STATUTORY INSTRUMENTS

2021 No. 213

CAPITAL GAINS TAX

CORPORATION TAX

The UK Property Rich Collective Investment Vehicles (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2021

Made - - - -	*1st March 2021*
Laid before the House of Commons	*2nd March 2021*
Coming into force - -	*24th March 2021*

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 2021 and come into force on 24th March 2021.

(2) The amendments made by regulations 6, 8 and 9 have effect in relation to disposals made on or after 6th April 2019.

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), after sub-paragraph (2A) insert—

"(2B) References to the group in sub-paragraph (2A) are to be read, in a case where that sub-paragraph applies for the purposes of sub-paragraph (1)(f), as references to—

(a) the group that, if section 170(4) is ignored, would be the group of which the company is the principal company, or

(b) the company (if there would be no group under paragraph (a)).".

4.—(1) Paragraph 6 (disposals by non-UK residents) is amended as follows.

(2) In sub-paragraph (6), for paragraph (b) and the "and" before it substitute—

(**a**) 1992 c. 12; Schedule 5AAA was inserted by paragraph 21 of Schedule 1 to the Finance Act 2019 (c. 11) and amended by S.I. 2020/315.

"(b) the vehicle is UK property rich,

(c) the vehicle together with one or more other collective investment vehicles have a 50% investment in the company, and

(d) each of those other collective investment vehicles is also UK property rich.".

(3) In sub-paragraph (9), at the end insert ", paragraph 7A (overseas life insurance companies) and paragraph 7B (offshore collective investment vehicles (other than UK feeder vehicles) that meet the conditions in paragraph 7(2)(a) and (b))".

5. In paragraph 7(2) (appropriate connection to disposals within paragraph 6), for "the vehicle mentioned in paragraph 6(3)(a) or (5) or (6), or each of the vehicles mentioned in paragraph 6(3)(b)," substitute "the vehicle mentioned in paragraph 6(3)(a) or (5), or each of the vehicles mentioned in paragraph 6(3)(b) or (6),".

6. After paragraph 7 insert—

"Overseas life insurance companies

7A.—(1) Paragraph 6 does not apply if—

(a) the person making the disposal ("D") is an overseas life insurance company or would be such a company if it were carrying on its life assurance business in the United Kingdom through a permanent establishment there,

(b) immediately before the disposal, no more than 40% of the market value of D's assets derives from investments consisting of—

(i) interests in UK land, or

(ii) rights or interests in companies which are UK property rich,

(c) the asset disposed of is a right or interest in a collective investment vehicle that is a company (whether as a result of paragraph 4 or otherwise) and is UK property rich, and

(d) immediately before the disposal, D does not have a 10% investment in that vehicle.

(2) D has a 10% investment in a collective investment vehicle if, applying the rule in paragraph 9 (but without regard to paragraph 10) of Schedule 1A as if references to 25% were references to 10%, D would be regarded as having a 10% investment in the vehicle.

Offshore collective investment vehicles (other than UK feeder vehicles) that meet the conditions in paragraph 7(2)(a) and (b)

7B.—(1) Paragraph 6 does not apply if—

(a) the person making the disposal is an offshore collective investment vehicle which meets the conditions in paragraph 7(2)(a) and (b),

(b) immediately before the disposal, the offshore collective investment vehicle is not a UK feeder vehicle,

(c) the asset disposed of is a right or interest in a collective investment vehicle that is a company (whether as a result of paragraph 4 or otherwise) and is UK property rich (a "UK property rich vehicle"), and

(d) immediately before the disposal, the offshore collective investment vehicle does not have a 10% investment in the UK property rich vehicle.

(2) An offshore collective investment vehicle is a "UK feeder vehicle" at any time if at least 85% of the market value of the assets of the vehicle at that time derives from units in a single collective investment vehicle that is UK property rich.

(3) An offshore collective investment vehicle has a 10% investment in a UK property rich vehicle if, applying the rule in paragraph 9 (but without regard to paragraph 10) of Schedule 1A as if references to 25% were references to 10%, the offshore collective investment vehicle would be regarded as having a 10% investment in the UK property rich vehicle.".

7. In paragraph 12(7) (exemption for qualifying offshore CIV that is UK property rich etc), after "sub-paragraph (3)(a)" insert "or (c)".

8.—(1) Paragraph 21 (deemed disposal: payments not otherwise taxable where value derived from direct or indirect disposals of UK land) is amended as follows.

(2) In sub-paragraph (1)—

(a) omit the "and" before paragraph (c),

(b) in that paragraph, omit "(whether in the case of the participant or anyone else)", and

(c) at the end of that paragraph insert—

", and

(d) some or all of the value which is represented by the amount does not fall to be taken into account for the purposes of income tax or corporation tax on income.".

(3) In sub-paragraphs (2)(a) and (3)(a), after "that time" insert "(as adjusted, if applicable, in accordance with sub-paragraph (3A))".

(4) After sub-paragraph (3) insert—

"(3A) If some of the value ("the taxed value") which is represented by the amount falls to be taken into account for the purposes of income tax or corporation tax on income, the market value mentioned in sub-paragraph (2)(a) or (3)(a) is to be reduced by so much of that market value as, on a just and reasonable basis, can be attributable to the taxed value.".

9. In paragraph 23 (gains accruing on disposals under paragraph 21 or 22), at the end insert—

"(9) In the case of a disposal under paragraph 21 where there is a reduction in market value under sub-paragraph (3A) of that paragraph, a reduction is also to be made for the purposes of this paragraph to the amount of the receipt mentioned in paragraph 21(1) on a just and reasonable basis.".

10. The amendment made by regulation 3 does not affect an election made under paragraph 12(3) of Schedule 5AAA to the Taxation of Chargeable Gains Act 1992 before 24th March 2021.

Rebecca Harris
Maggie Throup

1st March 2021 — 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.

Regulation 2 introduces the amendments to the Schedule.

Regulation 3 amends paragraph 1 of the Schedule and specifies how a company within paragraph 1(1)(f) meets the property income condition in paragraph 1(2A). It contains the requirements relating to derivation and distribution of income and profits at the level of the sub-group comprising the company and its subsidiaries, rather than at the level of the group of which that company is itself a member.

Regulation 4 contains amendments to paragraph 6 of the Schedule, which treats investors in UK property rich CIVs as having a substantial indirect interest in UK land. Regulation 6 inserts new

paragraphs 7A and 7B which contain specific exclusions from paragraph 6 for certain non-UK resident life insurance companies and non-UK resident, non-UK property rich CIVs.

Regulations 5 and 7 contain minor amendments to paragraphs 7 and 12 of the Schedule respectively.

Regulation 8 amends paragraph 21 of the Schedule. Paragraph 21 deems an investor to have disposed of its interest in a fund or company (which is subject to an exemption from tax election made under paragraph 12) where the investor is entitled to an amount that represents value derived from a direct or indirect disposal of UK land. The regulation amends paragraph 21 in order to clarify that it applies where neither the amount to which the investor is entitled nor the disposal value which that amount represents has been brought into account for tax.

Regulations 8(4) and 9 provide for an adjustment, consequent upon the amendment to paragraph 21, of the amount of the receipt in paragraph 21(1) and of the market value in paragraph 21(2)(a) or (3)(a).

Regulation 10 preserves the effect of an election under paragraph 12 of the Schedule where a company is brought within the definition of a CIV solely as a result of the amendment in regulation 3.

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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£4.90

http://www.legislation.gov.uk/id/uksi/2021/213

ISBN 978-0-34-822073-5

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