

SCHEDULES

SCHEDULE 6

UK REPRESENTATIVES OF NON-UK RESIDENTS

PART 2

NEW PART 7A OF TCGA 1992

24 After section 271 of TCGA 1992 insert—

“PART 7A

UK REPRESENTATIVES OF NON-UK RESIDENTS

CHAPTER 1

TREATMENT OF BRANCH OR AGENCY AS UK REPRESENTATIVE OF NON-UK RESIDENT

Introduction

271A Overview of Chapter

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to capital gains tax.
- (2) For obligations and liabilities in relation to capital gains tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2.”

25 After section 271A insert—

“Branches and agencies

271B Branch or agency treated as UK representative

- (1) This section applies if—
 - (a) a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom, and

Status: This is the original version (as it was originally enacted).

- (b) the branch or agency is to be treated under Chapter 2B of Part 14 of ITA 2007 as the UK representative of the non-UK resident in relation to amounts within section 835E(2) of that Act.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to amounts which, by reference to the branch or agency, are chargeable to capital gains tax under section 10 above.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2 in relation to an amount within that subsection.

Rule 1

The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

Rule 2

The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

Rule 3

If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 271C.”

26 After section 271B insert—

“271C Trade or profession carried on in partnership

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 271B and Chapter 2, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—
 - (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
 - (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 271B and Chapter 2, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident’s share in the partnership’s profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

27 After section 271C insert—

“271D Interpretation of Chapter

In this Chapter—

“branch or agency” means any factorship, agency, receivership, branch or management, and

“non-UK resident” means a person who is not resident in the United Kingdom.”

28 After section 271D insert—

“CHAPTER 2

**CAPITAL GAINS TAX OBLIGATIONS AND
LIABILITIES IMPOSED ON UK REPRESENTATIVES**

271E Introduction to Chapter

(1) This Chapter applies to the enactments contained in—

- (a) this Act,
- (b) the Tax Acts, and
- (c) subordinate legislation made under this Act or the Tax Acts,

so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.

(2) Those enactments have effect in accordance with section 271F in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 1.

(3) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

29 After section 271E insert—

“271F Obligations and liabilities of UK representative

(1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.

(2) Subsection (3) applies if—

- (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
- (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident’s UK representative is subject by virtue of this section.

(3) The corresponding obligation or liability—

- (a) of the non-UK resident (in a case within subsection (2)(a)), or

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

(b) of the UK representative (in a case within subsection (2)(b)),
 is discharged.

(4) A non-UK resident is bound, as if they were the non-UK resident’s own,
 by acts or omissions of the non-UK resident’s UK representative in the
 discharge of the obligations and liabilities imposed on the representative by
 this section.

(5) This section is subject to sections 271G and 271H.”

30 After section 271F insert—

“271G Exceptions: notices and information

(1) An obligation or liability attaching to a non-UK resident (“X”) by reason
 of a notice or other document having been given or served on X does not
 also attach to the UK representative of X by virtue of section 271F unless
 the notice or other document (or a copy of it) has been given to or served
 on the representative.

(2) An obligation or liability attaching to X by reason of a request or demand
 having been received by X does not also attach to the UK representative of
 X by virtue of section 271F unless the representative has been notified of
 the request or demand.

(3) Subsection (4) applies to obligations relating to the provision of information
 that are imposed on the UK representative of X by section 271F in a case
 where the representative is X’s independent agent.

(4) The obligations do not require the UK representative to do anything except
 so far as it is practicable for the representative to do so.

(5) For this purpose, the representative must act to the best of the representative’s
 knowledge and belief after taking all reasonable steps to obtain the necessary
 information.

(6) An obligation of X to provide information is not discharged by virtue of
 section 271F in a case where the UK representative of X has discharged the
 obligation only so far as required by subsection (4) of this section.

(7) X is not bound by virtue of section 271F by mistakes in information provided
 by the UK representative of X in discharging, so far as required under
 subsection (4) of this section, an obligation imposed on the representative
 by section 271F unless—

(a) the mistake is the result of an act or omission of X, or

(b) the mistake is one to which X consented or in which X connived.

(8) In this section “information” includes anything contained in a return, self-
 assessment, account, statement or report required to be provided to the
 Commissioners for Her Majesty’s Revenue and Customs or to any officer of
 Revenue and Customs.”

31 After section 271G insert—

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

“271H Exceptions: criminal offences and penalties etc

- (1) A person is not by virtue of section 271F liable to be proceeded against for a criminal offence unless the person—
 - (a) committed the offence, or
 - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 271F liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not—
 - (a) an act or omission of the independent agent, or
 - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 271I(3) (after being indemnified for any other liabilities under section 271I).”

32 After section 271H insert—

“271I Indemnities

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 271F.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 271F the agent has discharged or to which the agent is subject.
- (3) The sums are those which—
 - (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
 - (b) are received by the independent agent on behalf of the non-UK resident.”

33 After section 271I insert—

“271J Meaning of “non-UK resident” and “independent agent”

- (1) In this Chapter “non-UK resident” means a person who is not resident in the United Kingdom.
- (2) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (3) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial

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

and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.”