



Corporation Tax Act 2009

2009 CHAPTER 4

PART 2

CHARGE TO CORPORATION TAX: BASIC PROVISIONS

CHAPTER 1

THE CHARGE TO CORPORATION TAX

Charge to tax on profits

2 Charge to corporation tax

- (1) Corporation tax is charged on profits of companies for any financial year for which an Act so provides.
- (2) In this Part “profits” means income and chargeable gains, except in so far as the context otherwise requires.
- (3) In this Act “the charge to corporation tax on income” means the charge under subsection (1) so far as relating to income.
- (4) The charge to corporation tax on income has effect in accordance with the provisions of the Corporation Tax Acts that deal with its application.

3 Exclusion of charge to income tax

- (1) The provisions of the Income Tax Acts relating to the charge to income tax do not apply to income of a company if—
 - (a) the company is UK resident, or
 - (b) the company is not UK resident and the income is within its chargeable profits as defined by section 19.

- (2) Subsection (1) does not apply to income accruing to a company in a fiduciary or representative capacity.

4 Exclusion of charge to capital gains tax

Capital gains tax is not charged on gains accruing to a company in respect of which the company is chargeable to corporation tax, or would be so chargeable but for an exemption.

General scheme of corporation tax

5 Territorial scope of charge

- (1) A UK resident company is chargeable to corporation tax on all its profits wherever arising.
- (2) A non-UK resident company is within the charge to corporation tax only if it carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (3) A non-UK resident company which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom is chargeable to corporation tax on all its profits wherever arising that are chargeable profits as defined in section 19 (profits attributable to its permanent establishment in the United Kingdom).
- (4) Subsections (1) and (3) are subject to any exceptions provided for by the Corporation Tax Acts.

6 Profits accruing in fiduciary or representative capacity

- (1) A company is not chargeable to corporation tax on profits which accrue to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in the profits.
- (2) The exception under subsection (1) from chargeability does not apply to profits arising in the winding up of the company.

7 Profits accruing under trusts

Profits that accrue for the benefit of a company under a trust are treated for the purposes of the charge to corporation tax under section 2(1) as accruing directly to the company.

8 How tax is charged and assessed

- (1) Corporation tax for a financial year is charged on profits arising in the year.
- (2) Corporation tax is calculated and chargeable, and assessments to corporation tax are made, by reference to accounting periods.
- (3) Corporation tax which is assessed and charged for an accounting period of a company is assessed and charged on the full amount of profits arising in the accounting period.
- (4) Subsection (3) is subject to any contrary provision in the Corporation Tax Acts.

- (5) If a company's accounting period falls within more than one financial year, the amount of the profits arising in the accounting period that is chargeable to corporation tax must be apportioned between the financial years in which the accounting period falls.

CHAPTER 2

ACCOUNTING PERIODS

9 Beginning of accounting period

- (1) An accounting period of a company begins—
- (a) when the company comes within the charge to corporation tax, or
 - (b) immediately after the end of the previous accounting period of the company, if the company is still within the charge to corporation tax.
- (2) For the purposes of this section a UK resident company is treated as coming within the charge to corporation tax when it starts to carry on business, if it would not otherwise be within the charge to corporation tax.
- (3) If a chargeable gain or allowable loss accrues to a company at a time which is not (ignoring this subsection) within an accounting period of the company—
- (a) an accounting period of the company begins at that time, and
 - (b) the gain or loss accrues in that accounting period.
- (4) This section does not apply if section 12 (companies being wound up) applies.
- (5) This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to begin at a different time.

10 End of accounting period

- (1) An accounting period of a company comes to an end on the first occurrence of any of the following—
- (a) the ending of 12 months from the beginning of the accounting period,
 - (b) an accounting date of the company,
 - (c) if there is a period for which the company does not make up accounts, the end of that period,
 - (d) the company starting or ceasing to trade,
 - (e) if the company carries on only one trade, coming, or ceasing to be, within the charge to corporation tax in respect of that trade,
 - (f) if the company carries on more than one trade, coming, or ceasing to be, within the charge to corporation tax in respect of all the trades it carries on,
 - (g) the company becoming, or ceasing to be, UK resident,
 - (h) the company ceasing to be within the charge to corporation tax,
 - (i) the company entering administration, and
 - (j) the company ceasing to be in administration.
- (2) If subsection (1)(i) applies, the accounting period is treated as having ended immediately before the day on which the company enters administration.

Status: This is the original version (as it was originally enacted).

- (3) For the purposes of this section a company enters administration—
 - (a) when it enters administration under Schedule B1 to the Insolvency Act 1986 (c. 45), or
 - (b) when it is subject to a corresponding procedure, other than one under that Act.
- (4) For the purposes of this section a company ceases to be in administration—
 - (a) when it ceases to be in administration under Schedule B1 to the Insolvency Act 1986, or
 - (b) when a corresponding event occurs, other than under that Act.
- (5) This section does not apply if section 12 (companies being wound up) applies.
- (6) This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to end at a different time.

11 Companies with more than one accounting date

- (1) This section applies if a company carrying on more than one trade—
 - (a) does not have the same accounting date for each of the trades, and
 - (b) does not make up general accounts for the whole of the company's activities.
- (2) The company may choose which of the accounting dates for the trades is to be used for the purpose of section 10(1)(b).
- (3) But if an officer of Revenue and Customs thinks, on reasonable grounds, that the date chosen by the company is inappropriate, the officer may give notice to the company directing one of the other accounting dates to be used for that purpose instead.

12 Companies being wound up

- (1) This section applies if a company is being wound up.
- (2) An accounting period of the company ends immediately before the winding up starts.
- (3) An accounting period of the company begins when the winding up starts.
- (4) After the winding up starts, an accounting period of the company ends—
 - (a) at the end of the period of 12 months beginning on the first day of the accounting period, or
 - (b) if earlier, when the winding up is completed.
- (5) After the winding up starts, an accounting period of the company begins immediately after the end of the previous accounting period of the company, if the winding up has not been completed.
- (6) This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to begin or end at a different time.
- (7) For the purposes of this section a winding up of a company starts—
 - (a) when the company passes a resolution for the winding up of the company,

- (b) when a petition for the winding up of the company is presented, if the company has not already passed such a resolution and a winding up order is made on the petition, or
- (c) when an act is done in relation to the company for a similar purpose, if the winding up is not under the Insolvency Act 1986 (c. 45).

CHAPTER 3

COMPANY RESIDENCE

13 Overview of Chapter

- (1) This Chapter contains rules for determining the residence of companies.
- (2) Section 14 gives the main rule for companies incorporated in the United Kingdom (including SEs and SCEs incorporated in the United Kingdom).
- (3) Section 15 deals with companies which have been UK resident under the rules of common law and provides for their continued residence when certain circumstances arise.
- (4) Sections 16 and 17 deal with SEs and SCEs which transfer their registered office to the United Kingdom.
- (5) Section 18 contains a special rule for companies treated as non-UK resident under double taxation arrangements.

14 Companies incorporated in the United Kingdom

- (1) A company which is incorporated in the United Kingdom is UK resident for the purposes of the Corporation Tax Acts.
- (2) Accordingly, even if a different place of residence is given by a rule of law, the company is not resident in that place for the purposes of the Corporation Tax Acts.

15 Continuation of residence established under common law

- (1) This section applies to a company which is neither—
 - (a) incorporated in the United Kingdom, nor
 - (b) resident in the United Kingdom by virtue of section 16 or 17.
- (2) If the company—
 - (a) is no longer carrying on a business, and
 - (b) was UK resident for the purposes of the Corporation Tax Acts immediately before it ceased to carry on business,the company continues to be UK resident for the purposes of the Corporation Tax Acts.
- (3) If the company—
 - (a) is being wound up outside the United Kingdom, and
 - (b) was UK resident for the purposes of the Corporation Tax Acts immediately before any of its activities came under the control of a foreign liquidator,the company continues to be UK resident for the purposes of the Corporation Tax Acts.

Status: This is the original version (as it was originally enacted).

- (4) In subsection (3) “foreign liquidator” means a person exercising functions which, in the United Kingdom, would be exercisable by a liquidator.

16 SEs which transfer registered office to the United Kingdom

- (1) This section applies to an SE which transfers its registered office to the United Kingdom in accordance with Article 8 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (Societas Europaea).
- (2) The SE is UK resident for the purposes of the Corporation Tax Acts from the time of its registration in the United Kingdom.
- (3) Accordingly, even if a different place of residence is given by a rule of law, the SE is not resident in that place for the purposes of the Corporation Tax Acts.
- (4) The SE does not cease to be UK resident merely because it later transfers its registered office from the United Kingdom.

17 SCEs which transfer registered office to the United Kingdom

- (1) This section applies to an SCE which transfers its registered office to the United Kingdom in accordance with Article 7 of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE).
- (2) The SCE is UK resident for the purposes of the Corporation Tax Acts from the time of its registration in the United Kingdom.
- (3) Accordingly, even if a different place of residence is given by a rule of law, the SCE is not resident in that place for the purposes of the Corporation Tax Acts.
- (4) The SCE does not cease to be UK resident merely because it later transfers its registered office from the United Kingdom.

18 Companies treated as non-UK resident under double taxation arrangements

- (1) This section applies to a company which is treated as—
- (a) resident in a territory outside the United Kingdom, and
 - (b) non-UK resident,
- for the purposes of any double taxation arrangements.
- (2) For the purposes of the Corporation Tax Acts the company is—
- (a) resident outside the United Kingdom, and
 - (b) non-UK resident.
- (3) Subsection (2) applies even if the company would otherwise be UK resident for the purposes of the Corporation Tax Acts by virtue of section 14, 15, 16 or 17 or another rule of law.
- (4) To decide whether a company is treated as mentioned in subsection (1)(a) and (b) for the purposes of any double taxation arrangements, assume that—
- (a) the company has made a claim for relief under the arrangements, and

- (b) in consequence of the claim it falls to be decided whether the company is to be treated as mentioned in subsection (1)(a) and (b) for the purposes of the arrangements.

CHAPTER 4

NON-UK RESIDENT COMPANIES: CHARGEABLE PROFITS

Chargeable profits

19 Chargeable profits

- (1) This section applies if a non-UK resident company carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (2) The company's chargeable profits are its profits that are—
 - (a) of a type mentioned in subsection (3), and
 - (b) attributable to the permanent establishment in accordance with sections 20 to 32.
- (3) The types of profits referred to in subsection (2)(a) are—
 - (a) trading income arising directly or indirectly through or from the establishment,
 - (b) income from property or rights used by, or held by or for, the establishment, and
 - (c) chargeable gains falling within section 10B of TCGA 1992 (non-resident company with United Kingdom permanent establishment)—
 - (i) as a result of assets being used in or for the purposes of the trade carried on by the company through the establishment, or
 - (ii) as a result of assets being used or held for the purposes of the establishment or being acquired for use by or for the purposes of the establishment.

20 Profits attributable to permanent establishment: introduction

- (1) Sections 21 to 32 apply for the purpose of determining the amount of profits of a non-UK resident company that are attributable to a permanent establishment of the company in the United Kingdom.
- (2) Sections 21 to 28 contain provision about the separate enterprise principle.
- (3) See also paragraph 5A of Schedule 26 to FA 2003 (non-resident companies: transactions through broker, investment manager or Lloyd's agent), which provides for profits of certain investment transactions to be disregarded in determining the amount of profits attributable to a permanent establishment.

The separate enterprise principle

21 The separate enterprise principle

- (1) The profits of the non-UK resident company that are attributable to the permanent establishment are those that the establishment would have made if it were a distinct and separate enterprise which—
 - (a) engaged in the same or similar activities under the same or similar conditions, and
 - (b) dealt wholly independently with the non-UK resident company.
- (2) In applying subsection (1) assume that—
 - (a) the permanent establishment has the same credit rating as the non-UK resident company, and
 - (b) the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.
- (3) In sections 22 to 28 the principle in subsection (1) (read with subsection (2)) is called “the separate enterprise principle”.

22 Transactions treated as being on arm’s length terms

In accordance with the separate enterprise principle, transactions between the permanent establishment and any other part of the non-UK resident company are treated as taking place on such terms as would have been agreed between parties dealing at arm’s length.

23 Provision of goods or services for permanent establishment

- (1) This section applies if the non-UK resident company provides the permanent establishment with goods or services.
- (2) If the goods or services are of a kind that the company supplies, in the ordinary course of its business, to third parties dealing with it at arm’s length, the matter is dealt with as a transaction to which the separate enterprise principle applies.
- (3) If not, the matter is dealt with as an expense incurred by the non-UK resident company for the purposes of the permanent establishment (see section 29).

24 Application to insurance companies

- (1) The Commissioners for Her Majesty’s Revenue and Customs may by regulations make provision about the application of section 21(1) to insurance companies.
- (2) The regulations may, in particular, make provision in place of section 21(2)(b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom.
- (3) In this section “insurance company” has the meaning given by section 431(2) of ICTA.

The separate enterprise principle: application to non-UK resident banks

25 Non-UK resident banks: introduction

- (1) Sections 26 to 28 contain provision in relation to the application of the separate enterprise principle if the non-UK resident company is a bank.
- (2) Nothing in sections 26 to 28 is to be read as preventing similar principles to those provided for in those sections from applying when the separate enterprise principle is applied to a non-UK resident company that is not a bank.
- (3) In this section and those sections “bank” has the meaning given by section 840A of ICTA.

26 Transfer of financial assets

- (1) This section applies if—
 - (a) the non-UK resident company is a bank, and
 - (b) there is a transfer of a loan or other financial asset between the permanent establishment and any other part of the company.
- (2) In accordance with the separate enterprise principle, the transfer is recognised only if it would have taken place between independent enterprises.
- (3) The transfer is not recognised if it cannot reasonably be considered that it is carried out for valid commercial reasons.
- (4) For this purpose the obtaining of a tax advantage is not a valid commercial reason.

27 Loans: attribution of financial assets and profits arising

- (1) This section applies if the non-UK resident company—
 - (a) is a bank, and
 - (b) makes a loan or has another financial asset.
- (2) In accordance with the separate enterprise principle, the loan or other financial asset, and profits arising from it, are attributed to the permanent establishment so far as they can reasonably be regarded as having been generated by the activities of the permanent establishment.
- (3) For the purposes of subsection (2), particular account is to be taken of the extent to which the permanent establishment is responsible for—
 - (a) obtaining the offer of new business,
 - (b) establishing the potential borrower’s credit rating and the risk involved in providing credit,
 - (c) negotiating the terms of the loan with the borrower, and
 - (d) deciding whether, and if so on what conditions, to make or extend the loan.
- (4) For those purposes, account may also be taken of the extent to which the permanent establishment is responsible for—
 - (a) concluding the loan agreement and disbursing the proceeds of the loan, and
 - (b) administering the loan (including handling and monitoring the service of it) and holding and controlling any securities pledged.

- (5) References in this section to a financial asset include any financial risk in relation to a loan, or potential loan, if—
- (a) the financial risk is capable of giving rise to fees or other receipts, and
 - (b) the holding of capital is required for the financial risk (or would be required if the transaction were between parties at arm's length).

28 Borrowing: permanent establishment acting as agent or intermediary

- (1) This section applies if—
- (a) the non-UK resident company is a bank, and
 - (b) the permanent establishment borrows funds for the purposes of another part of the company and (in relation to that borrowing) acts only as an agent or intermediary.
- (2) In accordance with the separate enterprise principle—
- (a) the profits attributable to the permanent establishment, and
 - (b) the capital attributable to the permanent establishment under section 21(2)(b),
- are to be those appropriate in the case of an agent acting at arm's length, taking into account the risks and costs borne by the establishment.

Rules about deductions

29 Allowable deductions

- (1) A deduction is allowed for any allowable expenses incurred for the purposes of the permanent establishment.
- (2) Expenses incurred for the purposes of the permanent establishment include executive and general administrative expenses so incurred, whether in the United Kingdom or elsewhere.
- (3) It does not matter whether the expenses are incurred by, or reimbursed by, the permanent establishment.
- (4) The amount of expenses to be taken into account under subsection (1) is the actual cost to the non-UK resident company.
- (5) “Allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a UK resident company.

30 Restriction on deductions: costs

No deduction is allowed for costs in excess of those which would have been incurred on the assumptions in section 21(2).

31 Restriction on deductions: payments in respect of intangible assets

- (1) No deduction is allowed for royalties paid, or other similar payments made, by the permanent establishment to any other part of the non-UK resident company in respect of the use of intangible assets held by the company.

- (2) This does not prevent a deduction for any contribution by the permanent establishment to the costs of creation of an intangible asset.
- (3) In this section “intangible asset” has the meaning it has for accounting purposes, and includes any intellectual property (as defined in section 712(3)).

32 Restriction on deductions: interest or other financing costs

- (1) No deduction is allowed for payments of interest or other financing costs by the permanent establishment to any other part of the non-UK resident company.
- (2) But the restriction in subsection (1) does not apply to interest or other financing costs that are payable in respect of borrowing by the permanent establishment in the ordinary course of a financial business carried on by it.
- (3) In subsection (2) “financial business” means any of the following—
 - (a) banking, deposit-taking, money-lending or debt-factoring, or a business similar to any of those, and
 - (b) dealing in commodity or financial futures.

CHAPTER 5

SUPPLEMENTARY

33 Trade includes office

In this Part, except in so far as the context otherwise requires—

- (a) references to a trade include an office, and
- (b) references to carrying on a trade include holding an office.