraph insert—

“(8) For the purposes of this paragraph whether a company is a member of a group, or is the principal company of a group, is determined in accordance with section 170.”.

4. In paragraph 3 (meaning of a collective investment vehicle being “UK property rich” etc), in sub-paragraphs (1) and (4), after “Schedule 1A” insert “(but without regard to paragraphs 5 and 6 of that Schedule)”.

5. In paragraph 6(8) (disposals by non-UK residents), for “schemes” substitute “vehicles”.

6. In paragraph 7(5) (disposals by non-UK residents)—

- (a) in paragraph (a), for “conditions A to C of regulation 75” substitute “the conditions in regulation 75(2), (3) and (4)(a)”,
- (b) in paragraph (b), at the end insert “(assuming for this purpose that regulation 75(4)(b) is omitted)”, and
- (c) in the words after that paragraph, at the end insert “(and see also paragraphs 46A and 51)”.

7. In paragraph 8 (election for collective investment vehicle to be treated as partnership), for sub-paragraph (4) substitute—

“(4) Section 12AA of the Management Act^(a) applies as a result of sub-paragraph (2) but as if —

- (a) subsection (1) of that section authorised the giving of a notice under subsection (2) or (3) for the purpose of facilitating the amount in which each partner is chargeable to tax on chargeable gains,
- (b) that section authorised the giving of the notice to the manager of the vehicle, and
- (c) that section authorised a single notice under subsection (2) or (3) of that section requiring the making and delivery, in accordance with the notice, of a return every year (whether or not any partnership property has been disposed of in the period to which the return relates).”.

8. In paragraph 9 (further provision about election), at the end insert—

“(4) An election under paragraph 8 must include the following information in the case of each participant in the vehicle—

- (a) the participant’s name and, if the participant has one, the participant’s unique taxpayer reference,
- (b) the participant’s usual or last known place of residence or the participant’s place of business, and
- (c) in the case of a participant who is an individual, the participant’s date of birth.”.

9. In paragraph 12 (exemption for qualifying offshore CIV that is UK property rich etc)—

- (a) in sub-paragraph (3)(a), after “(or almost wholly)” insert “and directly”, and
- (b) after sub-paragraph (3) insert—

“(3A) In sub-paragraph (3)(a) the reference to direct ownership by a collective investment scheme is to ownership otherwise than through—

- (a) a company, or
- (b) a partnership, trust or other entity or arrangements.”.

10. In paragraph 13 (qualifying conditions)—

- (a) in sub-paragraph (1), after paragraph (a) insert—

(a) Section 288 of the Taxation of Chargeable Gains Act provides that “the Management Act” means The Taxes Management Act 1970 (1970 c. 9).

- “(ab) it is a collective investment scheme, it meets the UK tax condition and it is wholly (or almost wholly) owned by one or more other collective investment schemes each of which meets the genuine diversity of ownership condition,”,
- (b) in sub-paragraph (2), for paragraph (b) substitute—
- “(b) the collective investment scheme directly owning the company—
- (i) meets the genuine diversity of ownership condition, or
- (ii) is wholly (or almost wholly) and directly owned by one or more qualifying partnerships each of which meets the genuine diversity of ownership condition,”,
- (c) after sub-paragraph (2) insert—
- “(2A) In sub-paragraph (2)(b)—
- (a) references to direct ownership are to ownership otherwise than through—
- (i) a company, or
- (ii) a partnership, trust or other entity or arrangements, and
- (b) “qualifying partnership” means a collective investment scheme which is constituted by two or more persons carrying on a trade or business in partnership.”,
- (d) in sub-paragraph (3)—
- (i) in paragraph (a), for “conditions A to C of regulation 75” substitute “the conditions in regulation 75(2), (3), and (4)(a)”,
- (ii) in paragraph (b), at the end insert “(assuming for this purpose that regulation 75(4)(b) is omitted)”, and
- (iii) in the words after that paragraph, at the end insert “(and see also paragraphs 46A and 51)”, and
- (e) at the end insert—
- “(8) If any of the proceeds arise to a company which is wholly (or almost wholly) owned by one or more investors to which paragraph 33 applies, the company is to be treated for the purposes of sub-paragraph (7) as if it were exempt from corporation tax in respect of chargeable gains accruing to it otherwise than as a result of double taxation arrangements.”.
- 11.** In paragraph 21 (deemed disposal: payments not otherwise taxable where value derived from direct or indirect disposals of UK land)—
- (a) in sub-paragraph (1)(c), at the end insert “(whether in the case of the participant or anyone else)”,
- (b) in sub-paragraph (3)(a), for “the company” substitute “the relevant entity”, and
- (c) at the end insert—
- “(5) In this paragraph “the relevant entity” means—
- (a) in a case where the relevant fund is constituted by a CoACS (within the meaning of paragraph 12), the CoACs, and
- (b) in any other case, the qualifying company.”.
- 12.** In paragraph 22 (deemed disposal if election ceases to have effect)—
- (a) in sub-paragraph (3)(a), for “the company” substitute “the relevant entity”, and
- (b) at the end insert—
- “(4) In this paragraph “the relevant entity” has the same meaning as in paragraph 21.”.
- 13.** In paragraph 33 (exemption for disposals by companies wholly owned by certain investors)—
- (a) for sub-paragraphs (1) and (2) substitute—
- “(1) This paragraph applies in the case of—

- (a) a collective investment vehicle in respect of which an election under paragraph 8 has been made (a “transparent fund”),
- (b) a qualifying fund or qualifying company in respect of which an election under paragraph 12 has been made,
- (c) a company which is a company UK REIT or is the principal company of a group UK REIT, or
- (d) an open-ended investment company to which Part 4A of the Authorised Investment Funds (Tax) Regulations 2006^(a) applies and which is UK property rich (a “PAIF”);

and a reference in the remainder of this paragraph to the fund concerned is to the transparent fund, the relevant fund, the company UK REIT or principal company, or the PAIF (as the case may be).

(2) If—

- (a) a participant in the fund concerned disposes of a unit in the fund concerned, and
- (b) the participant is a company which is wholly (or almost wholly) owned by one or more investors to which this paragraph applies,

any gain accruing on the disposal is not a chargeable gain.”,

(b) after sub-paragraph (2) insert—

“(2A) If a company which is wholly (or almost wholly) owned by one or more investors to which this paragraph applies disposes of a right or interest in a company whose assets consist wholly of units in the fund concerned, any gain accruing on the disposal is not a chargeable gain.”, and

(c) for sub-paragraph (3) substitute—

“(3) Nothing in paragraph 21 is to result in a deemed disposal of an asset held by—

- (a) an investor to which this paragraph applies who is not an insurance company, or
- (b) a company which is wholly (or almost wholly) owned by one or more investors to which this paragraph applies each of whom is not an insurance company.”.

14. After paragraph 33 insert—

“Disapplication of paragraphs 5 and 6 of Schedule 1A

33A.—(1) If—

- (a) an election under paragraph 12 has been made in respect of a collective investment vehicle, and
- (b) there is a disposal of a unit in the vehicle,

nothing in paragraph 5 or 6 of Schedule 1A (exceptions) applies to the disposal.

(2) If—

- (a) an election under paragraph 12 has been made in respect of a qualifying company, and
- (b) there is a disposal of a unit in the relevant fund,

nothing in paragraph 5 or 6 of that Schedule applies to the disposal so far as it constitutes a disposal of a right or interest in the qualifying company.”.

15. In paragraph 46 (meaning of close company etc)—

- (a) in sub-paragraph (2), omit the “and” before paragraph (d) and after that paragraph insert—

(a) S.I. 2006/964.

“, and

- (e) a company (“C”) is not to be regarded as a close company only because a person possesses or is entitled to acquire the greater part of the voting power in C as a result of being—
 - (i) a manager of a collective investment vehicle, or
 - (ii) a general partner in a limited partnership which is a collective investment scheme.”,
- (b) in sub-paragraph (4)—
 - (i) in paragraph (a), for “conditions A to C of regulation 75” substitute “ the conditions in regulation 75(2), (3) and (4)(a)”,
 - (ii) in paragraph (b), at the end insert “(assuming for this purpose that regulation 75(4)(b) is omitted)”, and
 - (iii) in the words after that paragraph, at the end insert “(and see also paragraphs 46A and 51)”, and
- (c) at the end insert—

“(12) For the purposes of this paragraph any reference to a body corporate includes—

 - (a) an offshore collective investment vehicle which is, as a result of paragraph 4, assumed to be a company for the purposes of this Schedule, and
 - (b) anything else which is, as a result of provision made elsewhere by this Act, assumed to be a company for the purposes of this Act.”.

16. After paragraph 46 insert—

“References to regulation 75(3) of the Offshore Funds (Tax) Regulations 2009(a)

46A.—(1) This paragraph applies, in the case of a collective investment vehicle, for the purpose of determining whether the vehicle meets the genuine diversity of ownership condition referred to in any provision of this Schedule.

(2) The fact that (for any reason) the capacity of the vehicle to receive investments is limited does not prevent regulation 75(3) of the Offshore Funds (Tax) Regulations 2009 (including as it applies for the purposes of regulation 75(5)(b) of those Regulations) from being met.

(3) Sub-paragraph (2) does not apply if—

- (a) the limited capacity of the vehicle to receive investments is fixed by the documents of the vehicle (or otherwise), and
- (b) a pre-determined number of specific persons, or specific groups of connected persons, make investments in the vehicle that collectively exhausts all, or substantially all, of that capacity.”.

17. In paragraph 47 (other definitions), in sub-paragraph (1)—

- (a) before the entry relating to “double taxation arrangements” insert—

““company UK REIT” has the same meaning as in Part 12 of CTA 2010(c),”

, and
- (b) after the entry relating to “the manager” (but before the “and” at the end of it), insert—

““the principal company of a group UK REIT” has the same meaning as in Part 12 of CTA 2010,”.

(a) S.I. 2009/3001.

(b) Regulation 75(5) was inserted by S.I. 2011/1211.

(c) 2010 c. 4

18. In paragraph 49 (elections for transparency under paragraph 8), in sub-paragraph (2), for “6 April 2020” substitute “1 October 2020”.

19. After paragraph 49 insert—

“49A.—(1) This paragraph applies in the case of an offshore collective investment vehicle to which paragraph 8 applies which was constituted on or after 6 April 2019.

(2) Paragraph 9(1)(c) has effect as if it permitted the election under paragraph 8 to be made before whichever is the later of—

- (a) the end of the period mentioned in paragraph 9(1)(c), or
- (b) 1 October 2020.”.

20. After paragraph 50 insert—

“Genuine diversity of ownership condition in case of existing funds

51.—(1) This paragraph applies, in the case of a collective investment vehicle constituted before 6 April 2020, for the purpose of determining whether the vehicle meets the genuine diversity of ownership condition referred to in any provision of this Schedule.

(2) It is to be assumed that regulation 75(2) of the Offshore Funds (Tax) Regulations 2009 (including as it applies for the purposes of regulation 75(5) of those Regulations) has effect as if it referred to a statement prepared by the manager of the vehicle, available to HMRC, which—

- (a) specifies the intended categories of investor when the vehicle was marketed,
- (b) confirms that the interests in the vehicle were made widely available, and
- (c) confirms that interests in the vehicle were marketed and made available in accordance with the requirements of regulation 75(4)(a) of those Regulations (and that provision is to be read accordingly).”.

*David Rutley
Iain Stewart*

17th March 2020

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Schedule 5AAA to the Taxation of Chargeable Gains Act 1992 (c. 12) (TCGA 1992). Schedule 5AAA (the Schedule) was inserted in TCGA 1992 by Schedule 1 to the Finance Act 2019 (c. 1) which concerns the capital gains tax treatment of disposals of interests in UK land by non-UK residents and contains provisions relating to UK property rich collective investment vehicles (CIVs) and their investors.

Regulation 1 sets out when these Regulations come into force and specifies the date on which individual regulations will take effect.

Regulations 2 and 3 amend paragraph 1 of the Schedule to clarify the meaning of “collective investment vehicle” for the purposes of the Schedule.

Regulation 4 amends paragraph 3 of the Schedule to provide that in determining whether a CIV is UK property rich under Part 2 of Schedule 1A to TCGA 1992 no regard is to be had to paragraphs 5 or 6 of that Schedule.

Regulation 5 makes a minor correction to paragraph 6(8) of the Schedule.

Regulation 6 makes amendments to paragraph 7(5) of the Schedule which sets out when a CIV will meet the genuine diversity of ownership condition for the purposes of paragraph 7.

Regulation 7 amends paragraph 8 of the Schedule to clarify HMRC's obligations in respect of giving notice to provide partnership returns where a CIV has made an election to be treated as a partnership under that paragraph.

Regulation 8 amends paragraph 9 of the Schedule to introduce a requirement that an election under paragraph 8 must contain specified information relating to each participant in the CIV.

Regulation 9 amends paragraph 12 of the Schedule as it concerns the making of an exemption election under that paragraph in respect of a company which is owned by a CIV.

Regulation 10 amends paragraph 13 of the Schedule which sets out the qualifying conditions which a CIV must meet in order to make an election under paragraph 12. The amendments make further provision as to when a CIV will meet the genuine diversity of ownership condition for the purposes of paragraph 12 and modify the UK tax condition as it applies for paragraph 13.

Regulation 11 makes minor amendments to paragraph 21 of the Schedule which provides that, where a CIV or a company is the subject of a paragraph 12 election, there is a deemed disposal where a participant in a fund receives an amount of a revenue nature which represents, in substance, value derived from a direct or indirect disposal of UK land.

Regulation 12 makes amendments to paragraph 22 of the Schedule, which provides that a participant makes a deemed disposal at the point at which a paragraph 12 election ceases to have effect.

Regulation 13 amends paragraph 33, so that it makes provision for further alternative holding structures not currently falling within that paragraph and disapplies the provisions of paragraph 21 in additional circumstances where a CIV is wholly owned by certain investors.

Regulation 14 inserts new paragraph 33A into the Schedule, which provides that where a CIV or qualifying company has made an election under paragraph 12, paragraphs 5 and 6 of Schedule 1A to TCGA 1992 will be disapplied with regard to disposals of any units in the relevant fund.

Regulation 15 makes amendments to paragraph 46 of the Schedule to clarify the meaning of "a close company", "qualifying investor" and references to "a body corporate".

Regulation 16 inserts new paragraph 46A into the Schedule which makes provision about references to regulation 75(3) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), in order to determine whether the CIV meets the genuine diversity of ownership condition for the purposes of the Schedule.

Regulation 17 amends paragraph 47 of the Schedule to include definitions of a "company UK REIT" and "the principal company of a group UK REIT".

Regulation 18 amends paragraph 49 of the Schedule to extend the deadline for making a transparency election under paragraph 8, in cases where the CIV was constituted before 6 April 2019, from 6 April 2020 to 1 October 2020.

Regulation 19 inserts new paragraph 49A into the Schedule, which extends the deadline for making a transparency election under paragraph 8 in cases where the CIV was constituted on or after 6 April 2019, to the later of the end of the period mentioned in paragraph 9(1)(c) or 1 October 2020.

Regulation 20 inserts new paragraph 51 into the Schedule which makes provision relating to CIVs constituted before 6 April 2020 to clarify whether or not they meet the genuine diversity of ownership condition for the purposes of the Schedule.

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

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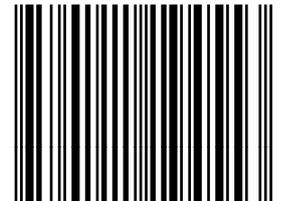
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