



# Finance Act 2016

## 2016 CHAPTER 24

### PART 3

#### INCOME TAX AND CORPORATION TAX

##### *Capital allowances*

#### **69 Capital allowances: designated assisted areas**

In section 45K of CAA 2001 (expenditure on plant and machinery for use in designated assisted area), in subsection (1)(b) (condition that expenditure is incurred in the period of 8 years beginning with 1 April 2012), for “1 April 2012” substitute “ the date on which the area is (or is treated as) designated under subsection (2)(a) ”.

#### **70 Capital allowances: anti-avoidance relating to disposals**

- (1) Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
- (2) Section 213 (relevant transactions: sale, hire purchase etc. and assignment) is amended in accordance with subsections (3) and (4).
- (3) In subsection (1) for the words from “enters” to “(“S”)” substitute “ and another person (“S”) enter into a relevant transaction ”.
- (4) After subsection (3) insert—

“(4) For the purposes of this Chapter, references to the disposal value of the plant or machinery under a relevant transaction are references to the disposal value that is to be brought into account by S as a result of the sale, contract or assignment in question.”
- (5) Section 215 (transactions to obtain tax advantages) is amended in accordance with subsections (6) to (8).
- (6) In subsection (1)—

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- (a) after “restricted” insert “ , and balancing charges are imposed or increased, ”, and
  - (b) for the words from “B” to “S” substitute “ B and S enter into a relevant transaction ”.
- (7) In subsection (4)—
- (a) after “includes” insert “—  
    - (a)”,  
and
  - (b) at end insert “, and  
    - (b) avoiding liability for the whole or part of a balancing charge to which a person would otherwise be liable.”
- (8) After subsection (4) insert—
- “(4A) If the tax advantage relates to the disposal value of the plant or machinery under the relevant transaction (whether by obtaining a more favourable allowance or by avoiding the whole or part of a balancing charge) then—
- (a) the applicable section is section 218ZB, and
  - (b) the tax advantage is to be disregarded for the purposes of subsection (6) and (8)(b).”
- (9) After section 218ZA (restrictions on writing down allowances: section 215) insert—

**“218ZB Disposal values: section 215**

- (1) If—
- (a) this section applies as a result of section 215,
  - (b) a payment is payable to any person under the transaction, scheme or arrangement mentioned in that section,
  - (c) some or all of the payment would not (apart from this section) be taken into account in determining the disposal value of the plant or machinery under the relevant transaction, and
  - (d) as a result of the matters mentioned in paragraphs (b) and (c) S would otherwise obtain a tax advantage as mentioned in section 215(3) and (4),
- the disposal value of the plant or machinery under the relevant transaction is to be adjusted in a just and reasonable manner so as to include an amount representing so much of the payment as would or would in effect cancel out the tax advantage.
- (2) In subsection (1) “payment” includes the provision of any benefit, the assumption of any liability and any other transfer of money or money's worth, and “payable” is to be construed accordingly.”
- (10) In section 66 (list of provisions outside Chapter 5 about disposal values) insert at the appropriate place—

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“section 218ZB            disposal of plant or machinery in avoidance cases”.

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- (2) For the purpose of calculating the profits of the trade, an amount equal to the value of the money's worth is brought into account as a receipt if, had the transaction involved money, an amount would have been brought into account as a receipt in respect of it.
- (3) But where another provision of this Part makes express provision for the bringing into account of an amount in respect of money's worth as a receipt in calculating the profits of a trade (however expressed), that other provision applies instead of subsection (2).”
- (6) In Chapter 3 of Part 4 (profits of property businesses), in section 210 (application of trading income rules), in the Table in subsection (2), at the appropriate place insert—

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“section 49A	money's worth”.
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- (7) The amendments made by this section have effect in relation to transactions entered into on or after 16 March 2016.

## **72 Replacement and alteration of tools**

- (1) Omit the following provisions (replacement and alteration of trade tools)—
- (a) section 68 of ITTOIA 2005 and the italic heading before that section, and
  - (b) section 68 of CTA 2009 and the italic heading before that section.
- (2) In consequence of subsection (1)(a), in ITTOIA 2005—
- (a) in subsection (1) of section 56A (cash basis accounting), omit the entry relating to section 68, and
  - (b) in section 272 (profits of a property business: application of trading income rules), in subsection (2), omit the entry in the table relating to section 68.
- (3) In consequence of subsection (1)(b), in section 210 of CTA 2009 (profits of a property business: application of trading income rules), in subsection (2), omit the entry in the table relating to section 68.
- (4) The amendments made by this section have effect in relation to expenditure incurred on or after the date in subsection (5).
- (5) The date is—
- (a) for corporation tax purposes, 1 April 2016, and
  - (b) for income tax purposes, 6 April 2016.

### *Property business deductions*

## **73 Property business deductions: replacement of domestic items**

- (1) In Chapter 5 of Part 3 of ITTOIA 2005 (property income), after section 311 insert—

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### *“Deduction for replacement of domestic items*

#### **311A Replacement domestic items relief**

- (1) This section applies if conditions A to D are met.
- (2) Condition A is that a person (“P”) carries on a property business in relation to land which consists of or includes a dwelling-house.
- (3) Condition B is that—
  - (a) a domestic item has been provided for use in the dwelling-house (“the old item”),
  - (b) P incurs expenditure on a domestic item for use in the dwelling-house (“the new item”),
  - (c) the new item is provided solely for the use of the lessee,
  - (d) the new item replaces the old item, and
  - (e) following that replacement, the old item is no longer available for use in the dwelling-house.
- (4) Condition C is that a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital expenditure rule (see subsection (15)).
- (5) Condition D is that no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (6) In calculating the profits of the business, a deduction for the expenditure is allowed. But this is subject to subsections (7) and (8).
- (7) No deduction is allowed for expenditure in a tax year if—
  - (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
  - (b) the dwelling-house constitutes some or all of that accommodation for the tax year.
- (8) No deduction is allowed for expenditure in a tax year if—
  - (a) the person has rent-a-room receipts in respect of the dwelling-house for the tax year, and
  - (b) section 793 or 797 (rent-a-room relief) applies in relation to those receipts.
- (9) The basic amount of the deduction is as follows—
  - (a) where the new item is the same or substantially the same as the old item, the deduction is equal to the expenditure incurred by P on the new item;
  - (b) where the new item is not the same or substantially the same as the old item, the deduction is equal to so much of the expenditure incurred by P on the new item as does not exceed the expenditure which P would have incurred on an item which is the same or substantially the same as the old item.

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Subsections (10) to (13) make further provision about the calculation of the deduction in certain cases.

- (10) If P incurs incidental expenditure of a capital nature in connection with the disposal of the old item or the purchase of the new item, the deduction is increased by the amount of the incidental expenditure.
- (11) If the old item is disposed of in part-exchange for the new item—
- (a) the expenditure incurred by P on the new item is treated as including an amount equal to the value of the old item, and
  - (b) the deduction is reduced by that amount.
- (12) If the old item is disposed of other than in part-exchange for the new item, the deduction is reduced by the amount or value of any consideration in money or money's worth which P or a person connected with P receives, or is entitled to receive, in respect of the disposal.
- (13) For the purposes of subsection (12), where the old item is disposed of together with other consideration, the consideration in respect of the disposal mentioned in that subsection is taken not to include the amount of, or an amount equal to the value of, that other consideration.
- (14) In this section, “domestic item” means an item for domestic use (such as furniture, furnishings, household appliances and kitchenware), and does not include anything that is a fixture.
- “Fixture”—
- (a) means any plant or machinery that is so installed or otherwise fixed in or to a dwelling-house as to become, in law, part of that dwelling-house, and
  - (b) includes any boiler or water-filled radiator installed in a dwelling-house as part of a space or water heating system.
- “Plant or machinery” here has the same meaning as in Part 2 of CAA 2001.

- (15) In this section—
- “the capital expenditure rule” means the rule in section 33 (capital expenditure), as applied by section 272;
- “lessee” means the person who is entitled to the use of the dwelling-house under a lease or other arrangement under which a sum is payable in respect of the use of the dwelling-house;
- “the wholly and exclusively rule” means the rule in section 34 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 272.”

- (2) In Chapter 5 of Part 4 of CTA 2009 (property income), after section 250 insert—

*“Deduction for replacement of domestic items*

### **250A Replacement domestic items relief**

- (1) This section applies if conditions A to D are met.

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- (2) Condition A is that a company (“C”) carries on a property business in relation to land which consists of or includes a dwelling-house.
  - (3) Condition B is that—
    - (a) a domestic item has been provided for use in the dwelling-house (“the old item”),
    - (b) C incurs expenditure on a domestic item for use in the dwelling-house (“the new item”),
    - (c) the new item is provided solely for the use of the lessee,
    - (d) the new item replaces the old item, and
    - (e) following that replacement, the old item is no longer available for use in the dwelling-house.
  - (4) Condition C is that a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital expenditure rule (see subsection (14)).
  - (5) Condition D is that no allowance under CAA 2001 may be claimed in respect of the expenditure.
  - (6) In calculating the profits of the business, a deduction for the expenditure is allowed.
  - (7) But no deduction is allowed for expenditure in an accounting period if—
    - (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
    - (b) the dwelling-house constitutes some or all of that accommodation for the accounting period.
  - (8) The basic amount of the deduction is as follows—
    - (a) where the new item is the same or substantially the same as the old item, the deduction is equal to the expenditure incurred by C on the new item;
    - (b) where the new item is not the same or substantially the same as the old item, the deduction is equal to so much of the expenditure incurred by C on the new item as does not exceed the expenditure which C would have incurred on an item which is the same or substantially the same as the old item.
- Subsections (9) to (12) make further provision about the calculation of the deduction in certain cases.
- (9) If C incurs incidental expenditure of a capital nature in connection with the disposal of the old item or the purchase of the new item, the deduction is increased by the amount of the incidental expenditure.
  - (10) If the old item is disposed of in part-exchange for the new item—
    - (a) the expenditure incurred by C on the new item is treated as including an amount equal to the value of the old item, and
    - (b) the deduction is reduced by that amount.
  - (11) If the old item is disposed of other than in part-exchange for the new item, the deduction is reduced by the amount or value of any consideration in money or

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money's worth which C or a person connected with C receives, or is entitled to receive, in respect of the disposal.

(12) For the purposes of subsection (11), where the old item is disposed of together with other consideration, the consideration in respect of the disposal mentioned in that subsection is taken not to include the amount of, or an amount equal to the value of, that other consideration.

(13) In this section, “domestic item” means an item for domestic use (such as furniture, furnishings, household appliances and kitchenware), and does not include anything that is a fixture.

“Fixture”—

(a) means any plant or machinery that is so installed or otherwise fixed in or to a dwelling-house as to become, in law, part of that dwelling-house, and

(b) includes any boiler or water-filled radiator installed in a dwelling-house as part of a space or water heating system.

“Plant or machinery” here has the same meaning as in Part 2 of CAA 2001.

(14) In this section—

“the capital expenditure rule” means the rule in section 53 (capital expenditure), as applied by section 210;

“lessee” means the person who is entitled to the use of the dwelling-house under a lease or other arrangement under which a sum is payable in respect of the use of the dwelling-house;

“the wholly and exclusively rule” means the rule in section 54 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 210.”

(3) In section 41 of TCGA 1992 (restriction of losses by reference to capital allowances and renewals allowances), in subsection (4), after paragraph (a) insert—

“(aa) any deduction under section 311A of ITTOIA 2005 or section 250A of CTA 2009 (replacement domestic items relief),”.

(4) In section 308 of ITTOIA 2005 (furnished lettings), in subsection (1)(b), after “expenses” insert “ of a revenue nature ”.

(5) In section 322 of ITTOIA 2005 (commercial letting of furnished holiday accommodation), after paragraph (za) in subsections (2) and (2A) insert—

“(zb) section 311A (replacement domestic items relief: see subsection (7)),”.

(6) In section 248 of CTA 2009 (furnished lettings), in subsection (1)(b), after “expenses” insert “ of a revenue nature ”.

(7) In section 264 of CTA 2009 (commercial letting of furnished holiday accommodation), before paragraph (a) in subsections (2) and (2A) insert—

“(za) section 250A (replacement domestic items relief: see subsection (7)),”.

(8) The amendments made by this section have effect in relation to expenditure incurred on or after the date in subsection (9).



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- (9) The date is—
- (a) for corporation tax purposes, 1 April 2016, and
  - (b) for income tax purposes, 6 April 2016.

#### **74 Property business deductions: wear and tear allowance**

- (1) In Part 3 of ITTOIA 2005 (property income)—
- (a) omit sections 308A to 308C and the italic heading before section 308A (wear and tear allowance), and
  - (b) in section 327 (capital allowances and loss relief: UK property business), in subsection (2), omit paragraph (c) and the “or” before that paragraph.
- (2) The amendments made by subsection (1) have effect for the tax year 2016-17 and subsequent tax years.
- (3) In Part 4 of CTA 2009 (property income)—
- (a) omit sections 248A to 248C of CTA 2009 and the italic heading before section 248A (wear and tear allowance), and
  - (b) in section 269 (capital allowances and loss relief: UK property business), in subsection (2), omit paragraph (c) and the “or” before that paragraph.
- (4) The amendments made by subsection (3) have effect in relation to accounting periods beginning on or after 1 April 2016.
- (5) For the purposes of subsection (3), where a company has an accounting period beginning before 1 April 2016 and ending on or after that date (“the straddling period”)—
- (a) so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a property business for the straddling period are apportioned to the two separate accounting periods in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

#### *Transfer pricing*

#### **75 Transfer pricing: application of OECD principles**

- (1) In section 164(4) of TIOPA 2010 (Part to be interpreted in accordance with OECD principles)—
- (a) in paragraph (a) after “2010” insert “ as revised by the report, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports, published by the OECD on 5 October 2015 ”, and
  - (b) in the words after paragraph (b)—
    - (i) for “such material” substitute “ material which is ”, and
    - (ii) for “as may be so designated” substitute “ and which is designated for the time being by order made by the Treasury ”.

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- (2) In section 357GE(1) of CTA 2010 (other interpretation), in the definition of “the OECD transfer pricing guidelines”, for the words from “means” to the end substitute “ has the same meaning as “the transfer pricing guidelines” in section 164 of TIOPA 2010 ”.
- (3) The amendments made by subsection (1) have effect (in relation to provision made or imposed at any time)—
  - (a) for corporation tax purposes, in relation to accounting periods beginning on or after 1 April 2016, and
  - (b) for income tax purposes, in relation to the tax year 2016-17 and subsequent tax years.
- (4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 1 April 2016.

#### *Transactions in UK land*

### **76 Corporation tax: territorial scope etc**

- (1) Section 5 of CTA 2009 (territorial scope of charge) is amended in accordance with subsections (2) to (4).
- (2) For subsection (2) substitute—
 

“(2) A non-UK resident company is within the charge to corporation tax only if—

  - (a) it carries on a trade of dealing in or developing UK land (see section 5B), or
  - (b) it carries on a trade in the United Kingdom (other than a trade of dealing in or developing UK land) through a permanent establishment in the United Kingdom.”
- (3) After subsection (2) insert—
 

“(2A) A non-UK resident company which carries on a trade of dealing in or developing UK land is chargeable to corporation tax on all its profits wherever arising that are profits of that trade.”
- (4) In subsection (4), after “(1)” insert “, (2A) ”.
- (5) After section 5 of CTA 2009 insert—

#### **“5A Arrangements for avoiding tax**

- (1) Subsection (3) applies if a company has entered into an arrangement the main purpose or one of the main purposes of which is to obtain a relevant tax advantage for the company.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of section 6(1) of TIOPA 2010).

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- (3) The relevant tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the company) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to corporation tax to which the company is chargeable (or would without the tax advantage be chargeable) by virtue of section 5(2A).
- (6) In this section—
  - “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
  - “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom);
  - “tax advantage” has the meaning given by section 1139 of CTA 2010.

### **5B Trade of dealing in or developing UK land**

- (1) A non-UK resident company's “trade of dealing in or developing UK land” consists of —
  - (a) any activities falling within subsection (2) which it carries on, and
  - (b) any activities from which profits, gains or losses arise which are treated under Part 8ZB of CTA 2010 as profits or losses of the company's trade of dealing in or developing UK land.
- (2) The activities within this subsection are—
  - (a) dealing in UK land;
  - (b) developing UK land for the purpose of disposing of it.
- (3) In this section “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (4) In this section—
  - “disposal” is to be interpreted in accordance with section 356OQ of CTA 2010;
  - “UK land” means land in the United Kingdom.”
- (6) In section 3 of CTA 2009 (exclusion of charge to income tax), in subsection (1), for paragraph (b) substitute—
  - “(b) the company is not UK resident and—
    - (i) the income is profits of a trade of dealing in or developing UK land, or
    - (ii) the income is within its chargeable profits as defined by section 19.”
- (7) In section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), after subsection (2) insert—

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“(2A) But profits and losses are not to be left out of account as mentioned in subsection (2) so far as they are, or would if the company were non-UK resident be, profits of the company's trade of dealing in or developing UK land (as defined in section 5B).”

(8) In section 19 of CTA 2009 (chargeable profits)—

- (a) in subsection (2) for “company's chargeable profits” substitute “ company's “chargeable profits” ”;
- (b) after subsection (2) insert—

“(2A) But the company's “chargeable profits” do not include profits of a trade of dealing in or developing UK land (and accordingly such profits are not attributable to any permanent establishment of the company).”

(9) In section 189 of CTA 2009 (post-cessation receipts: extent of charge to tax), in subsection (4), at the end insert “ other than a company's trade of dealing in or developing UK land ”.

(10) In section 107 of CTA 2010 (restrictions on losses etc surrenderable by non-UK resident), in subsection (1), for the words from “non-UK resident” to the end substitute “non-UK resident company—

- (a) carrying on a trade of dealing in or developing UK land, or
- (b) carrying on a trade in the United Kingdom through a permanent establishment.”

(11) In section 1119 of CTA 2010 (definitions for purposes of Corporation Tax Acts), at the appropriate place insert—

““trade of dealing in or developing UK land”, in relation to a non-UK resident company, has the meaning given by section 5B of CTA 2009,”.

## 77 Corporation tax: transactions in UK land

(1) In CTA 2010, after Part 8ZA insert—

### “PART 8ZB

#### TRANSACTIONS IN UK LAND

##### *Introduction*

### 3560A Overview of Part

This Part contains provision about the corporation tax treatment of certain profits and gains realised from disposals concerned with land in the United Kingdom.

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### *Amounts treated as profits of a trade*

#### **356OB Disposals of land in the United Kingdom**

- (1) Section 356OC(1) applies (subject to subsection (3) of that section) if—
  - (a) a person within subsection (2)(a), (b) or (c) realises a profit or gain from a disposal of any land in the United Kingdom, and
  - (b) any of conditions A to D is met in relation to the land.
- (2) The persons referred to in subsection (1) are—
  - (a) the person acquiring, holding or developing the land,
  - (b) a person who is associated with the person in paragraph (a) at a relevant time, and
  - (c) a person who is a party to, or concerned in, an arrangement within subsection (3).
- (3) An arrangement is within this subsection if—
  - (a) it is effected with respect to all or part of the land, and
  - (b) it enables a profit or gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (4) Condition A is that the main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land.
- (5) Condition B is that the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.
- (6) Condition C is that the land is held as trading stock.
- (7) Condition D is that (in a case where the land has been developed) the main purpose, or one of the main purposes, of developing the land was to realise a profit or gain from disposing of the land when developed.
- (8) In this section “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal mentioned in subsection (1).
- (9) In this section “the project” means all activities carried out for any of the following purposes—
  - (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D.
- (10) For the purposes of this section a person (“A”) is associated with another person (“B”) if—
  - (a) A is connected with B by virtue of any of subsections (5) to (7) of section 1122 (read in accordance with section 1123), or
  - (b) A is related to B (see section 356OT).

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### **356OC Disposals of land: profits treated as trading profits**

- (1) The profit or gain is to be treated for corporation tax purposes as profits of a trade carried on by the chargeable company (see section 356OG).
- (2) If the chargeable company is non-UK resident, that trade is the company's trade of dealing in or developing UK land (as defined in section 5B of CTA 2009).
- (3) But subsection (1) does not apply to a profit or gain so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for corporation tax purposes, or
  - (b) for income tax purposes.
- (4) The profits are treated as arising in the accounting period of the chargeable company in which the profit or gain is realised.
- (5) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

### **356OD Disposals of property deriving its value from land in the United Kingdom**

- (1) Section 356OE applies (subject to subsection (3) of that section) if—
  - (a) a person realises a profit or gain from a disposal of any property which (at the time of the disposal) derives at least 50% of its value from land in the United Kingdom,
  - (b) the person is a party to, or concerned in, an arrangement concerning some or all of the land mentioned in paragraph (a) (“the project land”), and
  - (c) the arrangement meets the condition in subsection (2).
- (2) The condition is that the main purpose, or one of the main purposes, of the arrangement is to—
  - (a) deal in or develop the project land, and
  - (b) realise a profit or gain from a disposal of property deriving the whole or part of its value from that land.

### **356OE Disposals within section 356OD: profits treated as trading profits**

- (1) The relevant amount is to be treated for corporation tax purposes as profits of a trade carried on by the chargeable company.
- (2) If the chargeable company is non-UK resident, that trade is the company's trade of dealing in or developing UK land.
- (3) But subsection (1) does not apply to an amount so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for corporation tax purposes, or
  - (b) for income tax purposes.

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- (4) The profits are treated as arising in the accounting period of the chargeable company in which the profit or gain is realised.
- (5) In this section the “relevant amount” means so much (if any) of the profit or gain mentioned in section 356OD(1) as is attributable, on a just and reasonable apportionment, to the relevant UK assets.
- (6) In this section “the relevant UK assets” means any land in the United Kingdom from which the property mentioned in section 356OD(1) derives any of its value (at the time of the disposal mentioned in that subsection).
- (7) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

#### **356OF Profits and losses**

- (1) Sections 356OB to 356OE have effect as if they included provision about losses corresponding to the provision they make about profits and gains.
- (2) Accordingly, in the following sections of this Part references to a “profit or gain” include a loss.

#### *Person to whom profits attributed*

#### **356OG The chargeable company**

- (1) For the purposes of sections 356OC and 356OE the general rule is that the “chargeable company” is the company (“C”) that realises the profit or gain (as mentioned in section 356OB(1) or 356OD(1)).
- (2) The general rule in subsection (1) is subject to the special rules in subsections (4) to (6).
- (3) But those special rules do not apply in relation to a profit or gain to which section 356OH(3) (fragmented activities) applies.
- (4) If all or any part of the profit or gain accruing to C is derived from value provided directly or indirectly by another person (“B”) which is a company, B is the “chargeable company”.
- (5) Subsection (4) applies whether or not the value is put at the disposal of C.
- (6) If all or any part of the profit or gain accruing to C is derived from an opportunity of realising a profit or gain provided directly or indirectly by another person (“D”) which is a company, D is “the chargeable company” (unless the case falls within subsection (4)).
- (7) For the meaning of “another person” see section 356OO.

#### *Anti-fragmentation*

#### **356OH Fragmented activities**

- (1) Subsection (3) applies if—

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- (a) a company (“C”) disposes of any land in the United Kingdom,
  - (b) any of conditions A to D in section 356OB is met in relation to the land, and
  - (c) a person (“R”) who is associated with C at a relevant time has made a relevant contribution to activities falling within subsection (2).
- (2) The following activities fall within this subsection—
- (a) the development of the land,
  - (b) any other activities directed towards realising a profit or gain from the disposal of the land.
- (3) For the purposes of this Part, the profit or gain (if any) realised by C from the disposal is to be taken to be what that profit or gain would be if R were not a distinct person from C (and, accordingly, as if everything done by or in relation to R had been done by or in relation to C).
- (4) Subsection (5) applies to any amount which is paid (directly or indirectly) by R to C for the purposes of meeting or reimbursing the cost of corporation tax which C is liable to pay as a result of the application of subsection (3) in relation to R and C.
- (5) The amount—
- (a) is not to be taken into account in calculating profits or losses of either R or C for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (6) In subsection (1) “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal.
- (7) For the purposes of this section any contribution made by R to activities falling within subsection (2) is a “relevant contribution” unless the profit made or to be made by R in respect of the contribution is insignificant having regard to the size of the project.
- (8) In this section “contribution” means any kind of contribution, including, for example—
- (a) the provision of professional or other services, or
  - (b) a financial contribution (including the assumption of a risk).
- (9) For the purposes of this section R is “associated” with C if—
- (a) R is connected with C by virtue of any of subsections (5) to (7) of section 1122 (read in accordance with section 1123), or
  - (b) R is related to C (see section 356OT).
- (10) In this section “the project” means all activities carried out for any of the following purposes—
- (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D in section 356OB.



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### *Calculation of profit or gain on disposal*

#### **356OI Calculation of profit or gain on disposal**

For the purposes of this Part, the profit or gain (if any) from a disposal of any property is to be calculated according to the principles applicable for calculating the profits of a trade under Part 3 of CTA 2009, subject to any modifications that may be appropriate (and for this purpose the same rules are to apply in calculating losses from a disposal as apply in calculating profits).

#### **356OJ Apportionments**

Any apportionment (whether of expenditure, consideration or any other amount) that is required to be made for the purposes of this Part is to be made on a just and reasonable basis.

### *Arrangements for avoiding tax*

#### **356OK Arrangements for avoiding tax**

- (1) Subsection (3) applies if an arrangement has been entered into the main purpose or one of the main purposes of which is to enable a company to obtain a relevant tax advantage.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the company) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to corporation tax charged (or which would, if the tax advantage were not obtained, be charged) in respect of amounts treated as profits of a trade by virtue of this Part.
- (6) In this section—
  - “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom);
  - “tax advantage” has the meaning given by section 1139.

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### *Exemption*

#### **356OL Profits attributable to period before relevant activities etc began**

- (1) Subsection (2) applies if—
  - (a) subsection (1) of section 356OC applies because Condition D in section 356OB is met (land developed with purpose of realising a gain from its disposal when developed), and
  - (b) part of the profit or gain mentioned in that subsection is fairly attributable to a period before the intention to develop was formed.
- (2) Section 356OC(1) has effect as if the person mentioned in section 356OB(1) had not realised that part of the profit or gain.
- (3) Subsection (4) applies if—
  - (a) section 356OE(1) applies, and
  - (b) part of the profit or gain mentioned in section 356OE(5) is fairly attributable to a period before the person mentioned in section 356OD(1) was a party to, or concerned in, the arrangement in question.
- (4) Section 356OE has effect as if the person had not realised that part of the profit or gain.
- (5) In applying this section account must be taken of the treatment under Part 3 of CTA 2009 (trading income) of a company which appropriates land as trading stock.

### *Other supplementary provisions*

#### **356OM Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.
- (2) Value may be traced through any number of companies, partnerships, trusts and other entities or arrangements.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners, beneficiaries or other participants at each stage in whatever way is appropriate in the circumstances.
- (4) In this section—
 

“partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar nature to a partnership; and “partners”, in relation to such arrangements, is to be construed accordingly;

“trust” includes arrangements—

  - (a) which have effect under the law of a country or territory outside the United Kingdom; and

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(b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and “beneficiaries”, in relation to such arrangements, is to be construed accordingly.

### **356ON Relevance of transactions, arrangements, etc**

- (1) In determining whether section 356OC(1) or 356OE(1) applies, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right, however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion on which section 356OC(1) or 356OE(1) applies.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

### *Interpretation*

#### **356OO “Another person”**

- (1) In this Part references to “other” persons are to be interpreted in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.

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- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

#### 356OP “Arrangement”

- (1) In this Part “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable).
- (2) For the purposes of this Part any number of transactions may be regarded as constituting a single arrangement if—
- a common purpose can be discerned in them, or
  - there is other sufficient evidence of a common purpose.

#### 356OQ “Disposal”

- (1) In this Part references to a “disposal” of any property include any case in which the property is effectively disposed of (whether wholly or in part, as mentioned in subsection (2))—
- by one or more transactions, or
  - by any arrangement.
- (2) For the purposes of this Part—
- references to a disposal of land or any other property include a part disposal of the property, and
  - there is a part disposal of property (“the asset”) where on a person making a disposal, any form of property derived from the asset remains undisposed of (including in cases where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal).

#### 356OR “Land” and related expressions

- (1) In this Part “land” includes—
- buildings and structures,
  - any estate, interest or right in or over land, and
  - land under the sea or otherwise covered by water.
- (2) In this Part references to property deriving its value from land include—
- any shareholding in a company deriving its value directly or indirectly from land,
  - any partnership interest deriving its value directly or indirectly from land,
  - any interest in settled property deriving its value directly or indirectly from land, and
  - any option, consent or embargo affecting the disposition of land.

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### 356OS References to realising a gain

- (1) For the purposes of sections 356OB(1) and 356OD(1) it does not matter whether the person (“P”) realising the profit or gain in question realises it for P or another person.
- (2) For the purposes of subsection (1), if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a profit or gain to another person (“B”), A realises B's profit or gain for B.

### 356OT Related parties

- (1) For the purposes of this Part a person (“A”) is related to another person (“B”)—
  - (a) throughout any period for which A and B are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 25% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
  - (a) their financial results for a period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for a period are in fact comprised in group accounts.
- (3) In subsection (2) “group accounts” means accounts prepared under—
  - (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with that day—
  - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
- (5) The 25% investment condition is met in relation to A and B if—
  - (a) one of them has a 25% investment in the other, or
  - (b) a third person has a 25% investment in each of them.
- (6) Section 259NC of TIOPA 2010 applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of this section as it applies for the purposes of section 259NB(2) of that Act.
- (7) In Chapter 2 of Part 4 of TIOPA 2010, sections 157(2), 158(4), 159(2) and 160(2) (which are about the interpretation of references to direct and indirect

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participation) apply in relation to subsection (4) as they apply in relation to subsection (4) of section 259NA of that Act.”

- (2) In section 1 of CTA 2010 (overview), in subsection (4), omit paragraph (e).
- (3) In section 481 of CTA 2010 (exemption from charges under provisions to which section 1173 applies), in subsection (2) omit paragraph (a).
- (4) In CTA 2010 omit Part 18 (transactions in land).
- (5) In section 1173 of CTA 2010 (miscellaneous charges), in Part 2 of the table in subsection (2), omit the entry relating to section 818(1) of CTA 2010.
- (6) In section 14B of TCGA 1992 (meaning of “non-resident CGT disposal”)—
  - (a) in subsection (1) for “subsection (5)” substitute “ subsections (5) and (6) ”;
  - (b) after subsection (5) insert—
    - “(6) A disposal of a UK residential property interest is not a non-resident CGT disposal if section 356OC(1) of CTA 2010 (gains etc on certain disposals treated as trading profits for corporation tax purposes) or section 517C of ITA 2007 (gains etc on certain disposals treated as trading profits for income tax purposes) applies in relation to it.”
- (7) In section 37 of TCGA 1992 (consideration chargeable to tax on income), in subsection (5A)(a), for the words from “821(3)” to “not” substitute “ 356OG(4) or (6) of CTA 2010 (transactions in land: the chargeable company) applies, an amount is charged to corporation tax as profits of a person other than ”.
- (8) In section 39 of TCGA 1992 (exclusion of expenditure by reference to tax on income), in subsection (5)(a), for the words from “821(3)” to “not” substitute “ 356OG(4) or (6) of CTA 2010 (transactions in land: the chargeable company) applies, an amount is charged to corporation tax as profits of a person other than ”.
- (9) In section 161 of TCGA 1992 (appropriations to and from stock), in subsection (6), for paragraph (a) substitute—
  - “(a) any person is charged to corporation tax by virtue of sections 356OB and 356OC of CTA 2010 (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 356OB(7) of that Act is met, and”.
- (10) In section 188A of TCGA 1992 (election for pooling), in subsection (4), at the end insert “ or section 14B(6) (gains on certain disposals treated as trading profits) ”.

## 78 Income tax: territorial scope etc

- (1) In section 6 of ITTOIA 2005 (territorial scope of charge to tax)—
  - (a) after subsection (1) insert—
    - “(1A) Profits of a trade of dealing in or developing UK land arising to a non-UK resident are chargeable to tax under this Chapter wherever the trade is carried on.”;
  - (b) in subsection (2), after “Profits of a trade” insert “ other than a trade of dealing in or developing UK land ”.
- (2) After section 6 of ITTOIA 2005 insert—

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### **“6A Arrangements for avoiding tax**

- (1) Subsection (3) applies if a person has entered into an arrangement the main purpose or one of the main purposes of which is to obtain a relevant tax advantage for the person.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The relevant tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to income tax to which the person is chargeable (or would without the tax advantage be chargeable) by virtue of section 6(1A).
- (6) In this section “tax advantage” includes—
  - (a) a relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.
- (7) In this section—

“arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

“double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).

### **6B Trade of dealing in or developing UK land**

- (1) A non-UK resident person's “trade of dealing in or developing UK land” consists of—
  - (a) any activities falling within subsection (2) which the person carries on, and
  - (b) any activities from which profits arise which are treated under Part 9A of ITA 2007 as profits of the person's trade of dealing in or developing UK land.
- (2) The activities within this subsection are—
  - (a) dealing in UK land;

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- (b) developing UK land for the purpose of disposing of it.
- (3) In this section “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (4) In this section—
  - “disposal” is to be interpreted in accordance with section 517R of ITA 2007;
  - “UK land” means land in the United Kingdom.”
- (3) In section 3 of ITTOIA 2005 (overview of Part 2), in subsection (4) for “6(2)” substitute “ 6(1A), (2) ”.
- (4) In section 243 of ITTOIA 2005 (post-cessation receipts: extent of charge to tax), in subsection (4), at the end insert “ , other than a person's trade of dealing in or developing UK land ”.
- (5) In section 989 of ITA 2007 (definitions for purposes of Income Tax Acts), at the appropriate place insert—
  - ““trade of dealing in or developing UK land”, in relation to a non-UK resident person, has the meaning given by section 6B of ITTOIA 2005,”.

## 79 Income tax: transactions in UK land

- (1) In ITA 2007, after Part 9 insert—

### “PART 9A

#### TRANSACTIONS IN UK LAND

##### *Introduction*

##### **517A Overview of Part**

This Part contains provision about the income tax treatment of certain profits and gains realised from disposals concerned with land in the United Kingdom.

##### *Amounts treated as profits of a trade*

##### **517B Disposals of land in the United Kingdom**

- (1) Section 517C(1) applies (subject to subsection (3) of that section) if—
  - (a) a person within subsection (2)(a), (b) or (c) realises a profit or gain from a disposal of any land in the United Kingdom, and
  - (b) any of conditions A to D is met in relation to the land.
- (2) The persons referred to in subsection (1) are—
  - (a) the person acquiring, holding or developing the land,



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- (b) a person who is associated with the person in paragraph (a) at a relevant time, and
  - (c) a person who is a party to, or concerned in, an arrangement within subsection (3).
- (3) An arrangement is within this subsection if—
- (a) it is effected with respect to all or part of the land, and
  - (b) it enables a profit or gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (4) Condition A is that the main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land.
- (5) Condition B is that the main purpose, or one of the main purposes, of acquiring any property deriving its value from the land was to realise a profit or gain from disposing of the land.
- (6) Condition C is that the land is held as trading stock.
- (7) Condition D is that (in a case where the land has been developed) the main purpose, or one of the main purposes, of developing the land was to realise a profit or gain from disposing of the land when developed.
- (8) In this section “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal mentioned in subsection (1).
- (9) In this section “the project” means all activities carried out for any of the following purposes—
- (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D.
- (10) For the purposes of this section a person (“A”) is associated with another person (“B”) if—
- (a) A is connected with B by virtue of any of subsections (2) to (4) of section 993 (read in accordance with section 994), or
  - (b) A is related to B (see section 517U).

### **517C Disposals of land: profits treated as trading profits**

- (1) The profit or gain is to be treated for income tax purposes as profits of a trade carried on by the chargeable person.
- (2) If the chargeable person is non-UK resident, that trade is the person's trade of dealing in or developing UK land (as defined in section 6B of ITTOIA 2005).
- (3) But subsection (1) does not apply to a profit or gain so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for income tax purposes, or
  - (b) for corporation tax purposes.

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- (4) The profits are treated as arising in the tax year in which the profit or gain is realised.
- (5) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

#### **517D Disposals of property deriving its value from land in the United Kingdom**

- (1) Section 517E(1) applies (subject to subsection (3) of that section) if—
  - (a) a person realises a profit or gain from a disposal of any property which (at the time of the disposal) derives at least 50% of its value from land in the United Kingdom,
  - (b) the person is a party to, or concerned in, an arrangement concerning some or all of the land mentioned in paragraph (a) (“the project land”), and
  - (c) the arrangement meets the condition in subsection (2).
- (2) The condition is that the main purpose, or one of the main purposes, of the arrangement is to—
  - (a) deal in or develop the project land, and
  - (b) realise a profit or gain from a disposal of property deriving the whole or part of its value from that land.

#### **517E Disposals within section 517D: profits treated as trading profits**

- (1) The relevant amount is to be treated for income tax purposes as profits of a trade carried on by the chargeable person.
- (2) If the chargeable person is non-UK resident, that trade is the chargeable person's trade of dealing in or developing UK land.
- (3) But subsection (1) does not apply to an amount so far as it would (apart from this section) be brought into account as income in calculating profits (of any person)—
  - (a) for income tax purposes, or
  - (b) for corporation tax purposes.
- (4) The profits are treated as arising in the tax year in which the profit or gain is realised.
- (5) In this section the “relevant amount” means so much (if any) of the profit or gain mentioned in section 517D(1) as is attributable, on a just and reasonable apportionment, to the relevant UK assets.
- (6) In this section “the relevant UK assets” means any land in the United Kingdom from which the property mentioned in section 517D(1) derives any of its value (at the time of the disposal mentioned in that subsection).
- (7) This section applies in relation to gains which are capital in nature as it applies in relation to other gains.

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### 517F Profits and losses

- (1) Sections 517B to 517E have effect as if they included provision about losses corresponding to the provision they make about profits and gains.
- (2) Accordingly, in the following sections of this Part references to a “profit or gain” include a loss.

#### *Person to whom profits attributed*

### 517G The chargeable person

- (1) For the purposes of sections 517C and 517E the general rule is that the “chargeable person” is the person (“P”) that realises the profit or gain (as mentioned in section 517B(1) or 517D(1)).
- (2) The general rule in subsection (1) is subject to the special rules in subsections (4) to (6).
- (3) But those special rules do not apply in relation to a profit or gain to which section 517H(3) (fragmented activities) applies.
- (4) If all or any part of the profit or gain accruing to P is derived from value provided directly or indirectly by another person (“B”), B is the “chargeable person”.
- (5) Subsection (4) applies whether or not the value is put at the disposal of P.
- (6) If all or any part of the profit or gain accruing to P is derived from an opportunity of realising a profit or gain provided directly or indirectly by another person (“D”), D is “the chargeable person” (unless the case falls within subsection (4)).
- (7) For the meaning of “another person” see section 517P.

#### *Anti-fragmentation*

### 517H Fragmented activities

- (1) Subsection (3) applies if—
  - (a) a person (“P”) disposes of any land in the United Kingdom,
  - (b) any of conditions A to D in section 517B is met in relation to the land, and
  - (c) a person (“R”) who is associated with P at a relevant time has made a relevant contribution to activities falling within subsection (2).
- (2) The following activities fall within this subsection—
  - (a) the development of the land,
  - (b) any other activities directed towards realising a profit or gain from the disposal of the land.

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- (3) For the purposes of this Part, the profit or gain (if any) realised by P from the disposal is to be taken to be what that profit or gain would be if R were not a distinct person from P (and, accordingly, as if everything done by or in relation to R had been done by or in relation to P).
- (4) Subsection (5) applies to any amount which is paid (directly or indirectly) by R to P for the purposes of meeting or reimbursing the cost of income tax which P is liable to pay as a result of the application of subsection (3) in relation to R and P.
- (5) The amount—
- (a) is not to be taken into account in calculating profits or losses of either R or P for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (6) In subsection (1) “relevant time” means any time in the period beginning when the activities of the project begin and ending 6 months after the disposal.
- (7) For the purposes of this section any contribution made by P to activities falling within subsection (2) is a “relevant contribution” unless the profit made or to be made by P in respect of the contribution is insignificant having regard to the size of the project.
- (8) In this section “contribution” means any kind of contribution, including, for example—
- (a) the provision of professional or other services, or
  - (b) a financial contribution (including the assumption of a risk).
- (9) For the purposes of this section R is “associated” with P if—
- (a) R is connected with P by virtue of any of subsections (2) to (4) of section 993 (read in accordance with section 994), or
  - (b) R is related to P (see section 517U).
- (10) In this section “the project” means all activities carried out for any of the following purposes—
- (a) the purposes of dealing in or developing the land, and
  - (b) any other purposes mentioned in Conditions A to D in section 517B.

#### *Calculation of profit or gain on disposal*

### **517I Calculation of surplus on a disposal of land**

For the purposes of this Part, the profit or gain (if any) from a disposal of any property is to be calculated according to the principles applicable for calculating the profits of a trade under Part 2 of ITTOIA 2005, subject to any modifications that may be appropriate (and for this purpose the same rules are to apply in calculating losses from a disposal as apply in calculating profits).

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## 517J Apportionments

Any apportionment (whether of expenditure, consideration or any other amount) that is required to be made for the purposes of this Part is to be made on a just and reasonable basis.

### *Arrangements for avoiding tax*

## 517K Arrangements for avoiding tax

- (1) Subsection (3) applies if an arrangement has been entered into the main purpose or one of the main purposes of which is to enable a person to obtain a relevant tax advantage.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means an advantage in relation to income tax charged (or which would, if the tax advantage were not obtained, be charged) in respect of amounts treated as profits of a trade by virtue of this Part.
- (6) In this section “advantage” includes—
  - (a) a relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.

### *Exemptions*

## 517L Gain attributable to period before intention to develop formed

- (1) Subsection (2) applies if—
  - (a) subsection (1) of section 517C applies because Condition D in section 517B is met (land developed with purpose of realising a gain from its disposal when developed), and
  - (b) part of the profit or gain mentioned in that subsection is fairly attributable to a period before the intention to develop was formed.

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- (2) Section 517C(1) has effect as if the person mentioned in section 517B(1) had not realised that part of the profit or gain.
- (3) Subsection (4) applies if—
  - (a) section 517E(1) applies, and
  - (b) part of the profit or gain mentioned in section 517E(5) is fairly attributable to a period before the person mentioned in section 517D(1) was a party to, or concerned in, the arrangement in question.
- (4) Section 517E has effect as if the person had not realised that part of the profit or gain.
- (5) In applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading income) of a person who appropriates land as trading stock.

#### 517M Private residences

No liability to income tax arises under this Part in respect of a gain accruing to an individual if—

- (a) the gain is exempt from capital gains tax as a result of sections 222 to 226 of TCGA 1992 (private residences), or
- (b) it would be so exempt but for section 224(3) of that Act (residences acquired partly with a view to making a gain).

#### *Other supplementary provisions*

#### 517N Tracing value

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.
- (2) Value may be traced through any number of companies, partnerships, trusts and other entities or arrangements.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners, beneficiaries or other participants at each stage in whatever way is appropriate in the circumstances.
- (4) In this section—
 

“partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar nature to a partnership; and “partners”, in relation to such arrangements, is to be construed accordingly;

“trust” includes arrangements—

  - (a) which have effect under the law of a country or territory outside the United Kingdom; and
  - (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

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and “beneficiaries”, in relation to such arrangements, is to be construed accordingly.

#### **517O Relevance of transactions, arrangements, etc**

- (1) In determining whether section 517C(1) or 517E(1) applies, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right, however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion on which section 517C(1) or 517E(1) applies.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

#### *Interpretation*

#### **517P “Another person”**

- (1) In this Part references to “other” persons are to be interpreted in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

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### 517Q “Arrangement”

- (1) In this Part “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable.
- (2) For the purposes of this Part any number of transactions may be regarded as constituting a single arrangement if—
  - (a) a common purpose can be discerned in them, or
  - (b) there is other sufficient evidence of a common purpose.

### 517R “Disposal”

- (1) In this Part references to a “disposal” of any property include any case in which the property is effectively disposed of (whether wholly or in part, as mentioned in subsection (2))—
  - (a) by one or more transactions, or
  - (b) by any arrangement.
- (2) For the purposes of this Part—
  - (a) references to a disposal of land or any other property include a part disposal of the property, and
  - (b) there is a part disposal of property (“the asset”) where on a person making a disposal, any form of property derived from the asset remains undisposed of (including in cases where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal).

### 517S “Land” and related expressions

- (1) In this Part “land” includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (2) In this Part references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.

### 517T References to realising a gain

- (1) For the purposes of sections 517B(1) and 517D(1) it does not matter whether the person (“P”) realising the profit or gain in question realises it for P or another person.



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- (2) For the purposes of subsection (1), if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a profit or gain to another person (“B”), A realises B’s profit or gain for B.

#### 517U **Related parties**

- (1) For the purposes of this Part a person (“A”) is related to another person (“B”)—
- (a) throughout any period for which A and B are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 25% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
- (a) their financial results for a period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for a period are in fact comprised in group accounts.
- (3) In subsection (2) “group accounts” means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with that day—
- (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
- (5) The 25% investment condition is met in relation to A and B if—
- (a) one of them has a 25% investment in the other, or
  - (b) a third person has a 25% investment in each of them.
- (6) Section 259NC of TIOPA 2010 applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of this section as it applies for the purposes of section 259NB(2) of that Act.
- (7) In Chapter 2 of Part 4 of TIOPA 2010, sections 157(2), 158(4), 159(2) and 160(2) (which are about the interpretation of references to direct and indirect participation) apply in relation to subsection (4) as they apply in relation to subsection (4) of section 259NA of that Act.”
- (2) In section 2 of ITA 2007 (overview of Act)—
- (a) after subsection (9) insert—

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- “(9A) Part 9A is about the treatment of certain transactions in UK land.”,  
and
- (b) in subsection (13), omit paragraph (c).
- (3) In section 482 of ITA 2007 (types of amount to be charged at special rates for trustees), in the words relating to Type 11, for “Chapter 3 of Part 13 of this Act (tax avoidance: transactions in land)” substitute “ Part 9A of this Act (transactions in land) ”.
- (4) In section 527 of ITA 2007 (exemption from charges under provisions to which section 1016 applies), in subsection (2)—
- (a) insert “ and ” at the end of paragraph (d), and
- (b) omit paragraph (e).
- (5) In Part 13 of ITA 2007, omit Chapter 3 (transactions in land).
- (6) In section 944 of ITA 2007 (tax avoidance: directions for duty to deduct to apply), in subsection (1)—
- (a) omit paragraph (a), and
- (b) in paragraph (b) for “that Part” substitute “ Part 13 ”.
- (7) In section 1016 of ITA 2007 (table of provisions to which that section applies), in Part 2 of the table in subsection (2), omit the entry relating to Chapter 3 of Part 13 of that Act.
- (8) In section 37 of TCGA 1992 (consideration chargeable to tax on income), in subsection (5)(a), for the words from “759(4)” to “is” substitute “ 517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of ”
- (9) In section 39 of TCGA 1992 (exclusion of expenditure by reference to tax on income), in subsection (4)(a), for the words from “759(4)” to “is” substitute “ 517G(4) or (6) of ITA 2007 (transactions in land: the chargeable person) applies, an amount is charged to income tax as income of ”.
- (10) In section 161 of TCGA 1992 (appropriations to and from stock), in subsection (5), for paragraph (a) substitute—
- “(a) any person is charged to income tax by virtue of sections 517B and 517C of [<sup>F1</sup>ITA 2007] (certain profits or gains on a disposal of land treated as trading profits) on the realisation of a profit or gain because the condition in section 517B(7) of that Act is met, and”.
- (11) In section 830 of ITTOIA 2005, in subsection (3), for the words from “of” to the end substitute “of—
- (a) section 844 (unremittable income: income charged on withdrawal of relief after source ceases), or
- (b) section 517C or 517E of ITA 2007 (profits on certain disposals concerned with land in the United Kingdom treated as trading profits).”

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#### Textual Amendments

**F1** Words in s. 79(10) substituted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), s. 39(3)(4)

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## **80 Pre-trading expenses**

- (1) Subsection (2) has effect if—
- (a) a particular time (“T”) is the time when a company (“C”) is first within the charge to corporation tax by virtue of subsection (2)(a) of section 5 of CTA 2009 (territorial scope of charge),
  - (b) immediately before time T, C was within the charge to corporation tax as a result of carrying on the relevant trade in the United Kingdom through a permanent establishment in the United Kingdom, and
  - (c) expenses which the company has incurred for the purposes of the trade meet the conditions in subsection (3) and (4).
- “The relevant trade” means the trade of dealing in or developing UK land mentioned in subsection (2)(a) of section 5 of CTA 2009.
- (2) Section 61 of CTA 2009 (pre-trading expenses) has effect in relation to those expenses as if the company had started to carry on the relevant trade at time T.
- (3) The condition in this subsection is that—
- (a) no deduction would be allowed for the expenses in calculating the profits of the relevant trade for corporation tax purposes (ignoring subsection (2)), but
  - (b) a deduction would be allowed for them (in accordance with sections 41 and section 61 of CTA 2009) if the company had not been within the charge to corporation tax in respect of the relevant trade immediately before time T.
- (4) The condition in this subsection is that no relief has been obtained for the expenses under the law of any country or territory outside the United Kingdom.

## **81 Commencement and transitional provision: sections 76, 77 and 80**

- (1) The amendments made by sections 76, 77 and 80 have effect in relation to disposals on or after 5 July 2016.
- (2) In subsection (1) of section 5A of CTA 2009 (tax avoidance in relation to section 5(2A) of that Act) “arrangement” does not include an arrangement (as defined in section 5A(6) of that Act) entered into before 16 March 2016.
- (3) In subsection (1) of section 356OK of CTA 2010 (tax avoidance in relation to Part 8ZB of CTA 2010) “arrangement” does not include an arrangement (as defined in section 356OP of that Act) entered into before 16 March 2016.
- (4) Subsection (6) applies if—
- (a) a person disposes of a relevant asset to a person who is associated with that person at the relevant time,
  - (b) the disposal is made on or after 16 March 2016 and before 5 July 2016, and
  - (c) a company obtains a relevant tax advantage as a result of the disposal.
- (5) In subsection (4) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (6) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (6) The tax advantage is to be counteracted by means of adjustments.

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- (7) Adjustments for the purposes of subsection (6) may be made (whether by an officer of Revenue and Customs or by the company) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (8) In subsection (4)(c) “relevant tax advantage” means a tax advantage in relation to tax to which the company in question is charged or chargeable (or would, if the tax advantage were not obtained, be charged or chargeable)—
- (a) by virtue of section 5(2A) of CTA 2009, or
  - (b) in respect of amounts treated as profits of a trade by virtue of Part 8ZB of CTA 2010.
- (9) For the purposes of this section, where any property is disposed of under a contract, the time at which the disposal is made is the time the contract is made (and not, if different, the time at which the property is conveyed or transferred).
- (10) In subsection (9) “contract” includes a conditional contract.
- (11) In this section—
- “arrangement” includes any scheme, agreement or understanding (whether or not legally enforceable);
  - “disposal” is to be interpreted in accordance with section 356OQ of CTA 2010;
  - “relevant asset” means land, or property deriving the whole or part of its value from land;
  - “tax advantage” has the meaning given by section 1139 of CTA 2010.
- (12) For the purposes of this section a person (“A”) is “associated” with another person (“B”) if—
- (a) A is connected with B by virtue of any of subsections (5) to (7) of section 1122 of CTA 2010 (read in accordance with section 1123 of that Act), or
  - (b) A is related to B.
- (13) In subsection (12) “related to” is to be interpreted in accordance with section 356OT of CTA 2010.
- (14) In subsection (4) “the relevant time”—
- (a) in a case within subsection (8)(a), means the time of the disposal mentioned in subsection (4)(a).
  - (b) in a case within subsection (8)(b), means any time in the period beginning when the activities of the project began and ending 6 months after the disposal mentioned in section 356OB(1) or 356OD(1) of CTA 2010.
- (15) In subsection (14) “the project” means (as the case requires) the project described in section 356OB(9) of CTA 2010 or the activities mentioned in section 356OD(2)(a) of that Act.

## **82 Commencement and transitional provision: sections 78 and 79**

- (1) The amendments made by sections 78 and 79 have effect in relation to disposals on or after 5 July 2016.

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- (2) In subsection (1) of section 6A of ITA 2007 (tax avoidance arrangements in relation to section 6(1A) of that Act) “arrangement” does not include an arrangement (as defined in section 6A(7) of that Act) entered into before 16 March 2016.
- (3) In subsection (1) of section 517K of ITA 2007 (tax avoidance in relation to Part 9A of that Act) “arrangement” does not include an arrangement (as defined in section 517Q of that Act) entered into before 16 March 2016.
- (4) Subsection (6) applies if—
  - (a) a person disposes of a relevant asset to a person who is associated with that person at the relevant time,
  - (b) the disposal is made on or after 16 March 2016 and before 5 July 2016, and
  - (c) a person obtains a relevant tax advantage as a result of the disposal.
- (5) In subsection (4) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (6) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (6) The tax advantage is to be counteracted by means of adjustments.
- (7) Adjustments for the purposes of subsection (6) may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (8) In subsection (4)(c) “relevant tax advantage” means a tax advantage in relation to tax to which the person in question is charged or chargeable (or would, if the tax advantage were not obtained, be charged or chargeable)—
  - (a) by virtue of section 6(1A) of ITTOIA 2005, or
  - (b) in respect of amounts treated as profits of a trade by virtue of Part 9A of ITA 2007.
- (9) For the purposes of this section, where any property is disposed of under a contract, the time at which the disposal is made is the time the contract is made (and not, if different, the time at which the property is conveyed or transferred).
- (10) In subsection (9) “contract” includes a conditional contract.
- (11) In this section—
  - “arrangement” includes any scheme, agreement or understanding (whether or not legally enforceable);
  - “disposal” is to be interpreted in accordance with section 517R of ITA2007;
  - “relevant asset” means land, or property deriving the whole or part of its value from land;
  - “tax advantage” has the same meaning as in section 6A of ITTOIA 2005.
- (12) For the purposes of this section a person (“A”) is “associated” with another person (“B”) if—
  - (a) A is connected with B by virtue of any of subsections (2) to (4) of section 993 of ITA 2007 (read in accordance with section 994 of that Act), or
  - (b) A is related to B.

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- (13) In subsection (12) “related to” is to be interpreted in accordance with section 517U of ITA 2007.
- (14) In subsection (4), “the relevant time”—
- (a) in a case within subsection (8)(a), means the time when the disposal was made,
  - (b) in a case within subsection (8)(b), means any time in the period beginning when the activities of the project began and ending 6 months after the disposal mentioned in section 517B(1) or 517D(1) of ITA 2007.
- (15) In subsection (14) “the project” means (as the case requires) the project described in section 517B(9) of ITA 2007 or the activities mentioned in section 517D(2)(a) of that Act.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)