

Bill 6: Permanent establishments and UK representatives

Summary

1. This paper presents draft clauses which rewrite sections 148, 150 and 152 of, and Schedule 26 to, FA 2003.
2. Sections 148 and 152 and Schedule 26 determine what constitutes a permanent establishment of a company in a territory.
3. Section 150 deals with the assessment, collection and recovery of corporation tax from the UK representative of a non-UK resident company carrying on a trade through a permanent establishment in the United Kingdom.
4. The paper contains:
 - the draft clauses, with origins;
 - draft explanatory notes; including draft notes outlining two proposed changes in the law.
5. Section 150 of FA 2003 is an administration provision. It is proposed that it be rewritten in Bill 6, rather than be inserted by Bill 7 into TMA, as it links directly to the provisions of section 148 of that Act which, as interpretation provisions, belong in Bill 6.
6. Schedule 26 to FA 2003 (transactions through broker, investment manager or Lloyd's agent) supplements section 148(3) of that Act (company not regarded as having permanent establishment by reason of trading through independent agent). Schedule 26 also formerly supplemented section 151 of FA 2003 (non-resident companies: extent of charge to income tax). Section 151 and Schedule 26 as it supplemented that section have been rewritten in Chapter 1 of Part 14 of ITA. These clauses complete the rewriting of Schedule 26.

Questions for the committee

7. We would be grateful for any comments you may have on these draft clauses and also on the proposed Change 624 relating to paragraph 2(2)(d) of Schedule 26 to FA 2003.
8. The change relating to paragraph 2(2)(d) was proposed when that paragraph was first rewritten for the purposes of the limit on liability to income tax of non-UK resident companies in Bill 4 (see Change {jc481} in the explanatory notes under Committee paper CC/SC (05) 14 published on 5 May 2005). The change was subsequently dropped as being outside the scope of an income tax rewrite Bill (see the commentary on clause 712 in the Response Document to the draft Bill published on 20 September 2006).

9. Change 626 relates to paragraph 4(3) of Schedule 26 to FA 2003. It replicates the change made in section 821(3) of ITA when that sub-paragraph was rewritten for the purposes of the limit on liability to income tax of non-UK resident companies. It has, therefore, already been consulted on and scrutinised by the Joint Committee as Bill 4 was being considered by Parliament. If there are, nevertheless, any comments on the proposed Change 626, we should be grateful to have them.

Closing date for comments

10. We would welcome any comments by 27 June 2008. If possible, they should be sent by e-mail to:

jackie.bartlett@hmrc.gsi.gov.uk

Written comments should be sent to:

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11. Please note that the names of respondents may be published unless they ask for their comments to be treated in confidence.

31 March 2008