

*Status: Point in time view as at 22/07/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2019, PART 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

#### NON-UK RESIDENT COMPANIES CARRYING ON UK PROPERTY BUSINESSES ETC

##### Modifications etc. (not altering text)

**C1** Sch. 5 modified (22.7.2020) by Finance Act 2020 (c. 14), Sch. 6 para. 10

### PART 3

#### COMMENCEMENT AND TRANSITIONAL PROVISIONS

##### *Commencement*

35 This Schedule comes into force on 6 April 2020 (“the commencement date”).

##### Commencement Information

**II** Sch. 5 para. 35 in force at 6.4.2020, see Sch. 5 para. 35

##### *Transitional provisions*

36 Where a period of account of a company begins before and ends on or after the commencement date, it is to be assumed for the purposes of the amendments made by this Schedule—

- (a) that the period (“the straddling period of account”) consists of two separate periods of account—
  - (i) the first beginning with the date on which the straddling period of account begins and ending with 5th April 2020, and
  - (ii) the second beginning with the commencement date and ending with the date on which the straddling period of account ends, and
- (b) that separate accounts have been drawn up for each of those separate periods in accordance with generally accepted accounting practice.

##### Commencement Information

**I2** Sch. 5 para. 36 in force at 6.4.2020, see Sch. 5 para. 35

37 (1) This paragraph applies if—

- (a) in a tax year ending before the commencement date a company makes a loss in a UK property business that is within the charge to income tax,

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- (b) relief for the purposes of income tax is not given to the company for an amount of the loss (“the unrelieved amount”), and
  - (c) on the commencement date the UK property business ceases to be within the charge to income tax and comes within the charge to corporation tax as a result of section 5(3A) of CTA 2009.
- (2) Relief for the purposes of corporation tax is given to the company under this paragraph for the unrelieved amount.
- (3) For this purpose—
- (a) the unrelieved amount is carried forward to post-commencement accounting periods of the company (for so long as the company continues to carry on the UK property business), and
  - (b) the profits of any such accounting period that are mentioned in subparagraph (4) are to be reduced by the unrelieved amount (so far as that amount cannot be used under this paragraph to reduce the profits of an earlier period).
- (4) The profits are—
- (a) profits of the UK property business, and
  - (b) profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of that business.
- (5) In this paragraph “post-commencement accounting period” means an accounting period ending after the commencement date.

**Commencement Information**

**I3** Sch. 5 para. 37 in force at 6.4.2020, see Sch. 5 para. 35

- 38 (1) This paragraph applies if—
- (a) in the tax year 2019-20 a non-UK resident company is a partner in a firm which—
    - (i) carries on a trade, and
    - (ii) has untaxed income or relievable losses from a UK property business, and
  - (b) accordingly, the company is treated under section 854 of ITTOIA 2005 as having a notional business for the tax year.
- (2) The basis period for the notional business for the tax year is taken to end with 5th April in that tax year (if it would not otherwise do so).
- (3) In this paragraph “untaxed income” has the meaning given by section 854(6) of ITTOIA 2005.

**Commencement Information**

**I4** Sch. 5 para. 38 in force at 6.4.2020, see Sch. 5 para. 35

- 39 (1) This paragraph applies if—
- (a) on or after the commencement date a loss arises in connection with a loan relationship of a company,

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- (b) the loss is wholly or partly referable to a time before the commencement date (“the pre-commencement time”), and
  - (c) had the loss arisen at the pre-commencement time it would have been brought into account in accordance with Part 3 of ITTOIA 2005 in calculating the profits of the UK property business of the company.
- (2) Section 327 (disallowance of imported losses etc) does not apply in relation to so much of the loss as is referable to the pre-commencement time.

#### Commencement Information

**I5** Sch. 5 para. 39 in force at 6.4.2020, see Sch. 5 para. 35

- 40 (1) This paragraph applies for an accounting period (“the loss period”) of a non-UK resident company beginning on or after the commencement date if—
- (a) apart from this paragraph, a loss arising in connection with a derivative contract of the company would by reason of this Schedule fall to be brought into account in accordance with Part 7 of CTA 2009,
  - (b) the loss is wholly or partly referable to a time before the commencement date when the derivative contract was not subject to corporation tax, and
  - (c) had the loss arisen at that time it would not have been brought into account in accordance with Part 3 of ITTOIA 2005 in calculating the profits of the UK property business of the company.
- (2) The amounts brought into account for the loss period in accordance with Part 7 of CTA 2009 must be such as to secure that none of the loss referable to that time is treated as arising in the loss period or any other accounting period of the company.
- (3) For the purposes of this section a loss is referable to a time when a contract is not subject to corporation tax so far as, at the time to which the loss is referable, the company would not have been chargeable to corporation tax on any profits arising from the contract.
- (4) If the company was not a party to the contract at the time to which the loss is referable, subparagraph (3) applies as if the reference to the company were a reference to the person who at that time was in the same position as respects the contract as is subsequently held by the company.
- (5) An amount which would be brought into account in accordance with Part 7 of CTA 2009 in respect of a derivative contract apart from this paragraph is treated for the purposes of section 699(1) of CTA 2009 (amounts brought into account under Part 7 excluded from being otherwise brought into account) as if it were so brought into account.
- (6) Accordingly, that amount must not be brought into account for corporation tax purposes as respects the derivative contract either in accordance with Part 7 of CTA 2009 or otherwise.
- [<sup>F1</sup>(7) Section 607ZA of CTA 2009 (debits referable to times before UK property business carried on) has effect subject to this paragraph.]

#### Textual Amendments

**F1** Sch. 5 para. 40(7) inserted (6.4.2020) by [Finance Act 2020 \(c. 14\)](#), [Sch. 6 para. 5](#)

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#### **Commencement Information**

**I6** Sch. 5 para. 40 in force at 6.4.2020, see Sch. 5 para. 35

- 41 (1) This paragraph applies for an accounting period (“the relevant period”) of a non-UK resident company beginning on or after the commencement date if—
- (a) a profit arising in connection with a loan relationship or derivative contract of the company (“the first instrument”) falls by reason of this Schedule to be brought into account in the relevant period in accordance with Part 5 or Part 7 of CTA 2009,
  - (b) an amount of the profit (“the profit amount”) is referable to a time before the commencement date when the first instrument was not subject to corporation tax,
  - (c) had the profit arisen at that time it would not have been brought into account in accordance with Part 3 of ITTOIA 2005 in calculating the profits of the UK property business of the company,
  - (d) at that time the first instrument and another loan relationship or derivative contract (“the second instrument”) were in a hedging relationship with one another, and
  - (e) an amount of a loss (“the loss amount”) arising in connection with the second instrument would (apart from this paragraph) be prevented by reason of paragraph 40 or section 327 of CTA 2009 from being brought into account in the relevant period in accordance with Part 5 or Part 7 of CTA 2009.
- (2) So much of the loss amount as does not exceed the profit amount may be brought into account in the relevant period in accordance with Part 5 or Part 7 of CTA 2009.
- (3) For the purposes of sub-paragraph (1) the first instrument and the second instrument are in a hedging relationship with one another in so far as one of them is intended to act as a hedge of the company's exposure to changes in the fair value of the other.
- (4) In a case where the first instrument and the second instrument are in a hedging relationship with one another to a limited extent, subsection (2) has effect in relation to so much of the loss amount as is just and reasonable having regard to the extent of that hedging relationship.
- (5) For the purposes of this paragraph a profit is referable to a time when the first instrument is not subject to corporation tax so far as, at the time to which the profit is referable, the company would not have been chargeable to corporation tax on any profits arising from the instrument.
- (6) If the company was not a party to the first instrument at the time to which the profit is referable, subparagraph (5) applies as if the reference to the company were a reference to the person who at that time was in the same position as respects the instrument as is subsequently held by the company.

#### **Commencement Information**

**I7** Sch. 5 para. 41 in force at 6.4.2020, see Sch. 5 para. 35

- 42 (1) Where—
- (a) before the commencement date a company is chargeable to income tax on the profits of its UK property business,

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- (b) on the commencement date the company becomes chargeable to corporation tax on the profits arising from a derivative contract that it is a party to for the purposes of its UK property business, and
  - (c) there is a tax asymmetry in relation to the derivative contract,
- the amounts to be brought into account in respect of the derivative contract for the purposes of Part 7 of CTA 2009 are to be adjusted in such manner as is just and reasonable having regard to the tax asymmetry.
- (2) For the purposes of subparagraph (1) there is a tax asymmetry in relation to the derivative contract if—
- (a) fair value amounts arising in relation to the derivative contract are brought into account in calculating for the purposes of income tax the profits or losses of the company's UK property business for tax years ending before the commencement date, but
  - (b) by reason of regulation 9 of the Disregard Regulations, fair value amounts arising in relation to the contract are not brought into account for the purposes of Part 7 of CTA 2009 for accounting periods of the company beginning on or after the commencement date.
- (3) In this paragraph—
- “fair value amount” means an amount representing a change in the fair value of a derivative contract which is recognised in determining a company's profit or loss for a period of account in accordance with generally accepted accounting practice;
- “the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256).

#### **Commencement Information**

**I8** Sch. 5 para. 42 in force at 6.4.2020, see Sch. 5 para. 35

- 43 (1) This paragraph applies if—
- (a) an amount representing a change in the fair value of a derivative contract is recognised in determining a company's profit or loss for a period of account beginning before the commencement date, and
  - (b) the amount would have been brought into account in calculating for the purposes of income tax the profits or losses of the company's UK property business for a tax year ending before the commencement date but for its having been treated as an amount of a capital nature.
- (2) In determining the amounts the company is to bring into account for the purposes of Part 7 of CTA 2009 for an accounting period beginning on or after the commencement date—
- (a) the derivative contract is to be treated as being one in relation to which an election has effect under regulation 6A of the Disregard Regulations, and
  - (b) if regulation 7 or 8 of those Regulations applies in relation to the derivative contract, the amount referred to in subparagraph (1) is to be treated for the purposes of regulation 10 of those Regulations as being an amount that has previously been excluded from being brought into account for the purposes of Part 7 of CTA 2009 by regulation 7 or 8 (as the case may be).

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(3) In this paragraph—

“the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256);

“recognised” means recognised in accordance with generally accepted accounting practice.

#### Commencement Information

**I9** Sch. 5 para. 43 in force at 6.4.2020, see Sch. 5 para. 35

44 (1) This paragraph applies if—

- (a) before 1 January 2015 a company measures a relevant derivative contract at fair value,
- (b) on the commencement date the company comes within the charge to corporation tax by reason of this Schedule, and
- (c) the first relevant period of the company begins on or after the commencement date.

(2) The company is to be treated for the purposes of regulation 6A of the Disregard Regulations as if it was a new adopter.

(3) In this paragraph—

“the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256), and

“the first relevant period” and “relevant derivative contract” have the meaning given by regulation 6A(5) of the Disregard Regulations.

[<sup>F2</sup>(4) In determining for the purposes of this paragraph whether, on the commencement date, a company comes within the charge to corporation tax by reason of this Schedule, no account is to be taken of any disposal made by the company before that date where any gain accruing to the company on the disposal would be chargeable to corporation tax as a result of section 2B(4) of TCGA 1992.]

#### Textual Amendments

**F2** Sch. 5 para. 44(4) inserted (with effect in accordance with Sch. 6 para. 11 of the amending Act) by Finance Act 2020 (c. 14), Sch. 6 para. 9

#### Commencement Information

**I10** Sch. 5 para. 44 in force at 6.4.2020, see Sch. 5 para. 35

45 (1) This paragraph applies if on the commencement date—

- (a) an asset held by a non-UK resident company for the purposes of its UK property business becomes a chargeable intangible asset in relation to the company by reason of the business coming within the charge to corporation tax, or
- (b) an asset held by a non-UK resident company for the purposes of enabling it to generate other UK property income becomes a chargeable intangible

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asset in relation to the company by reason of that income coming within the charge to corporation tax.

- (2) Part 8 of CTA 2009 applies as if—
- (a) the company had acquired the asset immediately on the commencement date, and
  - (b) had done so for its accounting value at that time.
- (3) In this paragraph—
- “accounting value” and “chargeable intangible asset” have the meaning they have in Part 8 of CTA 2009, and
  - “other UK property income” has the meaning it has in Part 2 of CTA 2009.

**Commencement Information**

**111** Sch. 5 para. 45 in force at 6.4.2020, see Sch. 5 para. 35

- 46 (1) An election under section 792 of CTA 2009 (reallocation of degrouping charge within a group) may not be made if—
- (a) subsection (3A) of section 793 applies to B, and
  - (b) the relevant time is before 5 July 2016.
- (2) An election under section 792 of CTA 2009 may not be made if—
- (a) subsection (3B) of section 793 applies to B, and
  - (b) the relevant time is before the commencement date.
- (3) In this paragraph references to “B” and “the relevant time” must be read in accordance with section 792 of CTA 2009.

**Commencement Information**

**112** Sch. 5 para. 46 in force at 6.4.2020, see Sch. 5 para. 35

- 47 (1) This paragraph applies if—
- (a) before the commencement date a company incurs expenditure for the purposes of a UK property business it is about to carry on,
  - (b) the company begins to carry on the business on or after the commencement date, and
  - (c) when the company begins to carry on the business it is non-UK resident.
- (2) Subsection (7) of section 1147 of CTA 2009 (which enables a company to obtain relief for expenditure on contaminated or derelict land incurred prior to carrying on a UK property business) does not apply in relation to the expenditure.

**Commencement Information**

**113** Sch. 5 para. 47 in force at 6.4.2020, see Sch. 5 para. 35

- 48 Where on the commencement date—

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- (a) a non-UK resident company ceases to be within the charge to income tax and comes within the charge to corporation tax by reason of this Schedule, and
  - (b) an accounting period of the company begins in accordance with section 9(1)(a) of CTA 2009,
- the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) do not have effect in relation to that accounting period.

**Commencement Information**

**I14** Sch. 5 para. 48 in force at 6.4.2020, see Sch. 5 para. 35

- 49 (1) This paragraph applies if on or after 29 October 2018 a company enters into an arrangement the main purpose or one of the main purposes of which is to secure for any person a tax advantage related to the coming into force of this Schedule.
- (2) The tax advantage is to be counteracted by means of adjustments.
- (3) The adjustments may be made (whether by an officer of Revenue and Customs or the person who would obtain the tax advantage) by way of an assessment, the modification of an assessment, an amendment or disallowance of a claim, or otherwise.
- (4) In this paragraph—  
 “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),  
 “tax advantage” has the meaning given by section 1139 of CTA 2010.

**Commencement Information**

**I15** Sch. 5 para. 49 in force at 6.4.2020, see Sch. 5 para. 35

- 50 (1) This paragraph applies if—
- (a) a company enters into an arrangement of a kind mentioned in paragraph 49(1),
  - (b) the arrangements are effected by taking only ordinary commercial steps in accordance with a generally prevailing commercial practice,
  - (c) the tax advantage that the arrangements secure is the benefit of a relief expressly conferred by Part 10 of TIOPA 2010 (corporate interest restriction), and
  - (d) securing that tax advantage is wholly consistent with the policy objectives of that Part.
- (2) If the arrangement is entered into on or after 29 October 2018, the tax advantage is not to be counteracted by means of adjustments under paragraph 49.
- (3) In addition, the tax advantage is not to be counteracted by means of adjustments under section 461 of TIOPA 2010 irrespective of the date on which the arrangement was entered into.



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**Commencement Information**

**I16** Sch. 5 para. 50 in force at 6.4.2020, see Sch. 5 para. 35

**Status:**

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**Changes to legislation:**

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