

Status: Point in time view as at 31/07/2017.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, Part 3. (See end of Document for details)

SCHEDULES

SCHEDULE 1

BANK PAYROLL TAX

PART 3

DEFINITIONS

“UK resident bank” and “relevant foreign bank”

- 43 (1) “UK resident bank” means a company which—
- (a) is resident in the United Kingdom,
 - (b) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),
 - (c) is a person—
 - (i) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 44(1)(a), or
 - (ii) which is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in paragraph 44(1)(b) to (f) and which meets the capital resources condition,
 - (d) carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade, and
 - (e) is not an excluded company.
- (2) “UK resident bank” also includes a company which—
- (a) meets the conditions in sub-paragraph (1)(a) and (e), and
 - (b) is a member of a partnership which meets the conditions in sub-paragraph (1)(b) to (d).
- (3) “Relevant foreign bank” means a company which—
- (a) is not resident in the United Kingdom,
 - (b) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),
 - (c) is a person which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom and—
 - (i) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 44(1)(a), or
 - (ii) which is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions

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mentioned in paragraph 44(1)(b) to (f) and which meets the capital resources condition,

- (d) carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of that trade, and
- (e) is not an excluded company.

- (4) “Relevant foreign bank” also includes a company which—
 - (a) meets the conditions in sub-paragraph (3)(a) and (e), and
 - (b) is a member of a partnership which meets the conditions in sub-paragraph (1)(b) to (d).

“Relevant regulated activity”, “capital resources condition”, “excluded company”, “asset management activities”, “linked entity” etc

- 44 (1) “Relevant regulated activity” means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—
- (a) article 5 (accepting deposits),
 - (b) article 14 (dealing in investments as principal),
 - (c) article 21 (dealing in investments as agent),
 - (d) article 25 (arranging deals in investments),
 - (e) article 40 (safeguarding and administering investments), and
 - (f) article 61 (entering into regulated mortgage contracts).
- (2) “The capital resources condition” is that the company has a capital resources requirement of at least £100 million.
- (3) But if the company is a member of a group, “the capital resources condition” is that the company and—
- (a) any other companies which—
 - (i) are members of the group,
 - (ii) meet either of the conditions in sub-paragraph (4),
 - (iii) are not excluded companies, and
 - (iv) are not members of any partnership within paragraph (b), and
 - (b) any partnership—
 - (i) the members of which are or include one or more companies that are members of the group and not excluded companies, and
 - (ii) which meets either of those conditions,
- have (in aggregate) capital resources requirements of at least that amount.
- (4) The conditions referred to in sub-paragraph (3) are that the company or partnership—
- (a) is both a BIPRU 730k firm and a full scope BIPRU investment firm, or
 - (b) is a company or partnership which carries on in the United Kingdom activities including the relevant regulated activity described in the provision mentioned in sub-paragraph (1)(a).
- (5) For the purposes of sub-paragraphs (2) and (3) the capital resources requirement of a company or a partnership is that as at the end of the last period of account of the company or partnership ending no later than the end of the chargeable period.

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- (6) In determining whether the company is a UK resident bank or a relevant foreign bank by virtue of paragraph 43(2) or (4), the references in sub-paragraph (2) to the company are to the partnership.
- (7) If any company or partnership whose capital resources may be material for the purposes of sub-paragraph (2) or (3) prepares its accounts in a currency other than sterling, the amount of its capital resources at the end of the period of account mentioned in that sub-paragraph is to be translated into its sterling equivalent by reference to the average spot rate of exchange on the day on which that period ends.
- (8) If any company whose capital resources may be material for the purposes of sub-paragraph (2) or (3) carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom, its capital resources are to be determined as they would be for the purposes of corporation tax (see Chapter 4 of Part 2 of CTA 2009).
- (9) “Excluded company” means a company which is—
- (a) an insurance company or an insurance special purpose vehicle,
 - (b) a company which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or insurance special purpose vehicle which is a member of the same group,
 - (c) a company which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme,
 - (d) an investment trust (within the meaning given by section 1158 of CTA 2010),
 - (e) a company which does not carry on any relevant regulated activities other than asset management activities,
 - (f) an exempt BIPRU commodities firm,
 - (g) a company which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives,
 - (h) a company which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences as principal with persons all or all but an insignificant proportion of whom are retail clients or of dealing in contracts for differences with another person to enable the company or other person to deal in contracts for differences as principal with such persons,
 - (i) a society incorporated under the Friendly Societies Act 1992,
 - (j) a society registered as a credit union under [F1the Co-operative and Community Benefit Societies Act 2014] or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (NI 12)), or
 - (k) a building society.
- (10) “Asset management activities” means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following—
- (a) acting as the operator of a collective investment scheme (within the meaning of Part 17 of FISMA 2000: see sections 235 and 237 of that Act),
 - (b) acting as a discretionary investment manager for clients none of which is a linked entity, and
 - (c) acting as an authorised corporate director.
- (11) “Linked entity”, in relation to a company (“C”), means—

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- (a) a member of the same group as C,
 - (b) a company in which a company which is a member of the same group as C has a major interest (within the meaning of Part 5 of CTA 2009: see section 473 of that Act), or
 - (c) a partnership the members of which include a company—
 - (i) which is a member of the same group as C, and
 - (ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the chargeable period is at least a 40% share (see Part 17 of CTA 2009 for provisions about shares of partnership profits and losses).
- (12) The following have the meanings given in the [^{F2}PRA Handbook made by the Prudential Regulation Authority] (as that Handbook has effect from time to time)—
- “authorised corporate director”,
 - “BIPRU 730k firm”,
 - “capital resources requirement”,
 - “contracts for differences”,
 - “discretionary investment manager”,
 - “exempt BIPRU commodities firm”,
 - “full scope BIPRU investment firm”,
 - “pension scheme”,
 - “principal”, and
 - “retail clients”.
- (13) A company which would be a BIPRU 730k firm and a full scope BIPRU investment firm by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom is to be treated as being one.
- (14) The Treasury may by order amend this paragraph.
- (15) An order under this paragraph may be made so as to have effect in relation to any time after the beginning of the chargeable period.
- (16) An order under this paragraph is to be made by statutory instrument.
- (17) An order under this paragraph may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

Textual Amendments

- F1** Words in [Sch. 1 para. 44\(9\)\(j\)](#) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\), s. 154, Sch. 4 para. 172](#) (with [Sch. 5](#))
- F2** Words in [Sch. 1 para. 44\(12\)](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\), art. 1\(2\), Sch. para. 14\(3\)\(a\)](#)

“Member of a banking group”

- 45 (1) A company is a “member of a banking group” at any time if—

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- (a) it is within sub-paragraph (2) at that time, or
 - (b) it was within that sub-paragraph immediately before the chargeable period.
- (2) A company is within this sub-paragraph if—
- (a) it is a member of a group,
 - (b) any of conditions A to C is met, and
 - (c) the group does not meet the exempt activities test.
- (3) Condition A is that the principal company of the group is a UK resident bank or a relevant foreign bank.
- (4) Condition B is that—
- (a) the principal company of the group is a company which is not resident in the United Kingdom but which (if it were so resident) would be a UK resident bank, or
 - (b) the principal company of the group is a company which is not resident in the United Kingdom, and is a member of a partnership which is not so resident, but which (if both the company and the partnership were so resident) would be a UK resident bank,
- and (in either case) any member of the group is a UK resident bank or a relevant foreign bank.
- (5) Condition C is that—
- (a) the principal company is the holding company of another company, and
 - (b) if that other company were the principal company of the group, condition A or B would be met.
- (6) For the purposes of condition C a company (“H”) is a “holding company” of another company (“S”) if—
- (a) H is an investment company, and
 - (b) S is—
 - (i) an effective 51% subsidiary of H, and
 - (ii) not an effective 51% subsidiary of any company which is not an investment company.
- (7) A group meets the exempt activities test if at least 90% of the trading income of the group for the relevant period is derived from exempt activities.
- (8) For this purpose—
- “exempt activities” means—
- (a) insurance activities, asset management activities and related activities, and
 - (b) activities carried on by a company which is not a financial trading company (or a company which would be a financial trading company if it were resident in the United Kingdom) other than lending activities or dealing on own account,
- “the relevant period”, in relation to a group, means the last period of account of the group ending no later than the end of the chargeable period, and
- “the trading income of the group” for the relevant period is to be calculated in accordance with paragraph 46.

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(9) In sub-paragraph (8)—

“insurance activities” means—

- (a) the effecting or carrying out of contracts of insurance by a regulated insurer, and
- (b) investment business that arises directly from activities falling within paragraph (a);

“lending activities” means—

- (a) acceptance of deposits or other repayable funds,
- (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting),
- (c) finance leasing (as lessor),
- (d) issuing and administering means of payment,
- (e) provision of guarantees or commitments to provide money,
- (f) money transmission services,
- (g) provision of alternative finance arrangements, and
- (h) other activities carried on in connection with activities falling within any of paragraphs (a) to (g);

“related activities” means—

- (a) activities which are ancillary to insurance activities or asset management activities of any company which is a member of the group (whether or not the company carrying on the insurance activities or asset management activities), and
- (b) activities which would not be carried on but for such insurance activities or asset management activities being carried on,

but does not include dealing on own account.

(10) In sub-paragraph (9)—

“activities” includes buying, holding, managing and selling assets;

“regulated insurer”, in relation to a group, means a member of the group that—

- (a) is authorised under the law of any territory to carry on insurance business, or
- (b) is a member of a body or organisation which is so authorised.

(11) A company which is a member of a banking group ceases to be a member of a banking group when it ceases to be within sub-paragraph (2), but only if it ceases to be within that provision as a result of—

- (a) an arm's length transaction undertaken for wholly commercial purposes, or
- (b) following a recommendation of a relevant regulatory body.

(12) For the purposes of sub-paragraph (11) obtaining a tax advantage is not a commercial purpose.

(13) “Tax advantage” means—

- (a) a relief from tax or increased relief from tax (relief here including a tax credit),
- (b) a repayment of tax or increased repayment of tax,

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- (c) the avoidance or reduction of a charge to tax or an assessment to tax (obtained in any way), or
 - (d) the avoidance of a possible assessment to tax (so obtained),
- and, for this purpose, “tax” includes bank payroll tax and any other tax.
- (14) In sub-paragraph (11) “relevant regulatory body” means—
- [^{F3}(a) the Financial Conduct Authority,
 - (aa) the Prudential Regulation Authority, or]
 - (b) a body discharging functions under the law of a country or territory outside the United Kingdom corresponding to functions discharged by the [^{F4}Financial Conduct Authority or the Prudential Regulation Authority].
- (15) In this paragraph “dealing on own account” has the same meaning as in [^{F5}Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004][^{F5}Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014] on markets in financial instruments (see Article 4(1)(6)).

Textual Amendments

- F3** Sch. 1 para. 45(14)(a) (aa) substituted for Sch. 1 para. 45(14)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 130\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F4** Words in Sch. 1 para. 45(14)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 130\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F5** Words in Sch. 1 para. 45(15) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\), reg. 1\(2\)\(3\)\(4\)\(6\), Sch. 4 para. 13](#) (with [reg. 7](#))

“The trading income of the group” for the relevant period

- 46 (1) This paragraph applies for calculating the “trading income of the group” for the relevant period for the purposes of paragraph 45.
- (2) The trading income for the group for the relevant period is the aggregate of—
 - (a) the gross income calculated in accordance with sub-paragraph (3), and
 - (b) the net income calculated in accordance with sub-paragraph (4).
 - (3) The income referred to in sub-paragraph (2)(a) is the gross income—
 - (a) arising from the activities of the group (other than net-basis activities), and
 - (b) disclosed as such in the financial statements of the group,without taking account of any deductions (whether for expenses or otherwise).
 - (4) The income referred to in sub-paragraph (2)(b) is the net income arising from the net-basis activities of the group that—
 - (a) is accounted for as such under international accounting standards or in accordance with practice which is generally accepted accounting practice in the territory in which the principal company of the group is resident, or
 - (b) would be accounted for as such if income arising from such activities were accounted for under such standards or in accordance with such practice.
 - (5) In this paragraph “net-basis activities” means activities normally reported on a net basis in financial statements prepared in accordance with such standards or practice.

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“Investment company” etc

- 47 (1) “Investment company”—
- (a) means a company whose business consists wholly or mainly of, and the principal part of whose income is derived from, the making of investments, and
 - (b) also includes any savings bank or other bank for savings.
- (2) “UK resident investment company” means an investment company which is resident in the United Kingdom.

“Financial trading company” etc

- 48 (1) “Financial trading company” means a company which—
- (a) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act), or
 - (b) is not within paragraph (a) but carries on a trade consisting wholly or partly in dealing in securities.
- (2) “UK resident financial trading company” means a financial trading company which is resident in the United Kingdom.
- (3) “Relevant foreign financial trading company” means a company which meets conditions A and B.
- (4) Condition A is that the company—
- (a) is not resident in the United Kingdom, and
 - (b) carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (5) Condition B is that, disregarding any activities of the company other than those carried on through that permanent establishment, the company is a financial trading company.
- (6) In this paragraph “securities” includes—
- (a) shares,
 - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of that Act, and
 - (c) in the case of a company with no share capital, interests in the company possessed by members of the company.

Other interpretative provisions

- 49 (1) In this Schedule—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
 - “benefit” includes a facility of any kind;
 - “building society” means a building society within the meaning of the Building Societies Act 1986;
 - “the Commissioners” means the Commissioners of Her Majesty’s Revenue and Customs;
 - “contract of insurance” has the meaning given by section 431(2) of ICTA;
 - “control” has the meaning given by section 995 of ITA 2007;

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“employment”, “employee” and “employer” have the same meaning as in the employment income Parts of ITEPA 2003 (see sections 4 and 5 of that Act);

“enactment” includes an enactment or instrument (whenever passed or made);

“HMRC” means Her Majesty's Revenue and Customs;

“insurance company” and “insurance special purpose vehicle” have the meaning given by section 431(2) of ICTA;

“market value” has the same meaning it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act;

“money's worth” has the meaning given by section 62(3) of ITEPA 2003;

“partnership” includes—

- (a) a limited liability partnership, and
- (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership (and “member”, in relation to a partnership, is to be read accordingly);

“period of account” and “permanent establishment” have the meaning given by section 1119 of CTA 2010;

“the tax year 2009-10” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007).

- (2) Section 170(2) to (11) of TCGA 1992 (“group”, “principal company”, “effective 51% subsidiary”, “company” etc) has effect for the interpretation of this Schedule as for the interpretation of sections 171 to 181 of that Act.
- (3) Section 993 of ITA 2007 (meaning of “connected” persons) applies for the purposes of this Schedule.
- (4) For the purposes of this Schedule the territory in which a company is resident is to be determined as for the purposes of the Corporation Tax Acts.

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