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**1 Non-UK resident companies carrying on UK property businesses etc**

Schedule 1 contains provision for non-UK resident companies to be chargeable to corporation tax on—

- (a) profits of UK property businesses, and
- (b) profits consisting of other UK property income.

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# SCHEDULE 1

Section 1

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

### PART 1

#### EXTENSION OF SCOPE OF CHARGE

- 1 Section 5 of CTA 2009 (territorial scope of charge to corporation tax) is amended as follows.
- 2 In subsection (2) (circumstances in which non-UK resident company is within the charge) –
- (a) omit “or” at the end of paragraph (a), and
  - (b) after paragraph (b) insert “,
    - (c) it carries on a UK property business, or
    - (d) it has other UK property income.”
- 3 After subsection (3) insert –
- “(3A) A non-UK resident company which carries on a UK property business is chargeable to corporation tax on income on all its profits that are –
- (a) profits of that business, or
  - (b) profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of that business.
- (3B) A non-UK resident company which has other UK property income is chargeable to corporation tax on income on all its profits that –
- (a) consist of that income, or
  - (b) are profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of enabling it to generate that income.”

4 In subsection (4) for “(2A) and (3)” substitute “and (2A) to (3B)”.

5 After subsection (4) insert –

“(5) In this Part “other UK property income” means income dealt with by any of the following Chapters of Part 4 –

    - (a) Chapter 7 (rent receivable in connection with a UK section 39(4) concern);
    - (b) Chapter 8 (rent receivable for UK electric-line wayleaves);
    - (c) Chapter 9 (post-cessation receipts arising from a UK property business).”

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PART 2

SUPPLEMENTARY & CONSEQUENTIAL AMENDMENTS

*ITTOIA 2005*

- 6 In Part 3 of ITTOIA 2005 (property businesses), omit section 362 (effect of company starting or ceasing to be within charge to income tax in respect of UK property business).

*ITA 2007*

- 7 In section 5 of ITA 2007 (income tax and companies) in paragraph (b) for the words from “the income” to the end substitute “it is chargeable to corporation tax in respect of the income, or would be so chargeable but for an exemption.”

*CTA 2009*

- 8 CTA 2009 is amended as follows.
- 9 In section 3 (exclusion of charge to income tax) in subsection (1)(b) (non-UK resident companies) for the words from “and –” to the end substitute “and it is chargeable to corporation tax in respect of the income, or would be so chargeable but for an exemption”.
- 10 In section 18A (exemption for profits or losses of foreign permanent establishments) in subsection (2A) for the words from “, or would” to the end substitute “or, if the company were non-UK resident, would be –
- (a) profits or losses of the company’s trade of dealing in or developing UK land (see section 5B),
  - (b) profits or losses of the company’s UK property business,
  - (c) profits consisting of the company’s other UK property income, or
  - (d) profits or losses arising from loan relationships or derivative contracts that the company is a party to for the purposes of its UK property business or for the purposes of enabling it to generate other UK property income.”
- 11 In section 19 (chargeable profits) for subsection (2A) substitute –
- “(2A) But the company’s “chargeable profits” do not include –
- (a) profits of a trade of dealing in or developing UK land (see section 5B),
  - (b) profits of a UK property business,
  - (c) profits consisting of other UK property income, or
  - (d) profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of its UK property business or for the purposes of enabling it to generate other UK property income.”
- 12 In section 333 (company with loan relationship ceasing to be UK resident) in subsection (2) –
- (a) after “owed” insert “–
  - (a) ”, and

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- (b) at the end insert “,
- (b) for the purposes of the company’s trade of dealing in or developing UK land,
  - (c) for the purposes of the company’s UK property business, or
  - (d) for the purposes of enabling the company to generate other UK property income (within the meaning given by section 5(5)).”
- 13 (1) Section 334 (non-UK resident company ceasing to hold loan relationship for UK permanent establishment) is amended as follows.
- (2) In the heading, for “UK permanent establishment” substitute “section 333(2) purposes”.
  - (3) In subsection (1) for the words from “the purposes” to “United Kingdom” substitute “section 333(2) purposes”.
  - (4) In subsection (3)(b) for “the purposes of the permanent establishment” substitute “section 333(2) purposes”.
  - (5) After subsection (4) insert –
    - “(5) An asset or liability ceases to be held or owed for section 333(2) purposes if and in so far as –
      - (a) it ceases to be held or owed for any purposes mentioned in section 333(2), and
      - (b) on doing so, it does not begin or continue to be held or owed for any of the other purposes so mentioned.”
- 14 In section 609 (company with derivative contract ceasing to be UK resident) in subsection (2) –
- (a) after “owed” insert “ –
    - (a) ”, and
  - (b) at the end insert “,
    - (b) for the purposes of the company’s trade of dealing in or developing UK land,
    - (c) for the purposes of the company’s UK property business, or
    - (d) for the purposes of enabling the company to generate other UK property income (within the meaning given by section 5(5)).”
- 15 (1) Section 610 (non-UK resident company ceasing to hold derivative contract for UK permanent establishment) is amended as follows.
- (2) In the heading, for “UK permanent establishment” substitute “section 609(2) purposes”.
  - (3) In subsection (1) for the words from “the purposes” to “United Kingdom” substitute “section 609(2) purposes”.
  - (4) In subsection (3)(b) for “the purposes of the permanent establishment” substitute “section 609(2) purposes”.

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- (5) After subsection (4) insert—
- “(5) A right or liability ceases to be held or owed for section 609(2) purposes if and in so far as—
- (a) it ceases to be held or owed for any purposes mentioned in section 609(2), and
  - (b) on doing so, it does not begin or continue to be held or owed for any of the other purposes so mentioned.”
- 16 (1) Section 697 (derivative contracts with non-UK residents: exceptions) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Section 696 does not apply if NR—
- (a) is chargeable to corporation tax or income tax in respect of income arising from the derivative contract (or would be if there were any such income), and
  - (b) is a party to the derivative contract otherwise than as agent or nominee of another person.”
- (3) In subsection (6) omit the definition of “relevant entity” and “, and” immediately before it.
- 17 In section 746 (“non-trading credits” and “non-trading debits”) in subsection (2) for paragraph (b) substitute—
- “(b) section 793A (effect of election to reallocate charge within group),”.
- 18 (1) Section 792 (reallocation of charge within group) is amended as follows.
- (2) Omit subsection (5).
- (3) In subsection (6) for “makes further provision” substitute “sets out further requirements”.
- (4) After subsection (6) insert—
- “(6A) Section 793A makes provision about the effect of elections under this section.”
- (5) In subsection (8) after “793” insert “, 793A”.
- 19 (1) Section 793 (further requirements about elections under section 792) is amended as follows.
- (2) In subsection (1) for “or (3)” substitute “, (3), (3A) or (3B)”.
- (3) In subsection (3), in the words before paragraph (a), after “if” insert “subsection (2) does not apply and”
- (4) After subsection (3) insert—
- “(3A) This subsection applies if neither of subsections (2) and (3) apply and at the relevant time—
- (a) B carried on a trade of dealing in or developing UK land, and
  - (b) B was not exempt from corporation tax in respect of profits of that trade because of arrangements that have effect under section 2(1) of TIOPA 2010.

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- (3B) This subsection applies if none of subsections (2), (3) and (3A) apply and at the relevant time –
- (a) B carried on a UK property business, and
  - (b) B was not exempt from corporation tax in respect of the income of its UK property business because of arrangements that have effect under section 2(1) of TIOPA 2010.”

20 After section 793 insert –

**“793A Effect of election under section 792**

- (1) This section applies if an election is made under section 792.
- (2) If subsection (2) of section 793 applies to B the gain, or the part specified in the election, is treated as if it had accrued to B at the relevant time as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).
- (3) If subsection (3) of section 793 applies to B the gain, or the part specified in the election, is treated –
  - (a) as if it had accrued to B at the relevant time as a non-trading credit for the purposes of Chapter 6, and
  - (b) as if it had accrued in respect of an asset held for the purposes of a permanent establishment of B in the United Kingdom.
- (4) If subsection (3A) of section 793 applies to B the gain, or the part specified in the election, is treated for the purposes of Chapter 6 as if it had accrued to B at the relevant time as a credit in respect of an asset held for the purposes of B’s trade of dealing in or developing UK land.
- (5) If subsection (3B) of section 793 applies to B the gain, or the part specified in the election, is treated for the purposes of Chapter 6 as if it had accrued to B at the relevant time as a credit in respect of an asset held for the purposes of B’s UK property business.”

21 In section 795 (recovery of charge from another group company or controlling director) in subsection (4) omit the words from “but” to “establishment”.

22 In section 863 (asset becoming chargeable intangible asset), in subsection (1)(b) –

- (a) after “held” insert “ –
  - (i) ”, and
- (b) after “establishment,” insert –
  - “(ii) for the purposes of a trade carried on by the company of dealing in or developing UK land,
  - (iii) for the purposes of a UK property business carried on by the company, or
  - (iv) for the purposes of enabling the company to generate other UK property income (within the meaning given by section 5(5)),”.

CTA 2010

23 CTA 2010 is amended as follows.

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- 24 (1) Section 9 (non-UK resident company preparing return of accounts in currency other than sterling) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies if a non-UK resident company within the charge to corporation tax prepares its return of accounts for a period of account in a currency other than sterling (the “accounts currency”).”
- (3) In subsection (4) omit from “of its” to “United Kingdom”.
- 25 In section 107 (group relief: restriction on losses etc surrenderable by non-UK resident) in subsection (1) for “company” (in the second place it occurs) to the end substitute “company within the charge to corporation tax”.
- 26 In section 134 (group relief: meaning of “UK related” company) in paragraph (b) for the words from “carrying on” to the end substitute “within the charge to corporation tax”.
- 27 In section 188BI (group relief for carried-forward losses: restriction on surrender of losses made when non-UK resident) in subsection (1) for “company” (in the second place it occurs) to the end substitute “company within the charge to corporation tax”.
- 28 In section 188CJ (group relief for carried-forward losses: meaning of “UK related” company) in paragraph (b) for the words from “carrying on” to the end substitute “within the charge to corporation tax”.

### PART 3

#### COMMENCEMENT AND TRANSITIONAL PROVISIONS

##### *Commencement*

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

##### *Transitional provisions*

- 30 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.
- 31 (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,
- (b) relief for the purposes of income tax is not given to the company for an amount of the loss (“the unrelieved amount”), and

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- (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 the UK property business of any such accounting period are 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) In this paragraph “post-commencement accounting period” means an accounting period ending after the commencement date.
- 32 (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 relieviable 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.
- 33 (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, and
  - (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.
- (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



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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.

34 (1) Where –

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

35 (1) This paragraph applies if –

- (a) an amount of a capital nature 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 the fact that it is an amount of a capital nature.

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- (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).
- (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.
- 36 (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 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.
- 37 (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.
- 38 (1) This paragraph applies if—

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- (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.