

CHAPTER 2

THE DETERMINATION & TAXATION OF THE UK SOURCE INCOME OF NON RESIDENT CORPORATIONS

2.1 Non Resident companies

[CTA 2009, s.19](#)
[CTA 2009, s.21](#)

Non resident companies are subject to UK corporation tax if they are **carrying on a trade** in the UK through a **permanent establishment (PE)**. S.20 sets out how the profits of a PE are to be calculated.

A Company will have a PE in two circumstances

[CTA 2010, s.1141](#)

- a) it has a **fixed place of business** through which the business is wholly or partly carried on or
- b) **an agent habitually carries on business activities as authorised for and on behalf of the company**

A fixed place of business is defined as including;

- (i) A place of management;
- (ii) a branch;
- (iii) an office;
- (iv) a factory;
- (v) a workshop;
- (vi) an installation or structure for the exploitation of natural resources;
- (vii) a mine an oil or gas well a quarry or other place of extraction of natural resources;
- (viii) a building site construction or installation project.

A company will not be regarded as having a PE if it carries on its business through an independent agent acting in the ordinary course of their business or if the activities are of a preparatory or auxiliary nature.

Activities will be of a preparatory or auxiliary nature if they relate to the use of facilities or maintenance of stock for the storage, display or delivery of goods; maintenance of goods for processing by another person; or the purchasing of goods or merchandise or collection of information for the company.

The UK legislation defines a PE in similar terms to the OECD model treaty which is reviewed generally in a later chapter. However, there are differences.

Note: A non-resident company will only be subject to corporation tax if

[CTA 2009, s.5\(2\)](#)
[CTA 2009, s.19\(1\)](#)

carrying on a **trade** in the UK which is narrower than carrying on a business.

2.2 PE charge to Corporation Tax

[CTA 2009, s.19\(3\)](#)

Where a **non resident company is trading through a PE in the UK** it will be chargeable to corporation tax on:

- (a) trading income arising directly or indirectly through or from the PE;
- (b) income from property or rights used by, held by or held for the PE; and
- (c) chargeable gains arising within s.10B TCGA 1992 (see 1.9 below).

The legislation sets out that the PE will have attributed to it the profits it would have made if it were a distinct and separate enterprise engaged in the same, or similar, activities under the same, or similar, conditions dealing wholly independently with the non resident company. In applying this rule the PE will be assumed to:

[CTA 2009, s.21\(1\)](#)

- (a) have the same credit rating as the non resident company; and
- (b) to have such equity and loan capital as it could reasonably be expected to have as an independent entity.

No deduction will be allowed for costs in excess of those that would be incurred on these assumptions.

[CTA 2009, s.30](#)

S.21 to 32 CTA 2009 set out further details relating to the deductions that can be claimed for allowable expenses. Basically the same rules will apply as for a UK resident company. In addition a deduction can be claimed for **executive and general administrative expenses whether incurred in the UK or elsewhere**.

[CTA 2009, s.29\(2\)](#)

Transactions between the PE and the non resident company will be treated as taking place at **arm's length prices**. A deduction will be available for allowable expenses, whether or not the expenses are incurred or reimbursed by the PE, equal to the cost to the non resident company

[CTA 2009, s.22](#)
[CTA 2009, s.29\(3\)](#)

Where the non resident company provides goods or services to the PE they will be treated as arm's length transactions under the separate enterprise basis if they are provided in the ordinary course of its business. Otherwise they will be treated as an expense of the non resident company incurred for the purposes of the PE.

[CTA 2009, s.23](#)

No deduction is allowed for **royalties paid to other parts of the non resident company**, however contributions towards creating an IFA will be allowed. No deduction is allowed for interest payments to other parts of the non resident company unless it is incurred as part of a financial business carried on by the PE.

[CTA 2009, s.31](#)

[CTA 2009, s.32](#)

Dividends and other distributions from UK resident companies will not be charged to tax. If annual income or other annual payments are received after deduction of income tax, then so long as the income is subject to tax the same rules apply as to a resident company.

For a non resident company the **full rate of corporation tax is normally applied** regardless of the level of profits. However where the company is resident in a country that has a double tax treaty with the non discrimination clause (see later chapter), the small profits rate and starting rate band (if applicable to that financial year) can be claimed. Corporation tax self assessment applies.

2.3 PE chargeable gains

[TCGA 1992, s.10B](#)

As for resident companies, a PE will be charged to corporation tax on its chargeable gains.

In the case of a PE, chargeable gains will arise on the disposal of assets situated in the UK used for the purposes of the trade or the purposes of the PE, at or before the time the gain accrued. The disposal will only be taxable if the asset is used in a trade carried on through a PE in the UK at the time of disposal.

We can see that it would be easy to avoid the charge to tax by moving assets outside the UK. As a result there are rules to prevent this. Where a non resident company **ceases to trade through a PE a charge will arise**. The PE will be treated as having **sold and reacquired the chargeable assets at market value immediately before it ceased to trade**. If the PE **exports a chargeable asset** then a gain will be deemed to arise **immediately before the asset leaves the UK**.

[TCGA 1992, s.25](#)

Rollover relief can apply to a PE but not if the asset that is acquired is outside the charge to UK capital gains tax.

The no gain no loss rules of s.171 TCGA 1992 can apply where a non resident company transfers the whole or part of a PE to another company in the same 75% group. Note that where the transferee is also non resident the assets must stay within the charge to capital gains tax. Don't forget that similar rules apply to the transfer of intangible fixed assets.

2.4 Non Resident companies - Assessment, collection and recovery of CT

[CTA 2010,
s.969](#)

The rules relating to the assessment, collection and recovery of corporation tax for UK companies **apply to the UK representative of a non resident company as they would to a UK resident company**. A PE in the UK through which a trade is carried on **is the UK representative** of the non resident company. The PE will continue to be treated as the UK representative even after the trade has ceased and is treated as a distinct and separate person from the non resident company.

The non resident company will be bound by the acts of the UK representative as if they were its own in connection with the obligations and liabilities imposed on the representative.

[CTA 2010,
s.970](#)

However, the non resident company **will not be bound by mistakes** in information provided by the UK representative **unless** they arise from acts or omissions of the non resident company or to which it **consented or connived**.

[CTA 2010,
s.971\(3\)](#)

The UK representative cannot be proceeded against for a criminal offence unless it committed the offence itself or consented or connived to it.

[CTA 2010,
s.971\(4\)](#)

If corporation tax due by a non resident company is outstanding for more than six months, then other companies who were members of the same group or consortium as the non resident company, or members of a group where another company was a member of such a consortium, can be served a notice requiring them to pay the outstanding tax.

[CTA 2010,
s.974](#)

The companies only have to be members of the same group etc at any time in the twelve month period before the start of the accounting period for which the outstanding tax is due.

For these purposes the 51% definition of group is used and for consortia the 75% definition for group relief is used. Where tax is recovered from a consortium member or another member of the same group as a consortium member, the amount cannot exceed the consortium member's share of the corporation tax outstanding.

[CTA 2010,
s.976](#)

Any notice under these rules must be served within 3 years of the date on which the tax liability was finally determined.

[CTA 2010,
s.978](#)

2.5 Non Resident companies and income tax

[ITA 2007,
s.815](#)

Where a non resident company has income that is not subject to corporation tax, for example where it is not trading through a PE or has letting income from property in the UK, income tax will apply.

No further income tax is due where tax is deducted at source for loan relationship, dividends and certain miscellaneous income. Tax deducted at source includes tax paid or treated as paid or where there is an entitlement to a tax credit.