



# Finance Act 2003

## 2003 CHAPTER 14

### PART 7

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

##### *Taxation of non-resident companies and related matters*

#### **148 Meaning of “permanent establishment”**

- (1) For the purposes of the Tax Acts a company has a permanent establishment in a territory if, and only if—
- (a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or
  - (b) an agent acting on behalf of the company has and habitually exercises there authority to do business on behalf of the company.

This general definition is subject to the following provisions.

- (2) For this purpose a “fixed place of business” includes (without prejudice to the generality of that expression)—
- (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) an installation or structure for the exploration of natural resources;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (h) a building site or construction or installation project.
- (3) A company is not regarded as having a permanent establishment in a territory by reason of the fact that it carries on business there through an agent of independent status acting in the ordinary course of his business.

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- (4) A company is not regarded as having a permanent establishment in a territory by reason of the fact that—
- (a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
  - (b) an agent carries on activities there for and on behalf of the company, if, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (5) For this purpose “activities of a preparatory or auxiliary character” include (without prejudice to the generality of that expression)—
- (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company;
  - (b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person;
  - (d) purchasing goods or merchandise, or collecting information, for the company.

[<sup>F1</sup>(5A) Where alternative finance return as defined by [<sup>F2</sup>Chapter 5 of Part 2] of the Finance Act 2005 is paid to a company that is not resident in the United Kingdom, the company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the arrangements falling within that section by the other party to the arrangements or by any other person acting for the company in relation to the arrangements.]

[<sup>F3</sup>(5B) Where profit share return is paid, in accordance with arrangements to which section 49A of FA 2005 applies (alternative finance arrangements: profit share agency), to a company that is not resident in the United Kingdom, the company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the arrangements by the other party to the arrangements or by any other person acting for the company in relation to the arrangements.]

- (6) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts), at the appropriate place insert—

““permanent establishment”, in relation to a company, has the meaning given by section 148 of the Finance Act 2003;”.

- (7) In section 288(1) of the Taxation of Chargeable Gains Act 1992 (c. 12) (interpretation), at the appropriate place insert—

““permanent establishment”, in relation to a company, has the meaning given by section 148 of the Finance Act 2003;”.

#### Textual Amendments

- F1** S. 148(5A) inserted (with effect in accordance with s. 56 of the amending Act) by [Finance Act 2005 \(c. 7\), s. 48\(2\)](#)
- F2** Words in s. 148(5A) substituted (with effect in accordance with s. 53(13)(14) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 53\(12\)](#)
- F3** S. 148(5B) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(9\)](#)

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## **149 Non-resident companies: basis of charge to corporation tax**

(1) In section 11 of the Taxes Act 1988 (corporation tax: companies not resident in the United Kingdom), for subsections (1) and (2) (basis of taxation) substitute—

“(1) A company not resident in the United Kingdom is within the charge to corporation tax if, and only if, it carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(2) If it does so, it is chargeable to corporation tax, subject to any exceptions provided for by the Corporation Tax Acts, on all profits, wherever arising, that are attributable to its permanent establishment in the United Kingdom.

These profits, and these only, are the company’s “chargeable profits” for the purposes of corporation tax.

(2A) The profits attributable to a permanent establishment for the purposes of corporation tax are—

(a) trading income arising directly or indirectly through or from the establishment,

(b) income from property or rights used by, or held by or for, the establishment, and

(c) chargeable gains falling within section 10B of the 1992 Act—

(i) by virtue of assets being used in or for the purposes of the trade carried on by the company through the establishment, or

(ii) by virtue of assets being used or held for the purposes of the establishment or being acquired for use by or for the purposes of the establishment.”

(2) After that section insert—

### **“11AA Determination of profits attributable to permanent establishment**

(1) This section provides for determining for the purposes of corporation tax the amount of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom (“the non-resident company”).

(2) There shall be attributed to the permanent establishment the profits it would have made if it were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

(3) In applying subsection (2)—

(a) it shall be assumed that the permanent establishment has the same credit rating as the non-resident company, and

(b) it shall also be assumed that the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.

No deduction may be made in respect of costs in excess of those that would have been incurred on those assumptions.

(4) There shall be allowed as deductions any allowable expenses incurred for the purposes of the permanent establishment, including executive and general

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administrative expenses so incurred, whether in the United Kingdom or elsewhere.

“Allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a company resident in the United Kingdom.

- (5) The Board may by regulations make provision as to the application of subsection (2) in relation to insurance companies.

The regulations may, in particular, make provision in place of subsection (3) (b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom. In this subsection “insurance company” has the meaning given by section 431(2).

- (6) Schedule A1 to this Act contains provisions supplementing the provisions of this section.”.

- (3) At the beginning of the Schedules to the Taxes Act 1988 insert as Schedule A1 the Schedule set out in Schedule 25 to this Act.

- (4) After section 10A of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

**“10B Non-resident company with United Kingdom permanent establishment**

- (1) Subject to any exceptions provided by this Act, the chargeable profits for the purposes of corporation tax of a company not resident in the United Kingdom but carrying on a trade in the United Kingdom through a permanent establishment there include chargeable gains accruing to the company on the disposal of—

- (a) assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time the gain accrued, or
- (b) assets situated in the United Kingdom and used or held for the purposes of the permanent establishment at or before the time the gain accrued or acquired for use by or for the purposes of the permanent establishment.

- (2) Subsection (1) does not apply unless the disposal is made at a time when the company is carrying on a trade in the United Kingdom through a permanent establishment there.

- (3) This section does not apply to a company that, by virtue of Part 18 of the Taxes Act (double taxation relief arrangements), is exempt from corporation tax for the chargeable period in respect of the profits of the permanent establishment.

- (4) In this section “trade” has the meaning given by section 6(4)(b) of the Taxes Act.”.

- (5) In section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), at the appropriate place insert—

““chargeable profits”, in relation to a company that is not resident in the United Kingdom—

- (a) for corporation tax purposes generally, has the meaning given by section 11(2), and

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(b) for the purposes of Chapter 4 of Part 17 (controlled foreign companies), has the meaning given by section 747(6);”.

- (6) This section has effect in relation to accounting periods (of the non-resident company) beginning on or after 1st January 2003, and regulations under section 11AA(5) of the Taxes Act 1988 (inserted by subsection (2) above) may be made so as to have effect from that date.

## **150 Non-resident companies: assessment, collection and recovery of corporation tax**

- (1) The enactments relating to corporation tax, so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax, have effect, in accordance with this section, as if the obligations and liabilities of a non-resident company were also obligations and liabilities of its UK representative.
- (2) For this purpose a permanent establishment in the United Kingdom through which a non-resident company carries on a trade—
- (a) is the UK representative of the company in relation to chargeable profits of the company attributable to that establishment,
  - (b) continues to be the company’s UK representative in relation to those profits even after ceasing to be a permanent establishment through which the company carries on a trade, and
  - (c) shall be treated, if it would not otherwise be so treated, as a distinct and separate person from the non-resident company.

As to the chargeable profits attributable to a permanent establishment, see section 11(2A) of the Taxes Act 1988.

- (3) Subject to the following provisions of this section—
- (a) the discharge by the UK representative of a non-resident company, or by the company itself, of an obligation or liability that corresponds to one to which the other is subject discharges the corresponding obligation or liability of the other, and
  - (b) a non-resident company is bound, as if they were its own, by acts or omissions of its UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (4) An obligation or liability attaching to a non-resident company—
- (a) by reason of its having been given or served with a notice or other document, or
  - (b) by reason of its having received a request or demand,
- does not also attach to its UK representative unless the notice or document, or a copy of it, has been given to or served on the representative or, as the case may be, unless the representative has been notified of the request or demand.
- (5) A non-resident company is not bound by mistakes in information provided by its UK representative in pursuance of an obligation imposed on the representative by this section, unless the mistake is the result of an act or omission of the company itself, or to which the company consented or in which it connived.
- (6) The UK representative of a non-resident company is not by virtue of this section liable to be proceeded against for a criminal offence unless the representative committed the offence itself, or consented to or connived in its commission.

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(7) In this section—

“enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30);

“information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Board or any officer of the Board;

“non-resident company” means a company that is not resident in the United Kingdom; and

“trade” has the meaning given by section 6(4)(b) of the Taxes Act 1988.

(8) This section has effect for accounting periods (of the non-resident company) beginning on or after 1st January 2003.

#### <sup>F4</sup>151 Non-resident companies: extent of charge to income tax

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##### Textual Amendments

**F4** S. 151 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 452, [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

#### 152 Non-resident companies: transactions carried out through broker, investment manager or Lloyd’s agent

[<sup>F5</sup>(1)] Schedule 26 to this Act contains provisions supplementing—

(a) section 148(3) (meaning of “permanent establishment”: not to include independent agent), <sup>F6</sup>...

<sup>F6</sup>(b) .....

as regards transactions carried out through a broker, investment manager or Lloyd’s agent.

[<sup>F7</sup>(2) Schedule 26 also contains provision about disregarding profits of certain investment transactions carried out on behalf of non-resident companies when attributing profits under section 11AA of the Taxes Act 1988.]

##### Textual Amendments

**F5** S. 152(1): s. 152 renumbered as s. 152(1) (with effect in accordance with Sch. 16 para. 11(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 8\(2\)](#)

**F6** S. 152(b) and word repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 453, [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F7** S. 152(2) inserted (with effect in accordance with Sch. 16 para. 11(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 8\(3\)](#)

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## 153 General replacement of references to branch or agency of company

- (1) In the following provisions (which relate only to companies) for “branch or agency” or “branches or agencies”, wherever occurring, substitute “ permanent establishment ” or “ permanent establishments ”.

The provisions are—

- (a) in the Taxes Act 1988, sections 115(4)(b), <sup>F8</sup>... 402(3B), 403E(1)(a), (2), (4), (5) and (6), 442(1), 444BB(3)(b), <sup>F9</sup>..., 748A(1)(c) and (2), 790(6A)(b), 801(1A)(b), 804A(1)(a), 806L(1), (2), (4), and (5), 806M(2) to (5) and 815A(6); in Schedule 15, paragraphs 17(3)(c) and 25(2)(c); <sup>F10</sup>... in Schedule 24, paragraphs 1 and 8; and in Schedule 25, paragraphs 6(2A) and (2C), 8 and 11(3);
- (b) in the Taxation of Chargeable Gains Act 1992 (c. 12), sections 140(1), 140C(1)(a), 173(3)(b), 175(1A)(b), 185(4) and 213(5A);
- <sup>F11</sup>(c) .....
- (d) in the Capital Allowances Act 2001 (c. 2), sections 560(2) and 561(1)(c);
- (e) in the Finance Act 2002 (c. 23), in Schedule 22, paragraph 10(1)(b)(ii); and in Schedule 29, paragraphs 66(5) and (8)(b), 68(2)(b), 86(1)(a), 87(1)(a), 109(1)(b) and 110(1)(b).

- (2) In the following provisions (which relate to companies and other persons), any reference to a branch or agency shall be read, in relation to a company, as a reference to a permanent establishment.

The provisions are—

- (a) in the Taxes Act 1988, sections <sup>F12</sup>... 794(2)(bb), 806K(1), 814(1) and 830(4), and in Schedule 23A, [<sup>F13</sup>paragraph 4];
- (b) in the Taxation of Chargeable Gains Act 1992, sections 25(2), (3) and (5), 80(4)(a) and (b) and (7)(b), 199(2) and (4) and 276(7);
- (c) in the Finance Act 1999 (c. 16), section 85(2)(a);
- (d) in the Finance Act 2002, in Schedule 26, paragraph 31(6)(a).

- (3) Any reference to a branch or agency—

- (a) in subordinate legislation made under an enactment contained in the Tax Acts or relating to chargeable gains, or
- (b) that is to be construed as having the same meaning as in any such enactment, shall be read, in relation to a company, as a reference to a permanent establishment.

“Subordinate legislation” here has the same meaning as in the Interpretation Act 1978 (c. 30).

- (4) This section has effect in relation to accounting periods beginning on or after 1st January 2003.

### Textual Amendments

- F8** Words in s. 153(1)(a) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F9** Word in s. 153(1)(a) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F10** Words in s. 153(1)(a) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(7\)](#)
- F11** S. 153(1)(c) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(11\)](#)

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- F12** Word in s. 153(2)(a) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))
- F13** Words in s. 153(2)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 454](#) (with [Sch. 2](#))

## **154 Double taxation relief: profits attributable to overseas permanent establishment**

- (1) In Part 18 of the Taxes Act 1988 (double taxation relief), section 797 (limits on credit: corporation tax) is amended as follows.
- (2) In subsection (1) for “subsections (2) and (3)” substitute “ the following provisions of this section ”.
- (3) In subsection (2) for “subsection (3)” substitute “ subsections (2A) and (3) ”.
- (4) After subsection (2) insert—
 

“(2A) The provisions of section 11AA (profits attributable to permanent establishment), and of any regulations made under that section, apply, with the necessary modifications, in determining for the purposes of this section how much of the chargeable profits of a company resident in the United Kingdom is attributable to a permanent establishment of the company outside the United Kingdom.”.
- (5) The amendments in this section have effect in relation to accounting periods beginning on or after 1st January 2003.

## **155 Consequential amendments**

- (1) Schedule 27 to this Act provides for amendments consequential on the provisions of sections 148 to 153.
- (2) The amendments made by that Schedule have effect in relation to accounting periods beginning on or after 1st January 2003.

## **156 Overseas life insurance companies**

- (1) The enactments relating to corporation tax have effect in relation to overseas life insurance companies subject to such modifications and exceptions as the Treasury may prescribe by regulations.
- (2) The power to make regulations under this section includes power to make provision in place of, and in consequence to repeal or revoke, all or any of the enactments relating to corporation tax that on the passing of this Act make provision in relation to overseas life insurance companies.
- (3) Regulations under this section—
  - (a) may make different provision for different cases, and
  - (b) may make such consequential amendments of other enactments as appear to the Treasury to be necessary or expedient.
- [<sup>F14</sup>(4) Regulations under this section may be made so as to have effect in relation to accounting periods or periods of account (whenever beginning) which end on or after the day on which the regulations come into force.]
- (5) In this section—

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“enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30), and

“overseas life insurance company” means an insurance company (as defined in section 431(2) of the Taxes Act 1988) that is not resident in the United Kingdom but carrying on life assurance business (as so defined) through a permanent establishment in the United Kingdom.

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**Textual Amendments**

**F14** S. 156(4) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), Sch. 9 para. 17

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