

Bill 6

CONTENTS

PART 1

NON-UK RESIDENT COMPANIES

CHAPTER 1

PERMANENT ESTABLISHMENTS

General

- 1 Permanent establishments of companies [j4300]

Circumstances where there is no permanent establishment

- 2 Agent of independent status [j4301]
- 3 Preparatory or auxiliary activities [j4313]
- 4 Alternative finance arrangements [j4302]

Brokers

- 5 The independent broker conditions [j4304]

Investment managers

- 6 The independent investment manager conditions [j4305]
- 7 Investment managers: the 20% rule [j4307]
- 8 Section 7: interpretation [j4308]
- 9 [Treatment of transactions if requirements of 20% rule are not met] [j4309]
- 10 Application of 20% rule to collective investment schemes [j4310]
- 11 Meaning of “investment manager” and “investment transaction” [j4306]

Lloyd’s agents

- 12 Lloyd’s agents [j4311]

Supplementary

- 13 Supplementary provision [j4312]

CHAPTER 2

COLLECTION ETC. OF TAX FROM UK REPRESENTATIVES OF NON-UK RESIDENT COMPANIES

- 14 Introduction [j4314]
- 15 Obligations and liabilities in relation to corporation tax [j4315]
- 16 Exceptions [j4316]
- 17 Interpretation of Chapter [j4317]

-
- Schedule 1 – Minor and consequential amendments [J2-PEs]
 - Part 1 – Other Enactments
 - Schedule 2 – Repeals and revocations [J4-PEs(1)]
 - Part 1 – Repeals (PEs)

PART 1

NON-UK RESIDENT COMPANIES

CHAPTER 1

PERMANENT ESTABLISHMENTS

General

1 Permanent establishments of companies [j4300]

- (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.

Origin: FA 2003 s.148(1).

- (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, and
 - (h) a building site or construction or installation project.

Origin: FA 2003 s.148(2).

- (3) Subsection (1) is subject to sections 2 to 4.

Origin: FA 2003 s.148(1).

Circumstances where there is no permanent establishment

2 Agent of independent status [j4301]

- (1) 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 the agent’s business.

Origin: FA 2003 s.148(3).

- (2) Sections 5 to 13 apply for the purpose of supplementing subsection (1) in relation to transactions carried out on behalf of a non-UK resident company by a person in the United Kingdom acting as—
- (a) a broker (section 5),
 - (b) an investment manager (sections 6 to 11), or
 - (c) a members' or managing agent at Lloyd's (section 12).

Origin: FA 2003 s.152, Sch.26 para.1(1), (2).

3 Preparatory or auxiliary activities [j4313]

- (1) If the condition in subsection (2) is met, 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.

Origin: FA 2003 s.148(4).

- (2) The condition is that, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.

Origin: FA 2003 s.148(4).

- (3) 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, and
 - (d) purchasing goods or merchandise, or collecting information, for the company.

Origin: FA 2003 s.148(5).

4 Alternative finance arrangements [j4302]

- (1) This section applies if—
- (a) alternative finance return is paid to a non-UK resident company, or
 - (b) profit share return is paid to a non-UK resident company.

Origin: FA 2003 s.148(5A), s.148(5B).

- (2) The company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of relevant arrangements—
- (a) by the other party to the arrangements, or
 - (b) by any other person acting for the company in relation to the arrangements.

Origin: FA 2003 s.148(5A), s.148(5B).

- (3) “Relevant arrangements” means –
- (a) in relation to the payment of alternative finance return, arrangements within section 47, 47A or 48A of FA 2005, and
 - (b) in relation to the payment of profit share return, arrangements within section 49A of that Act.

Origin: FA 2003 s.148(5A), s.148(5B); drafting.

- (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 2003 s.148(5A); drafting.

Brokers

5 The independent broker conditions [j4304]

- (1) This section applies if a transaction is carried out on behalf of a non-UK resident company in the course of the company’s trade by a person in the United Kingdom acting as a broker.

Origin: FA 2003 Sch.26 paras.1(1), 2(1).

- (2) In relation to the transaction, the broker is regarded for the purposes of section 2(1) as an agent of independent status acting in the ordinary course of the broker’s business if (and only if) conditions A to D are met.

Origin: FA 2003 Sch.26 para.2(1).

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

Origin: FA 2003 Sch.26 para.2(2).

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

Origin: FA 2003 Sch.26 para.2(2).

- (5) 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 company is not less than is customary for that class of business.

Origin: FA 2003 Sch.26 para.2(2).

- (6) Condition D is that the broker does not fall (apart from this subsection) to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

Origin: FA 2003 Sch.26 para.2(2); Annex 1, Change [jc624].

*Investment managers***6 The independent investment manager conditions [j4305]**

- (1) This section applies if an investment transaction is carried out on behalf of a non-UK resident company in the course of the company's trade by a person in the United Kingdom acting as an investment manager.

Origin: FA 2003 Sch.26 paras.1(1), 3(1).

- (2) In relation to the investment transaction, the investment manager is regarded for the purposes of section 2(1) as an agent of independent status acting in the ordinary course of the investment manager's business if (and only if) conditions A to F are met ("the independent investment manager conditions").

Origin: FA 2003 Sch.26 para.3(1).

- (3) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.

Origin: FA 2003 Sch.26 para.3(2).

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

Origin: FA 2003 Sch.26 para.3(2).

- (5) Condition C is that, when the investment manager acts on behalf of the non-UK resident company 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.

Origin: FA 2003 Sch.26 paras.3(2), 7(2).

- (6) Condition D is that the requirements of the 20% rule are met (see section 7).

Origin: FA 2003 Sch.26 para.3(2).

- (7) 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 company is not less than is customary for that class of business.

Origin: FA 2003 Sch.26 para.3(2).

- (8) [Condition F is that the investment manager does not fall to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction carried out in the same accounting period.]

Origin: FA 2003 Sch.26 para.3(2).

7 Investment managers: the 20% rule [j4307]

- (1) The requirements of the 20% rule are met if conditions A and B are met.

Origin: FA 2003 Sch.26 para.4(1).

- (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 company's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.

Origin: FA 2003 Sch.26 para.4(1).

- (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 of 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 2003 Sch.26 para.4(1).

8 Section 7: interpretation [j4308]

- (1) This section applies for the purposes of section 7.

Origin: Drafting.

- (2) A “qualifying period” means—
- (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
 - (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.

Origin: FA 2003 Sch.26 para.4(2).

- (3) The “relevant disregarded income” of the non-UK resident company for a qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from transactions—
- (a) carried out by the investment manager on the non-UK resident company's behalf, and
 - (b) in relation to which the investment manager does not (apart from the requirements of the 20% rule) fall to be treated as a permanent establishment of the company.

Origin: FA 2003 Sch.26 para.4(3); Annex 1, Change [jc626].

- (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).

Origin: FA 2003 Sch.26 para.4(4).

- (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 company.

Origin: FA 2003 Sch.26 para.4(4).

9 [Treatment of transactions if requirements of 20% rule are not met] [j4309]

- (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.

Origin: FA 2003 Sch.26 para.4(5).

- (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 chargeable profits of the non-UK resident company deriving from the transaction as do not represent income –
- (a) which is relevant disregarded income of the non-UK resident company, and
 - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.]

Origin: FA 2003 Sch.26 para.4(5).

10 Application of 20% rule to collective investment schemes [j4310]

- (1) This section applies if amounts arise or accrue to the non-UK resident company as a participant in a collective investment scheme.

Origin: FA 2003 Sch.26 para.5(1).

- (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.

Origin: FA 2003 Sch.26 para.5(2); drafting.

- (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.

Origin: FA 2003 Sch.26 para.5(2); drafting.

- (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 accounting period in which the transaction was carried out, the requirements of the 20% rule are to be treated as met in relation to a transaction carried out for the purposes of the scheme.

Origin: FA 2003 Sch.26 para.5(2).

- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 7 to 9 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).

Origin: FA 2003 Sch.26 para.5(3).

- (6) The modifications are –
- (a) for references to the non-UK resident company substitute references to the assumed company, and
 - (b) for references to the non-UK resident company’s relevant disregarded income for a qualifying period substitute references to the sum 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 –
 - (i) carried out by the investment manager, and
 - (ii) assumed to be carried out on behalf of the company.

Origin: FA 2003 Sch.26 para.5(3).

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

Origin: FA 2003 Sch.26 para.5(4).

11 Meaning of “investment manager” and “investment transaction” [j4306]

- (1) In this Chapter –
- “investment manager” means a person who provides investment management services, and
 - “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 section.

Origin: FA 2003 Sch.26 para.3(1), (3); drafting.

- (2) For the purposes of subsection (1) a contract is not prevented from being a futures contract or an options contract by the fact that a 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.

Origin: FA 2003 Sch.26 para.3(4).

Lloyd’s agents

12 Lloyd’s agents [j4311]

- (1) This section applies if a transaction is carried out on behalf of a non-UK resident company in the course of the company’s trade by a person in the United Kingdom acting as a members’ agent or managing agent at Lloyd’s.

Origin: FA 2003 Sch.26 paras.1(1), 6(1).

- (2) In relation to the transaction, the person is regarded for the purposes of section 2(1) as an agent of independent status acting in the ordinary course of the person's business if conditions A to C are met.

Origin: FA 2003 Sch.26 para.6(1).

- (3) Condition A is that the non-UK resident company is a member of Lloyd's.

Origin: FA 2003 Sch.26 para.6(1).

- (4) Condition B is that the transaction is carried out in the course of the company's underwriting business.

Origin: FA 2003 Sch.26 para.6(1).

- (5) Condition C is that the person acting on behalf of the company in relation to the transaction acts as members' agent or as managing agent of the syndicate in question.

Origin: FA 2003 Sch.26 para.6(1).

- (6) For the purposes of this section –

- (a) a non-UK resident company is a member of Lloyd's if it is a corporate member within the meaning of Chapter 5 of Part 4 of FA 1994, and
- (b) "members' agent" and "managing agent" are to be construed in accordance with section 230 of that Act.

Origin: FA 2003 Sch.26 para.6(2).

Supplementary

13 Supplementary provision [j4312]

- (1) For the purposes of this Chapter a person is 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.

Origin: FA 2003 Sch.26 para.7(1).

- (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 2003 Sch.26 para.7(4).

- (3) [Section 839 of ICTA (connected persons) applies for the purposes of this Chapter.]

Origin: FA 2003 Sch.26 para.7(3).

CHAPTER 2

COLLECTION ETC. OF TAX FROM UK REPRESENTATIVES OF NON-UK RESIDENT COMPANIES

14 Introduction [j4314]

- (1) This Chapter applies to 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.

Origin: FA 2003 s.150(1); drafting.

- (2) Those enactments have effect in accordance with section 15 in relation to a non-UK resident company and its UK representative.

Origin: FA 2003 s.150(1).

- (3) For the purposes of this Chapter, the following rules apply to a permanent establishment in the United Kingdom through which a non-UK resident company carries on a trade.

Rule 1

The permanent establishment is the UK representative of the non-UK resident company in relation to chargeable profits of the company attributable to that establishment.

Rule 2

The permanent establishment continues to be the company's UK representative in relation to those profits even after ceasing to be a permanent establishment through which the non-UK resident company carries on a trade.

Rule 3

The permanent establishment is to be treated as a distinct and separate person from the non-UK resident company (if it would not otherwise be so treated).

Origin: FA 2003 s.150(2).

- (4) For the determination of the chargeable profits attributable to a permanent establishment, see [section 11(2A) of ICTA].

Origin: FA 2003 s.150(2).

15 Obligations and liabilities in relation to corporation tax [j4315]

- (1) The obligations and liabilities of a non-UK resident company 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 its UK representative.

Origin: FA 2003 s.150(1).

- (2) Subsection (3) applies if –
 - (a) the UK representative of a non-UK resident company discharges an obligation or liability that corresponds to one to which the non-UK resident company is subject, or
 - (b) a non-UK resident company discharges an obligation or liability that corresponds to one to which its UK representative is subject.

Origin: FA 2003 s.150(3).

- (3) The corresponding obligation or liability –
- (a) of the non-UK resident company (in a case within subsection (2)(a)), or
 - (b) of the UK representative (in a case within subsection (2)(b)),
- is discharged.

Origin: FA 2003 s.150(3).

- (4) A non-UK 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 UK representative by this section.

Origin: FA 2003 s.150(3).

- (5) This section is subject to section 16.

Origin: FA 2003 s.150(3); drafting.

16 Exceptions [j4316]

- (1) An obligation or liability attaching to a non-UK resident company by reason of its having been given or served with a notice or other document does not also attach to its UK representative by virtue of section 15 unless the notice or other document (or a copy of it) has been given to or served on the representative.

Origin: FA 2003 s.150(4).

- (2) An obligation or liability attaching to a non-UK resident company by reason of its having received a request or demand does not also attach to its UK representative by virtue of section 15 unless the representative has been notified of the request or demand.

Origin: FA 2003 s.150(4).

- (3) A non-UK resident company is not bound by mistakes in information provided by its UK representative in pursuance of an obligation imposed on the representative by section 15 unless –
- (a) the mistake is the result of an act or omission of the company, or
 - (b) the mistake is one to which the company consented or in which it connived.

Origin: FA 2003 s.150(5).

- (4) The UK representative of a non-UK resident company is not by virtue of section 15 liable to be proceeded against for a criminal offence unless the representative –
- (a) committed the offence, or
 - (b) consented to or connived in its commission.

Origin: FA 2003 s.150(6).

17 Interpretation of Chapter [j4317]

In this Chapter –

“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 Commissioners for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs, and

“trade” has the meaning given by [section 6(4)(b) of ICTA].

Origin: FA 2003 s.150(7).

SCHEDULES

SCHEDULE 1

Section [ref]

MINOR AND CONSEQUENTIAL AMENDMENTS [J2-PEs]

PART 1

OTHER ENACTMENTS

Taxation of Chargeable Gains Act 1992 (c. 12)

- 1 In section 288(1) of the Taxation of Chargeable Gains Act 1992 (interpretation of Act), for the definition of “permanent establishment” substitute –
““permanent establishment”, in relation to a company, has the meaning given by Chapter [1] of Part [] of [Bill 6];”.

Finance Act 2003 (c. 14)

- 2 The Finance Act 2003 is amended as follows.
- 3 Omit section 148 (meaning of “permanent establishment”).
- 4 Omit section 150 (non-resident companies: assessment, collection and recovery of corporation tax).
- 5 Omit section 152 (non-resident companies: transactions carried out through broker, investment manager or Lloyd’s agent).
- 6 Omit Schedule 26 (non-resident companies: transactions through broker, investment manager or Lloyd’s agent).

Income Tax Act 2007 (c. 3)

- 7 In section 989 of the Income Tax Act 2007 (definitions applying for purposes of Income Tax Acts), in the definition of “permanent establishment” for “section 148 of FA 2003” substitute “Chapter [1] of Part [] of [Bill 6]”.

SCHEDULE 2

Section {999998}

REPEALS AND REVOCATIONS [J4-PES(1)]

PART 1

REPEALS (PES)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 2003 (c. 14)	Section 148. Section 150. Section 152. Schedule 26.
