

1 Permanent establishments

Schedule 1 makes provision about permanent establishments, including for the purposes of giving effect to certain provisions of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development in 2017.

SCHEDULE 1

Section 1

PERMANENT ESTABLISHMENTS

PART 1

AMENDMENTS TO CTA 2009

Introduction

- 1 CTA 2009 (charge to corporation tax: basic provisions) is amended as follows.

References to Model Tax Convention

- 2 In section 18S (other interpretation), in the definition of “the OECD model”, for “in July 2010 (“the OECD”)” substitute “(“the OECD”) on 21 November 2017”.

Attribution of profits

- 3 In section 19 (chargeable profits) –
 - (a) in subsection (2)(b), for “32” substitute “24”;
 - (b) in subsection (5), for “32” substitute “24”.
- 4 In section 20 (profits attributable to permanent establishment: introduction), for subsections (1) and (2) substitute –
 - “(1A) Sections 21 and 24 –
 - (a) apply for the purpose of determining the amount of profits of a non-UK resident company that are attributable to a permanent establishment of the company in the United Kingdom, and
 - (b) contain provision about the separate enterprise principle.
 - (1B) So far as provisions in those sections are in substantially the same terms as Article 7(2) of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development (“the OECD”) on 21 November 2017 they are to be read and given effect, so far as possible, in a way that is consistent with –
 - (a) the 2010 Report on the Attribution of Profits to Permanent Establishments published by the OECD on 22 July 2010,
 - (b) the OECD’s commentary on Article 7(2) published on 21 November 2017,
 - (c) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, published by the OECD on 20 January 2022, and

- (d) the Additional Guidance on the Attribution of Profits to Permanent Establishments published by the OECD in March 2018.
- (1C) The Treasury may by regulations amend subsection (1B) so as to—
 - (a) replace a reference to a document published by the OECD (“the earlier publication”) with a reference to another document also published by the OECD with the intention of replacing or superseding the earlier publication, or
 - (b) add a reference to a further document published by the OECD.”
- 5 (1) Section 21 (the separate enterprise principle) is amended as follows.
 - (2) In subsection (1), for the words from “distinct” to the end substitute “separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the non-UK resident company through the permanent establishment and through the other parts of the non-UK resident company”.
 - (3) Omit subsection (3).
- 6 Omit—
 - (a) section 22 (transactions treated as being at arm’s length);
 - (b) section 23 (provision of goods or services for permanent establishment).
- 7 In section 24 (application to insurance companies)—
 - (a) in subsection (2), in the words after paragraph (b), for the words from “distinct” to the end substitute “separate and independent enterprise acting as mentioned in that subsection”;
 - (b) omit subsections (4), (5) and (6).
- 8 Omit—
 - (a) section 25 (non-UK resident banks: introduction);
 - (b) section 26 (transfer of financial assets);
 - (c) section 27 (loans: attribution of financial assets and profits arising);
 - (d) section 28 (borrowing: permanent establishment acting as agent or intermediary);
 - (e) section 29 (allowable deductions);
 - (f) section 30 (restriction on deductions: costs);
 - (g) section 31 (restriction on deductions: payments in respect of intangible assets);
 - (h) section 32 (restriction on deductions: interest or other financing costs).

Exclusion of income tax charge

- 9 (1) In section 3 (exclusion of charge to income tax), in subsection (1)(b) for “for an exemption.” substitute “is not as a result of—
- “(i) an exemption, or
 (ii) the application of sections 1142 to 1144 of CTA 2010 (circumstances in which a company is not regarded as having a permanent establishment).”
- (2) In consequence of the amendment made by sub-paragraph (1), in ITA 2007—
- (a) in section 816 (meaning of disregarded company income)—
- (i) in subsection (1), omit paragraphs (c) and (d), and
 (ii) omit subsection (2) to (4), and
- (b) in section 817 (the independent broker conditions)—
- (i) in subsection (1), for the words from “Kingdom” to the end substitute “Kingdom if conditions A to D are met.”, and
 (ii) omit subsection (6).

PART 2

AMENDMENTS TO CTA 2010

Introduction

- 10 CTA 2010 is amended as follows.

General interpretation

- 11 Before section 1141 (but after the heading “General”) insert—

“1140A Introduction

- (1) This Chapter applies for the purpose of determining when a company has a permanent establishment in a territory for the purposes of the Corporation Tax Acts.
- (2) So far as provisions in this Chapter are in substantially the same terms as Article 5 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development (“the OECD”) on 21 November 2017 they are to be read and given effect, so far as possible, in a way that is consistent with the OECD’s commentary on that Article, also published on 21 November 2017.
- (3) The Treasury may by regulations amend subsection (2) so as to—
- (a) replace a reference to a document published by the OECD (“the earlier publication”) with a reference to another document also published by the OECD with the intention of replacing or superseding the earlier publication, or

- (b) add a reference to a further document published by the OECD.”

Dependent agents

- 12 In section 1141 (permanent establishment of companies), in subsection (1), for paragraph (b) substitute—
 - “(b) a person acting on behalf of the company habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts, that are routinely concluded without material modification by the company, and the contracts are—
 - (i) for the transfer of the ownership of, or for the granting of the right to use, property owned by the company or that the company has the right to use, or
 - (ii) for the provision of services by the company.”

Fixed place of business

- 13 In section 1141 , in subsection (2)(h), at the end insert “, provided that the site or project lasts more than twelve months”.

Independent agents

- 14 (1) Section 1142 (agent of independent status) is amended as follows.
 - (2) After subsection (1) insert—
 - “(1A) A person is not to be regarded for the purposes of subsection (1) as an agent of independent status in relation to a company where the person—
 - (a) is closely related to the company, and
 - (b) acts exclusively or almost exclusively on behalf of—
 - (i) the company, or
 - (ii) the company and other companies to which the person is closely related.
 - (1B) In subsection (1A), “closely related” has the meaning that it has in section 1143 (see subsection (2CA) of that section).”
 - (3) In subsection (2)—
 - (a) for “apply for the purpose of supplementing” substitute “modify the application of”;
 - (b) at the end of paragraph (a) insert “or”;
 - (c) omit paragraph (c) (and the “or” at the end of paragraph (b)).

Meaning of “closely related”

- 15 In section 1143 (preparatory or auxiliary activities), for subsection (2D) substitute –
- “(2CA) For the purposes of this section, one person (“A”) is closely related to another person (“B”) if, based on all the relevant facts and circumstances, A has control of B or A and B are under the control of the same persons, including if the 50% investment condition is met in relation to A and B.”

Independent investment manager conditions not sole means of showing independent status

- 16 In section 1146 (the independent investment manager conditions), in subsection (2) –
- (a) after “transaction,” insert “the circumstances in which”, and
 - (b) for “if”, in the first place it occurs, to the end substitute “include where each of the following conditions (the independent investment manager conditions) are met.”

Removal of the 20% rule

- 17 (1) In section 1146, omit subsection (6).
- (2) In consequence of the amendment made by sub-paragraph (1) –
- (a) omit section 1147 (investment managers: the 20% rule),
 - (b) omit section 1148 (interpretation of section 1147), and
 - (c) omit section 1149 (application of 20% rule to collective investment schemes).

New definition of “investment transaction”

- 18 (1) For section 1150 (meaning of investment manager and investment transaction) substitute –

“1150 Meaning of “investment manager” and “investment transaction”

- (1) The following definitions apply for the purposes of this Chapter.
- (2) An “investment manager” means a person who provides investment management services.
- (3) An “investment transaction” means any transaction made by an investment fund, other than a transaction with an excluded subject matter.
- (4) The following are excluded subject matters –
 - (a) land in the United Kingdom, and
 - (b) any commodity or other physical asset.
- (5) But a transaction is to be treated as not having an excluded subject matter if –

- (a) it is a derivative contract whose subject matter is a commodity but which does not result in the physical delivery of the commodity, or
 - (b) it is a derivative contract whose subject matter is an excluded subject matter only because it operates by reference to a qualifying index, provided that index is not maintained by a person who is connected to any of the parties to the transaction.
- (6) For the purposes of subsection (5) a “qualifying index” means an index relating to an excluded subject matter that –
 - (a) is publicly available, and
 - (b) is an index of a substantial number of assets.
- (7) For the purposes of this section an “investment fund” means –
 - (a) an AIF, within the meaning of the Alternative Investment Fund Managers Regulations 2013 (see regulation 3 of those regulations), or
 - (b) a collective investment scheme within the meaning of Part 17 of FISMA 2000 (see section 235 of that Act).”
- (2) In section 1171 (orders and regulations), in subsection (2)(g) omit sub-paragraph (ii).
- (3) In Schedule 4 (index of defined expressions) –
 - (a) in the entry for “investment manager (in Chapter 5 of Part 8B)” for “1150(1)” substitute “1150”,
 - (b) in the entry for “investment manager (in Chapter 2 of Part 24)” for “1150(1)” substitute “1150”, and
 - (c) in the entry for “investment transaction (in Chapter 5 of Part 8B)” for “1150(1)” substitute “1150”.

Removal of disregard of certain chargeable profits attributable to permanent establishment represented by investment manager

- 19 (1) Omit section 1152 (investment managers: disregard of certain chargeable profits).
- (2) In consequence of the amendment made by sub-paragraph (1), in section 20 of CTA 2009 (profits attributable to permanent establishment: introduction), omit subsection (3).

Lloyd’s agents

- 20 In section 1142 (agent of independent status), in subsection (2) –
 - (a) in the words before paragraph (a) for “1151” substitute “1150”,
 - (b) in paragraph (a), at the end insert “or”, and
 - (c) omit paragraph (c) (and the “or” at the end of paragraph (b)).
- 21 Omit section 1151 (Lloyd’s agents).

Northern Ireland regional establishments

- 22 (1) In section 357LD (the independent investment manager conditions) –
- (a) in subsection (2) –
 - (i) after “transaction,” insert “the circumstances in which”, and
 - (ii) for “if (and only if)” substitute “include where” and
 - (b) omit subsection (6).
- (2) Omit sections 357LE to 357LG (20% rule).
- (3) In section 357LH (meaning of investment manager and investment transaction), for “1150(1)” substitute “1150”.
- (4) Omit section 357LJ (disregard of certain chargeable profits).

PART 3

AMENDMENTS TO ITA 2007

Introduction

- 23 ITA 2007 is amended as follows.

Investment managers (removal of the 20% rule)

- 24 (1) In section 818 (the independent investment manager conditions) omit subsection (5).
- (2) In section 835M (the independent investment manager conditions) omit subsection (5).
- (3) Omit sections 819 and 835N (investment managers: the 20% rule).
- (4) In consequence of the amendments made by sub-paragraph (3) –
- (a) omit sections 820 to 824,
 - (b) omit sections 835O to 835Q, and
 - (c) in Schedule 4 (index of defined expressions), in the table omit both entries relating to relevant disregarded income.

Meaning of investment transaction

- 25 (1) In section 827 (meaning of investment manager and investment transaction), for subsections (2) and (3) substitute –
- “(2) An “investment transaction” means any transaction made by an investment fund, other than a transaction with an excluded subject matter.
 - (3) The following are excluded subject matters –
 - (a) land in the United Kingdom, and
 - (b) any commodity or other physical asset.

- (4) But a transaction is to be treated as not having an excluded subject matter if—
 - (a) it is a derivative contract whose subject matter is a commodity but which does not result in the physical delivery of the commodity,
 - (b) is a derivative contract whose subject matter is an excluded subject matter only because it operates by reference to a qualifying index, provided that index is not maintained by a person who is connected to any of the parties to the transaction.
- (5) For the purposes of subsection (4) a “qualifying index” means an index relating to an excluded subject matter that—
 - (a) is publicly available, and
 - (b) is an index of a substantial number of assets.
- (6) For the purposes of this section an “investment fund” means—
 - (a) an AIF, within the meaning of the Alternative Investment Fund Managers Regulations 2013 (see regulation 3 of those regulations), or
 - (b) a collective investment scheme within the meaning of Part 17 of FISMA 2000 (see section 235 of that Act).”
- (2) In section 835S (interpretation of Chapter 2B of Part 14)—
 - (a) in subsection (3), for “has the same meaning” substitute “and “investment transaction” have the same meanings”, and
 - (b) omit subsection (4).

Lloyd’s agents

- 26 In section 814 (meaning of “disregarded transaction income”) omit subsection (6).
- 27 In section 835E (branch or agency treated as UK representative), in subsection (5) for “835K” substitute “835J”.
- 28 Omit section 835K (Lloyd’s agents).

PART 4

AMENDMENTS TO TCGA 1992

- 29 (1) TCGA 1992 is amended as follows.
- (2) In section 2B (territorial scope of charge to corporation tax on chargeable gains), in subsection (3)—
 - (a) in paragraph (a) omit “that have a relevant connection to the company’s UK permanent establishment (see section 2C)”;
 - (b) in paragraph (b), for “that permanent establishment” substitute “a UK permanent establishment (see section 2C)”;

- (c) in paragraph (c), for “to 32” substitute “and 24”.
- (3) In section 2C (non-UK resident company with UK permanent establishment) omit subsection (2).

PART 5

CONSEQUENTIAL AMENDMENTS

FA 2011

- 30 In FA 2011, in Schedule 19 (the bank levy), in paragraph 26—
 - (a) in sub-paragraph (2), for the words from “distinct” to the end substitute “separate and independent enterprise engaged in the same or similar activities under the same or similar conditions”;
 - (b) in sub-paragraph (3), for “to 28” substitute “and 24”.

PART 6

COMMENCEMENT

- 31 The amendments made by this Schedule have effect in relation to chargeable periods beginning on or after [commencement date].