

SCHEDULES

SCHEDULE 23

Section 126.

OBLIGATIONS ETC. IMPOSED ON UK REPRESENTATIVES

General imposition of obligations etc.

- 1 (1) Subject to the following provisions of this Schedule, the provisions of the Tax Acts, of the Taxation of Chargeable Gains Act 1992 and of any subordinate legislation made under the Tax Acts or that Act of 1992, so far as they—
- (a) make provision for or in connection with the assessment, collection and recovery of tax, or of interest on any tax, and
 - (b) apply in any case for purposes connected with the taxation of any amounts in relation to which the non-resident has a UK representative,
- shall have effect in that case with respect to tax chargeable on, and interest payable by, the non-resident as if the obligations and liabilities of the non-resident by virtue of those provisions were also obligations and liabilities of the UK representative.
- (2) In this paragraph “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

Discharge of obligations and liabilities

- 2 Subject to the following provisions of this Schedule—
- (a) the discharge by the non-resident’s UK representative or by the non-resident himself of an obligation or liability which is or corresponds to one to which that representative is subject under this Schedule shall be treated as discharging the corresponding obligation or liability to which the other is subject; and
 - (b) the non-resident shall be bound, as if they were his own, by any acts or omissions of his UK representative in the discharge of the obligations and liabilities imposed on that representative by this Schedule.

Obligations and liabilities requiring notice

- 3 Where any obligation or liability such as is mentioned in paragraph 2 above arises only if the person on whom it is imposed has been given or served with a notice or other document or has received a request or demand, that obligation or liability shall not by virtue of this Schedule be treated as having been imposed on the non-resident’s UK representative unless the notice or document, or a copy of it, was given to or served on that representative, or he was notified of the request or demand.

Status: This is the original version (as it was originally enacted).

Information requirements

- 4 (1) The obligations relating to the furnishing of information which are imposed by this Schedule on the non-resident's UK representative in a case where that representative is his independent agent shall not require that representative to do anything except so far as it is practicable for the representative to do so by acting to the best of his knowledge and belief after having taken all reasonable steps to obtain the necessary information.
- (2) Paragraph 2 above shall not have the effect—
- (a) of discharging the non-resident from any obligation to furnish information in a case where that obligation has been discharged by his UK representative by virtue only of sub-paragraph (1) above; or
 - (b) of requiring the non-resident to be bound by any error or mistake contained, otherwise than as a result of—
 - (i) any act or omission of the non-resident himself, or
 - (ii) any act or omission to which he consented or in which he connived, in information furnished by his UK representative in compliance, so far as required by sub-paragraph (1) above, with any obligation imposed by virtue of this Schedule on that representative.
- (3) In this paragraph “information” includes anything contained in any return, self-assessment, account, statement or report that is required to be provided to the Board or any officer of the Board, and references to furnishing information shall be construed accordingly.

Criminal offences and penalties etc

- 5 (1) A person shall not by virtue of this Schedule be guilty of a criminal offence except where he committed the offence himself or consented to, or connived in, its commission.
- (2) An independent agent of the non-resident shall not by virtue of this Schedule be liable, in respect of any act or omission, to any civil penalty or surcharge if—
- (a) the act or omission is neither an act or omission of the agent himself nor an act or omission to which he consented or in which he connived, and
 - (b) he is able to show that he will not, after being indemnified for his other liabilities by virtue of this Schedule, be able to recover the amount of the penalty or surcharge out of any such sums as are mentioned in paragraph 6 below.

Indemnities

- 6 An independent agent of the non-resident shall be entitled—
- (a) to be indemnified in respect of the amount of any liability of the non-resident which is discharged by that agent by virtue of paragraph 2 above; and
 - (b) to retain, out of any sums otherwise due from that agent to the non-resident, or received by that agent on behalf of the non-resident, amounts sufficient for meeting any liabilities by virtue of that paragraph which have been discharged by the agent, or to which he is subject.

Meaning of “independent agent”

- 7 (1) In this Schedule “independent agent”, in relation to the non-resident, means any person who is the non-resident’s UK representative in respect of any agency from the non-resident in which he was acting on the non-resident’s behalf in an independent capacity.
- (2) For the purposes of this paragraph a person shall not be regarded as acting in an independent capacity on behalf of the non-resident unless, having regard to its legal, financial and commercial characteristics, the relationship between them is a relationship between persons carrying on independent businesses that deal with each other at arm’s length.