



Corporation Tax Act 2010

2010 CHAPTER 4

PART 24

CORPORATION TAX ACTS DEFINITIONS ETC

CHAPTER 2

PERMANENT ESTABLISHMENTS

General

1141 Permanent establishments of companies

- (1) For the purposes of the Corporation 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.
- (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, and
 - (h) a building site or construction or installation project.

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- (3) Subsection (1) is subject to sections 1142 to 1144.

Circumstances where there is no permanent establishment

1142 Agent of independent status

- (1) 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 the agent's business.
- (2) Sections 1145 to 1151 apply for the purpose of supplementing subsection (1) in relation to transactions carried out on behalf of a non-UK resident company by a person in the United Kingdom acting as—
- (a) a broker (section 1145),
 - (b) an investment manager (sections 1146 to 1150), or
 - (c) a members' or managing agent at Lloyd's (section 1151).

1143 Preparatory or auxiliary activities

- (1) If the condition in subsection (2) is met, 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.
- (2) The condition is that, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (3) 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, and
 - (d) purchasing goods or merchandise, or collecting information, for the company.

1144 Alternative finance arrangements

- (1) Subsection (2) applies if alternative finance return is paid to a non-UK resident company.
- (2) 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 alternative finance arrangements—
- (a) by the other party to the arrangements, or
 - (b) by any other person acting for the company in relation to the arrangements.
- (3) In subsection (1) "alternative finance return" means alternative finance return within the application of—

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- (a) section 564I, 564K or 564L(2) or (3) of ITA 2007, or
 - (b) section 511, 512 or 513(2) or (3) of CTA 2009.
- (4) In subsection (2) the reference to “the alternative finance arrangements” is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) is paid.

Brokers

1145 The independent broker conditions

- (1) This section applies if a transaction is carried out on behalf of a non-UK resident company in the course of the company’s trade by a person in the United Kingdom acting as a broker.
- (2) In relation to the transaction, the broker is regarded for the purposes of section 1142(1) as an agent of independent status acting in the ordinary course of the broker’s business if (and only if) each of conditions A to D is met.
- (3) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (4) Condition B is that the transaction is carried out in the ordinary course of that business.
- (5) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident company is not less than is customary for that class of business.
- (6) Condition D is that the broker does not fall (apart from this subsection) to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

Investment managers

1146 The independent investment manager conditions

- (1) This section applies if an investment transaction is carried out on behalf of a non-UK resident company in the course of the company’s trade by a person in the United Kingdom acting as an investment manager.
- (2) In relation to the investment transaction, the investment manager is regarded for the purposes of section 1142(1) as an agent of independent status acting in the ordinary course of the investment manager’s business if (and only if) each of conditions A to E is met (“the independent investment manager conditions”).
- (3) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (4) Condition B is that the transaction is carried out in the ordinary course of that business.
- (5) Condition C is that, when the investment manager acts on behalf of the non-UK resident company in relation to the transaction, the relationship between them, having

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regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.

- (6) Condition D is that the requirements of the 20% rule are met (see section 1147).
- (7) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident company is not less than is customary for that class of business.

1147 Investment managers: the 20% rule

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident company's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
 - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
 - (b) does not result from a failure of any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.

1148 Section 1147: interpretation

- (1) This section applies for the purposes of section 1147.
- (2) A “qualifying period” means—
 - (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
 - (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.
- (3) The “relevant disregarded income” of the non-UK resident company for a qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from transactions—
 - (a) carried out by the investment manager on the non-UK resident company's behalf, and
 - (b) in relation to which the investment manager does not (apart from the requirements of the 20% rule) fall to be treated as a permanent establishment of the company.
- (4) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).
- (5) The interests and rights referred to in subsection (4) are—
 - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
 - (b) an interest in, or other rights in relation to, the non-UK resident company.

1149 Application of 20% rule to collective investment schemes

- (1) This section applies if amounts arise or accrue to the non-UK resident company as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).
- (3) In applying this section make the following assumptions—
 - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
 - (i) constituted for the purposes of the scheme, and
 - (ii) non-UK resident, and
 - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the accounting period in which the transaction was carried out, the requirements of the 20% rule are to be treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 1147 and 1148 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
 - (a) for references to the non-UK resident company substitute references to the assumed company, and
 - (b) for references to the non-UK resident company’s relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for accounting periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—
 - (i) carried out by the investment manager, and
 - (ii) assumed to be carried out on behalf of the company.
- (7) In this section—

“collective investment scheme” has the meaning given by section 235 of FISMA 2000, and

“participant”, in relation to a collective investment scheme, is to be read in accordance with that section.

1150 Meaning of “investment manager” and “investment transaction”

- (1) In this Chapter—

“investment manager” means a person who provides investment management services, and

“investment transaction” means any transaction of a description specified for the purposes of this subsection in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.

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- (2) Provision made in regulations under subsection (1) may, in particular, have effect in relation to accounting periods current on the day on which the regulations are made.

Lloyd's agents

1151 Lloyd's agents

- (1) This section applies if a transaction is carried out on behalf of a non-UK resident company in the course of the company's trade by a person in the United Kingdom acting as a members' agent or managing agent at Lloyd's.
- (2) In relation to the transaction, the person is regarded for the purposes of section 1142(1) as an agent of independent status acting in the ordinary course of the person's business if conditions A, B and C are met.
- (3) Condition A is that the non-UK resident company is a member of Lloyd's.
- (4) Condition B is that the transaction is carried out in the course of the company's underwriting business.
- (5) Condition C is that the person acting on behalf of the company in relation to the transaction acts as members' agent or as managing agent of the syndicate in question.
- (6) For the purposes of this section—
 - (a) a non-UK resident company is a member of Lloyd's if it is a corporate member within the meaning of Chapter 5 of Part 4 of FA 1994, and
 - (b) "members' agent" and "managing agent" are to be read in accordance with section 230 of that Act.

Supplementary

1152 Investment managers: disregard of certain chargeable profits

- (1) This section applies if—
 - (a) an investment manager carries out one or more investment transactions on behalf of a non-UK resident company (whether or not the investment manager also carries out other transactions of any kind on behalf of the company), and
 - (b) the investment manager falls to be treated as a permanent establishment of the non-UK resident company (whether because the independent investment manager conditions are not met in relation to such investment transactions, or otherwise).
- (2) In determining under Chapter 4 of Part 2 of CTA 2009 the amount of profits attributable to the permanent establishment represented by the investment manager acting as an agent on behalf of the non-UK resident company, chargeable profits deriving from an investment transaction carried out by the investment manager on behalf of the non-UK resident company are to be disregarded in either of the following two cases—

Case 1

The independent investment manager conditions are met in relation to the investment transaction.

Case 2

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The independent investment manager conditions, other than Condition D in section 1146(6) (the 20% rule), are met in relation to the investment transaction.

- (3) But if Case 2 applies in relation to the investment transaction, chargeable profits deriving from the transaction are to be disregarded only to the extent that they do not represent relevant disregarded income of the non-UK resident company to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.
- (4) In subsection (3) “relevant disregarded income” and “beneficial entitlement” have the meanings given in section 1148.

1153 Miscellaneous

- (1) For the purposes of this Chapter a person is regarded as carrying out a transaction on behalf of another if the person—
 - (a) undertakes the transaction, whether on behalf of or to the account of the other, or
 - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.