



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 14

#### INCOME TAX LIABILITY: MISCELLANEOUS RULES

#### [<sup>F1</sup>CHAPTER 2B

#### UK REPRESENTATIVE OF NON-UK RESIDENT

##### Textual Amendments

- F1** Pt. 14 Ch. 2B inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 1](#) (with Sch. 9 paras. 1-9, 22)

#### *Introduction*

#### **835C Overview of Chapter**

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to income tax.
- (2) For obligations and liabilities in relation to income tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2C.]

#### [<sup>F2</sup>**835D Income tax chargeable on company's income: application**

This Chapter does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.]

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#### Textual Amendments

- F2** S. 835D inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 2](#) (with Sch. 9 paras. 1-9, 22)

### [<sup>F3</sup>Branches and agencies

#### Textual Amendments

- F3** S. 835E and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 3](#) (with Sch. 9 paras. 1-9, 22)

### 835E Branch or agency treated as UK representative

- (1) This section applies if a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to—
  - (a) the amount of any income from the trade, profession or vocation that arises (directly or indirectly) through or from the branch or agency, and
  - (b) the amount of any income from property or rights which are used by, or held by or for, the branch or agency.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2C in relation to an amount within that subsection.
 

*Rule 1* The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

*Rule 2* The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

*Rule 3* If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.
- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 835F.
- (5) This section needs to be read with sections 835G to 835K (which provide for descriptions of persons who are not to be regarded as the UK representative of a non-UK resident if certain conditions are met).]

### [<sup>F4</sup>835F Trade or profession carried on in partnership

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.

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- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 835E and Chapter 2C, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—
  - (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
  - (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 835E and Chapter 2C, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.]

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**Textual Amendments**

- F4** S. 835F inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 4](#) (with [Sch. 9 paras. 1-9, 22](#))

*<sup>F5</sup>Persons who are not UK representatives*

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**Textual Amendments**

- F5** S. 835G and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 5](#) (with [Sch. 9 paras. 1-9, 22](#))

## **835G Agents**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an agent in the United Kingdom.
- (2) The agent is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) arising to the non-UK resident from—
  - (a) so much of the non-UK resident's business as relates to disregarded transactions, or
  - (b) property or rights which, as a result of disregarded transactions, are used by, or held by or for, the agent on behalf of the non-UK resident.
- (3) “Disregarded transactions” are transactions—
  - (a) carried out through the agent in the United Kingdom, and
  - (b) in respect of which the agent does not act in the course of carrying on a regular agency for the non-UK resident.]

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### [<sup>F6</sup>835H Brokers

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) The broker is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—
  - (a) the amount is transaction income in relation to a transaction carried out through the broker in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent broker conditions are met in relation to the transaction (see section 835L).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through a broker in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).]

#### Textual Amendments

**F6** S. 835H inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 6](#) (with Sch. 9 paras. 1-9, 22)

### [<sup>F7</sup>835I Investment managers

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (2) The investment manager is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—
  - (a) the amount is transaction income in relation to an investment transaction carried out through the investment manager in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent investment manager conditions are met in relation to the investment transaction (see section 835M).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through an investment manager in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).]

#### Textual Amendments

**F7** S. 835I inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 7](#) (with Sch. 9 paras. 1-9, 22)

### [<sup>F8</sup>835J Persons acting under alternative finance arrangements

- (1) Subsection (2) applies if an amount within section 835E(2) arising to a non-UK resident consists of alternative finance return.

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- (2) Neither of the following is the UK representative of the non-UK resident in relation to the amount—
- (a) the other party to the alternative finance arrangements,
  - (b) any other person acting for the non-UK resident in relation to the alternative finance arrangements.
- (3) In subsection (1) “alternative finance return” means alternative finance return within the application of section 564I, 564K or 564L(2) or (3).
- (4) In subsection (2) the reference to “the alternative finance arrangements” is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) arises.]

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**Textual Amendments**

- F8** S. 835J inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 8](#) (with [Sch. 9 paras. 1-9, 22](#))

**[<sup>F9</sup>835K Lloyd's agents**

- (1) This section applies if—
- (a) a non-UK resident (“X”) is a member of Lloyd's, and
  - (b) an amount within section 835E(2) arises to X from X's underwriting business.
- (2) A person who has been X's members' agent or the managing agent of the syndicate in question is not the UK representative of X in relation to the amount or to matters connected with the amount.
- (3) For the purposes of this section—
- (a) X is a member of Lloyd's if X is a member within the meaning of Chapter 3 of Part 2 of FA 1993, and
  - (b) “members' agent” and “managing agent” are to be construed in accordance with section 184 of that Act.]

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**Textual Amendments**

- F9** S. 835K inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 9](#) (with [Sch. 9 paras. 1-9, 22](#))

*[<sup>F10</sup>The independent broker conditions*

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**Textual Amendments**

- F10** S. 835L and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 10](#) (with [Sch. 9 paras. 1-9, 22](#))

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### 835L The independent broker conditions

- (1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if conditions A to D are met.
- (2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.
- (5) Condition D is that the broker does not fall (apart from this subsection) to be treated under this Chapter, or under Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that—
  - (a) are not included in transaction income in relation to the transaction (see section 835H(2) and (3)), and
  - (b) are chargeable to tax for the same tax year as that transaction income.]

### *[<sup>F11</sup>The independent investment manager conditions*

#### Textual Amendments

- F11** S. 835M and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 11](#) (with [Sch. 9 paras. 1-9, 22](#))

### 835M The independent investment manager conditions

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if conditions A to E are met.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 835N).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.]

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## [<sup>F12</sup>835N Investment managers: the 20% rule

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
  - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
  - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.]

### Textual Amendments

**F12** S. 835N inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 12](#) (with Sch. 9 paras. 1-9, 22)

## [<sup>F13</sup>835O Meaning of “qualifying period”, “relevant disregarded income” and “beneficial entitlement”

- (1) This section applies for the purposes of this Chapter.
- (2) A “qualifying period” means—
  - (a) the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, or
  - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) The “relevant disregarded income” of the non-UK resident for a qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from investment transactions—
  - (a) carried out by the investment manager on the non-UK resident's behalf, and
  - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- (4) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).
- (5) The interests and rights referred to in subsection (4) are—
  - (a) an interest (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 the relevant disregarded income is represented, or
  - (b) an interest in, or other rights in relation to, the non-UK resident.]

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#### Textual Amendments

**F13** S. 835O inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 6 para. 13](#) (with [Sch. 9 paras. 1-9, 22](#))

#### [<sup>F14</sup>835P Treatment of transactions where 20% rule not met

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction, but only in relation to so much of the transaction income in relation to the transaction (see section 835I(2) and (3)) as does not represent an amount—
  - (a) which is relevant disregarded income of the non-UK resident, and
  - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.]

#### Textual Amendments

**F14** S. 835P inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 6 para. 14](#) (with [Sch. 9 paras. 1-9, 22](#))

#### [<sup>F15</sup>835Q Application of 20% rule to collective investment schemes

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).
- (3) In applying this section make the following assumptions—
  - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
    - (i) constituted for the purposes of the scheme, and
    - (ii) non-UK resident, and
  - (b) that the participants do 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 assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.



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- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 835N to 835P have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
- (a) for references to the non-UK resident substitute references to the assumed company, and
  - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for tax years comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—
    - (i) carried out by the investment manager, and
    - (ii) assumed to be carried out on behalf of the company.
- (7) In this section—
- “collective investment scheme” has the meaning given by section 235 of FISMA 2000, and
  - “participant”, in relation to a collective investment scheme, is construed in accordance with that section.]

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**Textual Amendments**

- F15** S. 835Q inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 15](#) (with Sch. 9 paras. 1-9, 22)

*[<sup>F16</sup>Supplementary*

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**Textual Amendments**

- F16** S. 835R and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 16](#) (with Sch. 9 paras. 1-9, 22)

**835R Supplementary provision**

- (1) For the purposes of this Chapter a person is to be regarded as carrying out a transaction on behalf of another if the person—
- (a) undertakes the transaction, whether on behalf of or to the account of the other, or
  - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.]

**[<sup>F17</sup>835S Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.

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- (2) “Branch or agency” means any factorship, agency, receivership, branch or management.
- (3) “Investment manager” has the same meaning as in Chapter 1 (see section 827).
- (4) “Investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (5) Provision made in regulations under subsection (4) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.]

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#### **Textual Amendments**

- F17** S. 835S inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 6 para. 17** (with Sch. 9 paras. 1-9, 22)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24B inserted by [2023 c. 30 Sch. 2 para. 10\(3\)](#)
- s. 788(7) inserted by [2007 c. 29 Sch. 21 para. 161\(b\)](#) (The amending provision was repealed before coming into force.)