

*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2019, Cross Heading: CTA 2009. (See end of Document for details)

## SCHEDULES

### SCHEDULE 5

#### NON-UK RESIDENT COMPANIES CARRYING ON UK PROPERTY BUSINESSES ETC

##### Modifications etc. (not altering text)

**C1** Sch. 5 modified (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [Sch. 6 para. 10](#)

### PART 2

#### SUPPLEMENTARY & CONSEQUENTIAL AMENDMENTS

##### CTA 2009

10 CTA 2009 is amended as follows.

##### Commencement Information

**I1** Sch. 5 para. 10 in force at 6.4.2020, see Sch. 5 para. 35

11 In section 3 (exclusion of charge to income tax) in subsection (1)(b) (non-UK resident companies) for the words from “and—” to the end substitute “ and it is chargeable to corporation tax in respect of the income, or would be so chargeable but for an exemption ”.

##### Commencement Information

**I2** Sch. 5 para. 11 in force at 6.4.2020, see Sch. 5 para. 35

12 In section 18A (exemption for profits or losses of foreign permanent establishments) in subsection (2A) for the words from “, or would” to the end substitute “or, if the company were non-UK resident, would be—

- (a) profits or losses of the company's trade of dealing in or developing UK land (see section 5B),
- (b) profits or losses of the company's UK property business,
- (c) profits consisting of the company's other UK property income, or
- (d) profits or losses arising from loan relationships or derivative contracts that the company is a party to for the purposes of its UK property business or for the purposes of enabling it to generate other UK property income.”

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**Commencement Information**

**I3** Sch. 5 para. 12 in force at 6.4.2020, see Sch. 5 para. 35

- 13 In section 19 (chargeable profits) for subsection (2A) substitute—
- “(2A) But the company's “chargeable profits” do not include—
- (a) profits of a trade of dealing in or developing UK land (see section 5B),
  - (b) profits of a UK property business,
  - (c) profits consisting of other UK property income, or
  - (d) profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of its UK property business or for the purposes of enabling it to generate other UK property income.”

**Commencement Information**

**I4** Sch. 5 para. 13 in force at 6.4.2020, see Sch. 5 para. 35

- 14 In section 289 (effect of company starting or ceasing to be within charge to corporation tax) in subsection (1) for “a property business” substitute “an overseas property business”.

**Commencement Information**

**I5** Sch. 5 para. 14 in force at 6.4.2020, see Sch. 5 para. 35

- 15 (1) Section 301 (calculation of non-trading profits and deficits from loan relationships: non-trading credits and debits) is amended as follows.
- (2) In subsection (1) for “as follows” substitute “in accordance with subsections (4) to (7)”.
- (3) After subsection (1) insert—
- “(1A) But in the case of a non-UK resident company the only non-trading credits and non-trading debits to be used are those in respect of loan relationships that the company is a party to for a purpose mentioned in section 5(3A)(b) or (3B)(b).”

**Commencement Information**

**I6** Sch. 5 para. 15 in force at 6.4.2020, see Sch. 5 para. 35

- 16 In section 333 (company with loan relationship ceasing to be UK resident) in subsection (2)—
- (a) after “owed” insert “—  
 (a),  
 and
  - (b) at the end insert “,

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- (b) for the purposes of the company's trade of dealing in or developing UK land,
- (c) for the purposes of the company's UK property business, or
- (d) for the purposes of enabling the company to generate other UK property income (within the meaning given by section 5(6)).”

**Commencement Information**

**I7** Sch. 5 para. 16 in force at 6.4.2020, see Sch. 5 para. 35

- 17 (1) Section 334 (non-UK resident company ceasing to hold loan relationship for UK permanent establishment) is amended as follows.
- (2) In the heading, for “UK permanent establishment” substitute “ section 333(2) purposes ”.
- (3) In subsection (1) for the words from “the purposes” to “United Kingdom” substitute “ section 333(2) purposes ”.
- (4) In subsection (3)(b) for “the purposes of the permanent establishment” substitute “ section 333(2) purposes ”.
- (5) After subsection (4) insert—
- “(5) An asset or liability ceases to be held or owed for section 333(2) purposes if and in so far as—
- (a) it ceases to be held or owed for any purposes mentioned in section 333(2), and
  - (b) on doing so, it does not begin or continue to be held or owed for any of the other purposes so mentioned.”

**Commencement Information**

**I8** Sch. 5 para. 17 in force at 6.4.2020, see Sch. 5 para. 35

- 18 In section 574 (non-trading credits and debits to be brought into account under Part 5) after subsection (2) insert—
- “(2A) But in the case of a non-UK resident company subsection (2) applies only in relation to those credits or debits in respect of derivative contracts that the company is a party to for a purpose mentioned in section 5(3A)(b) or (3B)(b)”.

**Commencement Information**

**I9** Sch. 5 para. 18 in force at 6.4.2020, see Sch. 5 para. 35

- 19 In section 609 (company with derivative contract ceasing to be UK resident) in subsection (2)—
- (a) after “owed” insert “—

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- (a)”,  
and
- (b) at the end insert “,
- (b) for the purposes of the company's trade of dealing in or developing UK land,
- (c) for the purposes of the company's UK property business, or
- (d) for the purposes of enabling the company to generate other UK property income (within the meaning given by section 5(6)).”

**Commencement Information**

**I10** Sch. 5 para. 19 in force at 6.4.2020, see Sch. 5 para. 35

- 20 (1) Section 610 (non-UK resident company ceasing to hold derivative contract for UK permanent establishment) is amended as follows.
- (2) In the heading, for “UK permanent establishment” substitute “ section 609(2) purposes ”.
- (3) In subsection (1) for the words from “the purposes” to “United Kingdom” substitute “ section 609(2) purposes ”.
- (4) In subsection (3)(b) for “the purposes of the permanent establishment” substitute “ section 609(2) purposes ”.
- (5) After subsection (4) insert—
- “(5) A right or liability ceases to be held or owed for section 609(2) purposes if and in so far as—
- (a) it ceases to be held or owed for any purposes mentioned in section 609(2), and
- (b) on doing so, it does not begin or continue to be held or owed for any of the other purposes so mentioned.”

**Commencement Information**

**I11** Sch. 5 para. 20 in force at 6.4.2020, see Sch. 5 para. 35

- 21 (1) Section 697 (derivative contracts with non-UK residents: exceptions) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Section 696 does not apply if NR—
- (a) is chargeable to corporation tax or income tax in respect of income arising from the derivative contract (or would be if there were any such income), and
- (b) is a party to the derivative contract otherwise than as agent or nominee of another person.”

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- (3) In subsection (6) omit the definition of “relevant entity” and “, and” immediately before it.

**Commencement Information**

**I12** Sch. 5 para. 21 in force at 6.4.2020, see Sch. 5 para. 35

- 22 In section 746 (“non-trading credits” and “non-trading debits”) in subsection (2) for paragraph (b) substitute—  
“(b) section 793A (effect of election to reallocate charge within group),”.

**Commencement Information**

**I13** Sch. 5 para. 22 in force at 6.4.2020, see Sch. 5 para. 35

- 23 (1) Section 792 (reallocation of charge within group) is amended as follows.
- (2) Omit subsection (5).
- (3) In subsection (6) for “makes further provision” substitute “ sets out further requirements ”.
- (4) After subsection (6) insert—  
“(6A) Section 793A makes provision about the effect of elections under this section.”
- (5) In subsection (8) after “793” insert “, 793A ”.

**Commencement Information**

**I14** Sch. 5 para. 23 in force at 6.4.2020, see Sch. 5 para. 35

- 24 (1) Section 793 (further requirements about elections under section 792) is amended as follows.
- (2) In subsection (1) for “or (3)” substitute “, (3), (3A) or (3B) ”.
- (3) In subsection (3), in the words before paragraph (a), after “if” insert “ subsection (2) does not apply and ”
- (4) After subsection (3) insert—  
“(3A) This subsection applies if neither of subsections (2) and (3) apply and at the relevant time—  
(a) B carried on a trade of dealing in or developing UK land, and  
(b) B was not exempt from corporation tax in respect of profits of that trade because of arrangements that have effect under section 2(1) of TIOPA 2010.
- (3B) This subsection applies if none of subsections (2), (3) and (3A) apply and at the relevant time—  
(a) B carried on a UK property business, and

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- (b) B was not exempt from corporation tax in respect of the income of its UK property business because of arrangements that have effect under section 2(1) of TIOPA 2010.”

**Commencement Information**

**I15** Sch. 5 para. 24 in force at 6.4.2020, see Sch. 5 para. 35

25 After section 793 insert—

**“793A Effect of election under section 792**

- (1) This section applies if an election is made under section 792.
- (2) If subsection (2) of section 793 applies to B the gain, or the part specified in the election, is treated as if it had accrued to B at the relevant time as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).
- (3) If subsection (3) of section 793 applies to B the gain, or the part specified in the election, is treated—
  - (a) as if it had accrued to B at the relevant time as a non-trading credit for the purposes of Chapter 6, and
  - (b) as if it had accrued in respect of an asset held for the purposes of a permanent establishment of B in the United Kingdom.
- (4) If subsection (3A) of section 793 applies to B the gain, or the part specified in the election, is treated for the purposes of Chapter 6 as if it had accrued to B at the relevant time as a credit in respect of an asset held for the purposes of B's trade of dealing in or developing UK land.
- (5) If subsection (3B) of section 793 applies to B the gain, or the part specified in the election, is treated for the purposes of Chapter 6 as if it had accrued to B at the relevant time as a credit in respect of an asset held for the purposes of B's UK property business.”

**Commencement Information**

**I16** Sch. 5 para. 25 in force at 6.4.2020, see Sch. 5 para. 35

26 In section 795 (recovery of charge from another group company or controlling director) in subsection (4) omit the words from “but” to “establishment”.

**Commencement Information**

**I17** Sch. 5 para. 26 in force at 6.4.2020, see Sch. 5 para. 35

27 In section 863 (asset becoming chargeable intangible asset), in subsection (1)(b)—

- (a) after “held” insert “—
  - (i)”,
  - and
- (b) after “establishment,” insert—

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- “(ii) for the purposes of a trade carried on by the company of dealing in or developing UK land,
- (iii) for the purposes of a UK property business carried on by the company, or
- (iv) for the purposes of enabling the company to generate other UK property income (within the meaning given by section 5(6)),”.

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**Commencement Information**

**I18** Sch. 5 para. 27 in force at 6.4.2020, see Sch. 5 para. 35

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