These notes refer to the Corporation Tax Act 2009 (c.4) which received Royal Assent on 26 March 2009

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Charge to corporation tax: basic provisions

Chapter 3: Company residence

Overview

81. This Chapter gives the statutory rules for company residence outside double taxation conventions.

82. The rules on company residence are both statutory and non-statutory. The oldest of the company residence rules ("central management and control") is based on common law.

83. The central management and control test is generally considered to be best expressed in De Beers Consolidated Mines v Howe (1905), 5 TC 198 HC. "A company resides, for the purposes of Income Tax, where its real business is carried on … I regard that as the true rule; and the real business is carried on where the central management and control actually abides". This has been endorsed by subsequent decisions and was described by Lord Radcliffe in Bullock v Unit Construction Company (1959), 38 TC 712 HL as being "as precise and unequivocal as a positive statutory injunction".

84. Residence may also be determined by the tie-breaker in a double taxation convention. When a company is resident in the territory of both parties a tie-breaker generally awards residence to the country where the effective management of the company is situated.

85. The two main statutory rules are found in section 66 of FA 1988 and section 249 of FA 1994. These two tests are rewritten in this Chapter.

86. Under section 66 of FA 1988 a company incorporated in the United Kingdom is, with some exceptions, regarded as resident here for all tax purposes. This overrides the rule in common law given above, although the common law test continues for companies outside section 66, that is to say companies which are not incorporated in the United Kingdom.

87. Section 249 of FA 1994 treats a company resident in the United Kingdom under the common law test or section 66 of FA 1998 as being non-UK resident if the tie-breaker in the double taxation treaty between the United Kingdom and that other territory would make the company resident outside the United Kingdom.

88. Both these statutory rules apply for the purposes of the Taxes Acts as defined in section 118 of TMA (see section 66(1) and 66A(2) of FA 1988 and section 249(1) of FA 1994). This Act rewrites the rules for the purposes of the Corporation Tax Acts only. Because the Corporation Tax Acts are defined more narrowly (Schedule 1 to the Interpretation Act 1978) than the Taxes Acts, Schedule 1 to this Act inserts new sections into TMA, TCGA and ITA to apply the rules given in this Chapter to those Acts.

Section 13: Overview of Chapter

89. This section sets out which residence rules are dealt with in this Chapter. It is new.

90. Although this Chapter does not legislate the common law test on residence (see above), *subsection (3)* makes clear that section 15 applies where a company has been resident in the United Kingdom under that test.

Section 14: Companies incorporated in the United Kingdom

91. This section provides that a company incorporated in the United Kingdom is resident here for corporation tax purposes and, under section 5, is within the charge to corporation tax on all its income and chargeable gains. It is based on section 66(1) of FA 1988.

92. *Subsection (2)* makes it clear that a company which is resident in the United Kingdom under *subsection (1)* is not resident in any other territory.

93. Although section 66 of FA 1988 and section 249 of FA 1994 refer to a company being "regarded as" resident it is not considered necessary to adopt that or similar wording. A company is simply resident somewhere.

Section 15: Continuation of residence established under common law

94. This section gives rules on residence for companies which are not incorporated in the United Kingdom. Companies which were UK resident immediately before they ceased business or came under the control of a foreign liquidator continue to be treated as UK resident. The section is based on section 66(2) of FA 1988.

95. This section clarifies that the provision applies only to companies which are not incorporated in the United Kingdom. That is less clear in the source legislation. Any United Kingdom incorporated company which ceases business or is being wound up outside the United Kingdom is already UK resident under the rule in the previous section.

96. The purpose of the rule in this section is to provide that a company which is resident in the United Kingdom through central management and control (see above) remains resident here. Such a company could otherwise become non-UK resident if central management and control left the United Kingdom.

97. Section 66(4) of FA 1998 gives effect to Schedule 7 to that Act, the commencement and transitional provisions. Paragraphs of that Schedule which are not spent are rewritten in Schedule 2 (transitionals and savings) to this Act.

Section 16: SEs which transfer registered office to the United Kingdom

98. This section provides that once an SE ("Societas Europaea" – see section 1319) has transferred its registered office to the United Kingdom it becomes and remains resident there, notwithstanding its residence elsewhere under overseas law or the subsequent transfer of its office abroad. The section is based on section 66A of FA 1988.

99. This section applies only to SEs which transfer their registered office to the United Kingdom since SEs that are formed here are resident in the United Kingdom in any event under section 14.

100. Once the registered office is moved to the United Kingdom the SE is effectively treated as if it were incorporated there. It cannot cease to be resident at any time simply by transferring its registered office.

Section 17: SCEs which transfer registered office to the United Kingdom

101. This section provides the same rule for SCEs (European Cooperative Societies – see section 1319) that section 16 provides for SEs. It is based on section 66A of FA 1988.

Section 18: Companies treated as non-UK resident under double taxation arrangements

102. Under this section a company which is resident in the United Kingdom, but treated under a double taxation convention as resident in a territory outside the United Kingdom, is resident outside the United Kingdom for corporation tax purposes. The section is based on section 249 of FA 1994.

103. Section 250 of FA 1994 is spent. It is repealed by this Act.