

SCHEDULES

SCHEDULE 4

Section 34

CHARGEABLE GAINS: LOCATION OF ASSETS ETC

PART 1

LOCATION OF ASSETS

Exceptions from sections 713 and 714 of ICTA

- 1 (1) Section 715 of ICTA is amended as follows.
 - (2) In subsection (8) (place where securities are situated to be determined under section 275 of TCGA 1992) for “section 275” substitute “sections 275(1) and (2) (b) and 275C”.

Foreign securities: delayed remittances

- 2 (1) Section 723 of ICTA is amended as follows.
 - (2) In subsection (8) (place where securities are situated to be determined under section 275 of TCGA 1992) for “section 275” substitute “sections 275(1) and (2) (b) and 275C”.

Designated international organisations

- 3 (1) Section 265 of TCGA 1992 is amended as follows.
 - (2) In subsection (3) (securities issued by designated international organisations to be taken to be situated outside UK for the purposes of capital gains tax) for “capital gains tax” substitute “this Act”.

Location of assets: general

- 4 (1) Section 275 of TCGA 1992 is amended as follows.
 - (2) Re-number that section as subsection (1) of that section.
 - (3) In that subsection, in paragraph (d) (location of shares or securities issued by municipal or governmental authority etc) for “securities” substitute “debentures”.
 - (4) In that subsection, after that paragraph insert—
 - “(da) subject to paragraph (d) above, shares in or debentures of a company incorporated in any part of the United Kingdom are situated in the United Kingdom.”.
 - (5) In that subsection, in paragraph (e) (location of registered shares or securities)—

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- (a) for “subject to paragraph (d)” substitute “subject to paragraphs (d) and (da)”;
 - (b) for “securities” substitute “debentures”.
- (6) In that subsection, for paragraph (h) (location of patents, trade marks and registered designs) substitute—
- “(h) patents, trade marks, registered designs and corresponding rights are situated where they are registered, and if registered in more than one register, where each register is situated, and licences or other rights in respect of any such rights are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom.”.
- (7) In that subsection, for paragraph (j) (location of copyright, design right and franchises) substitute—
- “(j) copyright, design right, franchises and corresponding rights, and licences or other rights in respect of any such rights, are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom.”.
- (8) After that subsection insert—
- “(2) In subsection (1) above—
 - (a) in paragraphs (d), (da) and (e), the references to shares or debentures, in relation to a company that has no share capital, include any interests in the company possessed by members of the company, and
 - (b) in paragraphs (d) and (e), the references to debentures, in relation to a person other than a company, include securities.
 - (3) In subsection (1) above, in each of paragraphs (h) and (j), “corresponding rights” means any rights under the law of a country or territory outside the United Kingdom that correspond or are similar to those within that paragraph.
 - (4) Subsection (1) above is subject to—
 - section 265(3) (securities issued by designated international organisations to be taken to be situated outside UK),
 - section 266 (securities issued by Inter-American Development Bank to be taken to be situated outside UK), and
 - section 275C (location of assets: interests of co-owners).”.

Location of certain intangible assets

5 After section 275 of TCGA 1992 insert—

“275A Location of certain intangible assets

- (1) This section applies for the purpose of determining whether the situation of an intangible asset (“asset A”) is in the United Kingdom if the situation of asset A is not otherwise determined (see section 275B(1)).
- (2) In this section “intangible asset” means—
 - (a) intangible or incorporeal property and includes a thing in action, or

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- (b) anything that under the law of a country or territory outside the United Kingdom corresponds or is similar to intangible or incorporeal property or a thing in action.
- (3) If asset A is subject to UK law (see section 275B(2)) at the time it is created, it shall be taken for the purposes of this Act to be situated in the United Kingdom at all times.
- (4) Subsections (5) to (9) below have effect if asset A—
 - (a) is a future or option (see section 275B(3)), and
 - (b) is not subject to UK law at the time it is created.
- (5) If, as a result of the application of the rule in subsection (6) below in relation to asset A or any other asset or assets, asset A falls to be treated as being subject to UK law at the time it is created, it shall be taken for the purposes of this Act to be situated in the United Kingdom at all times.
- (6) That rule is that where, in the case of any intangible asset,—
 - (a) the asset is a future or option,
 - (b) the underlying subject matter (see section 275B(4)) of the asset consists of or includes an asset which is an intangible asset, and
 - (c) either—
 - (i) that intangible asset is subject to UK law at the time it is created and, on the assumption that there were no rights or interests in or over that asset, the situation of that asset would not be otherwise determined, or
 - (ii) that intangible asset is treated by this subsection as being so subject at that time,the intangible asset mentioned in paragraph (a) above is to be treated for the purposes of subsection (5) above and this subsection as being so subject at the time it is created.
- (7) If—
 - (a) asset A is not taken to be situated in the United Kingdom by virtue of subsection (5) above, and
 - (b) as a result of the application of the rule in subsection (8) below in relation to asset A or any other asset or assets, asset A falls to be treated as being situated in the United Kingdom at any time,it shall be taken for the purposes of this Act to be situated in the United Kingdom at that time.
- (8) That rule is that where, in the case of any intangible asset,—
 - (a) the asset is a future or option, and
 - (b) the underlying subject matter of the asset consists of or includes an asset—
 - (i) which is, by virtue of subsection (9) below or of any provision of this Act apart from this section, situated in the United Kingdom at any time, or
 - (ii) which is treated by this subsection as being so situated at any time,

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the intangible asset mentioned in paragraph (a) above is to be treated for the purposes of subsection (7) above and this subsection as being so situated at that time.

(9) Where—

- (a) the underlying subject matter of a future or option consists of or includes shares or debentures issued by a company incorporated in any part of the United Kingdom, but
- (b) at the time the future or option is created, those shares or debentures have not been issued,

the underlying subject matter of the future or option, so far as consisting of or including those shares or debentures, is to be taken, for the purposes of subsection (8) above, to consist of or include an asset which is situated in the United Kingdom at all times.

275B Section 275A: supplementary provisions

- (1) For the purposes of section 275A, the situation of an asset is not otherwise determined if, apart from that section, this Act does not make any provision for determining—
 - (a) the situation of the asset, or
 - (b) whether the situation of the asset is in the United Kingdom.
- (2) For the purposes of section 275A, an intangible asset is subject to UK law at a particular time if any right or interest which comprises or forms part of the asset is, at that time,—
 - (a) governed by, or otherwise subject to, or
 - (b) enforceable under,
 the law of any part of the United Kingdom.
- (3) Sub-paragraphs (6) to (10) of paragraph 12 of Schedule 26 to the Finance Act 2002 (meaning of “future” and “option”) apply for the purposes of section 275A as they apply for the purposes of Part 2 of that Schedule.
- (4) For the purposes of section 275A—
 - (a) the underlying subject matter of a future is the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, and
 - (b) the underlying subject matter of an option is the property which would fall to be delivered if the option were exercised.
- (5) Section 275A is subject to section 275C (location of assets: interests of co-owners).
- (6) This section is to be construed as one with section 275A.”.

Location of assets: interests of co-owners

6 After section 275B of TCGA 1992 (as inserted by paragraph 5) insert—

“275C Location of assets: interests of co-owners

- (1) This section applies for determining for the purposes of this Act—

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- (a) the situation of an interest (see subsection (4)) in an asset, or
 - (b) whether the situation of an interest in an asset is in the United Kingdom.
- (2) The situation of the interest in the asset shall be taken to be the same as the situation of the asset, as determined in accordance with subsection (3) below.
- (3) The situation of the asset for the purposes of subsection (2) above shall be determined on the assumption that the asset is wholly-owned by the person holding the interest in the asset.
- (4) In this section “interest”, in relation to an asset, means an interest as a co-owner of the asset (whether the asset is owned jointly or in common and whether or not the interests of the co-owners are equal).”.

PART 2

MINOR AMENDMENTS: NON-RESIDENT COMPANY WITH UK PERMANENT ESTABLISHMENT

Computation of losses

- 7 (1) Section 16 of TCGA 1992 is amended as follows.
- (2) In subsection (3) (loss accruing to person in year of assessment during which he is not resident or ordinarily resident in UK not to be allowable loss unless, under section 10, he would be chargeable to tax in respect of chargeable gain if the loss had been a gain) after “section 10” insert “or 10B”.

Reallocation within group of gain or loss accruing under section 179

- 8 (1) Section 179A of TCGA 1992 is amended as follows.
- (2) In subsection (12) (asset is “chargeable asset” if gain accruing to company on disposal of asset would be chargeable gain and would by virtue of section 10(3) form part of company’s chargeable profits for corporation tax) for “section 10(3)” substitute “section 10B”.

Exemptions for disposals by companies with substantial shareholding

- 9 (1) Schedule 7AC to TCGA 1992 is amended as follows.
- (2) In paragraph 3(2)(c)(ii) (one of conditions for exemption that chargeable gain accruing to company on disposal would by virtue of section 10(3) form part of company’s chargeable profits for corporation tax) for “section 10(3)” substitute “section 10B”.

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PART 3

COMMENCEMENT

Commencement

- 10 (1) The amendments made by Part 1 of this Schedule have effect for determining for the purposes of TCGA 1992—
- (a) the situation of any asset, or
 - (b) whether the situation of any asset is in the United Kingdom,
- at any time on or after 16th March 2005 (irrespective of when the asset was acquired by the person holding it).
- (2) The amendment made by paragraph 7 has effect in relation to any loss accruing to a company in an accounting period ending on or after 16th March 2005.
- (3) The amendment made by paragraph 8 has effect for determining for the purposes of section 179A of TCGA 1992 whether an asset is a “chargeable asset” in relation to a company at any time on or after 16th March 2005.
- (4) The amendment made by paragraph 9 has effect in relation to disposals on or after 16th March 2005.