

Permanent Establishments

(Lecture B1143 – 8.44 minutes)

A non-UK resident company has hitherto only been liable to corporation tax if it carries on:

- a trade of dealing in or developing UK land; or
- any other trade through a permanent establishment in the UK (S5(2) CTA 2009).

However, this test is being widened next year following the enactment of S17 and Sch 5 FA 2019 – see the chapter entitled ‘Non-UK resident companies carrying on UK property businesses’.

In this chapter, we are concerned with the meaning of the term ‘permanent establishment’. S1141 CTA 2010 states that a non-UK resident company has a permanent establishment in the UK if (and only if):

- it has a fixed place of business here through which its business is wholly or partly carried on; or
- an agent acting for the company has authority to operate here on its behalf (and regularly does so).

Certain preparatory or auxiliary low-value activities such as storing or displaying the company’s products, purchasing goods or merchandise and collecting information for the company are classed as exempt activities and do not therefore create a permanent establishment (S1143 CTA 2010).

It is known that some non-UK resident companies have artificially fragmented their activities in order to take advantage of this let-out and, in doing so, have avoided forming a permanent establishment.

With effect from 1 January 2019, a non-UK resident company is denied the permanent establishment exemption in S1143 CTA 2010 where that:

- that company (or group) carries on a business operation in the UK;
- that company (or one of the other group members) effectively has a permanent establishment where complementary functions are carried on; and
- those activities would create a permanent establishment if they all took place within a single company (S21 FA 2019).

This legislative change puts into UK domestic law part of the OECD and G20 programme to tackle the erosion of the tax base by multinational companies.

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