
STATUTORY INSTRUMENTS

1995 No. 2902

**The Taxation of Income from Land
(Non-residents) Regulations 1995**

Prescribed persons

Prescribed persons for the purposes of section 42A

3.—(1) In any case where a person falling within subsection 2(a) or (b) of section 42A is issued with a notice by the Board stating that he is a prescribed person for the purposes of subsection (1) of that section in respect of the Schedule A business of a non-resident, or a part of that business, that person is prescribed for the purposes of subsection (1) of that section in respect of that business or, as the case may be, the part referred to in the notice.

(2) Except where it relates to a part of a non-resident's Schedule A business, a notice under paragraph (1) above need not specify the name of the non-resident concerned or describe his Schedule A business.

(3) In any case where—

- (a) no notice has been issued by the Board under paragraph (1) above in respect of a non-resident's Schedule A business, or there is a part of his business in respect of which no notice has been issued under that paragraph; and
- (b) a person whose usual place of abode is in the United Kingdom—
 - (i) is an agent in respect of that business or that part,
 - (ii) has power to receive income in respect of that business or that part or has control over the direction of that income, and
 - (iii) is not an excluded person,that person is, subject to paragraph (4) below, prescribed for the purposes of subsection (1) of section 42A in respect of that business or, as the case may be, that part.

(4) Where in a case falling within paragraph (3) above there is more than one person to whom sub-paragraph (b) of that paragraph applies as respects the same business or the same part of a business, the person who is the elected agent or, if there is no elected agent, the last agent is the person prescribed for the purposes of subsection (1) of section 42A in respect of that business or, as the case may be, that part.

(5) In any case where—

- (a) no notice has been issued by the Board under paragraph (1) above in respect of a non-resident's Schedule A business, or there is a part of his business in respect of which no notice has been issued under that paragraph;
- (b) there is no person to whom paragraph (3)(b) above applies in respect of that business or that part; and
- (c) a person whose usual place of abode is in the United Kingdom—
 - (i) is a tenant of premises owned by the non-resident in connection with that business or that part, and

(ii) is liable to pay to the non-resident in respect of his occupation of those premises sums exceeding in the aggregate £5,200 per annum or, where he occupies the premises for less than one year, the proportionate amount of that sum which is determined by the duration of his occupation,

that person is prescribed for the purposes of subsection (1) of section 42A in respect of that business or, as the case may be, that part.

Interpretation of regulation 3

4.—(1) In regulation 3—

- (a) “excluded person” means an agent whose activity on behalf of the non-resident in connection with the management or administration of his Schedule A business or part thereof (as the case may be) is confined to the provision of legal advice or legal services;
- (b) “elected agent” means the agent who is elected jointly by the last agent and himself to assume the responsibilities of a prescribed person for the purposes of subsection (1) of section 42A in relation to the Schedule A business or part thereof (as the case may be);
- (c) “last agent” means the agent by whom sums constituting income from the non-resident’s Schedule A business or part thereof (as the case may be) are paid directly to the non-resident or to an agent whose usual place of abode is outside the United Kingdom or to a person who is not an agent.

(2) An election shall be made by notice to the Board signed by the last agent and the person to be elected, and any such notice shall state—

- (a) the name and address of the agent elected, and
- (b) the date from which the election has effect, not being a date earlier than the first day of the quarter in which the election is made.

(3) An election may be revoked by notice to the Board given by either of the agents who made the election, and any such revocation shall have effect—

- (a) from the first day of the quarter next following the date on which the notice is received by the Board, or
- (b) after the expiry of 30 days following the date on which the notice is received by the Board, whichever is the later to occur.

Partnerships

5. In any case where a liability to make any payment to the Board under these Regulations arises from amounts payable or things done in the course of a business carried on by any persons in partnership, that partnership as such shall be treated for the purposes of these Regulations as a person falling within subsection (2)(a) or (b) (as the case may be) of section 42A.

Multiple branches

6.—(1) In any case where an agent—

- (a) is a prescribed person by virtue of regulation 3 in respect of the Schedule A business, or part thereof, of more than one non-resident,
- (b) acts on behalf of those non-residents through branches of his business in circumstances where the average number of non-residents in each branch at the relevant time is not less than five, and
- (c) is a person approved by the Board for the purposes of this regulation,

that person shall be treated for the purposes of these Regulations as if in respect of each branch he were a separate and distinct person.

(2) An application for approval under paragraph (1) above shall be made to the Board in a form provided or authorised by the Board which shall contain—

- (a) such information as is necessary to identify the branches concerned,
- (b) the number of non-residents in each branch, and
- (c) a declaration by the prescribed person that he does not act on behalf of any non-residents other than those whose business is managed by the branches so identified.

(3) An approval under paragraph (1) above shall, unless revoked or withdrawn, have effect for the quarter following that in which it is given and for any subsequent quarter.

(4) An approval may be revoked by the prescribed person by notice to the Board and, subject to paragraph (5) below, such revocation shall have effect for the quarter following that in which it is given and for any subsequent quarter.

(5) Notwithstanding the revocation of approval under paragraph (4) above, a further application for approval may be made by the prescribed person in accordance with paragraph (2) above at any time following the revocation; and paragraph (3) above shall apply accordingly in relation to an approval given in response to that application.

(6) The Board may, by notice to the prescribed person, refuse approval where they have reason to believe that—

- (a) the average number of non-residents in each branch is less than five at the relevant time, or
- (b) there is likely to be a failure on the part of the prescribed person to comply with the obligations imposed on him under these Regulations in relation to any branch, or
- (c) the declaration given by the prescribed person pursuant to paragraph (2)(c) above is incorrect.

(7) The Board may, by notice to the prescribed person, withdraw approval where they have reason to believe that—

- (a) the average number of non-residents in each branch was at the relevant time, or has since become, less than five, or
- (b) there has been a failure on the part of the prescribed person to comply with the obligations imposed on him under these Regulations in relation to any branch, or
- (c) the declaration given by the prescribed person pursuant to paragraph (2)(c) above was, or has become, incorrect.

(8) The prescribed person may appeal against a notice under paragraph (6) above refusing approval, or a notice under paragraph (7) above withdrawing approval, by notice to the Board within 30 days of the date of issue of the notice of refusal or, as the case may be, the notice of withdrawal.

(9) The appeal shall be to the General Commissioners except that the prescribed person may elect (in accordance with section 46(1) of the Management Act) to appeal to the Special Commissioners.

(10) The General Commissioners or, as the case may be, the Special Commissioners shall on appeal to them confirm the notice of refusal or withdrawal unless they are satisfied that it ought to be quashed.

(11) In this regulation—

- (a) references to branches of an agent's business are references to the units (of whatever kind) into which the agent has divided his business;
- (b) references to "the relevant time" are references to the time at which an application for approval is made by the prescribed person.

Registration by prescribed persons

7.—(1) The person prescribed by paragraph (2) below shall, within the period of 30 days following the date specified in paragraph (3) below, register with the Board the following details—

- (a) his name and address, and
- (b) his tax office reference, if he has one.

(2) The person prescribed by this paragraph is any person who is—

- (a) an agent in respect of the Schedule A business, or part thereof, of a non-resident, and
- (b) a person prescribed by regulation 3 in respect of that business or that part.

(3) The date specified in this paragraph is the date on which the agent became a person prescribed by regulation 3 in respect of that business or that part.