



Finance Act 1995

1995 CHAPTER 4

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Change of residence and non-residents

124 Change of residence

- (1) In Chapter VI of Part IV of the Taxes Act 1988 (discontinuance and change of basis of computation), after section 110 there shall be inserted the following section—

“Change of residence

110A Change of residence

- (1) Where there is a change of residence by an individual who is carrying on any trade, profession or vocation wholly or partly outside the United Kingdom and otherwise than in partnership with others, tax shall be chargeable, and loss relief may be claimed, as if the change—
- (a) constituted the permanent discontinuance of the trade, profession or vocation; and
 - (b) was immediately followed, in so far as the trade, profession or vocation continues to be carried on by that individual, by the setting up and commencement of a new one;
- but nothing in this subsection shall prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against profits or gains arising or accruing after the change.
- (2) For the purposes of this section there is a change of residence by an individual if—
- (a) not being resident in the United Kingdom, he becomes so resident; or

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(b) being so resident, he ceases to be so resident.”

- (2) This section shall have effect as respects the year 1997-98 and subsequent years of assessment and also, in relation only to a trade, profession or vocation set up and commenced on or after 6th April 1994, as respects the years 1995-96 and 1996-97.

125 Non-resident partners

- (1) The provisions of the Taxes Act 1988 to which sections 215 and 216 of the Finance Act 1994 (partnerships and change of ownership of trade etc.) relate shall have effect as respects the year 1995-96 and subsequent years of assessment as if subsection (5) (b) of section 215 (amendments not to apply until the year 1997-98 to partnerships controlled abroad) were omitted; and the Taxes Act 1988 shall have effect—

- (a) as respects the year 1997-98 and subsequent years of assessment, and
- (b) in its application with the amendments made by those sections to partnerships whose trades, professions or businesses were set up and commenced on or after 6th April 1994, as respects the years 1995-96 and 1996-97,

with the further amendments specified in the following provisions of this section.

- (2) For subsections (1) to (3) of section 112 (partnerships controlled abroad) there shall be substituted the following subsections—

“(1) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is not resident in the United Kingdom, section 111 shall have effect for the purposes of income tax in relation to the partner who is not so resident as if—

- (a) the reference in subsection (2)(b) to an individual resident in the United Kingdom were a reference to an individual who is not so resident; and
- (b) in subsection (4)(a), after “carried on” there were inserted “in the United Kingdom”.

(1A) Where—

- (a) any persons are carrying on a trade, profession or business in partnership,
- (b) the trade, profession or business is carried on wholly or partly outside the United Kingdom,
- (c) the control and management of the trade, profession or business is situated outside the United Kingdom, and
- (d) any of the partners who is an individual resident in the United Kingdom satisfies the Board that he is not domiciled in the United Kingdom or that, being a Commonwealth citizen or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom,

section 111 shall have effect in accordance with subsection (1) above as if that partner were not resident in the United Kingdom and, in addition (as respects that partner as an individual who is in fact resident in the United Kingdom), his interest as a partner, so far as it entitles him to a share of any profits or gains arising from the carrying on of the trade, profession or business otherwise than within the United Kingdom, shall be treated for the purposes of Case V of Schedule D as if it were a possession outside the United Kingdom.

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- (1B) Where any persons are carrying on a trade or profession in partnership, the trade or profession is carried on wholly or partly outside the United Kingdom and an individual who is one of the partners changes his residence (within the meaning of section 110A), it shall be assumed for income tax purposes—
- (a) that that individual ceased to be a partner at the time of the change and became one again immediately afterwards; and
 - (b) in relation to matters arising after the change, that the time when he became a partner is the time immediately after the change;
- but nothing in this subsection shall, in relation to that individual, prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against profits or gains arising or accruing after the change.”
- (3) In that section—
- (a) in subsection (4)(a), for “or is deemed to reside outside the United Kingdom” there shall be substituted “outside the United Kingdom or which carries on any trade, profession or business the control and management of which is situated outside the United Kingdom”; and
 - (b) in subsection (6), for “this section” there shall be substituted “subsections (4) and (5) above”.
- (4) In section 114(1) (partnerships including companies), after the word “company”, in the second place where it occurs, there shall be inserted “and, subject to section 115(4), as if that company were resident in the United Kingdom”.
- (5) In section 115 (provisions supplementary to section 114), for subsections (4) and (5) there shall be substituted the following subsections—
- “(4) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is a company which is not resident in the United Kingdom, section 114 shall have effect in relation to that company as if—
- (a) the reference in subsection (1) to a company resident in the United Kingdom were a reference to a company that is not so resident; and
 - (b) in subsection (2), after “carried on” there were inserted “in the United Kingdom through a branch or agency”.
- (5) Where the partners in a partnership include a company, subsections (4) and (5) of section 112 shall apply for the purposes of corporation tax as well as for the purposes of income tax, and section 114 shall have effect accordingly.”

126 UK representatives of non-residents

- (1) Schedule 23 to this Act shall have effect for imposing obligations and liabilities in relation to income tax, corporation tax and capital gains tax on a branch or agency which, under this section, is the UK representative of a person who is not resident in the United Kingdom (“the non-resident”).
- (2) Subject to the following provisions of this section and to section 127 below, a branch or agency in the United Kingdom through which the non-resident carries on (whether solely or in partnership) any trade, profession or vocation shall, for the purposes of this section and Schedule 23 to this Act, be the non-resident’s UK representative in relation to the following amounts, that is to say—

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- (a) the amount of any such income from the trade, profession or vocation as arises, directly or indirectly, through or from that branch or agency;
 - (b) the amount of any income from property or rights which are used by, or held by or for, that branch or agency;
 - (c) amounts which, by reference to that branch or agency, are chargeable to capital gains tax under section 10 of the Taxation of Chargeable Gains Act 1992 (non-residents) or fall under that section to be included in the chargeable profits of the non-resident; and
 - (d) in a case where the non-resident is an overseas life insurance company, any other amounts which by virtue of paragraph 3 of Schedule 19AC to the Taxes Act 1988 fall by reference to that branch or agency to be included in the company's chargeable profits for the purposes of corporation tax.
- (3) For the purposes of this section and Schedule 23 to this Act, the non-resident's UK representative in relation to any amount shall continue to be the non-resident's UK representative in relation to that amount even after ceasing to be a branch or agency through which the non-resident carries on the trade, profession or vocation in question.
- (4) For the purposes of this section and Schedule 23 to this Act, the non-resident's UK representative in relation to any amount shall be treated, where he would not otherwise be so treated, as if he were a separate and distinct person from the non-resident.
- (5) Where the branch or agency through which the non-resident carries on the trade, profession or vocation is one carried on by persons in partnership, the partnership, as such, shall be deemed for the purposes of this section and Schedule 23 to this Act to be the non-resident's UK representative in relation to the amounts mentioned in subsection (2) above.
- (6) Where a trade or profession carried on by the non-resident through a branch or agency in the United Kingdom is one carried on by him in partnership, the trade or profession carried on through that branch or agency shall be deemed, for the purposes of this section and Schedule 23 to this Act, to include the deemed trade or profession from which the non-resident's share in the partnership's profits, gains or losses is treated for the purposes of section 111 or 114 of the Taxes Act 1988 as deriving.
- (7) For the purposes of this section and Schedule 23 to this Act where—
- (a) a trade or profession carried on by the non-resident in the United Kingdom is one carried on by him in partnership, and
 - (b) any member of that partnership is resident in the United Kingdom,
- the deemed trade or profession from which the non-resident's share in the partnership's profits, gains or losses is treated for the purposes of section 111 or 114 of the Taxes Act 1988 as deriving shall be treated (in addition, where subsection (6) above also applies, to being treated as included in a trade or profession carried on through any such branch or agency as is mentioned in that subsection) as a trade carried on in the United Kingdom through the partnership as such.
- (8) In this section "branch or agency" has the same meaning as in the Management Act.
- (9) This section and Schedule 23 to this Act apply—
- (a) for the purposes of income tax and capital gains tax, in relation to the year 1996-97 and subsequent years of assessment; and
 - (b) for the purposes of corporation tax, in relation to accounting periods beginning after 31st March 1996.

127 Persons not treated as UK representatives

- (1) For the purposes of section 126 above and Schedule 23 to this Act, none of the following persons shall be capable of being the non-resident's UK representative in relation to income or other amounts falling within paragraphs (a) to (d) of section 126(2) above, that is to say—
- (a) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to transactions carried out through a person who (though an agent of the non-resident) does not act in relation to the transactions in the course of carrying on a regular agency for the non-resident, that agent;
 - (b) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to transactions carried out through a broker and falling within subsection (2) below, that broker;
 - (c) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to investment transactions carried out through an investment manager and falling within subsection (3) below, that manager; and
 - (d) where the non-resident is a member of Lloyd's and the income arises from, or the other amounts are chargeable by reference to, his underwriting business, any person who, in relation to or to matters connected with that income or those amounts, has been the non-resident's members' agent or the managing agent of the syndicate in question.
- (2) For the purposes of subsection (1)(b) above where any income arises from, or other amounts are chargeable by reference to, so much of any business as relates to any transaction carried out through a broker, that transaction shall be taken, in relation to the income or other amounts (“the taxable sums”), to fall within this subsection if—
- (a) at the time of the transaction, the broker was carrying on the business of a broker;
 - (b) the transaction was carried out by the broker on behalf of the non-resident in the ordinary course of that business;
 - (c) the remuneration which the broker received for the provision of the services of a broker to the non-resident in respect of that transaction was at a rate not less than that which would have been customary for that class of business; and
 - (d) the non-resident does not fall (apart from this paragraph) to be treated as having the broker as his UK representative in relation to any income or other amounts not included in the taxable sums but chargeable to tax for the same chargeable period.
- (3) For the purposes of subsection (1)(c) above where any income arises from, or other amounts are chargeable by reference to, so much of any business as relates to any investment transaction, that transaction shall be taken, in relation to that income or those amounts (“the taxable sums”), to have been carried out through an investment manager and to fall within this subsection if—
- (a) the transaction was carried out on behalf of the non-resident by a person (“the manager”) who at the time was carrying on a business of providing investment management services;
 - (b) the transaction was carried out in the ordinary course of that business;
 - (c) the manager, when he acted on behalf of the non-resident in relation to the transaction, did so in an independent capacity;

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- (d) the requirements of subsection (4) below are satisfied in relation to the transaction;
 - (e) the remuneration which the manager received for the provision to the non-resident of the investment management services in question was at a rate which was not less than that which would have been customary for that class of business; and
 - (f) the non-resident does not fall (apart from this paragraph) to be treated as having the manager as his UK representative in relation to any income or other amounts not included in the taxable sums but chargeable to tax for the same chargeable period.
- (4) Subject to subsections (9) to (11) below, the requirements of this subsection are satisfied in relation to any transaction if—
- (a) there is a qualifying period in relation to which it has been or is the intention of the manager and the persons connected with him that the non-resident's relevant excluded income should, as to at least 80 per cent., consist of amounts to which neither the manager nor any such person has a beneficial entitlement; and
 - (b) to the extent that there is a failure to fulfil that intention, that failure—
 - (i) is attributable (directly or indirectly) to matters outside the control of the manager and persons connected with him; and
 - (ii) does not result from a failure by the manager or any of those persons to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (5) For the purposes of this section any reference to the relevant excluded income of the non-resident for a qualifying period is a reference to the aggregate of such of the profits and gains of the non-resident for the chargeable periods comprised in the qualifying period as—
- (a) derive from transactions carried out by the manager while acting on the non-resident's behalf; and
 - (b) for the purposes of section 128 or 129 below would fall (apart from the requirements of subsection (4) above) to be treated as excluded income for any of those chargeable periods.
- (6) For the purposes of this section any reference to an amount of relevant excluded income to which a person has a beneficial entitlement is a reference to so much of any amount to which he has or may acquire a beneficial entitlement by virtue of—
- (a) any interest of his (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 that income is represented, or
 - (b) any interest of his in or other rights in relation to the non-resident, as is or would be attributable to that income.
- (7) For the purposes of subsections (4) to (6) above references to a qualifying period, in relation to any transaction, are references to any period consisting in or including the chargeable period for which the taxable sums are chargeable to tax, being, in a case where it is not that chargeable period, a period of not more than five years comprising two or more complete chargeable periods.
- (8) Where there is a transaction which would fall within subsection (3) above but for its being a transaction in relation to which the requirements of subsection (4) above

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are not satisfied, this section shall have effect as if the transaction did fall within subsection (3) above but only in relation to so much of the amount of the taxable sums as does not represent any amount of the non-resident's relevant excluded income to which the manager or a person connected with him has or has had any beneficial entitlement.

- (9) Subsections (10) and (11) below shall apply, where amounts arise or accrue to the non-resident as a participant in a collective investment scheme, for the purpose of determining whether a transaction carried out for the purposes of that scheme, in so far as it is a transaction in respect of which any such amounts arise or accrue to him, is one in relation to which the requirements of subsection (4) above are satisfied.
- (10) Those requirements shall be deemed to be satisfied in relation to the transaction wherever the collective investment scheme is such that, if the following assumptions applied, namely—
- (a) that all transactions carried out for the purposes of the scheme were carried out on behalf of a company constituted for the purposes of the scheme and resident outside the United Kingdom, and
 - (b) that the participants did 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 company on whose behalf the transactions are assumed to be carried out, would be their rights as shareholders,

the assumed company would not, in relation to the chargeable period in which the taxable sums are chargeable to tax, be regarded for tax purposes as a company carrying on a trade in the United Kingdom.

- (11) Where, on those assumptions, the assumed company would be so regarded for tax purposes, subsections (4) to (8) above shall have effect in relation to the transaction as if, applying those assumptions—
- (a) references to the non-resident were references to the assumed company; and
 - (b) the following subsection were substituted for subsection (5) above, namely—
- “(5) In subsection (4) above the reference to the assumed company's relevant excluded income for a qualifying period is a reference to the aggregate of the amounts which would, for the chargeable periods comprised in the qualifying period, be chargeable to tax on that company as profits deriving from the transactions carried out by the manager and assumed to be carried out on the company's behalf.”

- (12) In this section “investment transactions” means—
- (a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,
 - (b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and
 - (c) such other transactions as the Treasury may by regulations designate for the purposes of this section;

and the power to make regulations for the purposes of paragraph (c) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

- (13) For the purposes of subsection (12) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled

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to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

- (14) The preceding provisions of this section shall have effect in the case of a person who acts as a broker or provides investment management services as part only of a business as if that part were a separate business.
- (15) For the purposes of this section—
- (a) a person shall be taken to carry out a transaction on behalf of another where he undertakes the transaction himself, whether on behalf of or to the account of that other, and also where he gives instructions for it to be so carried out by another; and
 - (b) the references to the income arising from so much of a business as relates to transactions carried out through a branch or agency on behalf of the non-resident shall include references to income from property or rights which, as a result of the transactions, are used by, or held by or for, that branch or agency.
- (16) In paragraph (d) of subsection (1) above—
- (a) the reference to a member of Lloyd’s is a reference to any person who is a member within the meaning of Chapter III of Part II of the Finance Act 1993 or a corporate member within the meaning of Chapter V of Part IV of the Finance Act 1994, and
 - (b) the references to a members' agent and to a managing agent shall also be construed in accordance with section 184 of that Act of 1993 or, as the case may be, section 230 of that Act of 1994.
- (17) In this section—
- “branch or agency” has the same meaning as in the Management Act;
 - “collective investment scheme” has the same meaning as in the Financial Services Act 1986; and
 - “participant”, in relation to a collective investment scheme, shall be construed in accordance with section 75 of that Act of 1986;
- and section 839 of the Taxes Act 1988 (connected persons) shall apply for the purposes of this section.
- (18) For the purposes of this section a person shall not be regarded as acting in an independent capacity when acting on behalf of the non-resident unless, having regard to its legal, financial and commercial characteristics, the relationship between them is a relationship between persons carrying on independent businesses that deal with each other at arm’s length.
- (19) This section applies—
- (a) for the purposes of income tax and capital gains tax, in relation to the year 1996-97 and subsequent years of assessment; and
 - (b) for the purposes of corporation tax, in relation to accounting periods beginning after 31st March 1996.

128 Limit on income chargeable on non-residents: income tax

- (1) Subject to subsection (5) below, the income tax chargeable for any year of assessment on the total income of any person who is not resident in the United Kingdom shall not exceed the sum of the following amounts, that is to say—

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- (a) the amount of tax which, apart from this section, would be chargeable on that total income if—
 - (i) the amount of that income were reduced by the amount of any excluded income; and
 - (ii) there were disregarded any relief under Chapter I of Part VII of the Taxes Act 1988 to which that person is entitled for that year by virtue of section 278(2) of that Act or of any arrangements having effect by virtue of section 788 of that Act;and
 - (b) the amount of tax deducted from so much of any excluded income as is income the tax on which is deducted at source.
- (2) For the purposes of this section income arising for any year to a person who is not resident in the United Kingdom is excluded income in so far as it—
- (a) falls within subsection (3) below; and
 - (b) is not income in relation to which that person has a UK representative for the purposes of section 126 above and Schedule 23 to this Act.
- (3) Income falls within this subsection if—
- (a) it is chargeable to tax under Schedule C, Case III of Schedule D or Schedule F;
 - (b) it is chargeable to tax under Case VI of Schedule D by virtue of section 56 of the Taxes Act 1988 (transactions in deposits);
 - (c) it is chargeable to tax under Schedule E by virtue of section 150 or 617(1) of the Taxes Act 1988 or section 139(1) of the Finance Act 1994 (social security benefits etc.);
 - (d) without being chargeable as mentioned in paragraphs (a) to (c) above or chargeable in accordance with section 171(2) of the Finance Act 1993 (profits of the underwriting business of a member of Lloyd's), it is income arising as mentioned in subsection (1)(b) or (c) of section 127 above; or
 - (e) it is income of such other description as the Treasury may by regulations designate for the purposes of this subsection;
- and the power to make regulations for the purposes of paragraph (e) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (4) In subsection (1)(b) above—
- (a) the reference to excluded income the tax on which is deducted at source is a reference to excluded income from which an amount in respect of income tax is or is treated as deducted, on which any such amount is treated as paid or in respect of which there is a tax credit, and
 - (b) the reference, in relation to any such income, to the amount of income tax deducted shall be construed, accordingly, as a reference to the amount which is or is treated as deducted or which is treated as paid or, as the case may be, to the amount of that credit.
- (5) This section shall not apply to the income tax chargeable for any year of assessment on the income of trustees not resident in the United Kingdom if there is a relevant beneficiary of the trust who is either—
- (a) an individual ordinarily resident in the United Kingdom, or
 - (b) a company resident in the United Kingdom.

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- (6) In subsection (5) above, the reference to a relevant beneficiary, in relation to a trust, is a reference to any person who, as a person falling wholly or partly within any description of actual or potential beneficiaries, is either—
- (a) a person who is, or will or may become, entitled under the trust to receive the whole or any part of any income under the trust; or
 - (b) a person to or for the benefit of whom the whole or any part of any such income may be paid or applied in exercise of any discretion conferred by the trust;
- and for the purposes of this subsection references, in relation to a trust, to income under the trust shall include references to so much (if any) of any property falling to be treated as capital under the trust as represents amounts originally received by the trustees as income.
- (7) This section shall apply, subject to subsections (8) and (9) below, in relation to the year 1995-96 and subsequent years of assessment.
- (8) This section shall have effect in relation to the year 1995-96 as if the following paragraphs were substituted for paragraph (b) of subsection (2) above, that is to say—
- “(aa) arises on or after 6th April 1995; and
 - (b) is not income in relation to which that person would have a UK representative for the purposes of section 126 above and Schedule 23 to this Act if sections 126 and 127 above and that Schedule applied for the year 1995-96.”
- (9) This section shall have effect in relation to the year 1995-96 as if—
- (a) the income falling within paragraphs (a) and (b) of subsection (3) above did not include any income arising otherwise than from a transaction falling within subsection (10) below; and
 - (b) the reference in paragraph (d) of subsection (3) above to income arising as mentioned in subsection (1)(b) or (c) of section 127 above were a reference to any income which would be such income if that section applied in relation to the year 1995-96.
- (10) A transaction falls within this subsection if—
- (a) it is either—
 - (i) a transaction carried out on behalf of the non-resident by a person who, at the time of the transaction, was carrying on the business of a broker; or
 - (ii) an investment transaction carried out on behalf of the non-resident by a person (“the manager”) who at the time was carrying on a business of providing investment management services;
 - (b) it was carried out by the broker or manager on behalf of the non-resident in the ordinary course of the business referred to in paragraph (a) above; and
 - (c) the remuneration which the broker or manager received in respect of that transaction for the provision to the non-resident of the services of a broker or, as the case may be, for the provision of the investment management services in question was at a rate not less than that which would have been customary for that class of business.
- (11) In this section “investment transaction” has the same meaning as in section 127 above.

129 Limit on income chargeable on non-residents: corporation tax

- (1) Subject to subsection (4) below, the corporation tax chargeable on the chargeable profits arising in any accounting period to a company which is not resident in the United Kingdom shall not exceed the sum of the following amounts, that is to say—
 - (a) the amount of tax deducted from so much of any excluded income as is income the tax on which is deducted at source; and
 - (b) the amount (if any) of corporation tax which would be chargeable on the chargeable profits arising to that company for that period if the excluded income of the company for that period were not included in those profits.
- (2) For the purposes of this section income arising for any accounting period to any company is excluded income in so far as it—
 - (a) is income arising as mentioned in subsection (1)(b) or (c) of section 127 above; and
 - (b) is not income in relation to which that person has a UK representative for the purposes of section 126 above and Schedule 23 to this Act.
- (3) In subsection (1)(a) above—
 - (a) the reference to excluded income the tax on which is deducted at source is a reference to excluded income from which an amount in respect of tax is or is treated as deducted, on which any such amount is treated as paid or in respect of which there is a tax credit, and
 - (b) the reference, in relation to any such income, to the amount of tax deducted shall be construed, accordingly, as a reference to the amount which is or is treated as deducted or which is treated as paid or, as the case may be, to the amount of that credit.
- (4) This section does not apply in relation to the chargeable profits arising to a company which is a corporate member within the meaning of Chapter V of Part IV of the Finance Act 1994 (corporate Lloyd's underwriters etc.).
- (5) This section applies, subject to subsection (6) below, in relation to any accounting period ending after 5th April 1995.
- (6) This section shall have effect in relation to any accounting period beginning before 1st April 1996 as if the following paragraphs were substituted for paragraphs (a) and (b) of subsection (2) above, that is to say—
 - “(a) is income arising after 5th April 1995 which would be income arising as mentioned in subsection (1)(b) or (c) of section 127 above if that section applied in relation to accounting periods beginning before 1st April 1996; and
 - (b) is not income in relation to which that person would have a UK representative for the purposes of section 126 above and Schedule 23 to this Act if sections 126 and 127 above and that Schedule so applied.”