

Bill 7

CONTENTS

PART 1

UK REPRESENTATIVES OF NON-UK RESIDENTS

1 UK representatives of non-UK residents [j4320]

- Schedule 1 – UK Representatives of non-UK residents [j2-UKreps(v3)]
 - Part 1 – New Chapters 1A and 1B of Part 14 of ITA 2007
 - Part 2 – New Part 7A of TCGA 1992
 - Part 3 – Minor and consequential amendments
- Schedule 2 – Repeals and revocations [J4-UKreps]
 - Part 1 – Repeals (UKreps)

PART 1

UK REPRESENTATIVES OF NON-UK RESIDENTS

1 UK representatives of non-UK residents [j4320]

Schedule 1 (which contains provision to be inserted into ITA 2007 and TCGA 1992 in relation to UK representatives of non-UK residents) has effect.

[Origin: Drafting.](#)

SCHEDULES

SCHEDULE 1

Section 1

UK REPRESENTATIVES OF NON-UK RESIDENTS [j2-UKREPS(v3)]

PART 1

NEW CHAPTERS 1A AND 1B OF PART 14 OF ITA 2007

1 After section 828 of the Income Tax Act 2007 (c. 3) insert –

“CHAPTER 1A

UK REPRESENTATIVE OF NON-UK RESIDENT

Introduction

828A Overview

- (1) This Chapter provides for a branch or agency to be treated for the purposes of this Chapter as the UK representative of a non-UK resident in respect of certain amounts chargeable to income tax.
- (2) For obligations and liabilities in relation to income tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 1B.”

Origin: Drafting.

2 After section 828A insert –

“828B Income tax chargeable on company’s income: application

This Chapter does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.”

Origin: FA 1995 s.126(10).

3 After section 828B insert –

“Branches and agencies

828C Branch or agency treated as UK representative

- (1) This section applies if a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom.

- (2) For the purposes of this Chapter the branch or agency is the UK representative of the non-UK resident in relation to –
 - (a) the amount of any income from the trade, profession or vocation that arises (directly or indirectly) through or from the branch or agency, and
 - (b) the amount of any income from property or rights which are used by, or held by or for, the branch or agency.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 1B in relation to an amount within that subsection.

Rule 1

The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

Rule 2

The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

Rule 3

If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 828D.
- (5) This section needs to be read with sections 828E to 828I (which provide for descriptions of persons who are not to be regarded as the UK representative of a non-UK resident for the purposes of this Chapter if certain conditions are met).”

Origin: FA 1995 s.126(2), (3), (4), (5); drafting.

4 After section 828C insert –

“828D Trade or profession carried on in partnership

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 828C and Chapter 1B, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if –
 - (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
 - (b) any member of the partnership is resident in the United Kingdom.

- (4) The notional trade or profession is, for the purposes of section 828C and Chapter 1B, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident’s share in the partnership’s profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

Origin: FA 1995 s.126 (6), (7), (7A).

- 5 After section 828D insert –

“Persons who are not UK representatives

828E Agents

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an agent in the United Kingdom.
- (2) The agent is not the UK representative of the non-UK resident for the purposes of this Chapter in relation to an amount within section 828C(2) arising to the non-UK resident from –
 - (a) so much of the non-UK resident’s business as relates to disregarded transactions, or
 - (b) property or rights which, as a result of disregarded transactions, are used by, or held by or for, the agent on behalf of the non-UK resident.
- (3) “Disregarded transactions” are transactions –
 - (a) carried out through the agent in the United Kingdom, and
 - (b) in respect of which the agent does not act in the course of carrying on a regular agency for the non-UK resident.”

Origin: FA 1995 s.127(1), (15).

- 6 After section 828E insert –

“828F Brokers

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) The broker is not the UK representative of the non-UK resident for the purposes of this Chapter in relation to an amount within section 828C(2) if –
 - (a) the amount is included in the taxable amounts in relation to a transaction carried out through the broker in the United Kingdom on behalf of the non-UK resident, and
 - (b) the independent broker conditions are met in relation to the transaction (see section 828J).
- (3) For the purposes of this section the “taxable amounts”, in relation to a transaction carried out through a broker in the United Kingdom on behalf of a non-UK resident, are amounts that arise to the non-UK resident from –
 - (a) so much of the non-UK resident’s business carried on through the broker as relates to the transaction, or

- (b) property or rights which, as a result of the transaction, are used by, or held by or for, the broker on behalf of the non-UK resident.”

Origin: FA 1995 s.127(1), (2), (15).

7 After section 828F insert –

“828G Investment managers

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (2) The investment manager is not the UK representative of the non-UK resident for the purposes of this Chapter in relation to an amount within section 828C(2) if –
 - (a) the amount is included in the taxable amounts in relation to an investment transaction carried out through the investment manager in the United Kingdom on behalf of the non-UK resident, and
 - (b) the independent investment manager conditions are met in relation to the investment transaction (see section 828K).
- (3) For the purposes of this section the “taxable amounts”, in relation to an investment transaction carried out through an investment manager in the United Kingdom on behalf of a non-UK resident, are amounts that arise to the non-UK resident from –
 - (a) so much of the non-UK resident’s business carried on through the investment manager as relates to the transaction, or
 - (b) property or rights which, as a result of the transaction, are used by, or held by or for, the investment manager on behalf of the non-UK resident.”

Origin: FA 1995 s.127(1), (3), (15).

8 After section 828G insert –

“828H Persons acting under alternative finance arrangements

- (1) This section applies if an amount within section 828C(2) arising to a non-UK resident consists of –
 - (a) alternative finance return, or
 - (b) profit share return.
- (2) Neither of the following is the UK representative of the non-UK resident for the purposes of this Chapter in relation to the amount –
 - (a) the other party to relevant arrangements,
 - (b) any other person acting for the non-UK resident in relation to relevant arrangements.
- (3) “Relevant arrangements” means –
 - (a) in relation to an amount consisting of alternative finance return, arrangements within section 47, 47A or 48A of FA 2005, and

(b) in relation to an amount consisting of profit share return, arrangements within section 49A of that Act.

(4) In this section –

“alternative finance return” has the meaning given by sections 47(6) and (7), 47A(5) and 48B(1) of FA 2005, and

“profit share return” has the meaning given by section 49A(2) of that Act.”

Origin: FA 1995 s.127(1); drafting.

9 After section 828H insert –

“828I Lloyd’s agents

(1) This section applies if –

(a) a non-UK resident (“X”) is a member of Lloyd’s, and

(b) an amount within section 828C(2) arises to X from X’s underwriting business.

(2) A person who has been X’s members’ agent or the managing agent of the syndicate in question is not the UK representative of X for the purposes of this Chapter in relation to the amount or to matters connected with the amount.

(3) For the purposes of this section –

(a) X is a member of Lloyd’s if X is a member within the meaning of Chapter 3 of Part 2 of FA 1993, and

(b) “members’ agent” and “managing agent” are to be construed in accordance with section 184 of that Act.”

Origin: FA 1995 s.127(1), (16).

10 After section 828I insert –

“The independent broker conditions

828J The independent broker conditions

(1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if conditions A to D are met.

(2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.

(3) Condition B is that the transaction is carried out in the ordinary course of that business.

(4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.

(5) Condition D is that the broker does not fall (apart from this subsection) to be treated, for the purposes of this Chapter or of Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that –

- (a) are not included in the taxable amounts for the purposes of section 828F, and
- (b) are chargeable to tax for the same tax year as those taxable amounts.”

Origin: FA 1995 s.127(2).

11 After section 828J insert –

“The independent investment manager conditions

828K The independent investment manager conditions

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if conditions A to F are met.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm’s length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 828L).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.
- (7) [Condition F is that the investment manager does not fall (apart from this subsection) to be treated, for the purposes of this Chapter or of Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that –
 - (a) are not included in the taxable amounts for the purposes of section 828G, and
 - (b) are chargeable to tax for the same tax year as those taxable amounts.]”

Origin: FA 1995 s.127(3), (18).

12 After section 828K insert –

“828L Investment managers: the 20% rule

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons

connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.

- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure –
- (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
 - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.”

Origin: FA 1995 s.127(4).

13 After section 828L insert –

“828M Meaning of “qualifying period”, “relevant disregarded income” and “beneficial entitlement”

- (1) This section applies for the purposes of this Chapter.
- (2) A “qualifying period” means –
 - (a) the tax year in which the taxable amounts for the purposes of section 828G are chargeable to tax, or
 - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) The “relevant disregarded income” of the non-UK resident for a qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from investment transactions –
 - (a) carried out by the investment manager on the non-UK resident's behalf, and
 - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- (4) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).
- (5) The interests and rights referred to in subsection (4) are –
 - (a) an interest (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 the relevant disregarded income is represented, or
 - (b) an interest in, or other rights in relation to, the non-UK resident.”

Origin: FA 1995 s.127(5), (6), (7).

14 After section 828M insert –

“828N Treatment of transactions where 20% rule not met

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction, but only in relation to so much of the taxable amounts as does not represent an amount –
 - (a) which is relevant disregarded income of the non-UK resident, and
 - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.
- (3) In subsection (2) the “taxable amounts” are the taxable amounts for the purposes of section 828G.”

Origin: FA 1995 s.127(8).

15 After section 828N insert –

“828O Application of 20% rule to collective investment schemes

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme.
- (3) In applying this section make the following assumptions –
 - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is –
 - (i) constituted for the purposes of the scheme, and
 - (ii) non-UK resident, and
 - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the tax year in which the taxable amounts are chargeable to tax, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would so be regarded for tax purposes, sections 828L to 828N have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are –
 - (a) for references to the non-UK resident substitute references to the assumed company,

- (b) for references to the non-UK resident’s relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for tax years comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions –
- (i) carried out by the investment manager, and
 - (ii) assumed to be carried out on behalf of the company.

- (7) In this section –
- “collective investment scheme” has the meaning given by section 235 of FISMA 2000,
- “participant”, in relation to a collective investment scheme, is construed in accordance with that section, and
- “the taxable amounts” are the taxable amounts for the purposes of section 828G.”

Origin: FA 1995 s.127(9), (10), (11), (17).

- 16 After section 828O insert –

“Supplementary

828P Supplementary provision

- (1) For the purposes of this Chapter a person is to be regarded as carrying out a transaction on behalf of another if the person –
- (a) undertakes the transaction, whether on behalf of or to the account of the other, or
 - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.”

Origin: FA 1995 s.127(14), (15).

- 17 After section 828P insert –

“828Q Interpretation of Chapter

- In this Chapter –
- “branch or agency” means any factorship, agency, receivership, branch or management, and
- “investment manager” and “investment transaction” have the same meanings as in Chapter 1 (see section 827).”

Origin: FA 1995 s.126(8), s.127(12), (13); drafting.

18 After section 828Q insert –

“CHAPTER 1B

INCOME TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

828R Introduction

- (1) This Chapter applies to the enactments relating to income tax so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 828S in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident for the purposes of Chapter 1A.
- (3) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.”

Origin: FA 1995 Sch.23 para.1(1), (2); drafting.

19 After section 828R insert –

“828S Obligations and liabilities of UK representative

- (1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.
- (2) Subsection (3) applies if –
 - (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
 - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident’s UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability –
 - (a) of the non-UK resident (in a case within subsection (2)(a)), or
 - (b) of the UK representative (in a case within subsection (2)(b)),is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident’s own, by acts or omissions of the non-UK resident’s UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 828T and 828U.”

Origin: FA 1995 Sch.23 paras.1(1), 2.

20 After section 828S insert –

“828T Exceptions: notices and information

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 828S unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 828S unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 828S in a case where the representative is X’s independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative’s knowledge and belief after taking all reasonable steps to obtain the necessary information.
- (6) An obligation of X to provide information is not discharged by virtue of section 828S in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 828S by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 828S unless –
 - (a) the mistake is the result of an act or omission of X, or
 - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioner’s for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs.”

Origin: FA 1995 Sch.23 paras.3, 4(1), (2), (3).

21 After section 828T insert –

“828U Exceptions: criminal offences and penalties etc

- (1) A person is not by virtue of section 828S liable to be proceeded against for a criminal offence unless the person –
 - (a) committed the offence, or
 - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 828S liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.

- (3) Condition A is that the act or omission is not—
 - (a) an act or omission of the independent agent, or
 - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in subsection (3) of section 828V (after being indemnified for any other liabilities under that section).”

Origin: FA 1995 Sch.23 para.5(1), (2).

22 After section 828U insert—

“828V Indemnities

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 828S.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 828S the agent has discharged or to which the agent is subject.
- (3) The sums are those which—
 - (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
 - (b) are received by the independent agent on behalf of the non-UK resident.”

Origin: FA 1995 Sch.23 para.6.

23 After section 828V insert—

“828W Meaning of “independent agent”

- (1) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (2) For this purpose a person does not act in an independent capacity on behalf of X unless 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.”

Origin: FA 1995 Sch.23 para.7(1), (2).

PART 2

NEW PART 7A OF TCGA 1992

24 After section 271 of the Taxation of Chargeable Gains Act 1992 (c. 12)

insert –

“PART 7A

UK REPRESENTATIVES OF NON-UK RESIDENTS

CHAPTER 1

TREATMENT OF BRANCH OR AGENCY AS UK REPRESENTATIVE OF NON-UK
 RESIDENT

Introduction

271A Overview

- (1) This Chapter provides for a branch or agency to be treated for the purposes of this Chapter as the UK representative of a non-UK resident in respect of certain amounts chargeable to capital gains tax.
- (2) For obligations and liabilities in relation to capital gains tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2.”

[Origin: Drafting.](#)

25 After section 271A insert –

“Branches and agencies

271B Branch or agency treated as UK representative

- (1) This section applies if –
 - (a) a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom, and
 - (b) the branch or agency is to be treated for the purposes of Chapter 1A of Part 14 of ITA 2007 as the UK representative of the non-UK resident in relation to amounts within section 828C(2) of that Act.
- (2) For the purposes of this Chapter the branch or agency is the UK representative of the non-UK resident in relation to amounts which, by reference to the branch or agency, are chargeable to capital gains tax under section 10 above.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2 in relation to an amount within that subsection.

Rule 1

The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

Rule 2

The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

Rule 3

If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 271C.”

Origin: FA 1995 s.126(2), (3), (4), (5); drafting.

26 After section 271B insert –

“271C Trade or profession carried on in partnership

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 271B and Chapter 2, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if –
- (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
 - (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 271B and Chapter 2, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident’s share in the partnership’s profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

Origin: FA 1995 s.126 (6), (7), (7A).

27 After section 271C insert –

“271D Interpretation of Chapter

In this Chapter –

“branch or agency” means any factorship, agency, receivership, branch or management, and

“non-UK resident” means a person who is not resident in the United Kingdom.”

Origin: FA 1995 s.126(1), (8).

28 After section 271D insert –

“CHAPTER 2

CAPITAL GAINS TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK
 REPRESENTATIVES

“271E Introduction

- (1) This Chapter applies to the enactments contained in –
 - (a) this Act,
 - (b) the Tax Acts, and
 - (c) subordinate legislation made under this Act or the Tax Acts, so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 271F in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident for the purposes of Chapter 1.
- (3) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

Origin: FA 1995 Sch.23 para.1(1), (2).

29 After section 271E insert –

“271F Obligations and liabilities of UK representative

- (1) The obligations and liabilities of the non-UK resident are, for the purposes of the enactments to which this Chapter applies, to be treated as if they were also the obligations and liabilities of the UK representative.
- (2) Subsection (3) applies if –
 - (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
 - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident’s UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability –
 - (a) of the non-UK resident (in a case within subsection (2)(a)), or
 - (b) of the UK representative (in a case within subsection (2)(b)), is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident’s own, by acts or omissions of the non-UK resident’s UK representative in the discharge of obligations or liabilities imposed on the representative by this section.
- (5) This section is subject to sections 271G and 271H.”

Origin: FA 1995 Sch.23 para.1(1), 2.

30 After section 271F insert –

“271G Exceptions: notices and information

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 271F unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 271F unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 271F in a case where the representative is X’s independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative’s knowledge and belief after taking all reasonable steps to obtain the necessary information.
- (6) An obligation of X to provide information is not discharged by virtue of section 271F in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 271F by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 271F unless –
 - (a) the mistake is the result of an act or omission of X, or
 - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioner’s for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs.”

Origin: FA 1995 Sch.23 paras.3, 4(1), (2), (3).

31 After section 271G insert –

“271H Exceptions: criminal offences and penalties etc

- (1) A person is not by virtue of section 271F liable to be proceeded against for a criminal offence unless the person –
 - (a) committed the offence, or
 - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 271F liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.

- (3) Condition A is that the act or omission is not—
 - (a) an act or omission of the independent agent, or
 - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in subsection (3) of section 271I (after being indemnified for any other liabilities under that section).”

Origin: FA 1995 Sch.23 para.5(1), (2).

32 After section 271H insert—

“271I Indemnities

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 271F.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 271F the agent has discharged or to which the agent is subject.
- (3) The sums are those which—
 - (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
 - (b) are received by the independent agent on behalf of the non-UK resident.”

Origin: FA 1995 Sch.23 para.6.

33 After section 271I insert—

“271J Meaning of “non-UK resident” and “independent agent”

- (1) In this Chapter “non-UK resident” means a person who is not resident in the United Kingdom.
- (2) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (3) For this purpose a person does not act in an independent capacity on behalf of X unless 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.”

Origin: FA 1995 s.126(1), Sch.23 para.7(1), (2).

PART 3

MINOR AND CONSEQUENTIAL AMENDMENTS

Finance Act 1995 (c. 4)

- 34 The Finance Act 1995 is amended as follows.
- 35 Omit section 126 (UK representatives of non-residents).
- 36 Omit section 127 (persons not treated as UK representatives).
- 37 Omit Schedule 23 (obligations etc imposed on UK representatives).

Income Tax Act 2007 (c. 3)

- 38 The Income Tax Act 2007 is amended as follows.
- 39 In section 813(2) (meaning of “disregarded income”) for “section 126 of, and Schedule 23 to, FA 1995 (UK representatives of non-UK residents)” substitute “Chapter 1A”.
- 40 (1) Section 817 (independent broker conditions) is amended as follows.
- (2) In subsection (3) omit “by the broker”.
- (3) In subsection (5) for “section 126 of, and Schedule 23 to, FA 1995” substitute “Chapter 1A of this Part, or of Chapter 1 of Part 7A of TCGA 1992,”.

SCHEDULE 2

Section {999998}

REPEALS AND REVOCATIONS [J4-UKREPS]

PART 1

REPEALS (UKREPS)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 1995	Sections 126 and 127. Schedule 23.
Income Tax Act 2007	In section 817(3), the words “by the broker”.