EXPLANATORY MEMORANDUM TO

THE TAXATION OF CHARGEABLE GAINS ACT 1992 (AMENDMENT) REGULATIONS 2022

2022 No. 230

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes some minor changes to the Taxation of Chargeable Gains Act 1992 (TCGA) to properly reflect the renumbering of Part 1 of the TCGA when it was rewritten by Schedule 1 to the Finance Act 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 Lucy Frazer QC, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Taxation of Chargeable Gains Act 1992 (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Schedule 1 to the Finance Act 2019 (FA19), brought into the scope of the capital gains regime the disposal of United Kingdom (UK) commercial properties by non-UK resident persons. This required the partial rewrite and renumbering of Part 1 of the TCGA. This renumbering had to be reflected in other Parts of the Act.

6.2 One consequential amendment, made by paragraph 36 of Schedule 1, was to section 87A TCGA. Section 87A applies to the beneficiaries of non-resident trusts and determines how much capital gains tax they should pay.

6.3 The amendment to section 87A required the words "the section 2(2) amount", which are used a number of times in that section, to be replaced by the words "the section 1(3) amount". This reflected the renumbering of section 2(2) TCGA to section 1(3) TCGA. Section 1(3) explains how to determine the amount of chargeable gain that capital gains tax is charged on. Section 2(2) now refers to corporation tax.

6.4 However, subsection 87A(2) contains the words "**with** section 2(2) amount**s**" and consequently still reads "with section 2(2) amounts" rather than "with section 1(3) amounts". In addition the reference to "Section 2(2)" in the heading to paragraph 1A, Schedule 4C to the TCGA should also have been changed to refer to Section 1(3). Schedule 4C applies to transfers of value made by the trustees of trusts.

6.5 FA19 provides a power at paragraph 124 of Schedule 1 enabling the Treasury to make the necessary clarificatory amendments to the TCGA by regulations where it is appropriate to do so. This instrument is being made under that power and it will ensure that the reference to "section 2(2) amounts" in section 87A(2) and the heading to Paragraph 1A of Schedule 4C, is changed to "section 1(3) amounts".

7. Policy background

What is being done and why?

7.1 This statutory instrument ensures that the references to "section 2(2) amounts" in section 87A(2) and the title to Paragraph 1A of Schedule 4C to the TCGA are changed to refer to "section 1(3) amounts".

7.2 It is to be noted that paragraphs 123(1), (2) and (5) of Schedule 1 to the FA19 provide that the changes made to Part 1 of the TCGA by the FA19 do not affect the continuity or effect of the law. This means that section 87A(2) should be read as though the amendment made to it properly refers to "section 1(3) amounts", rather than "section 2(2) amounts".

7.3 However, a number of textbooks have identified that the amendments made by paragraph 36 of Schedule 1 to the FA19 did not change the reference in section 87A(2) TCGA from "section 2(2) amounts" to "section 1(3) amounts" and they continue therefore to refer to section 2(2). They have also identified that the heading to paragraph 1A of Schedule 4C also incorrectly refers to "section 2(2) amounts". To remove any uncertainty for taxpayers it is considered appropriate to amend section 87A(2) and the heading to paragraph 1A, so that they both refer to section 1(3) and not section 2(2).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This is a free-standing statutory instrument. No legislation is being consolidated.

10. Consultation outcome

10.1 There was no formal consultation undertaken. This instrument simply makes two minor amendments to the TCGA to properly reflect the rewrite made to Part 1 of the TCGA by the Finance Act 2019.

11. Guidance

11.1 General guidance on the operation on capital gains tax can be found on the HMRC pages of the gov.uk website at: https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual. The manual does not need to be updated to reflect the amendment made by this statutory instrument as this correctly explains how the legislation should be applied.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As the purpose of this legislation is to correct a drafting error that occurred when Part 1 to the TCGA was rewritten in 2019, no formal monitoring or review is considered necessary.

14.2 The instrument does not include a statutory review clause. In accordance with section 28(3)(a) Small Business, Enterprise and Employment Act 2015 there is no requirement to make provision for review of any secondary legislation that makes or amends provision imposing, abolishing or varying any tax, duty, levy or other charge.

15. Contact

15.1 Nick Williams at HM Revenue and Customs, Telephone: 03000 585660 or email: nicholas.williams@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Kelsey, Deputy Director for Assets, Residence and Valuation at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.