



# Finance Act 1995

## 1995 CHAPTER 4

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Change of residence and non-residents*

#### <sup>F1</sup>124 Change of residence.

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#### **Textual Amendments**

**F1** S. 124 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

#### 125 Non-resident partners.

- (1) The provisions of the Taxes Act 1988 to which sections 215 and 216 of the <sup>M1</sup>Finance Act 1994 (partnerships and change of ownership of trade etc.) relate shall have effect as respects the year 1995-96 and subsequent years of assessment as if subsection (5) (b) of section 215 (amendments not to apply until the year 1997-98 to partnerships controlled abroad) were omitted; and the <sup>M2</sup>Taxes Act 1988 shall have effect—
- (a) as respects the year 1997-98 and subsequent years of assessment, and
  - (b) in its application with the amendments made by those sections to partnerships whose trades, professions or businesses were set up and commenced on or after 6th April 1994, as respects the years 1995-96 and 1996-97,
- with the further amendments specified in the following provisions of this section.

<sup>F2</sup>(2) .....

<sup>F2</sup>(3) .....

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- (4) In section 114(1) (partnerships including companies), after the word “company”, in the second place where it occurs, there shall be inserted “ and, subject to section 115(4), as if that company were resident in the United Kingdom ”.
- (5) In section 115 (provisions supplementary to section 114), for subsections (4) and (5) there shall be substituted the following subsections—
  - “(4) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is a company which is not resident in the United Kingdom, section 114 shall have effect in relation to that company as if—
    - (a) the reference in subsection (1) to a company resident in the United Kingdom were a reference to a company that is not so resident; and
    - (b) in subsection (2), after “carried on” there were inserted “in the United Kingdom through a branch or agency”.
  - (5) Where the partners in a partnership include a company, subsections (4) and (5) of section 112 shall apply for the purposes of corporation tax as well as for the purposes of income tax, and section 114 shall have effect accordingly.”

**Textual Amendments**

**F2** S. 125(2)(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

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**Marginal Citations**

**M1** 1994 c. 9.

**M2** 1994 c. 9.

**126 UK representatives of non-residents.**

- (1) Schedule 23 to this Act shall have effect for imposing obligations and liabilities in relation to income tax <sup>F3</sup>... and capital gains tax on a branch or agency which, under this section, is the UK representative of a person who is not resident in the United Kingdom (“the non-resident”).
- (2) Subject to the following provisions of this section and to section 127 below, a branch or agency in the United Kingdom through which the non-resident carries on (whether solely or in partnership) any trade, profession or vocation shall, for the purposes of this section and Schedule 23 to this Act, be the non-resident’s UK representative in relation to the following amounts, that is to say—
  - (a) the amount of any such income from the trade, profession or vocation as arises, directly or indirectly, through or from that branch or agency;
  - (b) the amount of any income from property or rights which are used by, or held by or for, that branch or agency; [<sup>F4</sup>and]
  - (c) amounts which, by reference to that branch or agency, are chargeable to capital gains tax under section 10 of the <sup>M3</sup>Taxation of Chargeable Gains Act 1992 (non-residents) <sup>F5</sup>... ; <sup>F6</sup>...
  - <sup>F6</sup>(d) .....
- (3) For the purposes of this section and Schedule 23 to this Act, the non-resident’s UK representative in relation to any amount shall continue to be the non-resident’s UK

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representative in relation to that amount even after ceasing to be a branch or agency through which the non-resident carries on the trade, profession or vocation in question.

(4) For the purposes of this section and Schedule 23 to this Act, the non-resident's UK representative in relation to any amount shall be treated, where he would not otherwise be so treated, as if he were a separate and distinct person from the non-resident.

(5) Where the branch or agency through which the non-resident carries on the trade, profession or vocation is one carried on by persons in partnership, the partnership, as such, shall be deemed for the purposes of this section and Schedule 23 to this Act to be the non-resident's UK representative in relation to the amounts mentioned in subsection (2) above.

(6) Where a trade or profession carried on by the non-resident through a branch or agency in the United Kingdom is one carried on by him in partnership, the trade or profession carried on through that branch or agency shall be deemed, for the purposes of this section and Schedule 23 to this Act, to include [<sup>F7</sup>the notional or deemed trade or profession].

(7) For the purposes of this section and Schedule 23 to this Act where—

- (a) a trade or profession carried on by the non-resident in the United Kingdom is one carried on by him in partnership, and
- (b) any member of that partnership is resident in the United Kingdom,

[<sup>F7</sup>the notional or deemed trade or profession] shall be treated (in addition, where subsection (6) above also applies, to being treated as included in a trade or profession carried on through any such branch or agency as is mentioned in that subsection) as a trade carried on in the United Kingdom through the partnership as such.

[<sup>F8</sup>(7A) In subsections (6) and (7) “the notional or deemed trade or profession” means—

- (a) the notional trade from which the non-resident's share in the partnership's profits or losses is treated for the purposes of section 852 of the Income Tax (Trading and Other Income) Act 2005 as deriving, or
- (b) the deemed trade or profession from which that share is treated for the purposes of section 114 of the Taxes Act as deriving.]

[<sup>F9</sup>(8) In this section, “branch or agency” means any factorship, agency, receivership, branch or management.]

(9) This section and Schedule 23 to this Act apply—

- (a) for the purposes of income tax and capital gains tax, in relation to the year 1996-97 and subsequent years of assessment; <sup>F10</sup>...

<sup>F10</sup>(b) .....

[<sup>F11</sup>(10) This section does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.]

#### Textual Amendments

**F3** Words in s. 126(1) repealed (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(2\), Sch. 43 Pt. 3\(6\)](#)

**F4** Word in s. 126(2)(b) inserted (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(3\)\(a\)](#)

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- F5** Words in s. 126(2)(c) repealed (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(3\)\(b\), Sch. 43 Pt. 3\(6\)](#)
- F6** S. 126(2)(d) and preceding word repealed (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(3\)\(c\), Sch. 43 Pt. 3\(6\)](#)
- F7** Words in s. 126(6)(7) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 479\(2\)](#) (with [Sch. 2](#))
- F8** S. 126(7A) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 479\(3\)](#) (with [Sch. 2](#))
- F9** S. 126(8) substituted (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(4\)](#)
- F10** S. 126(9)(b) and preceding word repealed (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(5\), Sch. 43 Pt. 3\(6\)](#)
- F11** S. 126(10) inserted (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 27 para. 4\(6\)](#)

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

- C1** S. 126(6)(7) amended (31.7.1998) by [1998 c. 36, s. 46\(3\), Sch. 7 para. 10](#)

**Marginal Citations**

- M3** [1992 c. 12.](#)

**127 Persons not treated as UK representatives.**

- (1) For the purposes of section 126 above and Schedule 23 to this Act, none of the following persons shall be capable of being the non-resident's UK representative in relation to income or other amounts falling within paragraphs [<sup>F12</sup>(a) to (c)] of section 126(2) above, that is to say—
- (a) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to transactions carried out through a person who (though an agent of the non-resident) does not act in relation to the transactions in the course of carrying on a regular agency for the non-resident, that agent;
- (b) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to transactions carried out through a broker and falling within subsection (2) below, that broker;
- (c) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to investment transactions carried out through an investment manager and falling within subsection (3) below, that manager;
- [<sup>F13</sup>[<sup>F14</sup>(ca)] where the income consists of alternative finance return, as defined by [<sup>F15</sup>Chapter 5 of Part 2] of the Finance Act 2005, the other party to the arrangements falling within that section or any other person acting for the non-resident in relation to the arrangements;]
- [<sup>F16</sup>(cb) where the income consists of profit share return in accordance with arrangements to which section 49A of FA 2005 applies (alternative finance arrangements: profit share agency), the other party to the arrangements or any other person acting for the non-resident in relation to the arrangements;]and

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- (d) where the non-resident is a member of Lloyd's and the income arises from, or the other amounts are chargeable by reference to, his underwriting business, any person who, in relation to or to matters connected with that income or those amounts, has been the non-resident's members' agent or the managing agent of the syndicate in question.
- (2) For the purposes of subsection (1)(b) above where any income arises from, or other amounts are chargeable by reference to, so much of any business as relates to any transaction carried out through a broker, that transaction shall be taken, in relation to the income or other amounts ("the taxable sums"), to fall within this subsection if—
- (a) at the time of the transaction, the broker was carrying on the business of a broker;
  - (b) the transaction was carried out by the broker on behalf of the non-resident in the ordinary course of that business;
  - (c) the remuneration which the broker received for the provision of the services of a broker to the non-resident in respect of that transaction was at a rate not less than that which would have been customary for that class of business; and
  - (d) the non-resident does not fall (apart from this paragraph) to be treated as having the broker as his UK representative in relation to any income or other amounts not included in the taxable sums but chargeable to tax for the same chargeable period.
- (3) For the purposes of subsection (1)(c) above where any income arises from, or other amounts are chargeable by reference to, so much of any business as relates to any investment transaction, that transaction shall be taken, in relation to that income or those amounts ("the taxable sums"), to have been carried out through an investment manager and to fall within this subsection if—
- (a) the transaction was carried out on behalf of the non-resident by a person ("the manager") who at the time was carrying on a business of providing investment management services;
  - (b) the transaction was carried out in the ordinary course of that business;
  - (c) the manager, when he acted on behalf of the non-resident in relation to the transaction, did so in an independent capacity;
  - (d) the requirements of subsection (4) below are satisfied in relation to the transaction;
  - (e) the remuneration which the manager received for the provision to the non-resident of the investment management services in question was at a rate which was not less than that which would have been customary for that class of business; and
  - (f) the non-resident does not fall (apart from this paragraph) to be treated as having the manager as his UK representative in relation to any income or other amounts not included in the taxable sums but chargeable to tax for the same chargeable period.
- (4) Subject to subsections (9) to (11) below, the requirements of this subsection are satisfied in relation to any transaction if—
- (a) there is a qualifying period in relation to which it has been or is the intention of the manager and the persons connected with him that the non-resident's relevant excluded income should, as to at least 80 per cent., consist of amounts to which neither the manager nor any such person has a beneficial entitlement; and
  - (b) to the extent that there is a failure to fulfil that intention, that failure—

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- (i) is attributable (directly or indirectly) to matters outside the control of the manager and persons connected with him; and
  - (ii) does not result from a failure by the manager or any of those persons to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (5) For the purposes of this section any reference to the relevant excluded income of the non-resident for a qualifying period is a reference to the aggregate of such of the profits and gains of the non-resident for the chargeable periods comprised in the qualifying period as—
- (a) derive from transactions carried out by the manager while acting on the non-resident's behalf; and
  - (b) for the purposes of [F17Chapter 1 of Part 14 of the Income Tax Act 2007 (limits on liability to income tax of non-UK residents) would fall (apart from the requirements of section 819 of that Act) to be treated as disregarded income (see section 813 of that Act) ] for any of those chargeable periods.
- (6) For the purposes of this section any reference to an amount of relevant excluded income to which a person has a beneficial entitlement is a reference to so much of any amount to which he has or may acquire a beneficial entitlement by virtue of—
- (a) any interest of his (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of that income is represented, or
  - (b) any interest of his in or other rights in relation to the non-resident, as is or would be attributable to that income.
- (7) For the purposes of subsections (4) to (6) above references to a qualifying period, in relation to any transaction, are references to any period consisting in or including the chargeable period for which the taxable sums are chargeable to tax, being, in a case where it is not that chargeable period, a period of not more than five years comprising two or more complete chargeable periods.
- (8) Where there is a transaction which would fall within subsection (3) above but for its being a transaction in relation to which the requirements of subsection (4) above are not satisfied, this section shall have effect as if the transaction did fall within subsection (3) above but only in relation to so much of the amount of the taxable sums as does not represent any amount of the non-resident's relevant excluded income to which the manager or a person connected with him has or has had any beneficial entitlement.
- (9) Subsections (10) and (11) below shall apply, where amounts arise or accrue to the non-resident as a participant in a collective investment scheme, for the purpose of determining whether a transaction carried out for the purposes of that scheme, in so far as it is a transaction in respect of which any such amounts arise or accrue to him, is one in relation to which the requirements of subsection (4) above are satisfied.
- (10) Those requirements shall be deemed to be satisfied in relation to the transaction wherever the collective investment scheme is such that, if the following assumptions applied, namely—
- (a) that all transactions carried out for the purposes of the scheme were carried out on behalf of a company constituted for the purposes of the scheme and resident outside the United Kingdom, and

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(b) that the participants did not have any rights in respect of the amounts arising or accruing in respect of those transactions other than the rights which, if they held shares in the company on whose behalf the transactions are assumed to be carried out, would be their rights as shareholders,

the assumed company would not, in relation to the chargeable period in which the taxable sums are chargeable to tax, be regarded for tax purposes as a company carrying on a trade in the United Kingdom.

(11) Where, on those assumptions, the assumed company would be so regarded for tax purposes, subsections (4) to (8) above shall have effect in relation to the transaction as if, applying those assumptions—

- (a) references to the non-resident were references to the assumed company; and
- (b) the following subsection were substituted for subsection (5) above, namely—

“(5) In subsection (4) above the reference to the assumed company’s relevant excluded income for a qualifying period is a reference to the aggregate of the amounts which would, for the chargeable periods comprised in the qualifying period, be chargeable to tax on that company as profits deriving from the transactions carried out by the manager and assumed to be carried out on the company’s behalf.”

(12) In this section “investment transactions” means—

- (a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,
- (b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and
- (c) such other transactions as the Treasury may by regulations designate for the purposes of this section;

and the power to make regulations for the purposes of paragraph (c) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

(13) For the purposes of subsection (12) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

(14) The preceding provisions of this section shall have effect in the case of a person who acts as a broker or provides investment management services as part only of a business as if that part were a separate business.

(15) For the purposes of this section—

- (a) a person shall be taken to carry out a transaction on behalf of another where he undertakes the transaction himself, whether on behalf of or to the account of that other, and also where he gives instructions for it to be so carried out by another; and
- (b) the references to the income arising from so much of a business as relates to transactions carried out through a branch or agency on behalf of the non-resident shall include references to income from property or rights which, as a result of the transactions, are used by, or held by or for, that branch or agency.

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- (16) In paragraph (d) of subsection (1) above—
- (a) the reference to a member of Lloyd’s is a reference to any person who is a member within the meaning of Chapter III of Part II of the Finance Act 1993 or a corporate member within the meaning of Chapter V of Part IV of the <sup>M4</sup>Finance Act 1994, and
  - (b) the references to a members’ agent and to a managing agent shall also be construed in accordance with section 184 of that Act of 1993 or, as the case may be, section 230 of that Act of 1994.
- (17) In this section—
- “branch or agency” has the same meaning as in [<sup>F18</sup>section 126 above];
- [<sup>F19</sup>“collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000 and “participant”, in relation to such a scheme, shall be construed in accordance with that section;]
- and [<sup>F20</sup>section 993 of the Income Tax Act 2007] (connected persons) shall apply for the purposes of this section.
- (18) For the purposes of this section a person shall not be regarded as acting in an independent capacity when acting 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.
- (19) This section applies—
- (a) for the purposes of income tax and capital gains tax, in relation to the year 1996-97 and subsequent years of assessment; <sup>F21</sup>...
  - <sup>F21</sup>(b) .....

#### Textual Amendments

- F12** Words in s. 127(1) substituted (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 5\(2\)](#)
- F13** S. 127(1)(cc) inserted (with effect in accordance with s. 56 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 48\(3\)](#)
- F14** S. 127(1)(ca): s. 127(1)(cc) renumbered as s. 127(1)(ca) (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 95\(10\)](#)
- F15** Words in s. 127(1)(ca) substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 53\(11\)](#)
- F16** S. 127(1)(cb) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 95\(10\)](#)
- F17** Words in s. 127(5)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1034\(1\)](#), [Sch. 1 para. 367\(2\)](#) (with [Sch. 2](#))
- F18** Words in s. 127(17) substituted (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 5\(4\)](#)
- F19** S. 127(17): definition of “collective investment scheme” substituted (1.12.2001) for definitions of “collective investment scheme” and “participant” by [S.I. 2001/3629](#), [art. 89](#)
- F20** Words in s. 127(17) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [s. 1034\(1\)](#), [Sch. 1 para. 367\(3\)](#) (with [Sch. 2](#))



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**F21** S. 127(19)(b) and preceding word repealed (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 5\(5\)](#), [Sch. 43 Pt. 3\(6\)](#)

**Marginal Citations**

**M4** [1993 c. 34](#).

**F22 128 Limit on income chargeable on non-residents: income tax.**

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**Textual Amendments**

**F22** S. 128 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 368](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F23 129 Limit on income chargeable on non-residents: corporation tax.**

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**Textual Amendments**

**F23** S. 129 repealed (with effect in relation to accounting periods beginning on or after 1.1.2003 in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 27 para. 7](#), [Sch. 43 Pt. 3\(6\)](#)

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