

*Status: Point in time view as at 31/07/1998.*

*Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Gains on disposal of shares in controlled foreign companies is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 26

#### RELIEFS AGAINST LIABILITY FOR TAX IN RESPECT OF CHARGEABLE PROFITS

##### *Gains on disposal of shares in controlled foreign companies*

- 3 (1) This paragraph applies in any case where—
- [<sup>F1</sup>(a) an accounting period of a controlled foreign company (“the apportionment period”) is one in respect of which an apportionment under section 747(3) falls to be made; and]
  - (b) the company’s chargeable profits for [<sup>F2</sup>the apportionment period] have been apportioned among the persons in subsection (3) of that section; and
  - (c) a company resident in the United Kingdom (“the claimant company”) disposes of—
    - (i) shares in the controlled foreign company, or
    - (ii) shares in another company which, in whole or in part, give rise to the claimant company’s interest in the controlled foreign company, being, in either case, shares acquired before the end of [<sup>F2</sup>the apportionment period]; and
  - (d) by virtue of the apportionment referred to in paragraph (b) above, a sum is, under section 747(4)(a), [<sup>F3</sup>chargeable on] the claimant company as if it were an amount of corporation tax; and
  - (e) the claimant company makes a claim for relief under this paragraph;
- and in this paragraph the disposal mentioned in paragraph (c) above is referred to as “the relevant disposal”.
- (2) Subject to the following provisions of this paragraph, in the computation under Chapter [<sup>F4</sup>III of Part II of the 1992] Act of the gain accruing on the relevant disposal, the appropriate fraction of the sum referred to in sub-paragraph (1)(d) above shall be allowable as a deduction; but to the extent that any sum has been allowed as a deduction under this sub-paragraph it shall not again be allowed as a deduction on any claim under this paragraph (whether made by the claimant company or another company).
- (3) In relation to the relevant disposal, the appropriate fraction is—

$$\frac{A}{B}$$

where—

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A is the average market value in [<sup>F5</sup>the apportionment period] of the shares disposed of, and

B is the average market value in that period of the interest in the controlled foreign company which, in the case of the claimant company, was taken into account in the apportionment referred to in sub-paragraph (1)(b) above.

- (4) Where, before the relevant disposal—
- (a) a dividend is paid by the controlled foreign company, and
  - (b) the profits out of which the dividend is paid are those from which the chargeable profits referred to in sub-paragraph (1)(b) above are derived, and
  - (c) at least one of the two conditions in sub-paragraph (5) below is fulfilled,
- this paragraph does not apply in relation to a sum [<sup>F6</sup>chargeable under section 747(4)(a)] in respect of so much of the chargeable profits as corresponds to the profits which the dividend represents.
- (5) The conditions referred to in sub-paragraph (4) above are—
- (a) that the effect of the payment of the dividend is such that the value of the shares disposed of by the relevant disposal is less after the payment than it was before it; and
  - (b) that, in respect of a dividend paid or payable on the shares disposed of by the relevant disposal, the claimant company is, by virtue of paragraph 4(2) below, entitled under Part XVIII to relief (by way of underlying tax) by reference to sums which include the sum referred to in sub-paragraph (1)(d) above.
- (6) A claim for relief under this paragraph shall be made before the expiry of the period of three months beginning—
- (a) at the end of the accounting period in which the relevant disposal occurs; or
  - (b) if it is later, on the date on which the assessment to tax for which the claimant company is liable by virtue of section 747(4)(a) becomes final and conclusive.

[<sup>F7</sup>(6A) Nothing in—

- (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
- (b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (6) above.]

- (7) In identifying for the purposes of this paragraph shares in a company with shares of the same class which are disposed of by the relevant disposal, shares acquired at an earlier time shall be deemed to be disposed of before shares acquired at a later time.

#### Textual Amendments

- F1** Sch. 26 para. 3(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 35(2); S.I. 1998/3173, art. 2
- F2** Words in Sch. 26 para. 3(1)(b)(c) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 35(3); S.I. 1998/3173, art. 2
- F3** Words in Sch. 26 para. 3(1)(d) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 35(4); S.I. 1998/3173, art. 2

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- F4** Words in Sch. 26 para. 3 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(62)** (with ss. 60, 101(1), 171, 201(3))
- F5** Words in Sch. 26 para. 3(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(5)**; S.I. 1998/3173, **art. 2**
- F6** Words in Sch. 26 para. 3(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(6)**; S.I. 1998/3173, **art. 2**
- F7** Sch. 26 para. 3(6A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(7)**; S.I. 1998/3173, **art. 2**

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