



Corporation Tax Act 2009

2009 CHAPTER 4

PART 2

CHARGE TO CORPORATION TAX: BASIC PROVISIONS

CHAPTER 4

NON-UK RESIDENT COMPANIES: CHARGEABLE PROFITS

The separate enterprise principle: application to non-UK resident banks

25 Non-UK resident banks: introduction

- (1) Sections 26 to 28 contain provision in relation to the application of the separate enterprise principle if the non-UK resident company is a bank.
- (2) Nothing in sections 26 to 28 is to be read as preventing similar principles to those provided for in those sections from applying when the separate enterprise principle is applied to a non-UK resident company that is not a bank.
- (3) In this section and those sections “bank” has the meaning given by [^{F1}section 1120 of CTA 2010] .

Textual Amendments

- F1** Words in s. 25(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 591](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C1** Ss. 21-28 applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 19 para. 26\(3\)](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Corporation Tax Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

26 Transfer of financial assets

- (1) This section applies if—
 - (a) the non-UK resident company is a bank, and
 - (b) there is a transfer of a loan or other financial asset between the permanent establishment and any other part of the company.
- (2) In accordance with the separate enterprise principle, the transfer is recognised only if it would have taken place between independent enterprises.
- (3) The transfer is not recognised if it cannot reasonably be considered that it is carried out for valid commercial reasons.
- (4) For this purpose the obtaining of a tax advantage is not a valid commercial reason.

Modifications etc. (not altering text)

C1 Ss. 21-28 applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 19 para. 26\(3\)](#)

27 Loans: attribution of financial assets and profits arising

- (1) This section applies if the non-UK resident company—
 - (a) is a bank, and
 - (b) makes a loan or has another financial asset.
- (2) In accordance with the separate enterprise principle, the loan or other financial asset, and profits arising from it, are attributed to the permanent establishment so far as they can reasonably be regarded as having been generated by the activities of the permanent establishment.
- (3) For the purposes of subsection (2), particular account is to be taken of the extent to which the permanent establishment is responsible for—
 - (a) obtaining the offer of new business,
 - (b) establishing the potential borrower's credit rating and the risk involved in providing credit,
 - (c) negotiating the terms of the loan with the borrower, and
 - (d) deciding whether, and if so on what conditions, to make or extend the loan.
- (4) For those purposes, account may also be taken of the extent to which the permanent establishment is responsible for—
 - (a) concluding the loan agreement and disbursing the proceeds of the loan, and
 - (b) administering the loan (including handling and monitoring the service of it) and holding and controlling any securities pledged.
- (5) References in this section to a financial asset include any financial risk in relation to a loan, or potential loan, if—
 - (a) the financial risk is capable of giving rise to fees or other receipts, and
 - (b) the holding of capital is required for the financial risk (or would be required if the transaction were between parties at arm's length).

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Corporation Tax Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Modifications etc. (not altering text)

C1 Ss. 21-28 applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 19 para. 26\(3\)](#)

28 Borrowing: permanent establishment acting as agent or intermediary

- (1) This section applies if—
- (a) the non-UK resident company is a bank, and
 - (b) the permanent establishment borrows funds for the purposes of another part of the company and (in relation to that borrowing) acts only as an agent or intermediary.
- (2) In accordance with the separate enterprise principle—
- (a) the profits attributable to the permanent establishment, and
 - (b) the capital attributable to the permanent establishment under section 21(2)(b),
- are to be those appropriate in the case of an agent acting at arm's length, taking into account the risks and costs borne by the establishment.

Modifications etc. (not altering text)

C1 Ss. 21-28 applied (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 19 para. 26\(3\)](#)

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Corporation Tax Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 322(2A)(zb) inserted by [2016 c. 24 s. 73\(5\)](#)
- s. 934(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 12\(2\)](#)
- s. 962(3A) inserted by [2023 c. 30 Sch. 2 para. 12\(5\)\(b\)](#)
- s. 962A(3A) inserted by [2023 c. 30 Sch. 2 para. 12\(6\)\(b\)](#)
- s. 963(1A) inserted by [2023 c. 30 Sch. 2 para. 12\(7\)\(a\)](#)
- s. 1058B(5)(ea) inserted by [2023 c. 20 Sch. para. 57](#)
- s. 1094(2A)-(2C) inserted by [2012 c. 14 Sch. 3 para. 13\(3\)](#)
- s. 1106(4A)-(4C) inserted by [2012 c. 14 Sch. 3 para. 14\(3\)](#)
- s. 1138A applied by [S.I. 2024/348 reg. 3](#)