

Status: Point in time view as at 24/02/2022.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2020, SCHEDULE 6. (See end of Document for details)

SCHEDULES

SCHEDULE 6

Section 32

NON-UK RESIDENT COMPANIES CARRYING ON UK PROPERTY BUSINESSES ETC

Calculation of non-trading profits and deficits from loan relationships or derivative contracts

1 In section 301 of CTA 2009 (calculation of non-trading profits and deficits from loan relationships), for the subsection (1A) inserted into that section by paragraph 15(3) of Schedule 5 to FA 2019 substitute—

“(1A) In the case of a non-UK resident company, subsections (4) to (7) need to be read with section 5(3), (3A)(b) and (3B)(b) (territorial scope of charge to corporation tax).”

2 In section 574 of CTA 2009 (derivative contracts: non-trading credits and debits to be brought into account), for the subsection (2A) inserted into that section by paragraph 18 of Schedule 5 to FA 2019 substitute—

“(2A) In the case of a non-UK resident company, subsection (2) needs to be read with section 5(3), (3A)(b) and (3B)(b) (territorial scope of charge to corporation tax).”

Debits referable to times before UK property business etc is carried on

3 After section 330 of CTA 2009 insert—

“Pre-commencement debits of property businesses etc of non-UK resident companies

330ZA Debits referable to times before UK property business etc carried on

(1) This section applies if—

- (a) a non-UK resident company has debits in respect of a loan relationship to which it is a party for the purposes of its UK property business,
- (b) the debits are referable to times (“the pre-rental times”) before (but not more than 7 years before) the date on which it starts to carry on the business, and
- (c) the debits are not otherwise brought into account for tax purposes.

(2) If, on the assumption that the company had been carrying on the business at the pre-rental times, the debits—

- (a) would have been recognised in determining its profit or loss for a period consisting of or including those times, and
- (b) would have been brought into account for the purposes of this Part,

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the debits are (so far as they exceed relevant credits) treated for the purposes of this Part as if they were debits for the accounting period in which it started to carry on the business.

- (3) For this purpose “relevant credits” means credits of the company in respect of the loan relationship which, on the assumption that the company had been carrying on the business at the pre-rental times—
- (a) would have been recognised in determining its profit or loss for a period consisting of or including those times,
 - (b) would have been brought into account for the purposes of this Part, and
 - (c) would not otherwise have been brought into account for tax purposes.
- (4) This section is subject to section 327 (disallowance of imported losses etc).
- (5) This section also applies in relation to a non-UK resident company which is a party to a loan relationship for the purpose of enabling it to generate other UK property income (within the meaning given by section 5(6)).”

4 After section 607 of CTA 2009 insert—

“607ZA Debits referable to times before UK property business etc carried on

- (1) This section applies if—
- (a) a non-UK resident company has debits in respect of a derivative contract to which it is a party for the purposes of its UK property business,
 - (b) the debits are referable to times (“the pre-rental times”) before (but not more than 7 years before) the date on which it starts to carry on the business, and
 - (c) the debits are not otherwise brought into account for tax purposes.
- (2) If, on the assumption that the company had been carrying on the business at the pre-rental times, the debits—
- (a) would have been recognised in determining its profit or loss for a period consisting of or including those times, and
 - (b) would have been brought into account for the purposes of this Part, the debits are (so far as they exceed relevant credits) treated for the purposes of this Part as if they were debits for the accounting period in which it started to carry on the business.
- (3) For this purpose “relevant credits” means credits of the company in respect of the derivative contract which, on the assumption that the company had been carrying on the business at the pre-rental times—
- (a) would have been recognised in determining its profit or loss for a period consisting of or including those times,
 - (b) would have been brought into account for the purposes of this Part, and
 - (c) would not otherwise have been brought into account for tax purposes.

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(4) This section also applies in relation to a non-UK resident company which is a party to a derivative contract for the purpose of enabling it to generate other UK property income (within the meaning given by section 5(6)).”

5 In paragraph 40 of Schedule 5 to FA 2019 (transitional provision: imported losses in respect of derivative contracts), at the end insert—

“(7) Section 607ZA of CTA 2009 (debts referable to times before UK property business carried on) has effect subject to this paragraph.”

Duty to notify chargeability to corporation tax: exceptions

6 In paragraph 2 of Schedule 18 to FA 1998 (duty of company to notify HMRC that it is chargeable for an accounting period if it has not received a notice requiring a company tax return), in sub-paragraph (1A) (which provides an exception to that duty), as inserted into that paragraph by paragraph 6(2) of Schedule 5 to FA 2019—

- (a) omit the “and” before paragraph (b), and
- (b) after that paragraph insert “, and
- (c) having deducted the income tax mentioned in paragraph (a) at the fourth step in paragraph 8 (calculation of tax payable), the amount of tax payable for the period is nil.”

7 In section 55A(1) of FA 2004 (exception to duty of company to give notice of coming within the charge to corporation tax), as inserted by paragraph 7 of Schedule 5 to FA 2019—

- (a) omit the “and” before paragraph (b), and
- (b) after that paragraph insert “, and
- (c) in consequence of the deduction of the income tax mentioned in paragraph (a) at the fourth step in paragraph 8 of Schedule 18 to the Finance Act 1998 (calculation of tax payable), the amount of tax payable for the period will be nil.”

Period for making election under regulation 6A of the Disregard Regulations

8 In regulation 6A of the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004—

- (a) in paragraph (5)(b), after “fair value” insert “ (but see paragraph (6)) ”, and
- (b) at the end insert—

“(6) For the purposes of the definition of “the first relevant period” an accounting period of a company is to be ignored if—

- (a) the accounting period begins solely as a result of a disposal of an asset by the company, and
- (b) any gain accruing to the company on the disposal would be chargeable to corporation tax as a result of section 2B(4) of the Taxation of Chargeable Gains Act 1992.”

9 In paragraph 44 of Schedule 5 to FA 2019, at the end insert—

“(4) In determining for the purposes of this paragraph whether, on the commencement date, a company comes within the charge to corporation

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tax by reason of this Schedule, no account is to be taken of any disposal made by the company before that date where any gain accruing to the company on the disposal would be chargeable to corporation tax as a result of section 2B(4) of TCGA 1992.”

Commencement

- 10 Schedule 5 to FA 2019 has effect as if the amendments made by paragraphs 1 to 7 had at all times been incorporated into the provision made by that Schedule.
- 11 The amendments made by paragraphs 8 and 9 have effect in relation to disposals made on or after 6 April 2019.

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