These notes refer to the Taxation (International and Other Provisions) Act 2010 (c.8) which received Royal Assent on 18 March 2010

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 6: UK representatives of non-UK residents

Part 2: New Part 7A of TCGA 1992

Part 7A: UK representatives of non-UK residents

Overview

1243. This new Part of TCGA provides, in Chapter 1, for determining who is a UK representative of a non-UK resident for the purposes of capital gains tax and, in Chapter 2, for the obligations and liabilities of such a UK representative.

Chapter 1: Treatment of branch or agency as UK representative of non-UK resident

Overview

1244. This Chapter determines the extent to which and the period for which a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to gains in respect of which the non-UK resident is chargeable to capital gains tax under section 10 of TCGA.

Section 271A: Overview of Chapter

1245. This section introduces the Chapter and provides a signpost to Chapter 2. It is new.

Section 271B: Branch or agency treated as UK representative

1246. This section determines who is a UK representative of a non-UK resident in relation to amounts to which the non-UK resident is chargeable to capital gains tax under section 10. It is based on section 126(2), (3), (4) and (5) of FA 1995.

1247. The amounts are those chargeable by reference to a branch or agency in the United Kingdom through which the non-UK resident carries on a trade, profession or vocation. The person who is the UK representative in relation to those amounts is the branch or agency that, in accordance with Chapter 2B of Part 14 of ITA, is the UK representative of the non-UK resident in relation to income of the non-UK resident from the trade, profession or vocation arising through the branch or agency. See *subsections (1)* and *(2)*.

1248. As it is a condition of chargeability to capital gains tax under section 10 of TCGA that the non-UK resident is carrying on a trade, profession or vocation through a branch or agency in the United Kingdom, it must always be the case (if the non-UK resident is to incur chargeability under that section) that there is a person who, under Chapter 2B

of Part 14 of ITA, is the non-UK resident's UK representative in relation to the non-UK resident's liabilities and obligations in respect of tax on income arising through the branch or agency. When considering whether a person is to be treated as a UK representative in relation to amounts of income for income tax purposes, it is immaterial whether or not there are in fact any amounts of income which are chargeable to income tax.

1249. If a branch or agency in the United Kingdom of a non-UK resident ceases to be the non-UK resident's branch or agency, the branch or agency nevertheless continues thereafter to be the UK representative of the non-UK resident in relation to the amounts for which the non-UK resident is chargeable mentioned in subsection (2). See *Rule 2* in *subsection (3)*.

Section 271C: Trade or profession carried on in partnership

1250. This section contains special rules to deal with the case where the non-UK resident carries on a trade or profession in partnership. It is based on section 126(6), (7) and (7A) of FA 1995.

1251. *Subsections (1)* and *(2)* provide that, if a partnership carries on a trade or profession in the United Kingdom through a branch or agency, the branch or agency is treated as the UK representative of any non-UK resident partner in relation to the share of the gains in respect of which that partner is chargeable under section 10 of TCGA.

1252. *Subsections (3)* and *(4)* provide that section 271B also applies if a partnership which includes both UK resident and non-UK resident members carries on a trade or profession in the United Kingdom, whether it does so itself or through a branch or agency.

1253. In this case, the partnership itself is treated as the UK representative of the non-UK resident partner in relation to the share of the gains in respect of which that partner is chargeable under section 10 of TCGA. This is so notwithstanding that there may also be a branch or agency which is the non-UK resident partner's UK representative in relation to those chargeable gains. All the partners are as a consequence jointly liable for capital gains tax on the gains of the non-UK resident partner.

Section 271D: Interpretation of Chapter

1254. This section defines two terms for the purposes of the Chapter. It is based on section 126(1) and (8) of FA 1995.

Chapter 2: Capital gains tax obligations and liabilities imposed on UK representatives

Overview

1255. This Chapter sets out the obligations and liabilities of a UK representative of a non-UK resident carrying on a trade, profession or vocation through a branch or agency in the United Kingdom in relation to the assessment, collection and recovery of capital gains tax in respect of amounts which are chargeable to tax under section 10 of TCGA by reference to that branch or agency.

Section 271E: Introduction to Chapter

1256. This section introduces the Chapter. It is based on paragraph 1(1) and (2) of Schedule 23 to FA 1995.

Section 271F: Obligations and liabilities of UK representative

1257. This section treats the obligations and liabilities of the non-UK resident in respect of amounts chargeable under section 10 of TCGA as also being the obligations and

liabilities of the non-UK resident's UK representative in respect of the branch or agency to which those amounts relate. It is based on paragraphs 1(1) and 2 of Schedule 23 to FA 1995.

Section 271G: Exceptions: notices and information

1258. This section provides:

- for the circumstances in which an obligation or liability of a non-UK resident does not attach to the non-UK resident's UK representative (*subsections (1)* and *(2)*);
- that a UK representative which is an independent agent is only required to do what is practicable for the representative to do in discharging the representative's obligations to provide information (*subsections (3)* to *(5)*);
- that, if the UK representative has only provided so much information as it is practicable for the representative to provide, the non-UK resident is not discharged from the non-UK resident's obligations to provide the whole of the information (*subsection (6)*); and
- for the circumstances in which a non-UK resident is not bound by the mistakes of the UK representative (*subsection (7)*).

It is based on paragraphs 3 and 4 of Schedule 23 to FA 1995.

1259. In the definition of "information" in *subsection (8)*, the words "to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs" have been substituted for the words "to the Board or any officer of the Board" in the source legislation. This gives effect to section 50(1) and (2) of CRCA which require references to the terms in the source legislation to be taken as references to the substituted terms.

Section 271H: Exceptions: criminal offences and penalties etc

1260. This section sets out the circumstances in which the UK representative is not liable to be proceeded against for a criminal offence. It is based on paragraph 5 of Schedule 23 to FA 1995.

Section 271I: Indemnities

1261. This section sets out the circumstances in which an "independent agent" is entitled to be indemnified by the non-UK resident and to retain sums otherwise payable or accountable by the UK representative to the non-UK resident to meet the UK representative's liabilities under the Chapter. It is based on paragraph 6 of Schedule 23 to FA 1995.

Section 271J: Meaning of "non-UK resident" and "independent agent"

1262. This section defines "non-UK resident" and "independent agent". It is based on section 126(1) of, and paragraph 7 of Schedule 23 to, FA 1995.