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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, Paragraph 37. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 7

#### DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC

##### PART 1

###### AMENDMENTS OF TCGA 1992

37 After Schedule B1 (as inserted by paragraph 36), insert—

“SCHEDULE  
C1

SECTION 14F: MEANING OF “CLOSELY-HELD  
COMPANY” AND “WIDELY-MARKETED SCHEME”

##### PART 1

###### MEANING OF “CLOSELY-HELD COMPANY”

###### *Introduction*

- 1 This Part of this Schedule sets out the rules for determining, for the purposes of sections 14F and 14G, whether or not a company is a closely-held company.

###### *Main definition*

- 2 (1) “Closely-held company” means a company in relation to which condition A or B is met.
- (2) Condition A is that the company is under the control of 5 or fewer participators.
- (3) Condition B is that 5 or fewer participators together possess or are entitled to acquire—
- (a) such rights as would, in the event of the winding up of the company (“the relevant company”) on the basis set out in paragraph 3, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
  - (b) such rights as would, in that event, so entitle them if there were disregarded any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company).

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- 3 (1) This paragraph applies for the purposes of paragraph 2(3).
- (2) In the notional winding up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—
- (a) any part of those assets which the person would be entitled to receive in the event of the winding up of the relevant company, and
  - (b) any part of those assets which the person would be entitled to receive if—
    - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding up were also wound up on the basis set out in this paragraph, and
    - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.
- (3) In the application of sub-paragraph (2)—
- (a) to the notional winding up of the other company mentioned in paragraph (b) of that sub-paragraph, and
  - (b) to any further notional winding up required by that paragraph (or by any further application of that paragraph),
- references to “the relevant company” are to be read as references to the company concerned.
- 4 (1) This paragraph applies for the purpose of determining whether, under sub-paragraph (3) of paragraph 2, 5 or fewer participators together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that sub-paragraph.
- (2) A person is to be treated as a participator in the relevant company if the person is a participator in any other company which would be entitled to receive assets in the notional winding up of the relevant company on the basis set out in paragraph 3.
- (3) No account is to be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.
- (4) But sub-paragraph (3) does not apply for the purposes of paragraph 3.
- 5 (1) A company is not to be treated as a closely-held company if condition A or B is met.
- (2) Condition A is that the company cannot be treated as a closely-held company except by taking, as one of the 5 or fewer participators requisite for its being so treated, a person which is a diversely-held company.
- (3) Condition B is that the company—
- (a) would not be a closely-held company were it not for paragraph (a) of paragraph 2(3) or paragraph (d) of paragraph 7(2), and

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- (b) would not be a closely-held company if the references in paragraphs 2(3)(a) and 7(2)(d) to participators did not include loan creditors which are diversely-held companies or qualifying institutional investors.
  - (4) In this paragraph “qualifying institutional investor” means any of the following persons—
    - (a) a scheme (as defined in section 14F(7)) which is a widely-marketed scheme;
    - (b) the trustee or manager of a qualifying pension scheme;
    - (c) a company carrying on life assurance business (as defined in section 56 of the Finance Act 2012);
    - (d) a person who cannot be liable for corporation tax or income tax (as relevant) on the ground of sovereign immunity.
  - (5) In sub-paragraph (4)(b) “qualifying pension scheme” means a pension scheme (as defined in section 150(1) of the Finance Act 2004) other than—
    - (a) an investment-regulated pension scheme within the meaning of Part 1 of Schedule 29A to that Act, or
    - (b) a pension scheme that would be an investment-regulated pension scheme if it were a registered pension scheme.
  - (6) The Treasury may by regulations amend sub-paragraphs (4) and (5).
  - (7) Regulations under sub-paragraph (6) may make incidental, consequential, supplementary or transitional provision or savings.
- 6
- (1) Sub-paragraph (2) applies where a participator in a company is a qualifying institutional investor.
  - (2) For the purpose of determining whether or not the company is a closely-held company, any share or interest which the qualifying institutional investor has as a participator in the company (in any of the ways set out in section 454(2) of CTA 2010 or otherwise) is treated as a share or interest held by more than 5 participators.
  - (3) Sub-paragraph (4) applies where a participator in a company is a general partner of a limited partnership which is a collective investment scheme (as defined in section 235 of the Financial Services and Markets Act 2000).
  - (4) For the purpose of determining whether or not the company is a closely-held company, any share or interest which the general partner has as a participator in the company (in any of the ways set out in section 454(2) of CTA 2010 or otherwise) is treated as a share or interest held by more than 5 participators.
  - (5) Sub-paragraph (4) does not apply to—
    - (a) any rights which would, in the event of the winding up of the company (“the relevant company”) on the basis set out in paragraph 3, or in any other circumstances, entitle the general partner (or a participator in the general partner) to receive assets of the company which would then be available for distribution among the participators, or
    - (b) any rights which would, in that event, so entitle the general partner (or a participator in the general partner) if there were disregarded

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any rights which a person has as a loan creditor (in relation to the relevant company or another company).

- (6) In this paragraph “limited partnership” means—
- (a) a limited partnership registered under the Limited Partnerships Act 1907, or
  - (b) a firm or entity of a similar character formed under the law of a territory outside the United Kingdom.
- (7) In this paragraph, “general partner”, in relation to a limited partnership, means a partner other than a limited partner.
- (8) In this paragraph, “limited partner” means a person carrying on business as a partner in a limited partnership who—
- (a) is not entitled to take part in the management of that business, and
  - (b) is entitled to have any liabilities of that business (or those beyond a certain limit) for debts or obligations incurred for the purposes of that business met or reimbursed by some other person.
- (9) In this paragraph “qualifying institutional investor” has the same meaning as in paragraph 5.

*Meaning of “control”*

- 7 (1) For the purposes of this Schedule, a person (“P”) is treated as having control of a company (“C”) if P—
- (a) exercises,
  - (b) is able to exercise, or
  - (c) is entitled to acquire,
- direct or indirect control over C's affairs.
- (2) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
- (a) the greater part of the share capital or issued share capital of C,
  - (b) the greater part of the voting power in C,
  - (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or
  - (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.
- (3) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in sub-paragraph (2)(c).
- (4) If two or more persons together satisfy any of the conditions in sub-paragraphs (1) and (2), they are treated as having control of C.
- 8 (1) This paragraph applies for the purposes of paragraph 7.
- (2) If a person—
- (a) possesses any rights or powers on behalf of another person (“A”), or

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- (b) may be required to exercise any rights or powers on A's direction or on A's behalf,  
those rights or powers are to be attributed to A.
- (3) There are also to be attributed to P all the rights and powers of any associate of P (including rights and powers exercisable jointly by any two or more associates of P).
- (4) In this paragraph “associate”, in relation to P, means—
- (a) any relative of P,
  - (b) the trustees of any settlement in relation to which P is a settlor, and
  - (c) the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor.
- (5) In this paragraph “relative” means—
- (a) a spouse or civil partner,
  - (b) a parent or remoter forebear,
  - (c) a child or remoter issue, or
  - (d) a brother or sister.

#### *Interpretation*

- 9 In this Part of this Schedule—
- “diversely-held company” means a company which is not a closely-held company;
- “loan creditor” has the meaning given by section 453 of CTA 2010;
- “open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act);
- “participator”, in relation to a company, has the meaning given by section 454 of CTA 2010.

## **PART 2**

### UNIT TRUST SCHEMES AND OEICs: WIDELY-MARKETED SCHEMES

#### *Introduction*

- 10 (1) This Part of this Schedule sets out the rules for determining, for the purposes of this Schedule and section 14F, whether or not a scheme is a widely-marketed scheme at any time.
- (2) In this Part of this Schedule “scheme” has the same meaning as in section 14F.

#### *Widely-marketed schemes*

- 11 (1) A scheme is a widely-marketed scheme at any time when the scheme meets conditions A to C.

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- (2) Condition A is that the scheme produces documents, available to investors and to Her Majesty's Revenue and Customs, which contain—
- (a) a statement specifying the intended categories of investor,
  - (b) an undertaking that units in the scheme will be widely available, and
  - (c) an undertaking that units in the scheme will be marketed and made available in accordance with the requirements of sub-paragraph (5) (a).
- (3) Condition B is that—
- (a) the specification of the intended categories of investor does not have a limiting or deterrent effect, and
  - (b) any other terms or conditions governing participation in the scheme do not have a limiting or deterrent effect.
- (4) In sub-paragraph (3) “limiting or deterrent effect” means an effect which—
- (a) limits investors to a limited number of specific persons or specific groups of connected persons, or
  - (b) deters a reasonable investor falling within one of (what are specified as) the intended categories of investor from investing in the scheme.
- (5) Condition C is that—
- (a) units in the scheme are marketed and made available—
    - (i) sufficiently widely to reach the intended categories of investors, and
    - (ii) in a manner appropriate to attract those categories of investors, and
  - (b) a person who falls within one of the intended categories of investors can, upon request to the manager of the scheme, obtain information about the scheme and acquire units in it.
- (6) A scheme is not regarded as failing to meet condition C at any time by reason of the scheme's having, at that time, no capacity to receive additional investments, unless—
- (a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise), and
  - (b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhaust all, or substantially all, of that capacity.

#### *Interpretation*

- 12 In this Part of this Schedule—
- “open-ended investment company” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236 of that Act);
- “units” means the rights or interests (however described) of the participants in a unit trust scheme or open-ended investment company.”

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