

EXPLANATORY MEMORANDUM TO

**THE UK PROPERTY RICH COLLECTIVE INVESTMENT VEHICLES
(AMENDMENT OF THE TAXATION OF CHARGEABLE GAINS ACT 1992)
REGULATIONS 2021**

2021 No. 213

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Commissioners for Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend legislation concerning the tax treatment of capital gains arising on disposals of interests in United Kingdom (UK) land by non-UK residents. Specifically, they amend rules relating to 'UK property rich' collective investment vehicles (CIVs) and their investors.
- 2.2 The amendments address issues raised following implementation of the legislation, and correct minor errors. In particular, the changes provide that specified investors in UK property rich CIVs are (subject to relevant conditions) treated as not having a substantial indirect interest (SII) in UK land at the time of a relevant disposal. In practical terms, this means that such disposals will not be within the charge to tax on capital gains.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 These Regulations will come into force and take effect from 24 March 2021 ("the commencement date"), except as noted below.
- 3.2 The amendments made by regulations 6, 8 and 9 have effect in relation to disposals made on or after 6 April 2019. These changes are relieving and apply retrospectively to the date the original rules had effect, under powers provided in paragraph 48(3) of Schedule 5AAA to the Taxation of Chargeable Gains Act 1992 (TCGA 1992).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As this instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

6.1 Schedule 1 to the Finance Act 2019 introduced new provisions extending the scope of the UK’s taxation of capital gains arising to non-UK residents on disposals of UK land, to include gains on disposals of interests in non-residential UK property. It also extended the charge on gains on disposals of interests in residential property to include disposals made by widely held companies, investment funds, and life assurance companies. Those rules apply to disposals made on or after 6 April 2019.

6.2 Paragraph 14 of Schedule 1 inserted a new Schedule 1A into TCGA 1992, which contains the provisions relating to disposals by non-UK residents of assets that are UK property rich (broadly, assets deriving 75% or more of their value from UK land). This brings into charge gains on disposals of assets that derive at least 75% of their value from UK land where a person has a SII in that land, for example shares in a company that in turn owns UK land.

6.3 Paragraph 21 of Schedule 1 inserted a new Schedule 5AAA into TCGA 1992, which was subsequently amended by the UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2020 (SI 2020/315) (the 2020 regulations). Schedule 5AAA contains rules relating specifically to UK property rich CIVs (CIV is a defined term encompassing various forms of investment funds), and their investors. Schedule 5AAA interacts with Schedule 1A to make provisions relating to disposals of interests in CIVs, and disposals by CIVs of interests in UK land.

6.4 Schedule 5AAA provides that all CIVs, other than partnerships, will by default be treated for the purposes of TCGA 1992 as if they were companies and so chargeable to Corporation Tax on relevant gains. Investors are deemed to hold shares in such a company where that is not already the case, so that where the CIV is UK property rich, a disposal of an interest in it by a non-UK resident investor will be chargeable to UK tax under the provisions in Schedule 1A.

6.5 The default treatment described above would result in tax exempt investors such as pension funds suffering indirectly the effect of tax paid by a CIV on disposal of interests in UK land. Non-exempt investors could suffer effective double taxation when disposing of an interest in such a vehicle.

6.6 Schedule 5AAA therefore provides that CIVs may, subject to qualifying criteria and conditions, make an election to be treated as transparent for tax purposes, or an election that they and companies owned by them are to be treated as exempt from tax on disposals of interests in UK land. In some instances, a combination of the two elections is possible. Making either election will generally have the effect that there will be a single tax point, so that tax on relevant gains will fall on non-exempt investors and not on exempt investors or the relevant exempt CIV or company.

- 6.7 The 2020 regulations addressed issues raised following implementation of the legislation to ensure that it works as intended, and to clarify certain points and correct minor errors. These further regulations address additional matters raised by industry, and correct minor errors.
- 6.8 Paragraph 48 of Schedule 5AAA provides powers to enable the Treasury to make regulations to amend provisions within TCGA 1992 in relation to CIVs and their investments, with retrospective effect where necessary. These Regulations are made under those powers.

7. Policy background

What is being done and why?

- 7.1 These Regulations: –
- remove disproportionate administrative burdens for specified investors which, if left unaddressed, could deter investment in UK commercial property in particular; and
 - correct minor drafting errors.
- 7.2 Paragraph 1 of Schedule 5AAA provides a definition of the term ‘collective investment vehicle’. Regulation 3 corrects an error relating to how the property income condition in paragraph 1(2A) applies for the purposes of determining whether a company comes within the definition of a CIV at paragraph 1(1)(f). This change has effect from the commencement date and so does not apply retrospectively because it potentially has a taxing effect. That is because whilst a company now coming within the definition may be eligible to make an exemption election, its investors will potentially be within the charge to tax on all disposals of interests in the company regardless of the size of their holding (by contrast, investors in non-CIV UK property rich companies would, broadly, only potentially be in charge if they hold an interest of 25% or more). This is consistent with the general policy aim that where an exemption election is in place there should be a single tax point on relevant gains which should fall on non-exempt investors, but not on exempt investors or the relevant exempt CIV or company.
- 7.3 Regulation 6 introduces new paragraphs 7A and 7B into Schedule 5AAA and provides that, subject to applicable conditions –
- non-UK resident life assurance companies, and
 - non-UK resident, non-UK property rich CIVs
- will not be within a potential charge to tax when they make a disposal of an interest in a UK property rich CIV if, immediately before the disposal, they do not have a 10% or more investment in the CIV. This removes disproportionate administrative burdens for such investors, whilst protecting UK investment at negligible cost to the Exchequer. This change is relieving and has effect from 6 April 2019.
- 7.4 Paragraph 21 of Schedule 5AAA provides that where certain returns of value are made to investors in an elected exempt CIV or company and the amount in question is of an untaxed revenue nature, there is a deemed market value disposal and reacquisition of investors’ interests. Non-exempt investors will potentially be within charge to tax on any gain arising on such a deemed disposal. This prevents returns from UK land escaping UK tax entirely, that is at both fund and investor level.

Regulation 8 amends paragraph 21 to make it clearer that a deemed disposal will not be treated as arising where the value in question has already been taxed on another person. In practical terms that person would be the CIV or company invested in, which despite being the subject of an exemption election may nonetheless be charged to tax where disposals of UK land are taxed as income instead of being treated as exempt gains (for example, where a disposal is subject to the transaction in land (TiL) rules). Regulation 8 also makes provision for cases where the underlying value is only partly charged to tax as income (for example, as might sometimes be the case under the TiL rules), by providing for a just and reasonable reduction of the market value on a deemed disposal for investors so that any gain is reduced. Where such a reduction is to be made, regulation 9 amends paragraph 23 of Schedule 5AAA to provide a similar just and reasonable reduction to the sum treated as received by investors for the purposes of determining how much tax is immediately brought into charge on a deemed disposal (part of the tax due on a relevant gain is in some circumstances deferred until a later time). These changes are relieving and have effect from 6 April 2019.

7.5 Other changes made by These Regulations correct minor errors without changing the way the relevant rules operate, and so have effect from the commencement date.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 These Regulations do not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 HMRC received eleven responses to the draft regulations published on 4 November 2020. The responses came from advisory firms, life insurance companies, and national and international representative bodies. The responses were generally supportive of the changes made whilst raising a number of points of technical detail, for example around certain definitional terms and how certain conditions should apply. HMRC engaged further with respondents on those points, resulting in revisions to the published statutory instrument, including the addition of changes made by regulations 8 and 9 which were not included in the published draft.

11. Guidance

11.1 HMRC published draft guidance on the rules in Schedule 5AAA on [31 December 2018](#), supplemented with further draft guidance on [19 September 2019](#). That draft guidance will be updated and published before this statutory instrument takes effect.

12. Impact

12.1 The impact on business, charities or voluntary bodies is as follows. These Regulations correct minor errors and remove disproportionate administrative burdens for specified investors. The regulations are predominantly relieving. Businesses affected by these changes may incur insignificant one-off costs of familiarisation with the amendments, and specified investors will make administrative savings as a result of the amendment

to paragraph 6 of Schedule 5AAA. There are not expected to be any continuing costs to those businesses from the amendment.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that, although the changes do not discriminate between businesses few, if any, small businesses are affected. The impact on small and micro businesses is negligible.

14. Monitoring & review

- 14.1 The approach to monitoring of the rules set out in Schedule 5AAA is as follows. CIVs making elections for transparency or exemption are required to send notices to HMRC, together with required information, and are subject to obligations to report details of disposals and investors annually. This information, together with continuing engagement with industry, will allow HMRC to closely monitor the operation of the rules and to consider whether further changes may be required to ensure that they are working as intended.
- 14.2 The regulations do not include a statutory review clause. They amend tax legislation and therefore fall within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Wayne Strangwood at HMRC, Telephone: 03000 585493 or email: wayne.a.strangwood@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Richard Thomas, Head of Financial Products and Services and a Deputy Director of Business, Assets and International at HMRC can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, can confirm that this explanatory memorandum meets the required standard.