

SCHEDULES

SCHEDULE 16

Section 38

NON-RESIDENTS: INVESTMENT MANAGERS

PART 1

ELIGIBILITY TO BE UK REPRESENTATIVE

- 1 In section 127 of FA 1995 (persons not treated as UK representatives), in subsection (3)—
 - (a) at the end of paragraph (d), insert “and”, and
 - (b) omit paragraph (f) (and the word “and” preceding it).
- 2 (1) In section 127 of FA 1995, for subsections (12) and (13) substitute—
 - “(12) In this section “investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.
 - (13) Provision made in regulations under subsection (12) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.”
- (2) In section 1014(2) of ITA 2007 (orders and regulations under the Income Tax Acts: excluded powers), after paragraph (b) insert—
 - “(ba) section 127(12) of FA 1995.”.

PART 2

ELIGIBILITY TO BE AGENT OF INDEPENDENT STATUS

FA 2003

- 3 (1) In Schedule 26 of FA 2003 (non-resident companies: transactions through broker, investment manager or Lloyd’s agent), for paragraph 3(3) and (4) substitute—
 - “(3) In sub-paragraph (1) “investment transaction” means any transaction of a description specified for the purposes of this paragraph in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.
 - (4) Provision made in regulations under sub-paragraph (3) may, in particular, have effect in relation to accounting periods current on the day on which the regulations are made.”
- (2) In section 828(2) of ICTA (orders and regulations), after “Finance Act 1989” insert “or paragraph 3(3) of Schedule 26 to the Finance Act 2003”.

Status: This is the original version (as it was originally enacted).

ITA 2007

- 4 ITA 2007 is amended as follows.
- 5 (1) Section 827 (meaning of “investment transaction”) is amended as follows.
- (2) For subsections (2) and (3) substitute—
- “(2) In this section “investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.
- (3) Provision made in regulations under subsection (2) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.”
- 6 (1) Section 1014(2) (orders and regulations under the Income Tax Acts: excluded powers) is amended as follows.
- (2) In paragraph (g)(iia), omit “and”.
- (3) After paragraph (g)(iia) insert—
- “(iib) section 827(2) (meaning of “investment transaction”), and”.

PART 3

NON-RESIDENTS LIABLE TO TAX: DISREGARDED INVESTMENT INCOME OR PROFITS

FA 2003

- 7 FA 2003 is amended as follows.
- 8 (1) Section 152 (non-resident companies: transactions carried out through broker, investment manager or Lloyd’s agent) is amended as follows.
- (2) The existing provision of section 152 becomes subsection (1) of that section.
- (3) After subsection (1) insert—
- “(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.”
- 9 (1) Schedule 26 (non-resident companies: transactions through broker, investment manager or Lloyd’s agent) is amended as follows.
- (2) In paragraph 3(2)—
- (a) at the end of paragraph (d), insert “and”, and
- (b) omit paragraph (f) (and the “and” before it).
- (3) Omit paragraph 4(5).
- (4) After paragraph 5 insert—

Status: This is the original version (as it was originally enacted).

“Profits attributable to permanent establishment: disregard of profits of certain investment transactions

- 5A (1) This paragraph applies if—
- (a) an investment manager carries out one or more investment transactions (“relevant investment transactions”) on behalf of a non-resident company (whether or not the investment manager also carries out other transactions of any kind on behalf of the company), and
 - (b) as regards the non-resident company, the investment manager is not regarded as an agent of independent status acting in the ordinary course of his business (whether because conditions in paragraph 3 are not met in relation to relevant investment transactions or otherwise).
- (2) In determining under section 11AA of the Taxes Act 1988 the amount of the profits attributable to the permanent establishment represented by the investment manager acting as an agent on behalf of the non-resident company, chargeable profits that derive from a relevant investment transaction are to be disregarded in either of the following cases.
- (3) The first case is where the conditions in paragraph 3 are met in relation to the transaction.
- (4) The second case is where the conditions in paragraph 3, except for the requirements of the 20% rule, are met in relation to the relevant investment transaction.
- (5) But, in the second case, the chargeable profits are to be disregarded only to the extent that they do not represent relevant excluded income of the company to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.
- (6) Expressions used in this paragraph and in paragraph 3 or 4 have the same meaning in this paragraph as in paragraph 3 or 4.”

ITA 2007

- 10 (1) Section 818 of ITA 2007 (the independent investment manager conditions) is amended as follows.
- (2) In subsection (1), for the words from “if” to the end substitute “if conditions A to E are met.”
- (3) Omit subsections (7) and (8).

PART 4

COMMENCEMENT

- 11 (1) The amendments made by paragraph 1 have effect in relation to business that relates to investment transactions occurring on or after the day on which this Act is passed.

Status: This is the original version (as it was originally enacted).

- (2) The amendments made by paragraphs 7 to 9 have effect in relation to accounting periods ending on or after the day on which this Act is passed.
- (3) The amendments made by paragraph 10 have effect for the tax year 2008-09 and subsequent tax years.
- (4) Subject to sub-paragraphs (1) to (3), the amendments made by this Schedule come into force on the day on which this Act is passed.
- (5) But, despite the coming into force of paragraph 2, 3 or 5—
 - (a) the superseded provision, and
 - (b) any regulations made under the superseded provision,continue to have effect until such time as the first regulations under the new regulation-making power come into force.
- (6) In sub-paragraph (5)—
 - “new regulation-making power” means the regulation-making power substituted by paragraph 2, 3 or 5, and
 - “superseded provision” means—
 - (a) in relation to paragraph 2, the existing section 127(12) and (13) of FA 1995,
 - (b) in relation to paragraph 3, the existing paragraph 3(3) and (4) of Schedule 26 to FA 2003, or
 - (c) in relation to paragraph 5, the existing section 827(2) and (3) of ITA 2007.