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## SCHEDULES

### SCHEDULE 25 **U.K.**

#### [<sup>F1</sup>CASES WHERE SECTION 747(3) DOES NOT APPLY]

##### Textual Amendments

- F1** Sch. 25 heading substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 25; S.I. 1998/3173, art. 2

### PART II **U.K.**

#### EXEMPT ACTIVITIES

##### Modifications etc. (not altering text)

- C1** Sch. 25 Pt. 2 modified (21.7.2009) by Finance Act 2009 (c. 10), Sch. 16 para. 17 (with Sch. 16 paras. 13-16, 18-20)

- 5 (1) The provisions of this Part of this Schedule have effect for the purposes of paragraph (b) of subsection (1) of section 748.

[<sup>F1</sup>(1A) Except as provided in paragraph 8 below, the provisions of this Part of this Schedule apply in relation to a company which is resident in an EEA territory in the same way as they apply in relation to a company which is resident elsewhere.]

- (2) In the case of a controlled foreign company—

- (a) which is, by virtue of section [<sup>F2</sup>749(5)], presumed to be resident in a territory in which it is subject to a lower level of taxation, and
- (b) the business affairs of which are, throughout the accounting period in question, effectively managed in a territory outside the United Kingdom other than one in which companies are liable to tax by reason of domicile, residence or place of management,

references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to the territory falling within paragraph (b) above, or, if there is more than one, to that one of them which may be notified to the Board by the United Kingdom resident company or companies referred to in paragraph 4(2) of Schedule 24.

- [<sup>F3</sup>(3) In the case of a controlled foreign company—

- (a) which is, by virtue of section 749(5), presumed to be resident in a territory in which it is subject to a lower level of taxation,
- (b) the business affairs of which are, throughout the accounting period in question, effectively managed in a special administrative region, and

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(c) which is liable to tax for that period in that region,  
 references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to that region.

(4) In sub-paragraph (3) above “special administrative region” means the Hong Kong or the Macao Special Administrative Region of the People’s Republic of China.

(5) Where sub-paragraph (3) above applies, it applies in place of sub-paragraph (2).]

#### Textual Amendments

- F1** Sch. 25 para. 5(1A) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 7(2)
- F2** Words in Sch. 25 para. 5(2)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 29; S.I. 1998/3173, art. 2
- F3** Sch. 25 para. 5(3)-(5) inserted (with effect in accordance with s. 201(2) of the amending Act) by Finance Act 2003 (c. 14), s. 201(1)

6 (1) Throughout an accounting period a controlled foreign company is engaged in exempt activities if, and only if, each of the following conditions is fulfilled—

- (a) that, throughout that accounting period, the company has a business establishment in the territory in which it is resident; and
- (b) that, throughout that accounting period, its business affairs in that territory are effectively managed there; and
- (c) that any of sub-paragraphs [F4(2) or (3)] below applies to the company.

(2) This sub-paragraph applies to a company if—

- (a) at no time during the accounting period in question does the main business of the company consist of either—
  - (i) investment business, or
  - (ii) dealing in goods for delivery to or from the United Kingdom or to or from connected or associated persons; and
- (b) in the case of a company which is mainly engaged in wholesale, distributive [F5financial or service] business in that accounting period, less than 50 per cent. of its gross trading receipts from that business is derived directly or indirectly from [F6persons falling within sub-paragraph (2A) below.]

[F7(2A) Those persons are—

- (a) persons who are connected or associated with the company;
- (b) persons who have a 25 per cent assessable interest in the company in the case of the accounting period in question; F8 . . .
- (c) if the company is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, persons who are connected or associated with either or both of the two persons mentioned in that subsection [F9;
- (d) persons not falling within paragraphs (a) to (c) above which are companies resident in the United Kingdom;
- (e) persons not falling within paragraphs (a) to (c) above which are companies not resident in the United Kingdom which carry on business through a [F10permanent establishment] in the United Kingdom;

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(f) persons not falling within paragraphs (a) to (c) above who are individuals habitually resident in the United Kingdom;

but where the company is a controlled foreign company falling within sub-paragraph (2B) below, paragraphs (d) to (f) above shall be disregarded.]]

[<sup>F11</sup>(2B) A controlled foreign company falls within this sub-paragraph if either—

- (a) its main business is the effecting or carrying out of contracts of long-term insurance, other than protection business; or
- (b) it is a member of an insurance group and its main business is insuring or reinsuring large risks.

Paragraph 11A below has effect for the interpretation of this sub-paragraph.

(2C) For the purposes of sub-paragraph (2)(b) above, a company's gross trading receipts from a business shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (2A)(e) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person's [<sup>F10</sup>permanent establishment] in the United Kingdom.]

(3) This sub-paragraph applies to a company which is a holding company if at least 90 per cent. of its gross income during the accounting period in question [<sup>F12</sup>is received by it in the territory in which it is resident and] is derived directly from companies which it controls and which, throughout that period—

- (a) are resident in the territory in which the holding company is resident; and
- (b) are not themselves holding companies [<sup>F13</sup><sup>F14</sup> . . . ], but otherwise are, in terms of this Schedule, engaged in exempt activities [<sup>F15</sup>or are, in terms of sub-paragraph (5A) below, exempt trading companies] ;

and a holding company to which this sub-paragraph applies is in this Part of this Schedule referred to as a “local holding company”.

(4) <sup>F16</sup> . . . . .

[<sup>F17</sup>(4ZA) <sup>F16</sup> . . . . .]

[<sup>F18</sup>(4A) <sup>F16</sup> . . . . .

[<sup>F16</sup> . . . . .]  
<sup>F19</sup>(4AA)

(4B) <sup>F16</sup> . . . . .]

[<sup>F20</sup>(4BB) <sup>F16</sup> . . . . .]

[<sup>F21</sup>(4C) For the purposes of sub-paragraph [<sup>F22</sup>(2A)(b)] above, a person has a 25 per cent. assessable interest in a controlled foreign company in the case of an accounting period of the company if, on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3), at least 25 per cent. of the controlled foreign company's chargeable profits for the accounting period would be apportioned to that person.]

(5) Any reference in [<sup>F23</sup>sub-paragraph (3)] above to a company which a holding company [<sup>F24</sup><sup>F25</sup> . . . ] controls includes a reference to a trading company [<sup>F26</sup>to which sub-paragraph (5ZA) or (5ZB) below applies.

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(5ZA) This sub-paragraph applies to a trading company] in which the holding company [<sup>F24F27</sup> . . . ] holds the maximum amount of ordinary share capital which is permitted under the law of the territory—

- (a) in which the trading company is resident; and
- (b) from whose laws the trading company derives its status as a company.

<sup>F28</sup>(5ZB) This sub-paragraph applies to a trading company if—

- (a) it is a controlled foreign company by virtue of subsection (1A) of section 747; and
- (b) the person who satisfies the requirement in paragraph (b) of that subsection in relation to the company also controls the holding company <sup>F29</sup> . . . ]

<sup>F30</sup>(5A) For the purposes of [<sup>F31</sup> sub-paragraph (3)] above, a company is an exempt trading company throughout any period if—

- (a) it is a trading company throughout each of its accounting periods which falls wholly or partly within that period; and
- (b) each of those accounting periods is one as regards which—
  - (i) the condition in section 747(1)(c) is not satisfied; or
  - (ii) the conditions in section 748(1)(e) are satisfied; or
  - (iii) the conditions in section 748(3)(a) and (b) are satisfied.]

<sup>F32</sup>(5B) <sup>F33</sup> . . . . . ]

<sup>F34</sup>(5C) For the purposes of this paragraph, the gross income of a holding company <sup>F35</sup> . . . during an accounting period includes—

- (a) any income which accrues during that period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and
- (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis.

(5D) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (5C)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.

(5E) In sub-paragraph (5C)(b) “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.]

(6) The following provisions of this Part of this Schedule have effect in relation to [<sup>F36</sup> this paragraph].

#### Textual Amendments

- F4** Words in [Sch. 25 para. 6\(1\)\(c\)](#) substituted (with effect in accordance with [Sch. 16 para. 12](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 16 para. 10\(2\)\(a\)](#) (with [Sch. 16 paras. 13-20](#))
- F5** Words in [Sch. 25 para. 6\(2\)\(b\)](#) substituted (with effect in accordance with [Sch. 31 para. 9\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 31 para. 5\(2\)\(a\)](#)
- F6** Words in [Sch. 25 para. 6\(2\)\(b\)](#) substituted (with effect in accordance with [Sch. 31 para. 9\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 31 para. 5\(2\)\(b\)](#)

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- F7** Sch. 25 para. 6(2A) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 5(3)**
- F8** Word in Sch. 25 para. 6(2A) repealed (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the repealing Act) by Finance Act 2003 (c. 14), s. 200(4), Sch. 42 para. 2(3), **Sch. 43 Pt. 5(2)**
- F9** Sch. 25 para. 6(2A)(d)-(f) and words inserted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(3)**
- F10** Words in Sch. 25 para. 6(2A)(e)(2C) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**
- F11** Sch. 25 para. 6(2B)(2C) inserted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(4)**
- F12** Words in Sch. 25 para. 6(3) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 6(2)**
- F13** Words in Sch. 25 para. 6(3)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(4)(a)**; S.I. 1998/3173, **art. 2**
- F14** Words in Sch. 25 para. 6(3)(b) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(b)** (with Sch. 16 paras. 13-20)
- F15** Words in Sch. 25 para. 6(3)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(4)(b)**; S.I. 1998/3173, **art. 2**
- F16** Sch. 25 para. 6(4)-(4BB) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(c)** (with Sch. 16 paras. 13-20)
- F17** Sch. 25 para. 6(4ZA) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(3)**
- F18** Sch. 25 para. 6(4A)(4B) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(6)**; S.I. 1998/3173, **art. 2**
- F19** Sch. 25 para. 6(4AA) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(5)**
- F20** Sch. 25 para. 6(4BB) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(7)**
- F21** Sch. 25 para. 6(4C) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(7)**; S.I. 1998/3173, **art. 2**
- F22** Words in Sch. 25 para. 6(4C) substituted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(5)**
- F23** Words in Sch. 25 para. 6(5) substituted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(d)(i)** (with Sch. 16 paras. 13-20)
- F24** Words in Sch. 25 para. 6(5) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(8)(b)**; S.I. 1998/3173, **art. 2**
- F25** Words in Sch. 25 para. 6(5) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(d)(ii)** (with Sch. 16 paras. 13-20)
- F26** Words in Sch. 25 para. 6 inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(8)**
- F27** Words in Sch. 25 para. 6(5ZA) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(e)** (with Sch. 16 paras. 13-20)
- F28** Sch. 25 para. 6(5ZB) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(9)**
- F29** Words in Sch. 25 para. 6(5ZB)(b) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(f)** (with Sch. 16 paras. 13-20)
- F30** Sch. 25 para. 6(5A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(9)**; S.I. 1998/3173, **art. 2**
- F31** Words in Sch. 25 para. 6(5A) substituted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(g)** (with Sch. 16 paras. 13-20)
- F32** Sch. 25 para. 6(5B) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(10)**

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- F33** Sch. 25 para. 6(5B) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(h)** (with Sch. 16 paras. 13-20)
- F34** Sch. 25 para. 6(5C)-(5E) inserted (with effect in accordance with s. 64(6)(9) of the amending Act) by Finance Act 2008 (c. 9), **s. 64(5)**
- F35** Words in Sch. 25 para. 6(5C) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(i)** (with Sch. 16 paras. 13-20)
- F36** Words in Sch. 25 para. 6(6) substituted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 16 para. 10(2)(j)** (with Sch. 16 paras. 13-20)

- 7 (1) For the purposes of paragraph 6(1)(a) above, a “business establishment”, in relation to a controlled foreign company, means premises—
- (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence; and
  - (b) from which the company’s business in the territory in which it is resident is wholly or mainly carried on.
- (2) For the purposes of sub-paragraph (1) above the following shall be regarded as premises—
- (a) an office, shop, factory or other building or part of a building; or
  - (b) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; or
  - (c) a building site or the site of a construction or installation project;
- but such a site as is referred to in paragraph (c) above shall not be regarded as premises unless the building work or the project, as the case may be, has a duration of at least twelve months.
- 8 (1) Subject to sub-paragraph (4) below, the condition in paragraph 6(1)(b) above shall not be regarded as fulfilled [<sup>F37</sup>in relation to a company which is not resident in an EEA territory] unless—
- (a) the number of persons employed by the company in the territory in which it is resident is adequate to deal with the volume of the company’s business; and
  - (b) any services provided by the company for persons resident outside that territory are not in fact performed in the United Kingdom.
- (2) For the purposes of sub-paragraph (1)(a) above, persons who are engaged wholly or mainly in the business of the company and whose remuneration is paid by a person connected with, and resident in the same territory as, the company shall be treated as employed by the company.
- (3) In the case of a holding company [<sup>F38F39</sup>. . . ], sub-paragraph (2) above shall apply with the omission of the words “wholly or mainly”.
- (4) For the purposes of sub-paragraph (1)(b) above, no account shall be taken of services—
- (a) provided through a [<sup>F40</sup>permanent establishment] of the controlled foreign company if the profits or gains of the business carried on through the [<sup>F40</sup>permanent establishment] are within the charge to tax in the United Kingdom; or
  - (b) provided through any other person whose profits or gains from the provision of the services are within the charge to tax in the United Kingdom and who provides the services for a consideration which is, or which is not dissimilar



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from what might reasonably be expected to be, determined under a contract entered into at arm's length; or

- (c) which are no more than incidental to services provided outside the United Kingdom.

[<sup>F41</sup>(5) The condition in paragraph 6(1)(b) above shall not be regarded as fulfilled in relation to a company which is resident in an EEA territory unless there are sufficient individuals working for the company in the territory who have the competence and authority to undertake all, or substantially all, of the company's business.

(6) For the purposes of sub-paragraph (5) above, individuals are not to be regarded as working for a company in any territory unless—

- (a) they are employed by the company in the territory, or  
(b) they are otherwise directed by the company to perform duties on its behalf in the territory.]

#### Textual Amendments

- F37** Words in Sch. 25 para. 8(1) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 7(3)
- F38** Words in Sch. 25 para. 8(3) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 31(2); S.I. 1998/3173, art. 2
- F39** Words in Sch. 25 para. 8(3) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), Sch. 16 para. 10(3) (with Sch. 16 paras. 13-20)
- F40** Words in Sch. 25 para. 8(4)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)
- F41** Sch. 25 para. 8(5)(6) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 7(4)

9 (1) Subject to sub-paragraph (3) below, for the purposes of paragraph 6(2)(a)(i) above, each of the following activities constitutes investment business—

- (a) the holding of securities, [<sup>F42</sup>or intellectual property];  
(b) dealing in securities, other than in the capacity of a broker;  
(c) the leasing of any description of property or rights; and  
(d) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of the controlled foreign company in question.

[<sup>F43</sup>[<sup>F44</sup>(1A) In sub-paragraph (1)(a) above “intellectual property” includes (in particular)—

- (a) any industrial, commercial or scientific information, knowledge or expertise;  
(b) any patent, trade mark, registered design, copyright or design right;  
(c) any licence or other right in respect of intellectual property;  
(d) any rights under the law of a country outside the United Kingdom which correspond or are similar to those falling within paragraph (b) or (c) above.]]

(2) In sub-paragraph (1)(b) above “broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally.

(3) For the purposes of paragraph 6(2) above, in the case of a company which is mainly engaged in [<sup>F45</sup>business] falling within paragraph 11(1)(c) below, nothing in sub-

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paragraph (1) above shall require the main business of the company to be regarded as investment business.

#### Textual Amendments

- F42** Words in Sch. 25 para. 9(1)(a) substituted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), s. 305(3), Sch. 7 para. 36(9); S.I. 1989/816, art. 2
- F43** Sch. 25 para. 9(1A) inserted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), s. 305(3), Sch. 7 para. 36(9); S.I. 1989/816, art. 2
- F44** Sch. 25 para. 9(1A) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), s. 112(2)
- F45** Word in Sch. 25 para. 9(3) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), s. 112(4)(a)

- 10 Goods which are actually delivered into the territory in which the controlled foreign company is resident shall not be taken into account for the purposes of paragraph 6(2)(a)(ii) above.
- 11 (1) For the purposes of paragraph 6(2)(b) above, each of the following activities constitutes wholesale, distributive [<sup>F46</sup>financial or service] business—
- (a) dealing in any description of goods wholesale rather than retail;
  - (b) the business of shipping or air transport, that is to say, the business carried on by an owner of ships or the business carried on by an owner of aircraft (“owner” including, for this purpose, any charterer);
  - [<sup>F47</sup>(c) banking, deposit-taking, money-lending or debt-factoring, or any business similar to banking, deposit-taking, money-lending or debt-factoring;]
  - (d) the administration of trusts;
  - (e) dealing in securities in the capacity of a broker, as defined in paragraph 9(2) above;
  - (f) dealing in commodity or financial futures,<sup>F48</sup> . . .
  - [<sup>F49</sup>(g) the effecting or carrying out of contracts of insurance; and]
  - [<sup>F50</sup>(h) the provision of services not falling within any of the preceding paragraphs.]
- [<sup>F51</sup>(1A) For the purposes of sub-paragraph (1)(g) above “contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]
- (2) In a case where the gross trading receipts of a company include an amount in respect of the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall be a deduction in calculating the company’s gross trading receipts for the purposes of paragraph 6(2)(b) above.
- (3) In the case of a controlled foreign company engaged in a [<sup>F52</sup>business] falling within sub-paragraph (1)(c) above—
- [<sup>F53</sup>(a) no payment of interest received from a company resident in the United Kingdom which is connected or associated with the controlled foreign company shall be regarded for the purposes of paragraph 6(2)(b) above as a receipt derived directly or indirectly from a person falling within paragraph 6(2A) above, but]
  - (b) it shall be conclusively presumed that the condition in paragraph 6(2)(b) above is not fulfilled if, at any time during the accounting period in question,



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- the amount by which the aggregate value of the capital interests in the company held directly or indirectly by—
- (i) the persons who have control of the company, and
  - (ii) any person connected or associated with those persons,
- exceeds the value of the company's fixed assets is 15 per cent. or more of the amount by which the company's outstanding capital exceeds that value [<sup>F54</sup>, and
- (c) it shall also be conclusively presumed that the condition in paragraph 6(2)(b) is not fulfilled if 10% or more of the company's gross trading receipts from all businesses carried on by it in the accounting period in question, taken together, are receipts other than interest and are directly or indirectly derived from persons—
    - (i) which are companies resident in the United Kingdom,
    - (ii) which are companies not resident in the United Kingdom but which carry on business through a [<sup>F55</sup>permanent establishment] in the United Kingdom, or
    - (iii) who are individuals habitually resident in the United Kingdom,but for this purpose a company's gross trading receipts shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (ii) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person's [<sup>F55</sup>permanent establishment] in the United Kingdom.]
- (4) For the purposes of this paragraph, in relation to a controlled foreign company—
- (a) "capital interest" means an interest in the issued share capital or reserves of the company or in a loan to or deposit with the company or the liability of a guarantor under a guarantee given to or for the benefit of the company;
  - (b) except in the case of the liability of a guarantor, the value of a capital interest is its value as shown in the company's accounts;
  - (c) in the case of the liability of a guarantor, the value shall be taken to be the market value of the benefit which the controlled foreign company derives from the provision of the guarantee;
  - (d) the value of the company's fixed assets means the value, as shown in the company's accounts, of the plant, premises and trade investments employed in the company's business; and
  - (e) "outstanding capital" means the total value of all the capital interests in the company, less the value, as shown in the company's accounts, of any advances made by the company to persons resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above.
- (5) For the purposes of sub-paragraph (4) above—
- (a) "trade investments", in relation to a controlled foreign company, means securities any profit on the sale of which would not be brought into account as a trading receipt in computing the chargeable profits of an accounting period in which that profit arose; and
  - (b) the reference in paragraph (e) to advances made to a person by the controlled foreign company includes, in the case of a company which is a person resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above, any securities of that

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company which are held by the controlled foreign company but are not trade investments, as defined in paragraph (a) above;

and in this sub-paragraph “securities” includes stocks and shares.

- (6) In the application of paragraph 6(2)(b) above in the case of a controlled foreign company engaged in insurance business of any kind—
- (a) the reference to gross trading receipts which are derived directly or indirectly from connected or associated persons is a reference to those which, subject to sub-paragraph (7) below, are attributable, directly or indirectly, to liabilities undertaken in relation to any of those persons or their property;
  - (b) the only receipts to be taken into account are commissions and premiums received under insurance contracts;
  - (c) so much of any such commission or premium as is returned is not to be taken into account; and
  - (d) when a liability under an insurance contract is reinsured, in whole or in part, the amount of the premium which is attributable, directly or indirectly, to that liability shall be treated as reduced by so much of the premium under the reinsurance contract as is attributable to that liability.
- (7) In determining, in relation to a controlled foreign company to which sub-paragraph (6) above applies, the gross trading receipts referred to in paragraph (a) of that sub-paragraph, there shall be left out of account any receipts under a local reinsurance contract which are attributable to liabilities which—
- (a) are undertaken under an insurance contract made in the territory in which the company is resident; and
  - (b) are not reinsured under any contract other than a local reinsurance contract; and
  - (c) relate either to persons who are resident in that territory and are neither connected nor associated with the company or to property which is situated there and belongs to persons who are not so connected or associated;
- and in paragraph (a) above “insurance contract” does not include a reinsurance contract.
- (8) In sub-paragraph (7) above “local reinsurance contract” means a reinsurance contract—
- (a) which is made in the territory in which the controlled foreign company is resident; and
  - (b) the parties to which are companies which are resident in that territory.
- (9) For the purposes of sub-paragraphs (7) and (8) above, any question as to the territory in which a company is resident shall be determined in accordance with section 749 and, where appropriate, paragraph 5(2) above; and, for the purpose of the application of those provisions in accordance with this sub-paragraph, the company shall be assumed to be a controlled foreign company.

#### **Textual Amendments**

- F46** Words in [Sch. 25 para. 11\(1\)](#) substituted (with effect in accordance with [Sch. 31 para. 9\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 31 para. 8\(2\)\(a\)](#)
- F47** [Sch. 25 para. 11\(1\)\(c\)](#) substituted (with effect in accordance with [s. 112\(5\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 112\(3\)](#)

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- F48** Word preceding Sch. 25 para. 11(1)(g) repealed (with effect in accordance with Sch. 31 para. 9(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 8(2)(b), **Sch. 40 Pt. 2(14)**, Note
- F49** Sch. 25 para. 11(1)(g) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2000/3629), **art. 51(2)**
- F50** Sch. 25 para. 11(1)(h) and preceding word added (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 8(2)(c)**
- F51** Sch. 25 para. 11(1A) inserted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2000/3629), **art. 51(3)**
- F52** Word in s. 11(3) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 112(4)(b)**
- F53** Sch. 25 para. 11(3)(a) substituted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 3(2)**
- F54** Sch. 25 para. 11(3)(c) and preceding word added (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 3(3)**
- F55** Words in Sch. 25 para. 11(3)(c) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

[<sup>F56</sup>11A(1) This paragraph has effect for the interpretation of paragraph 6(2B) above.

- (2) “Contract of long-term insurance” means any contract falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- (3) “Protection business” means contracts of long-term insurance where—
- (a) either—
- (i) the contract has no surrender value; or
- (ii) the consideration consists of a single premium and the surrender value does not exceed the amount of that premium; and
- (b) the contract makes no provision for its conversion or extension in a manner which would result in its ceasing to fall within paragraph (a) above;
- and references to protection business include a reference to reinsurance of protection business.

[<sup>F57</sup>(4) “Insurance group” shall be construed in accordance with section 1165(5) of the Companies Act 2006, but does not include such an insurance group if it falls within sub-paragraph (5) below.]

- (5) Such an insurance group falls within this sub-paragraph if <sup>F58</sup> . . . the parent company is a subsidiary undertaking of a parent company which is neither—
- (a) the parent company of an insurance group; nor
- (b) a subsidiary undertaking of the parent company of an insurance group.
- (6) A controlled foreign company is, in accordance with sub-paragraphs (4) and (5) above, a “member of an insurance group” if (within the meaning of that Part as so read) it is the parent company, or a subsidiary undertaking of the parent company, of an insurance group which is by virtue of sub-paragraph (4) above an insurance group for the purposes of paragraph 6(2B) above.
- (7) A company’s main business is “insuring or reinsuring large risks” if (and only if)—
- (a) the company’s main business is the effecting or carrying out of contracts of insurance; and

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- (b) 50% or more of its gross trading receipts from that business are derived from insuring or reinsuring large risks.

“Large risks” is defined in paragraph 11B below.

- (8) In this paragraph—

“contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“contract of long-term insurance” has the meaning given by sub-paragraph (2) above.]

#### Textual Amendments

- F56** Sch. 25 paras. 11A, 11B inserted (retrospective to 27.11.2002 with effect in accordance with s. 200(2) (3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 4**
- F57** Sch. 25 para. 11A(4) substituted (6.4.2008 with effect in accordance with art. 1(2) of the amending S.I.) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), **arts. 1(1), 14(2)(a)** (with art. 4)
- F58** Words in Sch. 25 para. 11A(5) repealed (6.4.2008 with effect in accordance with art. 1(2) of the repealing S.I.) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), **arts. 1(1), 14(2)(b), Sch.** (with art. 4)

- 11B (1) In paragraph 11A above “large risks” means—

- (a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;
- (c) risks falling within classes 3, 8, 9, 10, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in sub-paragraph (2) below is satisfied.

- (2) The condition referred to in sub-paragraph (1)(c) above is that, in the case of that business of the policy holder, at least two of the three following criteria were exceeded in the most recent financial year beginning on or after 1st January 1999 for which the information is available—

- (a) balance sheet total: 6.2 million euros;
- (b) net turnover: 12.8 million euros;
- (c) number of employees: 250.

- (3) For the purposes of sub-paragraph (2) above as it applies where the policy holder is a company, within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986,—

- (a) “balance sheet total” has the meaning given by [<sup>F59</sup>sections 382(5) and 465(5) of the Companies Act 2006];
- (b) “net turnover” has the meaning given to “turnover” by [<sup>F60</sup>section 474(1) of that Act]; and
- (c) “number of employees” has the meaning given by [<sup>F61</sup>sections 382(6) and 465(6) of that Act];

and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the company shall be proportionately reduced.

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- (4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC) are drawn up, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to those accounts.
- (5) For the purposes of sub-paragraph (1)(c) above as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to the aggregate of the figures of the description in question for all the members of the professional association, joint venture or temporary grouping.
- (6) In sub-paragraphs (1) to (5) above “business” includes a trade or profession and, for the purposes of sub-paragraph (1)(c) above, any activity of a professional association, joint venture or temporary grouping.
- (7) For the purposes of this paragraph, where an amount is denominated in any accounts in a currency other than the euro, it shall be converted into its equivalent in euros using the London closing exchange rate for that currency and the euro for the last day of the period to which the accounts relate.
- (8) In this paragraph—
  - “euro” means the single currency adopted or proposed to be adopted as its currency by a member State in accordance with the Treaty establishing the European Community;
  - “financial year”, in relation to any person, means the period (not exceeding 12 months) for which that person makes up accounts.

#### Textual Amendments

- F59** Words in Sch. 25 para. 11B(3)(a) substituted (6.4.2008 with effect in accordance with art. 1(2) of the amending S.I.) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), 14(3)(a) (with art. 4)
- F60** Words in Sch. 25 para. 11B(3)(b) substituted (6.4.2008 with effect in accordance with art. 1(2) of the amending S.I.) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), 14(3)(b) (with art. 4)
- F61** Words in Sch. 25 para. 11B(3)(c) substituted (6.4.2008 with effect in accordance with art. 1(2) of the amending S.I.) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), 14(3)(c) (with art. 4)

- 12 (1) Subject to sub-paragraph (2) below, in paragraphs 6 and 8(3) above and [F62[F63:in]] sub-paragraphs (4) and (5) below “holding company” means—
- (a) a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are either local holding companies and its 90 per cent. subsidiaries or trading companies and either its 51 per cent. subsidiaries or companies falling within paragraph 6(5) above; or
  - (b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.

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- (2) In determining whether a company is a holding company for the purposes of paragraph 6(3) above (and, accordingly, whether the company is or may be a local holding company), sub-paragraph (1) above shall have effect with the omission from paragraph (a) thereof of the words “either local holding companies and its 90 per cent. subsidiaries or”.
- (3) In its application for the purposes of this paragraph, section 838 shall have effect with the omission of—
- (a) in subsection (1)(a), the words “or indirectly”; and
  - (b) subsection (2).
- (4) For the purposes of sub-paragraph (3) <sup>F64</sup> . . . of paragraph 6 above, as it applies in relation to a holding company part of whose business consists of activities other than the holding of shares or securities or the holding of property or rights as mentioned in paragraph (a) or (b) of sub-paragraph (1) above, the company’s gross income during any accounting period shall be determined as follows—
- (a) there shall be left out of account so much of what would otherwise be the company’s gross income as is derived from any activity which, if it were the business in which the company is mainly engaged, would be such that paragraph 6(2) above would apply to the company; and
  - (b) to the extent that the receipts of the company from any other activity include receipts from the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall (to the extent that the cost does not exceed the receipts) be a deduction in calculating the company’s gross income, and no other deduction shall be made in respect of that activity.
- (5) For the purposes of [<sup>F65</sup>sub-paragraph (3)] of paragraph 6 above, so much of the income of a holding company as—
- (a) is derived directly from another company which it controls and which is not a holding company [<sup>F66F67</sup> . . . ] but otherwise is, in terms of this Schedule, engaged in exempt activities [<sup>F68</sup>or, in terms of sub-paragraph (5A) of that paragraph, is an exempt trading company], and
  - (b) was or could have been paid out of any non-trading income of that other company which is derived directly or indirectly from a third company connected or associated with it,
- shall be treated, in relation to the holding company, as if it were not derived directly from companies which it controls.
- (6) The reference in sub-paragraph (5) above to the non-trading income of a company is a reference to so much of its income as, if the company were carrying on its trade in the United Kingdom, would not be within the charge to corporation tax under [<sup>F69</sup>section 35 of CTA 2009].

#### Textual Amendments

- F62** Words in [Sch. 25 para. 12\(1\)](#) inserted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 32\(2\)](#); S.I. 1998/3173, [art. 2](#)
- F63** Word in [Sch. 25 para. 12\(1\)](#) substituted (with effect in accordance with [Sch. 16 para. 12](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 16 para. 10\(4\)\(a\)](#) (with [Sch. 16 paras. 13-20](#))



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- F64** Words in Sch. 25 para. 12(4) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(4)(b)** (with Sch. 16 paras. 13-20)
- F65** Words in Sch. 25 para. 12(5) substituted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 16 para. 10(4)(c)(i)** (with Sch. 16 paras. 13-20)
- F66** Words in Sch. 25 para. 12(5)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 32(3)(a)**; S.I. 1998/3173, **art. 2**
- F67** Words in Sch. 25 para. 12(5)(a) omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(4)(c)(ii)** (with Sch. 16 paras. 13-20)
- F68** Words in Sch. 25 para. 12(5)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 32(3)(b)**; S.I. 1998/3173, **art. 2**
- F69** Words in Sch. 25 para. 12(6) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 287(5)** (with Sch. 2 Pts. 1, 2)

[<sup>F70</sup>12A      <sup>F71</sup>.....]

**Textual Amendments**

- F70** Sch. 25 para. 12A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 33**; S.I. 1998/3173, **art. 2**
- F71** Sch. 25 para. 12A omitted (with effect in accordance with Sch. 16 para. 12 of the repealing Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 10(5)** (with Sch. 16 paras. 13-20)

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