

Income Tax and Capital Gains Tax: Bill 7
UK representatives
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Clause 1 and Schedule 1: UK representatives of non-UK residents

Overview

1. This clause and Schedule provide for the rewriting of sections 126 and 127 of, and Schedule 23 to, FA 1995 providing for the liabilities and obligations of a person who in accordance with those provisions is a UK representative of a non-UK resident in respect of the assessment, collection and recovery of income tax and capital gains tax chargeable on the non-UK resident.

2. Those provisions of FA 1995 are examples of administration provisions which were not rewritten in previous Rewrite Acts as they were expected to be included in a new Management Act, for which HMRC had established a separate project. Following the decision not to proceed with the separate project, we are of the view that these provisions should not be left orphaned in FA 1995.

3. These provisions could, therefore, be rewritten for insertion in TMA, but we believe it is more helpful to users to rewrite them separately for income tax purposes in ITA and for capital gains tax purposes in TCGA. The equivalent provisions for corporation tax purposes in section 150 of FA 2003 are proposed to be rewritten in Bill 6 (see Committee paper CC/SC (08) 10).

4. The new Chapter 1A inserted in Part 14 of ITA accordingly rewrites sections 126 and 127 of FA 1995, so far as those sections determine whether a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of that non-UK resident in relation to the non-UK resident's income from the trade, profession or vocation so carried on.

5. The new Chapter 1A is brigaded with Chapter 1 of Part 14 of ITA (Limits on liability to income tax of non-UK residents) which is also based, in part, on section 127 of FA 1995.

6. The new Chapter 1B inserted in Part 14 of ITA rewrites Schedule 23 to FA 1995 so far as that Schedule imposes obligations on the UK representative in respect of the assessment, collection and recovery of income tax chargeable on the non-UK resident.

7. Chapter 1 of the new Part 7A inserted in TCGA is concerned with a person who, in accordance with Chapter 1A of Part 14 of ITA, is the UK representative of a non-UK resident in relation to the income of the non-UK resident from a trade, profession or vocation carried on through a branch or agency in the United Kingdom. It provides that the same person is also the UK representative of the non-UK resident in relation to chargeable gains accruing to the non-UK resident on the disposal of such assets referred to in section 10 of TCGA as relate to the trade, profession or vocation so carried on or to the branch or agency.

8. Chapter 2 of the new Part 7A inserted in TCGA rewrites Schedule 23 to FA 1995 so far as that Schedule imposes obligations on the UK representative in

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respect of the assessment, collection and recovery of capital gains tax chargeable on the non-UK resident under section 10 of TCGA.

Q1. We welcome comments on the proposal to rewrite these provisions of FA 1995 in ITA so far as they relate to income tax and in TCGA so far as they relate to capital gains tax.

9. The commentary uses a number of abbreviations. They are listed below.

Bill 5	the draft Corporation Tax Bill published on 22 February 2008 (and references to numbered Parts, Chapters and clauses of, and Schedules to and paragraphs of Schedules to, Bill 5 are to the Parts, Chapters, clauses, Schedules and paragraphs so numbered in that draft)
CRCA	the Commissioners for Revenue and Customs Act 2005
FA 1995	Finance Act 1995 (and similarly for other Finance Acts)
FB 2008	Finance Bill 2008 (and references to numbered Parts, Chapters, and clauses of, and Schedules to and paragraphs of Schedules to, FB 2008 are to the Parts, Chapters, clauses, Schedules and paragraphs so numbered in FB 2008 as published on 27 March 2008)
ICTA	the Income and Corporation Taxes Act 1988
ITA	the Income Tax Act 2007
TCGA	the Taxation of Chargeable Gains Act 1992
TMA	the Taxes Management Act 1970.

Clause 1: UK representatives of non-UK residents

10. This clause introduces Schedule 1. It is new.

Schedule 1: UK representatives of non-UK residents

Overview

11. This Schedule is divided into three Parts containing respectively amendments to ITA, amendments to TCGA and minor and consequential amendments. The minor and consequential amendments in Part 3 of this Schedule may be removed to the Schedule to Bill 7 containing minor and consequential amendments.

12. The following explanatory notes are written by reference to the Parts, Chapters and sections of ITA and TCGA proposed to be inserted or amended by this Schedule.

Part 1: New Chapters 1A and 1B of Part 14 of ITA 2007

Chapter 1A: UK representative of non-UK resident

Overview

13. This new Chapter determines the extent to which and the period for which a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to the non-UK resident's income from the trade, profession or vocation.

14. This Chapter does not apply if the non-UK resident is a company, except to the extent that the income accrues to the non-UK resident company in the capacity of trustee.

Section 828A: Overview

15. This section introduces this Chapter and provides a signpost to Chapter 1B. It is new.

Section 828B: Income tax chargeable on company's income: application

16. This section provides that this Chapter does not apply to income tax chargeable on a company otherwise than as a trustee. It is based on section 126(10) of FA 1995.

17. If a non-UK resident company trades in the United Kingdom through a permanent establishment here, it is chargeable to corporation tax on its "chargeable profits". Section 11(2) of ICTA defines "chargeable profits" as the trading income arising directly or indirectly through or from the permanent establishment and the other income and chargeable gains referred to in section 11(2A) of ICTA attributable to the permanent establishment in accordance with section 11AA of ICTA.

18. Sections 11(2) and (2A) and 11AA of ICTA are rewritten in Chapter 4 of Part 2 of Bill 5. Section 148 of, and Schedule 26 to, FA 2003, which determine what constitutes a permanent establishment of a company, are proposed to be rewritten in Bill 6, together with section 150 of that Act, which imposes obligations and liabilities on a permanent establishment in the United Kingdom as the UK representative of the non-UK resident company in relation to the chargeable profits attributable to the permanent establishment. See Committee paper CC/SC (08) 10.

19. If a non-UK resident company is chargeable to tax in respect of any other income from a United Kingdom source, it is charged to income tax and its liability is limited in accordance with Chapter 1 of Part 14 of ITA. The extent to which the non-UK resident company is chargeable to tax in respect of such income may be limited by the terms of any applicable double taxation agreement. But in any event the non-UK resident company will not have a UK representative in relation to any of that income to which it is beneficially entitled.

Section 828C: Branch or agency treated as UK representative

20. This section provides that a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the non-UK resident's UK representative in relation to the amount of any income of the non-UK resident from the trade, profession or vocation arising through or from the branch or agency. It is based on section 126(2), (3), (4) and (5) of FA 1995.

21. *Subsection (2)* sets out the amounts of income of a non-UK resident in relation to which a branch or agent in the United Kingdom through which the non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident.

22. If a branch or agency in the United Kingdom of a non-UK resident ceases to be the non-UK resident's branch or agency, the branch or agency nevertheless continues thereafter to be the UK representative of the non-UK resident in relation to the amounts of income of the non-UK resident mentioned in subsection (2). See *Rule 2 in subsection (3)*.

23. *Subsection (5)* introduces sections 828E to 828I which provide exceptions to the general rule in subsection (2) that a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to the amounts of income mentioned in subsection (2).

Section 828D: Trade or profession carried on in partnership

24. This section contains special rules to deal with the case where the non-UK resident carries on a trade or profession in partnership. It is based on section 126(6), (7) and (7A) of FA 1995.

25. *Subsections (1) and (2)* provide that, if a partnership carries on a trade or profession in the United Kingdom through a branch or agency, the branch or agency is treated as the UK representative of any non-UK resident partner in relation to that partner's share of the UK profits.

26. *Subsections (3) and (4)* provide that section 828C also applies if a partnership which includes both UK resident and non-UK resident members carries on a trade or profession in the United Kingdom, whether it does so itself or through a branch or agency.

27. In this case, the partnership itself is treated as the UK representative of the non-UK resident partner in relation to that partner's share of the UK profits, notwithstanding that there may also be a branch or agency which is the non-UK resident partner's UK representative in respect of those profits. All the partners are as a consequence jointly liable for tax on the non-UK resident partner's share of the UK profits.

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28. Section 126(7A)(b) of FA 1995 has not been rewritten in *subsection (5)*. In defining “the notional or deemed trade or profession” for the purposes of section 127(6) and (7), section 126(7A) refers to (a) the notional trade from which the non-resident’s share in the partnership’s profits or losses is treated for the purposes of section 852 of ITTOIA as deriving and (b) the deemed trade or profession from which that share is treated for the purposes of section 114 of ICTA as deriving. Section 114 of ICTA is a corporation tax provision. Following the amendment of section 126 of FA 1995 by FA 2003 so that it ceased to apply for corporation tax purposes, reference to section 114 of ICTA is unnecessary.

Section 828E: Agents

29. This section provides that an agent in the United Kingdom who, when carrying out a transaction on behalf of a non-UK resident, does not act in the course of a regular agency for the non-UK resident is not the UK representative of the non-UK resident in respect of income of the non-UK resident arising from or as a result of the transaction. It is based on section 127(1) and (15) of FA 1995.

Section 828F: Brokers

30. This section sets out the circumstances in which and the extent to which a broker in the United Kingdom through whom a non-UK resident carries on business is not the UK representative of the non-UK resident in respect of income of the non-UK resident arising from or as a result of transactions carried out through the broker. It is based on section 127(1), (2) and (15) of FA 1995.

31. *Subsection (2)(b)* provides that the only circumstances in which the broker will not be a UK representative in respect of the income arising from or as a result of such a transaction is if the independent broker conditions in section 828J are met in relation to the transaction. See the commentary on section 828J.

Section 828G: Investment managers

32. This section sets out the circumstances in which and the extent to which an investment manager in the United Kingdom through whom a non-UK resident carries on business is not the UK representative of the non-UK resident in respect of income of the non-UK resident arising from or as a result of transactions carried out through the investment manager. It is based on section 127(1), (3) and (15) of FA 1995.

33. *Subsection (2)* provides that the only circumstances in which the investment manager will not be a UK representative in respect of the income arising from or as a result of such a transaction is if the transaction is an investment transaction and the independent broker conditions in section 828K are met in relation to the transaction. See the commentary on section 828K.

34. “Investment manager” and “investment transaction” have the same meanings as in section 827 (see section 828Q).

Section 828H: Persons acting under alternative finance arrangements

35. This section provides that, if a non-UK resident is party to alternative finance arrangements, neither the counter-party to the arrangements nor any other person acting for the non-UK resident in relation to the arrangements is the UK representative in respect of the alternative finance return or profit share return of the non-UK resident. It is based on section 127(1) of FA 1995.

36. This section cross-refers to provisions of Chapter 5 of Part 2 of FA 2005 which are to be rewritten for corporation tax purposes in Chapter 6 of Part 7 of Bill 5. As explained in the commentary on clause 500 of Bill 5 in the explanatory notes to Bill 5, Bill 5 proposes to dispense with the term “profit share return” in the rewritten clauses.

37. Bill 5 will make consequential amendments to Chapter 5 of Part 2 of FA 2005, which will remain in force for income tax purposes, by removing references to “profit share return” in order to conform that Chapter with the rewritten corporation tax clauses. This will result in section 127(1) of FA 1995 also being consequentially amended. The final version of this new section of ITA will reflect the consequential amendments but for the time being the draft section does not anticipate the proposed amendments.

Section 828I: Lloyd’s agents

38. This section provides that a person in the United Kingdom who acted as the members’ agent of a non-UK resident member of Lloyd’s or as the managing agent of the syndicate of which the non-UK resident was a member is not a UK representative of the non-UK resident in relation to income of the non-UK resident from the non-UK resident’s underwriting business at Lloyd’s. It is based on section 127(1) and (16) of FA 1995.

39. The reference in section 127(16)(a) of FA 1995 to a corporate member of Lloyd’s within the meaning of Chapter 5 of Part 4 of FA 1994 has been omitted. Corporate members of Lloyd’s are chargeable to corporation tax. Following the amendment of section 126 of FA 1995 by FA 2003 so that it ceased to apply for corporation tax purposes, the reference is unnecessary. Similarly the provision in section 127(16)(b) of FA 1995 construing members’ agent and managing agent (in relation to corporate members of Lloyd’s) in accordance with section 230 of FA 1994 has been omitted.

Section 828J: The independent broker conditions

40. This section sets out the conditions to be met if, in accordance with section 828F, a broker in the United Kingdom is not to be the UK representative of a non-UK resident in relation to a transaction carried out on behalf of the non-UK resident by the broker. It is based on section 127(2) of FA 1995.

Section 828K: The independent investment manager conditions

41. This section sets out the conditions to be met if, in accordance with section 828G, an investment manager in the United Kingdom is not to be the UK representative of a non-UK resident in relation to an investment transaction carried out on behalf of the non-UK resident by the investment manager. It is based on section 127(3) and (18) of FA 1995.

42. As announced on 12 March 2008 (see BN28), paragraph 1 of Schedule 16 to FB 2008 omits section 127(3)(f) of FA 1995. The condition in section 127(3)(f) of FA 1995 is for the time being retained in square brackets as *subsection (7)*.

Section 828L: Investment managers: the 20% rule

43. This section sets out the “20% rule” for investment managers. It is based on section 127(4) of FA 1995.

44. The 20% rule has two requirements. The first requirement is that the investment manager and connected persons must intend that any interest that they may have in the non-UK resident’s “relevant disregarded income” will not exceed 20% of that income. The second requirement applies if that intention is not fulfilled. The 20% rule will continue to be met if the only reason why it is not fulfilled is because of matters outside the control of the investment manager or connected persons despite their having taken reasonable steps to mitigate the effect of those matters.

45. In *subsection (2)* the term “relevant disregarded income” has been substituted for the term “relevant excluded income” which appears in section 127(4) of FA 1995. The same substitution was made in section 819(2) of ITA which is also based on section 127(4) of FA 1995. See the commentary on section 828M.

46. This section is in identical terms to section 819(1) to (3) which are also based on section 127(4) of FA 1995, but as mentioned in the commentary on section 828M the definition of “qualifying period” in that section has detailed differences from that which is applied for the purposes of section 819 by section 821 and the definition of “relevant disregarded income” in section 828M is that given by section 821(2) rather than that given by section 821(3).

47. It would be possible to take a different approach and apply section 819 by cross-reference. But that would not in our opinion lead to clarity or ease of use. If section 828K is included, we consider that, for clarity, this section should also be set out in full.

<p>Q2. We welcome comments on the inclusion of section 828L notwithstanding that it is in identical terms to section 819(1) to (3).</p>
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Section 828M: Meaning of “qualifying period”, “relevant disregarded income” and “beneficial entitlement”

48. This clause defines three terms used in section 828L (and also in sections 828N and 828O, which modify the effect of section 828L in certain cases). It is based on section 127(5), (6) and (7) of FA 1995.

49. In *subsection (2)(a)* the definition of “qualifying period” is similar to that in section 820 but cross-reference is made to “the taxable amounts for the purposes of section 828G” in place of “the transaction income” which is defined in section 814(5).

50. Although “the taxable amounts for the purposes of section 828G” and “the transaction income” refer to the same amounts, it would be necessary to modify the definition of “qualifying period” in section 820 if that section were to be applied for the purposes of section 828L.

51. The definition of “relevant disregarded income” in section 821(2) could be applied for the purposes of section 828L, as could the definition of “beneficial entitlement” in section 822.

52. If section 828L is included, we consider that, for clarity, the definition of “qualifying period” should be set out in full rather than by cross-reference, with modification, to section 820 and, if that is done, that the other definitions should also be set out in full, notwithstanding that they are also set out in identical terms in sections 821 and 822.

53. If section 828L were to be omitted and section 819 to be applied by cross-reference, it would be necessary to include a provision making appropriate modifications to sections 820 and 821 as they apply for the purposes of section 819 as applied for the purposes of this Chapter. This would not in our opinion lead to clarity or ease of use.

Q3. We welcome comments on the inclusion of the definitions in full in section 828M rather than applying, with modification, the definitions in sections 820, 821 and 822 by cross-reference.

54. *Subsection (3)* adopts the term “relevant disregarded income” in preference to the term “relevant excluded income” in section 127(5) of FA 1995. Section 821 of ITA, which is also based on section 127(5) of FA 1995, similarly adopts the term “relevant disregarded income”.

55. In *subsection (3)*, a reference to “the total of the non-UK resident’s income” has been substituted for the reference in section 127(5) of FA 1995 to “the aggregate of such of the profits and gains of the non-resident”. As section 127(5)(b) of FA 1995 requires that this aggregate falls to be treated (apart from the 20% rule) as excluded income, the reference to “such of the profits and gains” is limited by the source

legislation to so much of the profits and gains as is income. The substitution, which makes this clear, is the same as the substitution made in section 821(2). Respondents to consultation on that section were in general content with the substitution.

Q4. We welcome comments on the use of “the total of the non-UK resident’s income” in section 828M(3).

56. In *subsection (3)(b)* the words:

in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule

are the same as appear in section 821(4)(b). They have the same effect as the words cross-referring to Chapter 1 of Part 14 of ITA which were substituted in section 127(5)(b) of FA 1995 by ITA.

Section 828N: Treatment of transactions where requirements of 20% rule not met

57. This section provides that, if the 20% rule is not met but all the other independent investment manager conditions are met, only the income in relation to which the 20% rule is not met is not relevant disregarded income. It is based on section 127(8) of FA 1995.

58. If section 828L is included, then we consider that, for clarity, this section should also be set out in full.

59. If section 828L were to be omitted and section 818 to be applied by cross-reference, section 823, as that section applies for the purposes of section 813, could be applied, with appropriate modifications, for the purposes of section 818 as applied for the purposes of this Chapter. This would not in our opinion lead to clarity or ease of use.

Q5. We welcome comments on the inclusion of section 828N rather than applying section 823, with modification, by cross-reference.

Section 828O: Application of 20% rule to collective investment schemes

60. This section modifies the 20% rule where the non-UK resident is a participant in a collective investment scheme. It is based on section 127(9), (10), (11) and (12) of FA 1995.

61. This section applies at the level of the scheme itself, treating it as if it were a non-UK resident company, see *subsection (3)*.

62. A minor drafting change has been made in subsection (3) by substituting reference to a non-UK resident company for the reference in section 127(10)(a) of

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FA 1995 to a company resident outside the United Kingdom. This has been done to clarify the assumption and in this context does not change the effect of the law. The same minor drafting change was made in section 824(3) of ITA.

63. *Subsection (4)* applies to a scheme which, if it was assumed to be a non-UK resident company, would *not* be regarded as carrying on a trade in the United Kingdom. The 20% rule is treated as satisfied in relation to such a scheme.

64. *Subsection (5)* applies to a scheme which, if it was assumed to be a non-UK resident company, would be regarded as carrying on a trade in the United Kingdom. The 20% rule applies to such a scheme with the modifications in *subsection (6)*.

65. If section 828L is included, then we consider that, for clarity, this section should also be set out in full.

66. If section 828L were to be omitted and section 818 to be applied by cross-reference, section 824, as that section applies for the purposes of section 813, could be applied, with appropriate modifications, for the purposes of section 818 as applied for the purposes of this Chapter. This would not in our opinion lead to clarity or ease of use.

<p>Q6. We welcome comments on the inclusion of section 828O rather than applying section 824, with modification, by cross-reference.</p>

Section 828P: Supplementary provision

67. This section explains when a person is to be regarded as carrying out a transaction on behalf of another and makes provision for a person part only of whose business is as a broker or investment manager. It is based on section 127(14) and (15) of FA 1995.

Section 828Q: Interpretation of Chapter

68. This section defines terms used in this Chapter. It is based on sections 126(8) and 127(12) and (13) of FA 1995.

69. “Investment transaction” is defined by cross-reference to section 827 of ITA in which the definition of that term is itself based on section 127(12) of FA 1995.

70. Regulations (SI 2003/2173 and SI 2007/964) have been made under section 127(12)(c) of FA 1995, designating as investment transactions:

- swap contracts settled in cash or foreign currency (other than contracts relating to land, insurance or capital redemption business) and
- transactions in Community tradeable emissions allowances and in transferable units issued pursuant to the Kyoto Protocol.

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71. As announced on 12 March 2008 (see BN28), paragraph 2(1) of Schedule 16 to FA 2008 amends the meaning of “investment transaction” so that in accordance with paragraph 11(4) and (5) of that Schedule investment transactions will be those transactions that are for the time being specified by order made by the Commissioners for Her Majesty’s Revenue and Customs . Transactions so specified will include the transactions currently specified in section 127(12)(a) and (b) or designated under section 127(12)(c) of FA 1995.

72. The provision of section 127(17) of FA 1995 that section 993 of ITA (connected persons) applies for the purposes of section 127 of FA 1995 has not been rewritten. It is not required, as section 1021(1) of ITA applies section 993 for the purposes of ITA unless otherwise indicated.

Chapter 1B: Income tax obligations and liabilities imposed on UK representatives

Overview

73. This new Chapter sets out the obligations and liabilities of a UK representative of a non-UK resident carrying on a trade, profession or vocation through a branch or agency in the United Kingdom in relation to the assessment, collection and recovery of income tax on amounts in respect of which the branch or agency is treated as the UK representative of the non-UK resident under Chapter 1A.

Section 828R: Introduction

74. This section introduces the Chapter. It is based on paragraph 1(1) and (2) of Schedule 23 to FA 1995.

75. *Subsection (1)* refers to this Chapter applying to “the enactments relating to income tax” and *subsection (3)* provides that “enactments” includes subordinate legislation. This is intended to have the same effect as the references in the source legislation to the Tax Acts and subordinate legislation under the Tax Acts, but is focussed more clearly on the income tax context of the Chapter.

Section 828S: Obligations and liabilities of UK representative

76. This section treats the obligations and liabilities of the non-UK resident in respect of the income of the trade, profession or vocation carried on through the branch or agency in the United Kingdom as also being the obligations and liabilities of the UK representative. It is based on paragraphs 1(1) and 2 of Schedule 23 to FA 1995.

Section 828T: Exceptions: notices and information

77. This section provides:

- for the circumstances in which an obligation or liability of a non-UK resident does not attach to the non-UK resident’s UK representative (*subsections (1) and (2)*),

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- that a UK representative which is an independent agent is only required to do what is practicable for it to do in discharging the UK representative's obligations to provide information (*subsections (3) to (5)*),
- that, if the UK representative has only provided so much information as it is practicable for the representative to provide, the non-UK resident is not discharged from the non-UK resident's obligations to provide the whole of the information (*subsection (6)*) and
- for the circumstances in which a non-UK resident is not bound by the mistakes of the UK representative (*subsection (7)*).

It is based on paragraphs 3 and 4(1), (2) and (3) of Schedule 23 to FA 1995.

78. In the definition of "information" in *subsection (8)*, the words "to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs" have been substituted for the words "to the Board or any officer of the Board" in the source legislation. This gives effect to section 50(1) and (2) of CRCA which require references to the terms in the source legislation to be taken as references to the substituted terms.

Section 828U: Exceptions: criminal offences and penalties

79. This section set out the circumstances in which the UK representative is not liable to be proceeded against for a criminal offence. It is based on paragraph 5(1) and (2) of Schedule 23 to FA 1995.

Section 828V: Indemnities

80. This section sets out the circumstances in which an "independent agent" is entitled to be indemnified by the non-UK resident and to retain sums otherwise payable or accountable by the UK representative to the non-UK resident to meet the UK representative's liabilities under this Chapter. It is based on paragraph 6 of Schedule 23 to FA 1995.

Section 828W: Meaning of "independent agent"

81. This clause defines "independent agent". It is based on paragraph 7(1) and (2) of Schedule 23 to FA 1995.

Part 2: New Part 7A of TCGA 1992

Part 7A: UK representatives of non-UK residents

Overview

82. This new Part of TCGA provides, in Chapter 1, for determining who is a UK representative of a non-UK resident for the purposes of capital gains tax and, in Chapter 2, for the obligations and liabilities of such a UK representative.

Chapter 1: Treatment of branch or agency as UK representative of non-UK resident

Overview

83. This new Chapter determines the extent to which and the period for which a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to gains in respect of which the non-UK resident is chargeable to capital gains tax under section 10 of TCGA.

Section 271A: Overview

84. This section introduces this Chapter and provides a signpost to Chapter 2. It is new.

Section 271B: Branch or agency treated as UK representative

85. This section determines who is a UK representative of a non-UK resident in relation to amounts to which the non-UK resident is chargeable to capital gains tax under section 10. It is based on section 126(2), (3), (4) and (5) of FA 1995.

86. The amounts are those chargeable by reference to a branch or agency in the United Kingdom through which the non-UK resident carries on a trade, profession or vocation. The person who is the UK representative in relation to those amounts is the branch or agency that, in accordance with Chapter 1A of Part 14 of ITA, is the UK representative of the non-UK resident in relation to income of the non-UK resident from the trade, profession or vocation arising through the branch or agency. See *subsections (1) and (2)*.

87. As it is a condition of chargeability to capital gains tax under section 10 that the non-UK resident is carrying on a trade, profession or vocation through a branch or agency in the United Kingdom, it must always be the case (if the non-UK resident is to incur chargeability under that section) that there is a person who, under Chapter 1A of Part 14 of ITA, is the non-UK resident's UK representative in relation to the non-UK resident's liabilities and obligations in respect of tax on income arising through the branch or agency.

88. We do not consider that it is possible for a person to be a non-UK resident's UK representative for capital gains tax purposes without also being the non-UK resident's UK representative for income tax purposes.

89. We do not consider that it matters, when considering whether a person is to be treated as a UK representative in relation to amounts of income for income tax purposes, whether there are in fact any amounts of income which are chargeable to income tax. For example, once a non-UK resident is trading in the UK, the non-UK resident is obliged to give notice of chargeability under section 7 of TMA and to make a self assessment return under section 8 of that Act, whether or not that return results in any tax being payable. Both those obligations also fall on the UK representative.

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90. Accordingly, if for any tax year the only amounts chargeable to tax are chargeable gains accruing to the non-UK resident which are chargeable under section 10 of TCGA, the branch or agency to which the gains refer will still be a UK representative in relation to amounts within section 828C(2) of ITA for the purposes of Chapter 1A of Part 14 of that Act. If a person is a UK representative in relation to those amounts, then by virtue of this section that person is a UK representative for the purposes of this Chapter in relation to those chargeable gains.

Q7. We welcome comments on the proposal to provide that a non-UK resident's UK representative for capital gains tax purposes is the same person as is the non-UK resident's UK representative for income tax purposes.

91. If a branch or agency in the United Kingdom of a non-UK resident ceases to be the non-UK resident's branch or agency, the branch or agency nevertheless continues thereafter to be the UK representative of the non-UK resident in relation to the amounts for which the non-UK resident is chargeable mentioned in subsection (2). See *Rule 2 in subsection (3)*.

Section 271C: Trade or profession carried on in partnership

92. This section contains special rules to deal with the case where the non-UK resident carries on a trade or profession in partnership. It is based on section 126(6), (7) and (7A) of FA 1995.

93. *Subsections (1) and (2)* provide that, if a partnership carries on a trade or profession in the United Kingdom through a branch or agency, the branch or agency is treated as the UK representative of any non-UK resident partner in relation to the share of the gains in respect of which that partner is chargeable under section 10.

94. *Subsections (3) and (4)* provide that section 271B also applies if a partnership which includes both UK resident and non-UK resident members carries on a trade or profession in the United Kingdom, whether it does so itself or through a branch or agency.

95. In this case, the partnership itself is treated as the UK representative of the non-UK resident partner in relation to the share of the gains in respect of which that partner is chargeable under section 10. This is so notwithstanding that there may also be a branch or agency which is the non-UK resident partner's UK representative in relation to those chargeable gains. All the partners are as a consequence jointly liable for capital gains tax on the gains of the non-UK resident partner.

96. Section 126(7A)(b) of FA 1995 has not been rewritten in *subsection (5)*. In defining "the notional or deemed trade or profession" for the purposes of section 127(6) and(7), section 126(7A) refers to (a) the notional trade from which the non-resident's share in the partnership's profits or losses is treated for the purposes of

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section 852 of ITTOIA as deriving and (b) the deemed trade or profession from which that share is treated for the purposes of section 114 of ICTA as deriving. Section 114 of ICTA is a corporation tax provision. Following the amendment of section 126 of FA 1995 by FA 2003 so that it ceased to apply for corporation tax purposes, reference to section 114 of ICTA is unnecessary.

Section 271D: Interpretation of Chapter

97. This clause defines two terms for the purposes of this Chapter. It is based on section 126(1) and (8) of FA 1995.

Chapter 2: Capital gains tax obligations and liabilities imposed on UK representatives

Overview

98. This Chapter sets out the obligations and liabilities of a UK representative of a non-UK resident carrying on a trade, profession or vocation through a branch or agency in the United Kingdom in relation to the assessment, collection and recovery of capital gains tax in respect of amounts which are chargeable to tax under section 10 of TCGA by reference to that branch or agency.

Section 271E: Introduction

99. This section introduces the Chapter. It is based on paragraph 1(1) and (2) of Schedule 23 to FA 1995.

Section 271F: Obligations and liabilities of UK representative

100. This section treats the obligations and liabilities of the non-UK resident in respect of amounts chargeable under section 10 as also being the obligations and liabilities of the non-UK resident's UK representative in respect of the branch or agency to which those amounts relate. It is based on paragraphs 1(1) and 2 of Schedule 23 to FA 1995.

Section 271G: Exceptions: notices and information

101. This section provides:

- for the circumstances in which an obligation or liability of a non-UK resident does not attach to the non-UK resident's UK representative (*subsections (1) and (2)*),
- that a UK representative which is an independent agent is only required to do what is practicable for it to do in discharging the UK representative's obligations to provide information (*subsections (3) to (5)*),
- that, if the UK representative has only provided so much information as it is practicable for the representative to provide, the non-UK resident is not

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discharged from the non-UK resident's obligations to provide the whole of the information (*subsection (6)*) and

- for the circumstances in which a non-UK resident is not bound by the mistakes of the UK representative (*subsection (7)*).

It is based on paragraphs 3 and 4(1), (2) and (3) of Schedule 23 to FA 1995.

102. In the definition of "information" in *subsection (8)*, the words "to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs" have been substituted for the words "to the Board or any officer of the Board" in the source legislation. This gives effect to section 50(1) and (2) of CRCA which require references to the terms in the source legislation to be taken as references to the substituted terms.

Section 271H: Exceptions: criminal offences and penalties

103. This section set out the circumstances in which the UK representative is not liable to be proceeded against for a criminal offence. It is based on paragraph 5(1) and (2) of Schedule 23 to FA 1995.

Section 271I: Indemnities

104. This section sets out the circumstances in which an "independent agent" is entitled to be indemnified by the non-UK resident and to retain sums otherwise payable or accountable by the UK representative to the non-UK resident to meet the UK representative's liabilities under this Chapter. It is based on paragraph 6 of Schedule 23 to FA 1995.

Section 271J: Meaning of "non-UK resident" and "independent agent"

105. This clause defines "non-UK resident" and "independent agent". It is based on paragraph 7(1) and (2) of Schedule 23 to FA 1995.

Part 3: Minor and consequential amendments

Income Tax Act 2007

Section 817: The independent broker conditions

106. The words "by the broker" in *subsection (3)* are omitted as otiose. This amendment conforms the wording of section 817(3) with that of section 828J(3). Like section 828J (inserted in ITA by Part 1 of this Schedule), section 817 is based on section 127(2) of FA 1995.