

SCHEDULES

SCHEDULE 1

CHARGEABLE GAINS ACCRUING TO NON-RESIDENTS ETC

PART 1

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

17 After Schedule 4 insert—

“SCHEDULE 4AA

RE-BASING FOR NON-RESIDENTS IN RESPECT OF UK LAND ETC HELD ON 5 APRIL 2019

PART 1

INTRODUCTION

- 1 (1) Part 2, 3 or 4 of this Schedule applies on the first occasion on which a person disposes of an asset that the person held on 5 April 2019 where—
 - (a) the disposal is either a direct or indirect disposal of UK land, and
 - (b) the disposal is made by a non-resident or a UK resident in the overseas part of a tax year.
- (2) See also paragraph 16 (non-UK resident company holding UK land becoming resident in UK after 5 April 2019).
- (3) For the purposes of this Schedule—
 - (a) a disposal is a “direct disposal of UK land” if it is a disposal of an interest in UK land, and
 - (b) a disposal by a person is an “indirect disposal of UK land” if it is a disposal of an asset (other than an interest in UK land) deriving at least 75% of its value from UK land where the person has a substantial indirect interest in that land.
- (4) For the purposes of this paragraph, the disposal is made by a non-resident or a UK resident in the overseas part of a tax year if it is—
 - (a) a disposal on which a gain accrues that falls to be dealt with by section 1A(3) because the asset disposed of is within paragraph (b) or (c) of that subsection,
 - (b) a disposal on which a gain accrues that falls to be dealt with by section 1A(1) in accordance with section 1G(2) because the asset disposed of is within section 1A(3)(b) or (c),

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- (c) a disposal on which a gain accrues that falls to be dealt with by section 2B(4), or
- (d) a disposal of an asset on which a gain does not accrue but which, had a gain accrued, would fall to be dealt with as mentioned in any of the preceding paragraphs of this sub-paragraph.

PART 2

INDIRECT DISPOSALS AND DIRECT DISPOSALS NOT CHARGEABLE BEFORE 6 APRIL 2019

Introduction

- 2 (1) This Part of this Schedule applies to—
- (a) all indirect disposals of UK land,
 - (b) direct disposals of UK land that were not fully residential before 6 April 2019, and
 - (c) direct disposals of UK land by persons who were not chargeable before 6 April 2019.
- (2) For the purposes of this paragraph a direct disposal of UK land made by a person was “not fully residential before 6 April 2019” if in the period—
- (a) beginning with the day on which the person acquired the interest in land being disposed of or, if later, 6 April 2015, and
 - (b) ending with 5 April 2019,
- there was no day on which the land to which the disposal relates consisted of or included a dwelling.
- (3) If the disposal is of an interest in land subsisting under a contract for the acquisition of land that, at any time before 6 April 2019, consisted of or included a building to be constructed or adapted for use as a dwelling, the disposal is taken to be fully residential before that date.
- (4) For the purposes of this paragraph, a disposal is made by a person who was not chargeable before 6 April 2019 if, immediately before that date, the person was—
- (a) a company which was not a closely-held company (see sub-paragraph (5)),
 - (b) a widely-marketed scheme (see sub-paragraph (6)), or
 - (c) a company carrying on life assurance business (as defined in section 56 of the Finance Act 2012) where the interest in UK land was, immediately before that date, held for the purpose of providing benefits to policyholders in the course of that business.
- (5) The question as to whether a company is “a closely-held company” is determined in accordance with Part 1 of Schedule C1; but if—
- (a) the company is a divided company within the meaning of section 14G, and
 - (b) the company would not otherwise be regarded as a closely-held company,

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the company is to be so regarded if the conditions in subsection (3) of that section are met.

- (6) A person is a “widely-marketed scheme” if—
- (a) the person is a scheme within the meaning of section 14F, and
 - (b) condition A or B in that section is met,
- reading the reference in subsection (8)(a) of that section to the non-resident CGT disposal as a reference to the disposal mentioned in paragraph 1(1).
- (7) In determining for the purposes of this paragraph whether or not—
- (a) a person is a closely-held company, or
 - (b) a person is a widely-marketed scheme,
- arrangements are to be ignored if the main purpose of, or one of the main purposes of, them is to secure a tax advantage as a result of the person not being a closely-held company or the person being a widely-marketed scheme.
- (8) In this paragraph—
- (a) “arrangements” and “tax advantage” have the same meaning as in section 16A, and
 - (b) any reference to section 14F, 14G or Schedule C1 are to those provisions as they had effect on 5 April 2019 (before their repeal by Schedule 1 to the Finance Act 2019).

Re-basing to 5 April 2019

- 3
- (1) In calculating the gain or loss accruing on the disposal it is to be assumed that the asset was on 5 April 2019 sold by the person, and immediately reacquired by the person, at its market value on that date.
 - (2) This paragraph has effect subject to any election made by the person under paragraph 4 (retrospective basis of calculation).

Election for retrospective basis of calculation

- 4
- (1) The person may make an election under this paragraph for the assumption that the asset is sold and reacquired as mentioned in paragraph 3 not to apply.
 - (2) If, in the case of an indirect disposal of UK land—
 - (a) a person makes an election under this paragraph, and
 - (b) a loss accrues on the disposal,the loss is not an allowable loss.

Calculation of residential property gain if election made under paragraph 4

- 5
- (1) This paragraph applies if—
 - (a) a person makes an election under paragraph 4 in respect of a disposal on which a gain accrues, and
 - (b) it is necessary to determine, in accordance with Schedule 1B, how much of the gain is a residential property gain.

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- (2) Paragraph 2 of Schedule 1B has effect as if—
- (a) sub-paragraphs (5) and (6) of that paragraph were omitted, and
 - (b) in that paragraph, “the applicable period” had the definition given by the next sub-paragraph.
- (3) “The applicable period” means the period—
- (a) beginning with the day on which the person acquired the interest in land being disposed of or, if later, 31 March 1982, and
 - (b) ending with the day before the day on which the disposal is made.

PART 3

DIRECT DISPOSALS OF PRE-APRIL 2015 ASSETS FULLY CHARGEABLE BEFORE 6 APRIL 2019

Introduction

- 6 (1) This Part of this Schedule applies to any direct disposal of UK land if—
- (a) the person held the interest in UK land being disposed of throughout the period beginning with 6 April 2015 and ending with the disposal, and
 - (b) the disposal was fully residential before 6 April 2019.
- (2) For this purpose a direct disposal of UK land made by a person is “fully residential before 6 April 2019” if in the period—
- (a) beginning with 6 April 2015, and
 - (b) ending with 5 April 2019,
- every day on which the land to which the disposal relates consisted of a dwelling.
- (3) If the disposal is of an interest in land subsisting under a contract for the acquisition of land that, at any time in that period, did not consist of a building to be constructed or adapted for use as a dwelling, the disposal is taken to be not fully residential before 6 April 2019.
- (4) This Part of this Schedule does not apply to a direct disposal of UK land made by a person who was not chargeable before 6 April 2019, as determined for the purposes of paragraph 2.

Re-basing to 5 April 2015

- 7 (1) In calculating the gain or loss accruing on the disposal it is to be assumed that the asset was on 5 April 2015 sold by the person, and immediately reacquired by the person, at its market value on that date.
- (2) This paragraph has effect subject to any election made by the person under either—
- (a) paragraph 8 (retrospective basis of calculation), or
 - (b) paragraph 9 (straight-line time apportionment),
- (and an election may be made under only one of those paragraphs).

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Election for retrospective basis of calculation

- 8 The person may make an election under this paragraph for the assumption that the asset is sold and reacquired as mentioned in paragraph 7 not to apply.

Election for straight-line time apportionment

- 9 (1) The person may make an election under this paragraph—
- (a) for the assumption that the asset is sold and reacquired as mentioned in paragraph 7 not to apply, and
 - (b) for the gain or loss accruing on the disposal to be apportioned so that only the post-5 April 2015 proportion of it is treated as accruing on the disposal.
- (2) The “post-5 April 2015 proportion” is the proportion that the days in the post-5 April 2015 period bear to the days in the ownership period.
- (3) For this purpose—
- “the post-5 April 2015 period” means the day beginning with 6 April 2015 and ending with the day on which the disposal is made, and
 - “the ownership period” means the period beginning with the day on which the person acquired the interest disposed of or, if later, 31 March 1982 and ending with the day on which the disposal is made.

Calculation of residential property gain if election made under paragraph 8 or 9

- 10 (1) This paragraph applies if—
- (a) a person makes an election under paragraph 8 in respect of a disposal on which a gain accrues, and
 - (b) it is necessary to determine, in accordance with Schedule 1B, how much of the gain is a residential property gain.
- (2) Paragraph 2 of Schedule 1B has effect as if—
- (a) sub-paragraphs (5) and (6) of that paragraph were omitted, and
 - (b) in that paragraph, “the applicable period” had the definition given by the next sub-paragraph.
- (3) “The applicable period” means the period—
- (a) beginning with the day on which the person acquired the interest in land being disposed of or, if later, 31 March 1982, and
 - (b) ending with the day before the day on which the disposal is made.
- 11 (1) This paragraph applies if—
- (a) a person makes an election under paragraph 9 in respect of a disposal on which a gain accrues, and
 - (b) it is necessary to determine, in accordance with Schedule 1B, how much of the gain is a residential property gain.

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- (2) Paragraph 2 of Schedule 1B has effect as if—
 - (a) sub-paragraphs (5) and (6) of that paragraph were omitted, and
 - (b) in that paragraph, “the applicable period” had the definition given by the next sub-paragraph.
- (3) “The applicable period” means the period—
 - (a) beginning with 6 April 2015, and
 - (b) ending with the day before the day on which the disposal is made.

PART 4

DIRECT DISPOSALS OF ASSETS PARTLY CHARGEABLE BEFORE 6 APRIL 2019

Introduction

- 12 (1) This Part of this Schedule applies to any direct disposal of UK land if—
 - (a) neither Part 2 nor Part 3 of this Schedule applies to the disposal, and
 - (b) the interest in UK land being disposed of was not a post-April 2015 asset that was fully residential before 6 April 2019.
- (2) For this purpose—
 - (a) the interest in UK land being disposed of is a “post-April 2015 asset” if it was acquired by the person after 5 April 2015, and
 - (b) the asset “was fully residential before 6 April 2019” if, in the period beginning with the day on which it was acquired and ending with 5 April 2019, every day on which the land to which the disposal relates consisted of a dwelling.
- (3) If the disposal is of an interest in land subsisting under a contract for the acquisition of land that, at any time in that period, did not consist of a building to be constructed or adapted for use as a dwelling, the disposal is taken to be not fully residential before 6 April 2019.

Re-basing to 5 April 2015 and 5 April 2019

- 13 (1) In calculating the gain or loss accruing on the disposal (“the actual disposal”) it is assumed that—
 - (a) the asset was on 5 April 2015 sold by the person, and immediately reacquired by the person, at its market value on that date (but see sub-paragraph (3)), and
 - (b) in addition, the asset was on 5 April 2019 sold by the person, and immediately reacquired by the person, at its market value on that date.
- (2) In the case of the assumed sale on 5 April 2019, the gain or loss accruing on that sale is treated as accruing on the actual disposal (in addition to the gain or loss that actually accrues on the actual disposal).

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- (3) If the asset was acquired by the person after 5 April 2015, the assumption that it is sold, and immediately reacquired, on 5 April 2015 is not to apply.
- (4) This paragraph has effect subject to any election made by the person under paragraph 14 (retrospective basis of calculation).

Election for retrospective basis of calculation

- 14 The person may make an election under this paragraph for the assumptions that the asset is sold and reacquired as mentioned in paragraph 13 not to apply.

Calculation of residential property gain if election made under paragraph 14

- 15 (1) This paragraph applies if—
- (a) a person makes an election under paragraph 14 in respect of a disposal on which a gain accrues, and
 - (b) it is necessary to determine, in accordance with Schedule 1B, how much of the gain is a residential property gain.
- (2) Paragraph 2 of Schedule 1B has effect as if—
- (a) sub-paragraphs (5) and (6) of that paragraph were omitted, and
 - (b) in that paragraph, “the applicable period” had the definition given by the next sub-paragraph.
- (3) “The applicable period” means the period—
- (a) beginning with the day on which the person acquired the interest in land being disposed of or, if later, 31 March 1982, and
 - (b) ending with the day before the day on which the disposal is made.

PART 5

MISCELLANEOUS

Companies with UK land becoming UK resident after 5 April 2019

- 16 (1) This paragraph applies in any case where—
- (a) a company becomes resident in the United Kingdom after 5 April 2019,
 - (b) the company makes a direct or indirect disposal of UK land after that date, and
 - (c) (ignoring this paragraph) Part 2, 3 or 4 of this Schedule would have applied to the disposal but for the fact that it is made at a time when the company is resident in the United Kingdom.
- (2) In that case, Part 2, 3 or 4 of this Schedule applies in relation to the disposal (regardless of paragraph 1(1)(b)).

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Persons with UK land ceasing to be UK resident after 5 April 2019

- 17 (1) This paragraph applies in any case where—
- (a) the trustees of a settlement cease to be resident in the United Kingdom after 5 April 2019,
 - (b) after that date the trustees dispose of an asset held by them on that date, and
 - (c) the disposal is a direct or indirect disposal of UK land.
- (2) Nothing in Part 2, 3 or 4 of this Schedule applies to the disposal.
- (3) The asset that is disposed of is excepted from the application of section 80(2) (deemed disposal of assets on trustees ceasing to be resident in UK).
- 18 (1) This paragraph applies in any case where—
- (a) a company ceases to be resident in the United Kingdom after 5 April 2019,
 - (b) after that date the company disposes of an asset held by it on that date, and
 - (c) the disposal is a direct or indirect disposal of UK land.
- (2) Nothing in Part 2, 3 or 4 of this Schedule applies to the disposal.
- (3) The asset that is disposed of is excepted from the application of section 185(2) and (3) (deemed disposal of assets on company ceasing to be resident in UK).

Wasting assets

- 19 (1) This paragraph applies if, in calculating a gain or loss accruing to a person in a case where paragraph 3, 7 or 13 is applicable, it is necessary to make a wasting asset determination in relation to the asset disposed of.
- (2) The assumption that the asset was acquired on a date mentioned in paragraph 3, 7 or 13 (as the case may be) is to be ignored in making that determination.
- (3) In this paragraph “a wasting asset determination” means a determination whether or not an asset is a wasting asset, as defined for the purposes of Chapter 2 of Part 2 of this Act.

Capital allowances

- 20 (1) This paragraph applies if, in calculating a gain or loss accruing to a person in a case where paragraph 3, 7 or 13 is applicable, it is to be assumed that the asset disposed of was acquired on a particular date for a consideration equal to its market value on that date.
- (2) For the purposes of that calculation—
- (a) section 41 (restriction of losses by reference to capital allowances and renewals allowances), and
 - (b) section 47 (wasting assets qualifying for capital allowances),

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are to apply in relation to any allowance made in respect of the expenditure actually incurred in acquiring or providing the asset as if it were made in respect of the expenditure assumed to have been incurred.

- (3) In this paragraph “allowance” means any capital allowance or renewals allowance.

Making of elections

- 21 (1) An election under any provision of this Schedule must (regardless of section 42(2) of the Management Act) be made by being included in a relevant return relating to the disposal.
- (2) For the purposes of this paragraph a “relevant return” means—
- (a) an ordinary tax return, or
 - (b) a return under Schedule 2 to the Finance Act 2019.
- (3) An election under any provision of this Schedule which is made by being included in a return under Schedule 2 to the Finance Act 2019 may be subsequently revoked by provision included in an ordinary tax return which is delivered on or before the filing date for the ordinary tax return.
- (4) Subject to that, an election under any provision of this Schedule is irrevocable.
- (5) All such adjustments are to be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under any provision of this Schedule.
- (6) For the purposes of this paragraph, in the case of a person other than a company—
- “ordinary tax return” means a return under section 8 or 8A of the Management Act, and
 - “the filing date”, in relation to that return, has the meaning given by section 9A(6) of that Act.
- (7) For the purposes of this paragraph, in the case of a company—
- “ordinary tax return” means a company tax return under Schedule 18 to the Finance Act 1998, and
 - “the filing date”, in relation to that return, has the meaning given by paragraph 14 of that Schedule.
- (8) For the purposes of this paragraph—
- (a) the reference to an election being included in a relevant return includes its being included as a result of an amendment of the return, and
 - (b) the reference to the revocation of an election being included in an ordinary tax return includes its being included as a result of an amendment of the return.

Interpretation

- 22 (1) In this Schedule—

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- (a) any reference to an interest in UK land is to be read in accordance with section 1C (and any reference to land is to be read in accordance with that section), and
 - (b) any reference to an asset (other than an interest in UK land) deriving at least 75% of its value from UK land where a person has a substantial indirect interest in that land is to be read in accordance with Schedule 1A.
- (2) If an interest in UK land disposed of by a person results from interests in UK land acquired by the person at different times, the person is regarded for the purposes of this Schedule as having acquired the interest disposed of at the time of the first acquisition.
- (3) For the purposes of this Schedule, whether a building is a dwelling is determined in accordance with Schedule 1B.”