

# Finance Bill

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## **1 Meaning of “permanent establishment”**

- (1) For the purposes of the Tax Acts a company has a permanent establishment in a territory if, and only if—
  - (a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or
  - (b) an agent acting on behalf of the company has and habitually exercises there authority to do business on behalf of the company.

This general definition is subject to the following provisions.

- (2) For this purpose a “fixed place of business” includes (without prejudice to the generality of that expression)—
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) an installation or structure for the exploration of natural resources;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (h) a building site or construction or installation project.
- (3) A company is not regarded as having a permanent establishment in a territory by reason of the fact that it carries on business there through an agent of independent status acting in the ordinary course of his business.
- (4) A company is not regarded as having a permanent establishment in a territory by reason of the fact that—
  - (a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
  - (b) an agent carries on activities there for and on behalf of the company, if, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (5) For this purpose “activities of a preparatory or auxiliary character” include (without prejudice to the generality of that expression)—
  - (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company;
  - (b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person;

- (d) purchasing goods or merchandise, or collecting information, for the company.
- (6) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts), at the appropriate place insert—
- ““permanent establishment”, in relation to a company, has the meaning given by section 1 of the Finance Act 2003;”.
- (7) In section 288(1) of the Taxation of Chargeable Gains Act 1992 (c. 12) (interpretation), at the appropriate place insert—
- ““permanent establishment”, in relation to a company, has the meaning given by section 1 of the Finance Act 2003;”.

## **2 Non-resident companies: basis of charge to corporation tax**

- (1) In section 11 of the Taxes Act 1988 (corporation tax: companies not resident in the United Kingdom), for subsections (1) and (2) (basis of taxation) substitute—
- “(1) A company not resident in the United Kingdom is within the charge to corporation tax if, and only if, it carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (2) If it does so, it is chargeable to corporation tax, subject to any exceptions provided for by the Corporation Tax Acts, on all profits, wherever arising, that are attributable to its permanent establishment in the United Kingdom.
- These profits, and these only, are the company’s “chargeable profits” for the purposes of corporation tax.
- (2A) The profits attributable to a permanent establishment for the purposes of corporation tax are—
- (a) trading income arising directly or indirectly through or from the establishment,
- (b) income from property or rights used by, or held by or for, the establishment, and
- (c) chargeable gains falling within section 10B of the 1992 Act—
- (i) by virtue of assets being used in or for the purposes of the trade carried on by the company through the establishment, or
- (ii) by virtue of assets being used or held for the purposes of the establishment or being acquired for use by or for the purposes of the establishment.”.
- (2) After that section insert—

### **“11AA Determination of profits attributable to permanent establishment**

- (1) This section provides for determining for the purposes of corporation tax the amount of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom (“the non-resident company”).
- (2) There shall be attributed to the permanent establishment the profits it would have made if it were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

- (3) In applying subsection (2)—
- (a) it shall be assumed that the permanent establishment has the same credit rating as the non-resident company, and
  - (b) it shall also be assumed that the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.

No deduction may be made in respect of costs in excess of those that would have been incurred on those assumptions.

- (4) There shall be allowed as deductions any allowable expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the United Kingdom or elsewhere.

“Allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a company resident in the United Kingdom.

- (5) The Board may by regulations make provision as to the application of subsection (2) in relation to insurance companies.

The regulations may, in particular, make provision in place of subsection (3)(b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom.

In this subsection “insurance company” has the meaning given by section 431(2).

- (6) Schedule A1 to this Act contains provisions supplementing the provisions of this section.”.

- (3) At the beginning of the Schedules to the Taxes Act 1988 insert as Schedule A1 the Schedule set out in Schedule 1 to this Act.

- (4) After section 10A of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

**“10B Non-resident company with United Kingdom permanent establishment**

- (1) Subject to any exceptions provided by this Act, the chargeable profits for the purposes of corporation tax of a company not resident in the United Kingdom but carrying on a trade in the United Kingdom through a permanent establishment there include chargeable gains accruing to the company on the disposal of—

- (a) assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time the gain accrued, or
- (b) assets situated in the United Kingdom and used or held for the purposes of the permanent establishment at or before the time the gain accrued or acquired for use by or for the purposes of the permanent establishment.

- (2) Subsection (1) does not apply unless the disposal is made at a time when the company is carrying on a trade in the United Kingdom through a permanent establishment there.

- (3) This section does not apply to a company that, by virtue of Part 18 of the Taxes Act (double taxation relief arrangements), is exempt from corporation tax for the chargeable period in respect of the profits of the permanent establishment.

- (4) In this section “trade” has the meaning given by section 6(4)(b) of the Taxes Act.”.
- (5) In section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), at the appropriate place insert—
- “chargeable profits”, in relation to a company that is not resident in the United Kingdom—
- (a) for corporation tax purposes generally, has the meaning given by section 11(2), and
- (b) for the purposes of Chapter 4 of Part 17 (controlled foreign companies), has the meaning given by section 747(6);”.
- (6) This section has effect in relation to accounting periods (of the non-resident company) beginning on or after 1st January 2003 and regulations under section 11AA(5) of the Taxes Act 1988 (inserted by subsection (2) above) may be made so as to have effect from that date.

### **3 Non-resident companies: assessment, collection and recovery of corporation tax**

- (1) The enactments relating to corporation tax, so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax, have effect, in accordance with this section, as if the obligations and liabilities of a non-resident company were also obligations and liabilities of its UK representative.
- (2) For this purpose a permanent establishment in the United Kingdom through which a non-resident company carries on a trade—
- (a) is the UK representative of the company in relation to chargeable profits of the company attributable to that establishment,
- (b) continues to be the company’s UK representative in relation to those profits even after ceasing to be a permanent establishment through which the company carries on a trade, and
- (c) shall be treated, if it would not otherwise be so treated, as a distinct and separate person from the non-resident company.

As to the chargeable profits attributable to a permanent establishment, see section 11(2A) of the Taxes Act 1988.

- (3) Subject to the following provisions of this section—
- (a) the discharge by the UK representative of a non-resident company, or by the company itself, of an obligation or liability that corresponds to one to which the other is subject discharges the corresponding obligation or liability of the other, and
- (b) a non-resident company is bound, as if they were its own, by acts or omissions of its UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (4) An obligation or liability attaching to a non-resident company—
- (a) by reason of its having been given or served with a notice or other document, or
- (b) by reason of its having received a request or demand,
- does not also attach to its UK representative unless the notice or document, or a copy of it, has been given to or served on the representative or, as the case may be, unless the representative has been notified of the request or demand.

- (5) A non-resident company is not bound by mistakes in information provided by its UK representative in pursuance of an obligation imposed on the representative by this section, unless the mistake is the result of an act or omission of the company itself, or to which the company consented or in which it connived.
- (6) The UK representative of a non-resident company is not by virtue of this section liable to be proceeded against for a criminal offence unless the representative committed the offence itself, or consented to or connived in its commission.
- (7) In this section—
  - “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30);
  - “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Board or any officer of the Board;
  - “non-resident company” means a company that is not resident in the United Kingdom; and
  - “trade” has the meaning given by section 6(4)(b) of the Taxes Act 1988.
- (8) This section has effect for accounting periods (of the non-resident company) beginning on or after 1st January 2003.

#### **4 Non-resident companies: extent of charge to income tax**

- (1) The income tax chargeable for a year of assessment on the total income of a company that is not resident in the United Kingdom is limited to the sum of the following amounts—
  - (a) the amount of tax that, apart from this section, would be chargeable on that total income if—
    - (i) the amount of that income were reduced by the amount of any income to which this section applies, and
    - (ii) there were disregarded any relief to which that company is entitled by virtue of arrangements having effect under section 788 of the Taxes Act 1988 (double taxation relief), and
  - (b) the amount of tax deducted from so much of any income to which this section applies as is income the tax on which is deducted at source.
- (2) The income to which this section applies is—
  - (a) income chargeable to tax under Case III of Schedule D or Schedule F;
  - (b) income chargeable to tax under Case VI of Schedule D by virtue of section 56 of the Taxes Act 1988 (transactions in deposits);
  - (c) income arising from a transaction carried out through a broker or investment manager in the United Kingdom acting as an agent of independent status in the ordinary course of his business, or
  - (d) income of such other description as the Treasury may by regulations designate for the purposes of this subsection.

Regulations under paragraph (d) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (3) In subsection (1)(b) above—

- (a) the reference to tax deducted at source is to tax that is or is treated as deducted, or is treated as paid, or in respect of which there is a tax credit, and
  - (b) the reference to the amount of tax deducted at source is to the amount that is or is treated as deducted, or is treated as paid, or, as the case may be, to the amount of that credit.
- (4) This section does not apply to the income tax chargeable for a year of assessment on income of a company as a trustee.
- (5) This section applies—
- (a) in relation to the year 2002-03, as regards income arising on or after 1st January 2003, and
  - (b) in relation to the year 2003-04 and subsequent years of assessment.

**5 Non-resident companies: transactions carried out through broker, investment manager or Lloyd's agent**

Schedule 2 to this Act contains provisions supplementing—

- (a) section 1(3) (meaning of “permanent establishment”: not to include independent agent), and
- (b) section 4(2)(c) (limit on income tax chargeable on non-resident company: income arising from transactions carried out through independent agent),

as regards transactions carried out through a broker, investment manager or Lloyd's agent.

**6 General replacement of references to branch or agency of company**

- (1) In the following provisions (which relate only to companies) for “branch or agency” or “branches or agencies”, wherever occurring, substitute “permanent establishment” or “permanent establishments”.

The provisions are—

- (a) in the Taxes Act 1988, sections 115(4)(b), 338B(2)(d) and (4)(b), 349B(2)(b) and (7)(b)(ii), 402(3B), 403E(1)(a), (2), (4), (5) and (6), 442(1), 444BB(3)(b), 547(6A), 748A(1)(c) and (2), 790(6A)(b), 801(1A)(b), 804A(1)(a), 806L(1), (2), (4), and (5), 806M(2) to (5) and 815A(6); in Schedule 15, paragraphs 17(3)(c) and 25(2)(c); in Schedule 19AA, paragraph 5(5)(c); in Schedule 24, paragraphs 1 and 8; and in Schedule 25, paragraphs 6(2A) and (2C), 8 and 11(3);
- (b) in the Taxation of Chargeable Gains Act 1992 (c. 12), sections 140(1), 140C(1)(a), 173(3)(b), 175(1A)(b), 185(4) and 213(5A);
- (c) in the Finance Act 2000 (c. 17), section 107(7);
- (d) in the Capital Allowances Act 2001 (c. 2), sections 560(2) and 561(1)(c);
- (e) in the Finance Act 2002 (c. 23), in Schedule 22, paragraph 10(1)(b)(ii); and in Schedule 29, paragraphs 66(5) and (8)(b), 68(2)(b), 86(1)(a), 87(1)(a), 109(1)(b) and 110(1)(b).

- (2) In the following provisions (which relate to companies and other persons), any reference to a branch or agency shall be read, in relation to a company, as a reference to a permanent establishment.

The provisions are—

- (a) in the Taxes Act 1988, sections 606(13), 794(2)(bb), 806K(1), 814(1) and 830(4), and in Schedule 23A, paragraphs 3 and 4;
  - (b) in the Taxation of Capital Gains Act 1992 (c. 9), sections 25(2), (3) and (5), 80(4)(a) and (b) and (7)(b), 199(2) and (4) and 276(7);
  - (c) in the Finance Act 1999 (c. 16), section 85(2)(a);
  - (d) in the Finance Act 2002 (c. 23), in Schedule 26, paragraph 31(6)(a).
- (3) Any reference to a branch or agency—
- (a) in subordinate legislation made under an enactment contained in the Tax Acts or relating to chargeable gains, or
  - (b) that is to be construed as having the same meaning as in any such enactment,
- shall be read, in relation to a company, as a reference to a permanent establishment.
- “Subordinate legislation” here has the same meaning as in the Interpretation Act 1978 (c. 30).
- (4) This section has effect in relation to accounting periods beginning on or after 1st January 2003.

## **7 Double taxation relief: profits attributable to overseas permanent establishment**

- (1) In Part 18 of the Taxes Act 1988 (double taxation relief), section 797 (limits on credit: corporation tax) is amended as follows.
- (2) In subsection (1) for “subsections (2) and (3)” substitute “the following provisions of this section”.
- (3) In subsection (2) for “subsection (3)” substitute “subsections (2A) and (3)”.
- (4) After subsection (2) insert—

“(2A) The provisions of section 11AA (profits attributable to permanent establishment), and of any regulations made under that section, apply, with the necessary modifications, in determining for the purposes of this section how much of the chargeable profits of a company resident in the United Kingdom is attributable to a permanent establishment of the company outside the United Kingdom.”.
- (5) The amendments in this section have effect in relation to accounting periods beginning on or after 1st January 2003.

## **8 Consequential amendments**

- (1) Schedule 3 to this Act provides for amendments consequential on the provisions of sections 1 to 6.
- (2) The amendments made by that Schedule have effect in relation to accounting periods beginning on or after 1st January 2003.

## **9 Overseas life insurance companies**

- (1) The enactments relating to corporation tax have effect in relation to overseas life insurance companies subject to such modifications and exceptions as the Treasury may prescribe by regulations.

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- (2) The power to make regulations under this section includes power to make provision in place of, and in consequence to repeal or revoke, all or any of the enactments relating to corporation tax that on the passing of this Act make provision in relation to overseas life insurance companies.
- (3) Regulations under this section—
- (a) may make different provision for different cases, and
  - (b) may make such consequential amendments of other enactments as appear to the Treasury to be necessary or expedient.
- (4) Regulations under this section providing for the application to overseas life insurance companies of sections 1 to 7 of this Act, Schedules 2 and 3 to this Act or any enactment amended by those sections or Schedules may be made so as to have effect from 1st January 2003.
- (5) In this section—
- “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30), and
  - “overseas life insurance company” means an insurance company (as defined in section 431(2)) that is not resident in the United Kingdom but carrying on life assurance business (as so defined) through a permanent establishment in the United Kingdom.

## SCHEDULES

### SCHEDULE 1

Section 2(3)

#### DETERMINATION OF PROFITS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT: SUPPLEMENTARY PROVISIONS

The Schedule inserted in the Taxes Act 1988 as Schedule A1 is as follows—

#### “SCHEDULE A1

#### DETERMINATION OF PROFITS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT: SUPPLEMENTARY PROVISIONS

##### PART 1

##### INTRODUCTION

##### *Introduction*

- 1 (1) The provisions of this Schedule have effect for supplementing section 11AA as regards the determination of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom (“the non-resident company”).
- (2) In this Schedule “the separate enterprise principle” means the principle in section 11AA(2) (read with subsection (3) of that section).

##### PART 2

##### GENERAL PROVISIONS

##### *Transactions treated as taking place at arm’s length*

- 2 In accordance with the separate enterprise principle, transactions between the permanent establishment and any other part of the non-resident company are treated as taking place on such terms as would have been agreed between parties dealing at arm’s length.

##### *Application of general provision as to allowable deductions*

- 3 (1) Section 11AA(4) (general provision as to allowable deductions) applies whether or not the expenses are incurred by, or reimbursed by, the permanent establishment.

- (2) The amount of expenses to be taken into account under section 11AA(4) is the actual cost to the non-resident company.

*Prohibition of deductions for payments in respect of intangible assets*

- 4 (1) No deduction is allowed in respect of royalties paid, or other similar payments made, by the permanent establishment to any other part of the non-resident company in respect of the use of intangible assets held by the company.
- (2) This does not prevent a deduction in respect of any contribution by the permanent establishment to the costs of creation of an intangible asset.
- (3) In this paragraph “intangible asset” has the meaning it has for accounting purposes, and includes any intellectual property (as defined in paragraph 2(2) of Schedule 29 to the Finance Act 2002).

*Prohibition of deductions for interest or other financing costs*

- 5 (1) No deduction is allowed in respect of payments of interest or other financing costs by the permanent establishment to any other part of the non-resident company, except as provided by sub-paragraph (2).
- (2) The restriction in sub-paragraph (1) above does not apply to interest or other costs of financing that are payable in respect of borrowing by the permanent establishment in the ordinary course of a financial business carried on by it.
- (3) In sub-paragraph (2) “financial business” means any of the following—
- (a) banking, deposit-taking, money-lending or debt-factoring, or a business similar to any of those;
  - (b) dealing in commodity or financial futures.

*Provision of goods or services for permanent establishment*

- 6 (1) This paragraph applies where the non-resident company provides the permanent establishment with goods or services.
- (2) If the goods or services are of a kind that the company supplies, in the ordinary course of its business, to third parties dealing with it at arm’s length, the matter is dealt with as a transaction to which the separate enterprise principle applies.
- (3) If not, the matter is dealt with as an expense incurred by the non-resident company for the purposes of the permanent establishment.

PART 3

PROVISIONS APPLICABLE TO NON-RESIDENT BANKS

*Application of this Part*

- 7 (1) The provisions of this Part of this Schedule have effect where the non-resident company is a bank.  
“Bank” for this purpose has the meaning given by section 840A.
- (2) Nothing in this Part of this Schedule shall be read as preventing the application of principles similar to those provided for in this Part in applying the separate enterprise principle to a non-resident company that is not a bank.

*Non-resident banks: transfer of financial assets*

- 8 (1) In accordance with the separate enterprise principle, transfers of loans and other financial assets between the permanent establishment and any other part of the company are recognised only if they would have taken place between independent enterprises.
- (2) Such a transfer is not recognised where it cannot reasonably be considered that it is carried out for valid commercial reasons.  
For this purpose the obtaining of a tax advantage is not a valid commercial reason.

*Loans by non-resident banks: attribution of financial assets and profits arising*

- 9 (1) In accordance with the separate enterprise principle, loans and other financial assets, and profits arising from them, are attributed to a permanent establishment to the extent that they can reasonably be regarded as having been generated by the activities of the permanent establishment.
- (2) The following provisions have effect as regards the factors to be taken into account.
- (3) Particular account shall be taken of the extent to which the permanent establishment is responsible for—
- (a) obtaining the offer of new business;
  - (b) establishing the potential borrower’s credit rating and the risk involved in providing credit;
  - (c) negotiating the terms of the loan with the borrower;
  - (d) deciding whether, and if so on what conditions, to make or extend the loan.
- (4) Account may also be taken of the extent to which the permanent establishment is responsible for—
- (a) concluding the loan agreement and disbursing the proceeds of the loan;
  - (b) administering the loan (including handling and monitoring the service of it) and holding and controlling any securities pledged.

- (5) References in this paragraph to a financial asset include any financial risk in relation to a loan, or potential loan, that is capable of giving rise to fees or other receipts and for which the holding of capital is required (or would be required if the transaction were between parties at arm's length).

*Borrowing by non-resident banks: permanent establishment acting as agent or intermediary*

- 10 (1) This paragraph applies where a permanent establishment—
- (a) borrows funds for the purposes of another part of the non-resident company, and
  - (b) in relation to that borrowing acts only as an agent or intermediary.
- (2) In such a case, in accordance with the separate enterprise principle—
- (a) the profits attributable to the permanent establishment, and
  - (b) the capital attributable to the permanent establishment under section 11AA(3),
- shall be that appropriate in the case of an agent acting at arm's length, taking into account the risks and costs borne by the establishment.”.

SCHEDULE 2

Section 5

NON-RESIDENT COMPANIES: TRANSACTIONS CARRIED OUT THROUGH BROKER,  
INVESTMENT MANAGER OR LLOYD'S AGENT

*Introduction*

- 1 (1) This Schedule makes provision about transactions carried out on behalf of a company that is not resident in the United Kingdom (a “non-resident company”), in the course of that company's trade, by a person in the United Kingdom acting as—
- (a) a broker (paragraph 2),
  - (b) an investment manager (paragraphs 3 to 5), or
  - (c) a members' or managing agent at Lloyd's (paragraph 6).
- (2) The provisions of this Schedule supplement—
- (a) section 1(3) (meaning of “permanent establishment”: not to include independent agent), and
  - (b) section 4(2)(c) (limit on income tax chargeable on non-resident company: income arising from transactions carried out through independent agent).

*Brokers*

- 2 (1) In relation to a transaction carried out on behalf of a non-resident company, a broker is regarded as an agent of independent status acting in the course of his business if, and only if, the following conditions are met.

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- (2) The conditions are—
- (a) that at the time of the transaction he is carrying on the business of a broker;
  - (b) that the transaction is carried out by him in the ordinary course of that business;
  - (c) that the remuneration he receives in respect of the transaction for the provision of the services of a broker to the non-resident company is not less than is customary for that class of business; and
  - (d) that he does not fall to be treated as a permanent establishment of the non-resident company in relation to any other transaction carried out in the same accounting period.

### *Investment managers*

- 3 (1) In relation to an investment transaction carried out on behalf of a non-resident company by a person providing investment management services (an “investment manager”), the investment manager is regarded as an agent of independent status acting in the ordinary course of his business if, and only if, the following conditions are met.
- (2) The conditions are—
- (a) that at the time of the transaction he is carrying on a business of providing investment management services;
  - (b) that the transaction is carried out in the ordinary course of that business;
  - (c) that he acts on behalf of the non-resident company in relation to the transaction in an independent capacity;
  - (d) that the requirements of the 20% rule are met (see paragraph 4);
  - (e) that the remuneration he receives in respect of the transaction for the provision to the non-resident company of investment management services is not less than is customary for that class of business; and
  - (f) that he does not fall to be treated as a permanent establishment of the company in relation to any other transaction carried out in the same accounting period.
- (3) In sub-paragraph (1) “investment transaction” means—
- (a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,
  - (b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and
  - (c) such other transactions as the Treasury may by regulations designate for the purposes of this Schedule.

Regulations for the purposes of paragraph (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

- (4) For the purposes of sub-paragraph (3) a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

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*Investment managers: the 20% rule*

- 4 (1) The requirements of the 20% rule are—
- (a) that in relation to a qualifying period (see sub-paragraph (2)) it has been or is the intention of the investment manager and the persons connected with him that the company's relevant excluded income (see sub-paragraph (3)) should, as to at least 80%, consist of amounts to which neither he nor any such person has a beneficial entitlement (see sub-paragraph (4)), and
  - (b) to the extent that there is a failure to fulfil that intention, that failure—
    - (i) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with him, and
    - (ii) does not result from a failure by him or any of those persons to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (2) A "qualifying period" means—
- (a) the accounting period in which the transaction in question is carried out, or
  - (b) a period of not more than five years comprising two or more complete accounting periods including that one.
- (3) The "relevant excluded income" of a non-resident company for a qualifying period is the aggregate of such of the chargeable profits of the company for the accounting periods comprised in the qualifying period as derive from transactions carried out by the investment manager on the company's behalf in relation to which the manager does not (apart from the requirements of the 20% rule) fall to be treated as a permanent establishment of the company.
- (4) A person has a "beneficial entitlement" to relevant excluded income if he has or may acquire a beneficial entitlement by virtue of—
- (a) an interest of his (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of that income is represented, or
  - (b) an interest of his in or other rights in relation to the non-resident company,
- that is or would be attributable to that income.
- (5) In the case of a transaction in relation to which the conditions in paragraph 3 are met except for the requirements of the 20% rule, this Schedule has effect as if the requirements of that rule were met in relation to so much of the chargeable profits of the non-resident company deriving from the transaction as do not represent relevant excluded income of the company to which the investment manager or a person connected with him has or has had any beneficial entitlement.

*Investment managers: application of 20% rule to collective investment schemes*

- 5 (1) This paragraph applies where amounts arise or accrue to the non-resident company as a participant in a collective investment scheme.

- (2) The requirements of the 20% rule need not be met in relation to a transaction carried out for the purposes of the scheme if the scheme is such that, if the following assumptions applied—
- (a) that all transactions carried out for the purposes of the scheme were carried out on behalf of a company constituted for the purposes of the scheme and resident outside the United Kingdom, and
  - (b) that the participants did not have any rights in respect of the amounts arising or accruing in respect of those transactions other than the rights that, if they held shares in the company on whose behalf the transactions are assumed to be carried out, would be their rights as shareholders,
- the assumed company would not, in relation to the accounting period in which the transaction was carried out, be regarded for tax purposes as carrying on a trade in the United Kingdom.
- (3) Where on those assumptions the assumed company would be regarded for tax purposes as carrying on a trade in the United Kingdom, paragraph 4 has effect with the following modifications in relation to a transaction carried out for the purposes of the scheme—
- (a) for references to the non-resident company substitute references to the assumed company;
  - (b) for references to the non-resident company's relevant excluded income substitute references to the aggregate of the amounts that would for accounting periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions carried out by the investment manager and assumed to be carried out on behalf of the company.
- (4) In this paragraph "collective investment scheme" has the meaning given by section 235 of the Financial Services and Markets Act 2000 (c. 8), and "participant", in relation to such a scheme, shall be construed in accordance with that section.

#### *Lloyd's agents*

- 6 (1) Where a non-resident company is a member of Lloyd's and the transaction is carried out in the course of the company's underwriting business, a person who acts on behalf of the company in relation to the transaction is regarded as an independent agent acting in the ordinary course of his business if he acts as members' agent or as managing agent of the syndicate in question.
- (2) In sub-paragraph (1)—
- (a) the reference to the non-resident company being a member of Lloyd's is to its being a corporate member within the meaning of Chapter 5 of Part 4 of the Finance Act 1994 (c. 9); and
  - (b) the references to a members' agent and to a managing agent shall be construed in accordance with section 230 of that Act.

#### *General supplementary provisions*

- 7 (1) For the purposes of this Schedule a person is regarded as carrying out a transaction on behalf of another where he undertakes the transaction himself, whether on behalf of or to the account of that other, and also where he gives instructions for it to be so carried out by another.

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- (2) For the purposes of this Schedule a person is regarded as acting in an independent capacity on behalf of a company only if the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses that deal with each other at arm's length.
- (3) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.
- (4) This Schedule has effect in the case of a person who acts as a broker or provides investment services as part only of a business as if that part were a separate business.

## SCHEDULE 3

Section 8

## PERMANENT ESTABLISHMENT ETC: CONSEQUENTIAL AMENDMENTS

*Taxes Act 1988*

- 1 (1) The Taxes Act 1988 is amended as follows.
- (2) In section 606 (persons responsible in case of default of administrator of retirement benefits scheme), for subsection (13) substitute—
- “(13) References in this section to the employer include, where the employer is not resident in the United Kingdom, any person who is treated as UK representative of the employer under section 126 of the Finance Act 1995 or section 3 of the Finance Act 2003.”.
- (3) In section 806L (carry forward or carry back of unrelieved foreign tax), for subsection (7) substitute—
- “(7) In this section—
- “overseas permanent establishment” means a permanent establishment through which a company carries on a trade in a territory outside the United Kingdom; and
- “permanent establishment”—
- (a) if there are arrangements having effect under section 788 in relation to the territory concerned that define the expression, has the meaning given by those arrangements, and
- (b) if there are no such arrangements, or if they do not define the expression, has the meaning given by section 1 of the Finance Act 2003.”.
- (4) In Schedule 15 (qualifying policies), in paragraph 24 (policies issued by non-resident companies), in sub-paragraph (3)(b) (twice) and (c) for “branch” substitute “permanent establishment”.

*Taxation of Chargeable Gains Act 1992*

- 2 (1) The Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In section 10 (non-resident with United Kingdom branch or agency)—
- (a) omit subsection (3); and

- (b) in subsection (4), omit “or corporation tax”.
- (3) In sections 13(5)(d), 25(7)(b), 106(10), 139(1A), 140A(2), 159(4)(b), 171(1A), 175(2AA), 179(1A), 190(2)(b) and (3)(b), 199(6)(b) and 228(6)(b), and in Schedule 7A, paragraph 1(3A), for “10(3)” substitute “10B”.

*Finance Act 1993*

- 3 (1) In sections 93 and 93A of the Finance Act 1993 (use of currency other than sterling) for “branch”, wherever occurring, substitute “permanent establishment”.
- (2) The provisions in which the above amendment is to be made are—
  - (a) in section 93, subsection (2)(b) and the definition of “return of accounts” in subsection (7) (twice);
  - (b) in section 93A, subsections (2)(b), (3)(b) and (7)(b).

*Finance Act 1995*

- 4 (1) Section 126 of the Finance Act 1995 (c. 4) (UK representatives of non-residents) is amended as follows.
- (2) In subsection (1), omit the words “, corporation tax”.
- (3) In subsection (2)—
  - (a) after paragraph (b) insert “and”;
  - (b) in paragraph (c) omit the words from “or fall” to “non-resident”; and
  - (c) omit sub-paragraph (d) and the word “and” preceding it.
- (4) For subsection (8) substitute—
  - “(8) In this section, “branch or agency” means any factorship, agency, receivership, branch or management.”.
- (5) In subsection (9), omit paragraph (b) and the word “and” preceding it.
- (6) After subsection (9) insert—
  - “(10) This section does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.”.
- 5 (1) Section 127 of the Finance Act 1995 (persons not treated as UK representatives) is amended as follows.
- (2) In subsection (1) for “(a) to (d)” substitute “(a) to (c)”.
- (3) In subsection (5)(b) omit “or 129”.
- (4) In subsection (17), in the definition of “branch or agency” for “the Management Act” substitute “section 126 above”.
- (5) In subsection (19) omit paragraph (b) and the word “and” preceding it.
- 6 In section 128 of the Finance Act 1995 (limit on income chargeable on non-residents: income tax), after subsection (11) insert—
  - “(12) This section does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.”.
- 7 Omit section 129 of the Finance Act 1995 (limit on income chargeable on non-residents: corporation tax).

*Finance Act 1996*

- 8 In Schedule 15 to the Finance Act 1996 (c. 8) (loan relationships: transitional provisions), in paragraph 8(6)(c)—
- (a) for “10(3)” substitute “10B”, and
  - (b) for “on a disposal by a branch or agency” substitute “attributable to a permanent establishment”.

*Finance Act 2000*

- 9 In Schedule 15 to the Finance Act 2000 (c. 17) (corporate venturing scheme), in paragraph 79(5) (gain accruing on chargeable event), for “section 10” substitute “section 10B”.

## SCHEDULE 4

## REPEALS

( ) REFERENCES TO BRANCH OR AGENCY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 118(1), the definitions of “branch or agency” and “branch or agent”.
Income and Corporation Taxes Act 1988 (c. 1)	Section 95(1A)(e).
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 10— (a) subsection (3), and (b) in subsection (4), the words “or corporation tax”.
Finance Act 1994 (c. 9)	In section 219(4A), the words “11(2)(a) or”.
Finance Act 1995 (c. 4)	In section 126— (a) in subsection (1), the words “, corporation tax”; (b) in subsection (2)(c), the words from “or fall” to “non-resident”; (c) in subsection (2), paragraph (d) and the word “and” preceding it; (d) in subsection (9), paragraph (b) and the word “and” preceding it.
	In section 127— (a) in subsection (5)(b), the words “ or 129”; (b) in subsection (19), paragraph (b) and the word “and” preceding it.
	Section 129.
Finance (No. 2) Act 1997 (c. 58)	Section 24(3)(e).

These repeals have effect in relation to accounting periods beginning on or after 1st January 2003.

