

1 Inheritance tax on overseas property representing UK residential property

Schedule 1 makes provision about the extent to which overseas property is excluded property for the purposes of inheritance tax, in cases where the value of the overseas property is attributable to residential property in the United Kingdom.

SCHEDULE 1

Section 1

INHERITANCE TAX ON OVERSEAS PROPERTY REPRESENTING UK RESIDENTIAL PROPERTY

Non-excluded overseas property

1 In IHTA 1984, before Schedule 1 insert –

“SCHEDULE A1

NON-EXCLUDED OVERSEAS PROPERTY

PART 1

OVERSEAS PROPERTY WITH VALUE ATTRIBUTABLE TO UK RESIDENTIAL PROPERTY

Introductory

1 Property is not excluded property by virtue of section 6(1) or 48(3)(a) if and to the extent that paragraph 2 or 3 applies to it.

Close company and partnership interests

2 (1) This paragraph applies to an interest in a close company or in a partnership, if and to the extent that the interest meets the condition in sub-paragraph (2).

(2) The condition is that the value of the interest is –

- (a) directly attributable to a UK residential property interest, or
- (b) attributable to a UK residential property interest by virtue only of one or more of the following –
 - (i) an interest in a close company;
 - (ii) an interest in a partnership;
 - (iii) property to which paragraph 3 (loans) applies.

(3) For the purposes of sub-paragraphs (1) and (2) disregard –

- (a) an interest in a close company, if the value of the interest is less than 5% of the total value of all the interests in the close company;
- (b) an interest in a partnership, if the value of the interest is less than 5% of the total value of all the interests in the partnership.

(4) In determining under sub-paragraph (3) whether to disregard a person's interest in a close company or partnership, treat the value of the person's interest as increased by the value of any connected person's interest in the close company or partnership.

(5) In determining whether or to what extent the value of an interest in a close company or in a partnership is attributable to a UK residential property interest for the purposes of sub-paragraph (1), liabilities of a close company or partnership are to be attributed rateably to all of its property, whether or not they would otherwise be attributed to any particular property.

Loans

- 3 This paragraph applies to—
- (a) the rights of a creditor in respect of a loan which is a relevant loan (see paragraph 4), and
 - (b) money or money's worth held or otherwise made available as security, collateral or guarantee for a loan which is a relevant loan, to the extent that it does not exceed the value of the relevant loan.
- 4 (1) For the purposes of this Schedule a loan is a relevant loan if and to the extent that money or money's worth made available under the loan is used to finance, directly or indirectly—
- (a) the acquisition by an individual, a partnership or the trustees of a settlement of—
 - (i) a UK residential property interest, or
 - (ii) property to which paragraph 2 to any extent applies, or
 - (b) the acquisition by an individual, a partnership or the trustees of a settlement of an interest in a close company or a partnership ("the intermediary") and the acquisition by the intermediary of property within paragraph (a)(i) or (ii).
- (2) In this paragraph references to money or money's worth made available under a loan or sale proceeds being used "indirectly" to finance the acquisition of something include the money or money's worth or sale proceeds being used to finance—
- (a) the acquisition of any property the proceeds of sale of which are used directly or indirectly to finance the acquisition of that thing, or
 - (b) the making, or repayment, of a loan to finance the acquisition of that thing.
- (3) In this paragraph references to the acquisition of a UK residential property interest by an individual, a partnership, the trustees of a settlement or a close company include the maintenance, or an enhancement, of the value of a UK residential property interest which is (as the case may be) the property of the individual, property comprised in the settlement or property of the partnership or close company.
- (4) Where the UK residential property interest by virtue of which a loan is a relevant loan is disposed of, the loan ceases to be a relevant loan.
- (5) Where a proportion of the UK residential property interest by virtue of which a loan is a relevant loan is disposed of, the loan ceases to be a relevant loan by the same proportion.
- (6) In this Schedule, references to a loan include an acknowledgment of debt by a person or any other arrangement under which a debt arises; and in such a case references to money or money's worth made available under the loan are to the amount of the debt.

PART 2

SUPPLEMENTARY

Disposals and repayments

- 5 (1) This paragraph applies to –
- (a) property which constitutes consideration in money or money's worth for the disposal of property to which paragraph 2 or paragraph 3(a) applies;
 - (b) any money or money's worth paid in respect of a creditor's rights falling within paragraph 3(a);
 - (c) any property directly or indirectly representing property within paragraph (a) or (b).
- (2) If and to the extent that this paragraph applies to any property –
- (a) for the two-year period it is not excluded property by virtue of section 6(1), (1A) or (2) or 48(3)(a), (3A) or (4), and
 - (b) if it is held in a qualifying foreign currency account within the meaning of section 157 (non-residents' bank accounts), that section does not apply to it for the two-year period.
- (3) The two-year period is the period of two years beginning with the date of –
- (a) the disposal referred to in sub-paragraph (1)(a), or
 - (b) the payment referred to in sub-paragraph (1)(b).
- (4) The value of any property within sub-paragraph (1)(c) is to be treated as not exceeding the relevant amount.
- (5) The relevant amount is –
- (a) where the property within sub-paragraph (1)(c) directly or indirectly represents property within sub-paragraph (1)(a) ("the consideration"), the value of the consideration at the time of the disposal referred to in that sub-paragraph, and
 - (b) where the property within sub-paragraph (1)(c) directly or indirectly represents property within sub-paragraph (1)(b), the amount of the money or money's worth paid as mentioned in that sub-paragraph.

Tax avoidance arrangements

- 6 (1) In determining whether or to what extent property situated outside the United Kingdom is excluded property, no regard is to be had to any arrangements the purpose or one of the main purposes of which is to secure a tax advantage by avoiding or minimising the effect of paragraph 1 or 5.
- (2) In this paragraph –
- “tax advantage” has the meaning given in section 208 of the Finance Act 2013;
 - “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding (whether or not legally enforceable and whenever entered into) and any associated operations.

Double taxation relief arrangements

- 7 (1) Nothing in any double taxation relief arrangements made with the government of a territory outside the United Kingdom is to be read as preventing a person from being liable for any amount of inheritance tax by virtue of paragraph 1 or 5 in relation to any chargeable transfer if under the law of that territory –
- (a) no tax of a character similar to inheritance tax is charged on that chargeable transfer, or
 - (b) a tax of a character similar to inheritance tax is charged in relation to that chargeable transfer at an effective rate of 0% (otherwise than by virtue of a relief or exemption).
- (2) In this paragraph –
- “double taxation relief arrangements” means arrangements having effect under section 158(1);
 - “effective rate” means the rate found by expressing the tax chargeable as a percentage of the amount by reference to which it is charged.

PART 3

INTERPRETATION

UK residential property interest

- 8 (1) In this Schedule “UK residential property interest” means an interest in UK land –
- (a) where the land consists of a dwelling,
 - (b) where and to the extent that the land includes a dwelling, or
 - (c) where the interest subsists under a contract for an off-plan purchase.
- (2) For the purposes of sub-paragraph (1)(b), the extent to which land includes a dwelling is to be determined on a just and reasonable basis.
- (3) In this paragraph –
- “interest in UK land” has the meaning given by paragraph 2 of Schedule B1 to the 1992 Act (and the power in sub-paragraph (5) of that paragraph applies for the purposes of this Schedule);
 - “the land”, in relation to an interest in UK land which is an interest subsisting for the benefit of land, is a reference to the land for the benefit of which the interest subsists;
 - “dwelling” has the meaning given by paragraph 4 of Schedule B1 to the 1992 Act (and the power in paragraph 5 of that Schedule applies for the purposes of this Schedule);
 - “contract for an off-plan purchase” has the meaning given by paragraph 1(6) of Schedule B1 to the 1992 Act.

Close companies

- 9 (1) In this Schedule –
- “close company” means a company within the meaning of the Corporation Tax Acts which is (or would be if resident in the United Kingdom) a close company for the purposes of those Acts;
- references to an interest in a close company are to the rights and interests that a participator in a close company has in that company.
- (2) In this paragraph –
- “participator”, in relation to a close company, means any person who is (or would be if the company were resident in the United Kingdom) a participator in relation to that company within the meaning given by section 454 of the Corporation Tax Act 2010;
- references to rights and interests in a close company include references to rights and interests in the assets of the company available for distribution among the participators in the event of a winding-up or in any other circumstances.

Partnerships

- 10 In this Schedule “partnership” means –
- (a) a partnership within the Partnership Act 1890,
 - (b) a limited partnership registered under the Limited Partnerships Act 1907,
 - (c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002, or
 - (d) a firm or entity of a similar character to either of those mentioned in paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom.”

Consequential and supplementary amendments

- 2 IHTA 1984 is amended as follows.
- 3 In section 6 (excluded property), at the end insert –
- “(5) This section is subject to Schedule A1 (non-excluded overseas property).”
- 4 In section 48 (excluded property) –
- (a) in subsections (3) and (3A), at the end insert “and to Schedule A1”;
 - (b) in subsection (4), at the end (but on a new line) insert “This subsection is subject to Schedule A1.”
- 5 In section 65 (charge at other times), after subsection (7B) insert –
- “(7C) Tax shall not be charged under this section by reason only that property comprised in a settlement ceases to any extent to be property to which paragraph 2 or 3 of Schedule A1 applies and

thereby becomes excluded property by virtue of section 48(3)(a) above.

- (7D) Tax shall not be charged under this section where property comprised in a settlement or any part of that property –
- (a) is, by virtue of paragraph 5(2)(a) of Schedule A1, not excluded property for the two year period referred to in that paragraph, but
 - (b) becomes excluded property at the end of that period.”
- 6 In section 157 (non-residents’ bank accounts), after subsection (3) insert –
- “(3A) This section is subject to paragraph 5 of Schedule A1 (non-excluded overseas property).”
- 7 In section 237 (imposition of charge), after subsection (2) insert –
- “(2A) Where tax is charged by virtue of Schedule A1 on the value transferred by a chargeable transfer, the reference in subsection (1)(a) to property to the value of which the value transferred is wholly or partly attributable includes the UK residential property interest (within the meaning of that Schedule) to which the charge to tax relates.”
- 8 In section 272 (general interpretation), in the definition of “excluded property”, after “above” insert “and Schedule A1”.

Commencement

- 9 (1) The amendments made by this Schedule have effect in relation to times on or after 6 April 2017.
- (2) But for the purposes of paragraph 5(1) of Schedule A1 to IHTA 1984 as inserted by this Schedule –
- (a) paragraph (a) of that paragraph does not apply in relation to a disposal of property occurring before 6 April 2017, and
 - (b) paragraph (b) of that paragraph does not apply in relation to a payment of money or money’s worth occurring before 6 April 2017.