

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, PART 2. (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

FA 1998

- 6 (1) Paragraph 2 of Schedule 18 to FA 1998 (duty to give notice of chargeability) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) But a company is not required to give notice under sub-paragraph (1) in respect of an accounting period if for the period —
- (a) all the income on which it is chargeable to tax consists of payments on which it bears income tax by deduction, and
- (b) the company has no chargeable gains.”
- (3) In sub-paragraph (2) for “The notice” substitute “ A notice required to be given under this paragraph ”.

Commencement Information

II Sch. 5 para. 6 in force at 6.4.2020, see Sch. 5 para. 35

FA 2004

- 7 After section 55 of FA 2004 insert—
- “55A Section 55: exception to duty to give notice**
- (1) A company is not required to give notice under section 55 of the beginning of an accounting period if it reasonably expects that—
- (a) all the income on which it will be chargeable to corporation tax for the period will consist of payments on which it bears income tax by deduction, and

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2019, PART 2. (See end of Document for details)*

- (b) it will have no chargeable gains for the period.
- (2) Subsection (3) applies if—
- (a) by reason of subsection (1) a company is not required to give notice under section 55 of the beginning of an accounting period (“the unreported period”), and
 - (b) a subsequent accounting period immediately follows the end of the unreported period.
- (3) The subsequent accounting period is to be treated for the purposes of section 55 as if it does not immediately follow the end of a previous accounting period.
- (4) If by reason of subsection (1) ceasing to apply a company becomes subject to the duty to give notice under section 55 of the beginning of an accounting period the notice must be given not later than three months after the date on which it becomes subject to that duty.”

Commencement Information

I2 Sch. 5 para. 7 in force at 6.4.2020, see Sch. 5 para. 35

ITTOIA 2005

- 8 In Part 3 of ITTOIA 2005 (property businesses), omit section 362 (effect of company starting or ceasing to be within charge to income tax in respect of UK property business).

Commencement Information

I3 Sch. 5 para. 8 in force at 6.4.2020, see Sch. 5 para. 35

ITA 2007

- 9 In section 5 of ITA 2007 (income tax and companies) in paragraph (b) for the words from “the income” to the end substitute “ it is chargeable to corporation tax in respect of the income, or would be so chargeable but for an exemption. ”

Commencement Information

I4 Sch. 5 para. 9 in force at 6.4.2020, see Sch. 5 para. 35

CTA 2009

- 10 CTA 2009 is amended as follows.

Commencement Information

I5 Sch. 5 para. 10 in force at 6.4.2020, see Sch. 5 para. 35

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, PART 2. (See end of Document for details)

- 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

I6 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.”

Commencement Information

I7 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

I8 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

I9 Sch. 5 para. 14 in force at 6.4.2020, see Sch. 5 para. 35

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2019, PART 2. (See end of Document for details)*

- 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

I10 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 “,
(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

I11 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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, PART 2. (See end of Document for details)

- (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

I12 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

I13 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 “—

(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

I14 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—

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2019, PART 2. (See end of Document for details)*

- (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

I15 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.”
- (3) In subsection (6) omit the definition of “relevant entity” and “, and” immediately before it.

Commencement Information

I16 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

I17 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

I18 Sch. 5 para. 23 in force at 6.4.2020, see Sch. 5 para. 35

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, PART 2. (See end of Document for details)

- 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
- (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

I19 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

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2019, PART 2. (See end of Document for details)*

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

I20 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

I21 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—
 - “(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)).”.

Commencement Information

I22 Sch. 5 para. 27 in force at 6.4.2020, see Sch. 5 para. 35

CTA 2010

- 28 CTA 2010 is amended as follows.

Commencement Information

I23 Sch. 5 para. 28 in force at 6.4.2020, see Sch. 5 para. 35

- 29 (1) Section 9 (non-UK resident company preparing return of accounts in currency other than sterling) is amended as follows.
- (2) For subsection (1) substitute—
 - “(1) This section applies if a non-UK resident company within the charge to corporation tax prepares its return of accounts for a period of account in a currency other than sterling (the “accounts currency”).”
 - (3) In subsection (4) omit from “of its” to “United Kingdom”.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, PART 2. (See end of Document for details)

Commencement Information

I24 Sch. 5 para. 29 in force at 6.4.2020, see Sch. 5 para. 35

- 30 In section 107 (group relief: restriction on losses etc surrenderable by non-UK resident) in subsection (1) for “company” (in the second place it occurs) to the end substitute “ company within the charge to corporation tax ”.

Commencement Information

I25 Sch. 5 para. 30 in force at 6.4.2020, see Sch. 5 para. 35

- 31 In section 188BI (group relief for carried-forward losses: restriction on surrender of losses made when non-UK resident) in subsection (1) for “company” (in the second place it occurs) to the end substitute “ company within the charge to corporation tax ”.

Commencement Information

I26 Sch. 5 para. 31 in force at 6.4.2020, see Sch. 5 para. 35

TIOPA 2010

- 32 Part 10 of TIOPA 2010 (corporate interest restriction) is amended as follows.

Commencement Information

I27 Sch. 5 para. 32 in force at 6.4.2020, see Sch. 5 para. 35

- 33 (1) Section 415 (qualifying net group-interest expense: interpretation) is amended as follows.
- (2) In subsection (1) for paragraph (b) substitute—
- “ (b) either—
- (i) the condition in subsection (1A) is met, or
- (ii) any of the conditions in subsection (2) is met in relation to the guarantee, indemnity or other financial assistance in question ”.
- (3) After subsection (1) insert—
- “(1A) The condition is that—
- (a) the member in question is a company that has not been UK resident at any time before 29 October 2018,
- (b) the financial assistance in question is provided before that date, and
- (c) the financial assistance in question is in respect of a loan relationship, derivative contract or relevant arrangement or transaction (within the meaning of section 382(4)) to which the member in question is a party for the purposes of its UK property business.”

*Changes to legislation: There are currently no known outstanding effects
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Commencement Information

I28 Sch. 5 para. 33 in force at 6.4.2020, see Sch. 5 para. 35

34 In section 438 (exemption for interest payable to third parties etc) after subsection (5) insert—

“(5A) For the purposes of subsection (4) a guarantee, indemnity or other financial assistance in favour of the creditor is also ignored if—

- (a) it is provided before 29 October 2018,
- (b) the company concerned has not been UK resident at any time before that date, and
- (c) the amount concerned is in respect of a loan relationship, derivative contract or relevant arrangement or transaction (within the meaning of section 382(4)) to which the member in question is a party for the purposes of its UK property business.”

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Commencement Information

I29 Sch. 5 para. 34 in force at 6.4.2020, see Sch. 5 para. 35

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2019, PART 2.