



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER IV

CONTROLLED FOREIGN COMPANIES

Modifications etc. (not altering text)

C1 Pt. XVII Ch. IV (ss. 747-756) modified (27.7.1993) by 1993 c. 34, s. 119(3)

747 Imputation of chargeable profits and creditable tax of controlled foreign companies

- ^{M1}(1) If the Board have reason to believe that in any accounting period a company—
- (a) is resident outside the United Kingdom, and
 - (b) is controlled by persons resident in the United Kingdom, and
 - (c) is subject to a lower level of taxation in the territory in which it is resident,
- and the Board so direct, the provisions of this Chapter shall apply in relation to that accounting period.
- (2) A company which falls within paragraphs (a) to (c) of subsection (1) above is in this Chapter referred to as a “controlled foreign company”.
- (3) Where, by virtue of a direction under subsection (1) above, the provisions of this Chapter apply in relation to an accounting period of a controlled foreign company, the chargeable profits of that company for that period and its creditable tax (if any) for that period shall each be apportioned in accordance with section 752 among the persons (whether resident in the United Kingdom or not) who had an interest in that company at any time during that accounting period.

Status: Point in time view as at 27/07/1993. This version of this chapter contains provisions that are not valid for this point in time.

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- (4) Where, on such an apportionment of a controlled foreign company's chargeable profits for an accounting period as is referred to in subsection (3) above, an amount of those profits is apportioned to a company resident in the United Kingdom then, subject to subsection (5) below—
- (a) a sum equal to corporation tax at the appropriate rate on that apportioned amount of profits, less the portion of the controlled foreign company's creditable tax for that period (if any) which is apportioned to the resident company, shall be assessed on and recoverable from the resident company as if it were an amount of corporation tax chargeable on that company; and
 - (b) if, apart from this paragraph, section 739 would deem any sum forming part of the company's chargeable profits for that accounting period to be the income of an individual for the purposes of the Income Tax Acts, that section shall not apply to such portion of that sum as corresponds to the portion of those chargeable profits which is apportioned to companies which are resident in the United Kingdom and which, by virtue of paragraph (a) above, have a liability to tax in respect thereof;
- and for the purposes of paragraph (a) above "the appropriate rate" means the rate of corporation tax applicable to profits of that accounting period of the resident company in which ends the accounting period of the controlled foreign company to which the direction under subsection (1) above relates or, if there is more than one such rate, the average rate over the whole of that accounting period of the resident company.
- (5) Tax shall not, by virtue of subsection (4) above, be assessed and recoverable from a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—
- (a) the amount of the controlled foreign company's chargeable profits for the accounting period in question which is apportioned to the resident company, and
 - (b) any amounts of those chargeable profits which are apportioned to persons who are connected or associated with the resident company,
- is at least 10 per cent. of the total of those chargeable profits.
- (6) In relation to a company resident outside the United Kingdom—
- (a) any reference in this Chapter to its chargeable profits for an accounting period is a reference to the amount which, on the assumptions in Schedule 24, would be the amount of the total profits of the company for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable; and
 - (b) any reference in this Chapter to profits does not include a reference to chargeable gains but otherwise (except as provided by paragraph (a) above) has the same meaning as it has for the purposes of corporation tax.

Marginal Citations

M1 Source—1984 s.82

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VALID FROM 01/05/1995

[^{F1}747A Special rule for computing chargeable profits.

- (1) Subsection (2) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for—
 - (a) the first relevant accounting period of the company, or
 - (b) any subsequent accounting period of the company.
- (2) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for its first relevant accounting period.
- (3) Subsection (4) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for any accounting period of the company which—
 - (a) begins on or after the appointed day, and
 - (b) falls before the company's first relevant accounting period.
- (4) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for the accounting period concerned.
- (5) For the purposes of this section the first relevant accounting period of the company shall be found in accordance with subsections (6) to (8) below.
- (6) Where a direction has been given under section 747 as regards an accounting period of the company which begins before its commencement day, its first relevant accounting period is its accounting period which begins on its commencement day.
- (7) Where the company is a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which a direction has been given under section 747.
- (8) Where the company is not a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which—
 - (a) a direction has been given under section 747, or
 - (b) it can reasonably be assumed that a direction would have been given under section 747 but for the fact that it pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy.
- (9) For the purposes of this section—
 - (a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day;
 - (b) the appointed day is such day as may be appointed under section 165(7)(b) of the ^{M2}Finance Act 1993 (which relates to exchange gains and losses).
- (10) References in this section to the accounts of a company—
 - (a) are to the accounts which the company is required by the law of its home State to keep, or

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- (b) if the company is not required by the law of its home State to keep accounts, are to the accounts of the company which most closely correspond to the individual accounts which companies formed and registered under the ^{M3}Companies Act 1985 are required by that Act to keep; and for the purposes of this subsection the home State of a company is the country or territory under whose law the company is incorporated or formed.]

Textual Amendments

F1 S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), Sch. 25 para. 2

Marginal Citations

M2 1993 c. 34.

M3 1985 c. 6.

748 Limitations on direction-making power

- ^{M4}(1) No direction may be given under section 747(1) with respect to an accounting period of a controlled foreign company if—
- (a) in respect of that period the company pursues, within the meaning of Part 1 of Schedule 25, an acceptable distribution policy; or
 - (b) throughout that period the company is, within the meaning of Part II of that Schedule, engaged in exempt activities; or
 - (c) the public quotation condition set out in Part III of that Schedule is fulfilled with respect to that period; or
 - (d) the chargeable profits of the accounting period do not exceed £20,000 or, if the accounting period is less than 12 months, a proportionately reduced amount.
- (2) Without prejudice to any right of appeal, nothing in subsection (1) above prevents the Board from giving a direction with respect to an accounting period after the end of that period but before it is known whether the company has paid such a dividend as establishes that it is pursuing an acceptable distribution policy in respect of the profits arising in that period.
- (3) Notwithstanding that none of paragraphs (a) to (d) of subsection (1) above applies to an accounting period of a controlled foreign company, no direction may be given under section 747(1) with respect to that accounting period if it appears to the Board that—
- (a) in so far as any of the transactions the results of which are reflected in the profits arising in that accounting period, or any two or more of those transactions taken together, achieved a reduction in United Kingdom tax, either the reduction so achieved was minimal or it was not the main purpose or one of the main purposes of that transaction or, as the case may be, of those transactions taken together to achieve that reduction, and
 - (b) it was not the main reason or, as the case may be, one of the main reasons for the company's existence in that accounting period to achieve a reduction in United Kingdom tax by a diversion of profits from the United Kingdom,
- and Part IV of Schedule 25 shall have effect with respect to the preceding provisions of this subsection.

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Marginal Citations

M4 Source—1984 s.83

VALID FROM 19/07/2011

[^{F2}748ZA] Exclusion of small profits exemptions

- (1) Nothing in section 748(1)(da) prevents an apportionment falling to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company (“X”) if condition A, B or C is met.
- (2) Condition A is that at any time before the end of the relevant accounting period a scheme is entered into and—
 - (a) in the absence of this subsection, in consequence of the scheme, section 748(1)(da) would apply to prevent an apportionment falling to be made as regards the relevant accounting period of X, and
 - (b) the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure that section 748(1)(da) prevents an apportionment falling to be made as regards that period, or that period and one or more other accounting periods of X.
- (3) Condition B is that at any time before the end of the relevant accounting period a scheme is entered into and—
 - (a) in consequence of the scheme profits are shifted to X from another company (“Y”),
 - (b) the main purpose or one of the main purposes of any party to the scheme in entering into the scheme is to ensure that section 748(1)(da) prevents an apportionment falling to be made as regards the chargeable profits of one or more controlled foreign companies for one or more accounting periods, and
 - (c) the relevant accounting period of X falls wholly or partly within that accounting period or those accounting periods.
- (4) For the purposes of subsection (3), profits are shifted to X from Y if it is reasonable to suppose that in the absence of the scheme, and any similar scheme, the whole or a part of the income which is reflected in X's profits would have been reflected in Y's profits.
- (5) Condition C is that, in determining X's chargeable profits for the relevant accounting period—
 - (a) [^{F3}section 418(5) of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits) has effect so as to treat X, for the purposes of Part 5 of that Act, as bringing into account for that period credits in respect of a loan relationship, or]
 - (b) Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).
- (6) For the purposes of this section—

“apportionment” means an apportionment under section 747(3);

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“scheme” means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.]

Textual Amendments

- F2** S. 748ZA inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 5
- F3** S. 748ZA(5)(a) omitted (with effect in accordance with Sch. 5 paras. 6(3), 7(3)(4) of the repealing Act) by Finance Act 2011 (c. 11), Sch. 5 para. 7(2)(a)

VALID FROM 24/07/2002

[^{F4}748A Territorial exclusions from exemption under section 748

- (1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—
- (a) is a company incorporated in a territory to which this section applies as respects that accounting period; or
 - (b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or
 - (c) at any time in that accounting period carries on business through a branch or agency in such a territory.
- (2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through branches or agencies in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.
- (3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.
- (4) Regulations under subsection (3) above—
- (a) may make different provision for different cases or with respect to different territories; and
 - (b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.
- (5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

Textual Amendments

- F4** S. 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), s. 89(2)

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749 Residence and interest.

- ^{M5}(1) Subject to subsections (2) and (4) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.
- (2) If, in the case of any company, there are in any accounting period two or more territories falling within subsection (1) above, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of them, namely—
- (a) if, throughout the accounting period, the company's place of effective management is situated in one of those territories only, in that territory; and
 - (b) if, throughout the accounting period, the company's place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company's assets is situated; and
 - (c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company's assets is situated; and
 - (d) if paragraph (a) above does not apply and neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories, in that one of them which may be specified in a direction under section 747(1) relating to that accounting period.
- (3) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.
- (4) In any case where it becomes necessary for the purposes of subsection (2) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period, account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories and the amount of them shall be determined by reference to their market value at that time.
- [^{F5}(4A) For the purposes of this Chapter, any company which, though resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom shall be treated as if it were resident outside the United Kingdom (and not resident in the United Kingdom).]
- (5) For the purposes of this Chapter, the following persons have an interest in a controlled foreign company—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
 - (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,
 - (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit, and

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- (d) any other person who, either alone or together with other persons, has control of the company,
- and for the purposes of paragraph (b) above the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.
- (6) References in subsection (5) above to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it; but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.
- (7) Without prejudice to subsection (5) above, the Board may, if they think it appropriate, treat a loan creditor of a controlled foreign company as having an interest in the company for the purposes of this Chapter.

Textual Amendments

F5 S. 749(4A) inserted by [Finance Act 1990 \(c. 29\)](#), [s.67\(1\)\(4\)](#)

Marginal Citations

M5 Source—1984 s.84

VALID FROM 31/07/1998

[^{F6}749A Elections and designations under section 749: supplementary provisions.

- (1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—
- (a) the accounting period in relation to which it is made (“the original accounting period”), and
 - (b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,
- and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.
- (2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—
- (a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or
 - (b) some other territory also falls within that subsection.
- (3) Any election under section 749(3)(d)—
- (a) must be made by notice given to an officer of the Board;

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- (b) must be made no later than twelve months after the end of the controlled foreign company's accounting period in relation to which it is made;
 - (c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;
 - (d) must be signed by the persons making it; and
 - (e) is irrevocable.
- (4) 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 an election under section 749(3)(d).
- (5) A designation under section 749(3)(e) is irrevocable.
- (6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting period of the controlled foreign company in relation to which the designation is made.
- (7) A notice under subsection (6) above shall specify—
- (a) the date on which the designation was made;
 - (b) the controlled foreign company to which the designation relates;
 - (c) the accounting period of the controlled foreign company in relation to which the designation is made; and
 - (d) the territory designated.
- (8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.]

Textual Amendments

- F6** Ss. 749-749B substituted for s. 749 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 4](#); [S.I. 1998/3173](#), [art. 2](#)

VALID FROM 31/07/1998

[^{F6}749B Interests in companies.

- (1) For the purposes of this Chapter, the following persons have an interest in a company—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
 - (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;

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- (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and
 - (d) any other person who, either alone or together with other persons, has control of the company.
- (2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.
- (3) For the purposes of subsection (1)(b) above, the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.
- (4) References in subsection (1) above to being entitled to do anything apply where a person—
- (a) is presently entitled to do it at a future date, or
 - (b) will at a future date be entitled to do it;
- but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.
- (5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.
- (6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.
- (7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person’s interest in that company, the same interest as the first company has in the second company.
- (8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.]

Textual Amendments

- F6** Ss. 749-749B substituted for s. 749 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 4](#); [S.I. 1998/3173](#), [art. 2](#)

750 Territories with a lower level of taxation.

- ^{M6}(1) Without prejudice to subsection (3) of section 749, a company which, by virtue of subsection (1) or subsection (2) of that section, is to be regarded as resident in a particular territory outside the United Kingdom shall be considered to be subject to a lower level of taxation in that territory if the amount of tax (“the local tax”) which is

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paid under the law of that territory in respect of the profits of the company which arise in any accounting period is less than [^{F7}three-quarters]of the corresponding United Kingdom tax on those profits.

- (2) For the purposes of this Chapter, the amount of the corresponding United Kingdom tax on the profits arising in an accounting period of a company resident outside the United Kingdom is the amount of corporation tax which, on the assumptions set out in Schedule 24 and subject to subsection (3) below, would be chargeable in respect of the chargeable profits of the company for that accounting period.
- (3) In determining the amount of corporation tax which, in accordance with subsection (2) above, would be chargeable in respect of the chargeable profits of an accounting period of a company resident outside the United Kingdom—
- (a) it shall be assumed for the purposes of Schedule 24—
- (i) that a direction has been given under section 747(1) in respect of that period; and
- (ii) that the Board have made any declaration which they could have made under sub-paragraph (3) of paragraph 11 of that Schedule and of which they gave notice as mentioned in that sub-paragraph; and
- (b) there shall be disregarded so much of any relief from corporation tax in respect of income as would be attributable to the local tax and would fall to be given by virtue of any provision of Part XVIII other than section 810; and
- (c) there shall be deducted from what would otherwise be the amount of that corporation tax—
- (i) any amount which (on the assumptions set out in Schedule 24) would fall to be set off against corporation tax by virtue of section 7(2); and
- (ii) any amount of income tax or corporation tax actually charged in respect of any of those chargeable profits.
- (4) The references in subsection (3)(c) above to an amount falling to be set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the company whether on the making of a claim or otherwise.

Textual Amendments

F7 Words in s. 750(1) substituted (27.7.1993 with application in relation to accounting periods beginning on or after 16.3.1993) by 1993 c. 34, s. 119(1)(2)

Marginal Citations

M6 Source—1984 s.85

VALID FROM 28/07/2000

[^{F8}750A Deemed lower level of taxation: designer rate tax provisions.

- (1) Where—
- (a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and

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- (b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but
- (c) that local tax is determined under designer rate tax provisions,
- the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.
- (2) In subsection (1) above “designer rate tax provisions” means provisions—
- (a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and
- (b) which are specified in regulations made by the Board.
- (3) Regulations under subsection (2) above—
- (a) may make different provision for different cases or with respect to different territories; and
- (b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.
- (4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made.]

Textual Amendments

- F8** S. 750A inserted (with effect in accordance with Sch. 31 para. 9(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 31 para. 3

751 Accounting periods and creditable tax

- ^{M7}(1) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall begin—
- (a) whenever the company comes under the control of [^{F9}persons] resident in the United Kingdom;
- (b) whenever the company, not being the subject of an earlier direction under section 747(1), commences to carry on business; and
- (c) whenever an accounting period of the company ends without the company then ceasing either to carry on business or to have any source of income whatsoever.
- (2) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall end if and at the time when—
- (a) the company ceases to be under the control of persons resident in the United Kingdom; or
- (b) the company becomes, or ceases to be, liable to tax in a territory; or
- [^{F10}(bb) the company becomes, or ceases to be, a company in relation to which section 749(4A) has effect; or]
- (c) the company ceases to have any source of income whatsoever;
- and for the purposes of paragraph (b) above “liable to tax” means liable to tax by reason of domicile, residence or place of management.

Status: Point in time view as at 27/07/1993. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, CHAPTER IV is up to date with all changes known to be in force on or before 04 June 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)

- (3) Without prejudice to subsections (1) and (2) above, subsections (3), (5) and (7) of section 12 shall apply for the purposes of this Chapter as they apply for the purposes of corporation tax, but with the omission of so much of those provisions as relates to a company coming or ceasing to be within the charge to corporation tax.
- (4) Where it appears to the Board that the beginning or end of any accounting period of a company resident outside the United Kingdom is uncertain, a direction under section 747(1) may specify as an accounting period of the company such period, not exceeding 12 months, as appears to the Board to be appropriate, and that period shall be treated for the purposes of this Chapter as an accounting period of the company unless the direction is subsequently amended under subsection (5) below.
- (5) If, on further facts coming to the knowledge of the Board after the making of a direction (including facts emerging on an appeal against notice of the making of the direction), it appears to the Board that any accounting period specified in the direction is not the true accounting period, the Board shall amend the direction so as to specify the true period.
- (6) In this Chapter, in relation to an accounting period of a controlled foreign company in respect of which a direction is given under section 747(1), the creditable tax means the aggregate of—
 - (a) the amount of any relief from corporation tax in respect of income which (on the assumptions set out in Schedule 24 and assuming the company to be liable for corporation tax on the chargeable profits of that accounting period) would fall to be given to the company by virtue of any provision of Part XVIII in respect of foreign tax attributable to any income which is brought into account in determining those chargeable profits; and
 - (b) any amount which (on those assumptions) would fall to be set off against corporation tax on those chargeable profits by virtue of section 7(2); and
 - (c) the amount of any income tax or corporation tax actually charged in respect of the chargeable profits of that accounting period, less any of that tax which has been or falls to be repaid to the company, whether on the making of a claim or otherwise.

Textual Amendments

F9 1990 s.89 and Sch.14 para.9 (correction of errors)—*deemed always to have had effect. Previously “the persons”.*

F10 1990 s.67(2), (4) *on and after 20 March 1990.*

Marginal Citations

M7 Source—1984 s.86

VALID FROM 19/07/2007

751A Reduction in chargeable profits for certain activities of EEA business establishments

- (1) This section applies if—

Status: Point in time view as at 27/07/1993. This version of this chapter contains provisions that are not valid for this point in time.

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- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) throughout that period the controlled foreign company has a business establishment in an EEA territory,
 - (c) throughout that period there are individuals who work for the controlled foreign company in that territory, and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) those chargeable profits are treated as reduced by the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in those chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—
- (a) arises to the appropriate body of persons (taken as a whole), and
 - (b) is created directly by qualifying work.
- (5) For the purposes of subsection (4) “net economic value” does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.
- (6) For the purposes of subsection (4) “the appropriate body of persons” means—
- (a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and
 - (b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,
- and for the purposes of this subsection “group of companies” means a company and any other companies of which it has control.
- (7) For the purposes of subsection (4) “qualifying work” means work which—
- (a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and
 - (b) is done in that territory by individuals working for the controlled foreign company there.
- (8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of

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Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).

- (9) For the purposes of this section 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.

VALID FROM 21/07/2009

[^{F11}751A] Reduction in chargeable profits for certain financing income

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company (“the payer”),
 - (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in the relevant accounting period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced by the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.
- (5) In subsection (4) “the relevant amount” means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.]

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Textual Amendments

- F11** S. 751AA inserted (with effect in accordance with Sch. 16 para. 25 of the amending Act) by Finance Act 2009 (c. 10), Sch. 16 para. 23

VALID FROM 19/07/2011

^{F12}751A Reduction in chargeable profits: failure to qualify for exemptions

- (1) This section applies if—
- (a) an apportionment under section 747(3) would fall to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) but for a relevant failure, section 748(1)(ba) or (bb) would have prevented such an apportionment, and
 - (c) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) “Relevant failure” means—
- (a) in the case of section 748(1)(ba), one or both of the following—
 - (i) a failure to satisfy the requirement of paragraph 12E of Schedule 25 (requirement as to company's UK connection) in circumstances where the requirement would be satisfied if the reference in subparagraph (3)(a) of that paragraph to 10% were a reference to 50%, and
 - (ii) a failure to satisfy the requirement of paragraph 12F of that Schedule (finance income and relevant IP income) in circumstances where the relevant IP income of the controlled foreign company for the accounting period does not exceed 5% of the company's gross income for that period, and
 - (b) in the case of section 748(1)(bb), a failure to satisfy the requirement of paragraph 12M of that Schedule (finance income).
- (3) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced to an amount specified in the application (“the specified amount”).
- The specified amount may be nil.
- (4) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced to the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (5) The Commissioners may grant the application only if—

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- (a) they are satisfied that the specified amount is not less than the relevant amount, and
 - (b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AC.
- (6) “The relevant amount” means—
- (a) if the relevant failure is within subsection (2)(a), the sum of—
 - (i) the excess finance and IP income (if any) for the relevant accounting period, and
 - (ii) in a case where there is a failure specified in subsection (2)(a)(i), so much (if any) of the net chargeable profits for that period as are not excluded by subsection (8), and
 - (b) if the relevant failure is within subsection (2)(b)—
 - (i) the amount (if any) by which the controlled foreign company's finance income for the relevant accounting period exceeds 5% of its gross income for that period, or
 - (ii) if that amount is a negligible amount, nil.
- (7) “The excess finance and IP income” for the relevant accounting period means—
- (a) the amount (if any) by which the total of the controlled foreign company's finance income and relevant IP income for that period exceeds 5% of its gross income for that period, or
 - (b) if that amount is a negligible amount, nil.
- (8) Net chargeable profits are excluded by this subsection if, and to the extent that, they can reasonably be regarded—
- (a) as representing the net economic value which—
 - (i) arises to the appropriate body of persons (taken as a whole), and
 - (ii) is created directly by qualifying work, or
 - (b) as not being wholly or partly attributable, directly or indirectly, to transactions with persons within the charge to United Kingdom tax.
- (9) In subsection (8)(a) “qualifying work” means work which—
- (a) is done in the territory in which the controlled foreign company is resident, and
 - (b) is done in that territory by individuals working for the controlled foreign company there.
- (10) A transaction with a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there is within subsection (8)(b) only if the transaction is attributable to activities carried on through that establishment.
- (11) For the purposes of subsections (8) and (9)—
- (a) section 751A(5), (6) and (9) applies as it applies for the purposes of the equivalent provisions of section 751A, and
 - (b) paragraph 5(2) to (5) of Schedule 25 (residence of controlled foreign company) applies as it applies in relation to Part 2 of that Schedule.
- (12) In this section—

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“finance income” has the meaning given by paragraph 12F(3) of Schedule 25 (with references to C read as references to the controlled foreign company);

“relevant IP income” has the meaning given by paragraph 12F(4) of that Schedule;

“net chargeable profits” means chargeable profits excluding so much of those profits as is directly attributable to the finance income or relevant IP income of the controlled foreign company;

“UK-connected gross income” has the same meaning as in paragraph 12E of Schedule 25;

“United Kingdom tax” means corporation tax or income tax; and paragraph 12G of that Schedule (gross income) applies for the purposes of this section as it applies for the purposes of Part 2A of that Schedule (with references to C read as references to the controlled foreign company).]

Textual Amendments

F12 S. 751AB inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 2

VALID FROM 19/07/2011

[^{F13}751A] Reduction in chargeable profits following an exempt period

- (1) This section applies if—
 - (a) an exempt period in relation to a controlled foreign company ends in accordance with paragraph 15F(2) of Schedule 25 (time exempt period ends if there is an early termination event), other than by reason of an early termination event within paragraph 15F(3)(b),
 - (b) an accounting period (“the relevant accounting period”) of the company ends after that exempt period but before the time the exempt period would have ended had paragraph 15F(2) of that Schedule not applied,
 - (c) an apportionment under section 747(3) would fall to be made as regards the relevant accounting period, and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for that accounting period (“the chargeable profits”) to be reduced to an amount (“the specified amount”) specified in the application (which may be nil).
- (3) If the Commissioners grant the application—
 - (a) the chargeable profits are treated as reduced to the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

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for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

- (4) The Commissioners may grant the application only if—
- (a) they are satisfied that the specified amount is not less than the relevant amount, and
 - (b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AB.
- (5) “The relevant amount” means the amount (if any) equal to so much of the chargeable profits as it is just and reasonable to regard as referable to—
- (a) the relevant transaction which triggered the end of the exempt period, or
 - (b) any later relevant transaction occurring before the time the exempt period would have ended had paragraph 15F(2) of Schedule 25 not applied.
- (6) “Relevant transaction” has the meaning given by paragraph 15E of Schedule 25 (and it does not matter if the transaction occurs pursuant to an agreement entered into by the controlled foreign company before the relevant time (within the meaning of paragraph 15G of that Schedule)).]

Textual Amendments

- F13** S. 751AC inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 7

VALID FROM 19/07/2007

751B Section 751A: supplementary

- (1) An application by a company under section 751A—
- (a) must be made in such form as the HMRC Commissioners may determine,
 - (b) must be accompanied by such documents (or copies of documents) in the company's possession or power as those Commissioners may reasonably require for the purpose of determining whether to grant the application, and
 - (c) must contain such information as those Commissioners may reasonably require for that purpose.
- (2) An application by a company under section 751A—
- (a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and
 - (b) may be amended or withdrawn at any time before the application is determined by those Commissioners.
- (3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.

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- (4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).
- (5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.
- (6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.
- (7) On an appeal—
 - (a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,
 - (b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and
 - (c) in any other case, the Special Commissioners must confirm the refusal.
- (8) For the purposes of subsection (7) “the relevant amount” means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.
- (9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.
- (10) In this section “relevant company tax return”, in relation to a company, means the return for the accounting period for which—
 - (a) any sum is chargeable on the company under section 747(4)(a), or
 - (b) any sum would be so chargeable but for section 751A,
 in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).
- (11) In this section “the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

752 Apportionment of chargeable profits and creditable tax

- ^{M8}(1) Where a direction has been given under section 747(1) in respect of an accounting period of a controlled foreign company, then, subject to subsections (2) and (3) below, the apportionment of the company's chargeable profits and creditable tax (if any) for that period shall be made among, and according to the respective interests of, the persons who at any time during that period had interests in the company.
- (2) In determining for the purposes of this Chapter the respective interests of persons who (in accordance with section 749) have interests in a controlled foreign company, the Board may, if it seems to them just and reasonable to do so, attribute to each of those persons an interest corresponding to his interest in the assets of the company available for distribution among those persons in the event of a winding up or in any other circumstances.

Status: Point in time view as at 27/07/1993. This version of this chapter contains provisions that are not valid for this point in time.

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- (3) Where the controlled foreign company is not a trading company, the Board may, if it seems to them just and reasonable to do so, treat a loan creditor as having for the purposes of this section an interest in the company to the extent to which the income of the company has been, or is available to be, expended in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.
- (4) Subject to subsections (5) and (7) below, as between persons each of whom has an unvarying holding of shares of the same class throughout a particular accounting period of a controlled foreign company, the amount of the company's chargeable profits and creditable tax which is apportioned to each of them by virtue of his holding of those shares shall be in direct proportion to the numbers of shares comprised in their holdings; and similar principles shall apply in relation to an apportionment among other persons each of whom holds an interest of the same description in the controlled foreign company.
- (5) Where the same interest in a controlled foreign company is held directly by one person and indirectly by another or others (as in a case where one company has a shareholding in the controlled foreign company and the first company is controlled by a third company or by two or more persons together) then, subject to subsection (6) below, the Board, in apportioning the company's chargeable profits and creditable tax—
- (a) may treat that interest as held solely by a person who holds that interest indirectly or, as the case may be, by two or more persons (the "holders") who, taken together, hold that interest indirectly, and
 - (b) in particular, if that person or one or more of those holders is resident in the United Kingdom, may treat the interest as held solely by that one or, as the case may be, those holders.
- (6) In any case where the same interest is held directly by one person and indirectly by another and the circumstances are as set out in any of paragraphs (a) to (c) below, the Board shall treat the interest as held solely by the company which is described in the paragraph concerned as "the assessable company"—
- (a) where the interest is held directly by a company resident in the United Kingdom, that company is the assessable company; and
 - (b) where the interest is held directly by a person resident outside the United Kingdom and indirectly by only one company resident in the United Kingdom, that company is the assessable company; and
 - (c) where the interest is held directly by a person resident outside the United Kingdom and indirectly by two or more companies resident in the United Kingdom, the assessable company is that one of the companies which so holds the interest by virtue of holding directly an interest in a foreign holding company;
- and for the purposes of paragraph (c) above a foreign holding company is a company resident outside the United Kingdom which holds directly or indirectly the interest in the controlled foreign company.
- (7) Without prejudice to subsection (5) above, in any case where an interest in a controlled foreign company is held in a fiduciary or representative capacity in such circumstances that there is or are an identifiable beneficiary or beneficiaries, the Board may treat the interest as held by that beneficiary or, as the case may be, as apportioned among those beneficiaries; and any such apportionment shall be made on such basis as seems to the Board to be just and reasonable.

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- (8) Subject to the preceding provisions of this section, the apportionment of the chargeable profits and creditable tax of a controlled foreign company for any accounting period shall be made on such basis as seems to the Board to be just and reasonable.

Marginal Citations

M8 Source—1984 s.87

VALID FROM 31/07/1998

[^{F14}752A] Relevant interests.

- (1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.
- (2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.
- (3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.
- (4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.
- (5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—
 - (a) a UK resident company; or
 - (b) another related person.
- (6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—
 - (a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and
 - (b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.
- (7) A person who—
 - (a) has a direct interest in a controlled foreign company, but
 - (b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,
 has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.

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- (8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—
- (a) has the whole or any part of the same interest indirectly, and
 - (b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.
- (9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.
- (10) In this section—
- “related person” means a person who—
 - (a) is not a UK resident company, but
 - (b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;
 - “UK resident company” means a company resident in the United Kingdom.]

Textual Amendments

- F14** Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 7; S.I. 1998/3173, art. 2

VALID FROM 31/07/1998

^{F14}Section 752(3): the percentage of shares which a relevant interest represents.

- (1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and

S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

- (2) In subsection (1) above and this subsection—
- “the appropriate fraction”, in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;

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“the lowest share-linked company”, in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;

“share-linked company” means a company which is share-linked to the controlled foreign company in question.

(3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—

(a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and

(b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.

(4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.

(5) For the purposes of subsection (4) above—

“holding period”, in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

“the relevant percentage”, in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

A is the number of days in the relevant accounting period.]

Textual Amendments

F14 Ss. 752-752C substituted for s. 752 (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 7](#); [S.I. 1998/3173](#), [art. 2](#)

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VALID FROM 31/07/1998

[^{F14}752C Interpretation of apportionment provisions.

- (1) In this section “the relevant provisions” means sections 752 to 752B and this section.
- (2) For the purposes of the relevant provisions—
 - (a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;
 - (b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;
 - (c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.
- (3) For the purposes of the relevant provisions, a company is “share-linked” to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—
 - (a) of the controlled foreign company, or
 - (b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or
 - (c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,and so on.
- (4) For the purposes of the relevant provisions, a company (“company A”) has an intermediate interest in a controlled foreign company if (and only if)—
 - (a) it has a direct or indirect interest in the controlled foreign company; and
 - (b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.
- (5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.
- (6) Where—
 - (a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and
 - (b) subsection (5) above does not apply, but
 - (c) there are one or more identifiable beneficiaries,the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.
- (7) In the relevant provisions—

“bare trustee” means a person acting as trustee—

 - (a) for a person absolutely entitled as against the trustee; or

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- (b) for any person who would be so entitled but for being a minor or otherwise under a disability; or
 - (c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;
- “ordinary shares”, in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;
- “the relevant accounting period” means the accounting period mentioned in section 752(1);
- “share” includes a reference to a fraction of a share.]

Textual Amendments

F14 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 7; S.I. 1998/3173, art. 2

753 Notices and appeals.

^{M9}(1) Where the Board have given a direction under section 747(1) with respect to an accounting period of a controlled foreign company, notice of the making of the direction shall be given to every company resident in the United Kingdom which appears to the Board to have had an interest in the controlled foreign company at any time during that period.

(2) A notice under subsection (1) above shall—

- (a) specify the date on which the direction was made and the controlled foreign company to which it relates;
- (b) specify the accounting period to which the direction relates and the amount of the chargeable profits and creditable tax computed for that period;
- (c) specify the reliefs (if any) which it has been assumed that the company has claimed by virtue of paragraph 4(1) of Schedule 24;
- (d) specify, in a case where paragraph (d) of subsection (2) of section 749 applies, the territory which, by virtue of that paragraph, was specified in the direction and, in any other case, specify the territory (if any) in which, by virtue of that section, the Board consider that the company is to be regarded as resident for the purposes of this Chapter;
- (e) inform the recipient of the notice of the right of appeal conferred on him by subsection (4) below and of the right to give notice under paragraph 4(2) of Schedule 24; and
- (f) specify any declaration with respect to the accounting period concerned which was made prior to or at the same time as the notice by virtue of paragraph 11(3) of Schedule 24 or paragraph 3(2) of Schedule 25;

and, in the case of a notice given after the direction concerned has been amended by virtue of section 751(5), the notice shall specify the date of the amendment and (so far as paragraphs (b) and (c) above are concerned) shall relate to the position resulting from the amendment.

(3) Where, by virtue of section 751(5), the Board have amended a direction so as to specify a revised accounting period, notice of the making of the amendment shall be given to

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every company which was previously given notice of the making of the direction; and a notice under this subsection—

- (a) shall identify the direction which is amended and state the effect of the amendment, including the extent to which the matters specified in the notice of the making of the direction are superseded; and
 - (b) shall contain the provisions required, by virtue of paragraphs (b) to (f) of subsection (2) above, to be included in a notice under subsection (1) above.
- (4) Any company to which notice is given under subsection (1) or subsection (3) above may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company, appeal to the Special Commissioners against that notice on all or any of the following grounds—
- (a) that the direction should not have been given or, where the direction has been amended, that the amendment should not have been made;
 - (b) that the amount of chargeable profits or creditable tax specified in the notice is incorrect;
 - (c) that the company did not have an interest in the controlled foreign company concerned at any time during the accounting period in question;
 - (d) that, if the notice specifies a declaration made by virtue of sub-paragraph (3) of paragraph 11 of Schedule 24, the condition for the making of that declaration in sub-paragraph (5) of that paragraph was not fulfilled; and
 - (e) that, if the notice specifies a declaration made by virtue of paragraph 3(2) of Schedule 25, the condition for the making of that declaration was not fulfilled;
- and the notice of appeal shall specify the grounds of appeal, but on the hearing of the appeal the Special Commissioners may allow the appellant to put forward any ground not specified in the notice and take it into consideration if satisfied that the omission was not wilful or unreasonable.
- (5) If, after the time at which notice is given under subsection (1) above with respect to an accounting period of a controlled foreign company, the Board make a declaration by virtue of—
- (a) paragraph 11(3) of Schedule 24; or
 - (b) paragraph 3(2) of Schedule 25,

then, unless the effect of the declaration is such that a notice (which, among other matters, will specify the declaration) will be required to be given under subsection (3) above, the Board shall give notice specifying the declaration to every company which was previously given notice of the making of the direction; and subsection (4) above shall apply in relation to a notice under this subsection as it applies in relation to a notice under subsection (3) above but with the omission of paragraphs (a) to (c).

- (6) If it appears to the inspector that the amount of the chargeable profits or creditable tax specified in a notice under subsection (1) or subsection (3) above is incorrect, he shall give notice of the revised amount to every company to which notice was given under subsection (1) or subsection (3) above and, except where the revised amount results from—
- (a) an appeal under this section, or
 - (b) a notice given to the Board under paragraph 4(2) of Schedule 24 or by virtue of paragraph 12 of that Schedule,

any company to which notice is given under this subsection may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company,

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appeal to the Special Commissioners against the revised amount specified in the notice.

- (7) The jurisdiction of the Special Commissioners on an appeal under this section shall include jurisdiction to review any decision of the Board or the inspector which is relevant to a ground of the appeal.
- (8) The Board may make regulations—
- (a) as respects the conduct of appeals under this section;
 - (b) entitling any person who has received, or is connected or associated with a person who has received, a notice under subsection (1) above with respect to a particular accounting period of a controlled foreign company to appear on an appeal brought by another person who has received such a notice; and
 - (c) with respect to the joinder of appeals brought by different persons with respect to the same direction or the same amount of chargeable profits or creditable tax.

Marginal Citations

M9 Source—1984 s.88

754 Assessment, recovery and postponement of tax.

- ^{M10}(1) Subject to the following provisions of this section, the provisions of section 747(4)(a) relating to assessment and recovery of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including those relating to the assessing, collecting and receiving of corporation tax, those conferring or regulating a right of appeal and those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
- (2) For the purposes of the Taxes Acts, any sum assessable and recoverable under section 747(4)(a) shall be regarded as corporation tax which falls to be assessed for the accounting period in which ends that one of the controlled foreign company's accounting periods the chargeable profits of which give rise to that sum; and a notice of assessment relating to such a sum shall (in addition to any other matter required to be contained in such a notice) specify separately—
- (a) the total amount of those chargeable profits and of any creditable tax which has been apportioned to persons falling within each of paragraphs (a) to (d) of subsection (5), or within subsection (7), of section 749, and
 - (b) where there is more than one class of shares in the controlled foreign company, the total amount apportioned to persons holding shares of each class,
- but such a notice shall not identify any particular person (other than the person assessed) as having an interest of any description in the controlled foreign company.
- (3) On an appeal against an assessment to tax under section 747(4)(a), the jurisdiction of the Special Commissioners shall include jurisdiction to review any relevant decision taken by the Board under section 752 in connection with the apportionment of chargeable profits or creditable tax.

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- (4) No appeal may be brought against an assessment to tax under section 747(4)(a) on a ground on which an appeal has or could have been brought under section 753(4) or (6).
- (5) Schedule 26 shall have effect with respect to the reliefs which may be claimed by a company resident in the United Kingdom which has a liability for tax in respect of an amount of chargeable profits; and no reliefs other than those provided for by that Schedule shall be allowed against any such liability.
- (6) In any case where—
- (a) the whole or any part of the tax assessed on a company (“the assessable company”) by virtue of section 752(6) is not paid before the date on which it is due and payable in accordance with this Act or, as the case may be, the Management Act; and
 - (b) the Board serve a notice of liability to tax under this subsection on another company (“the responsible company”) which is resident in the United Kingdom and holds or has held (whether directly or indirectly) the same interest in the controlled foreign company as is or was held by the assessable company,
- the tax assessed on the assessable company or, as the case may be, so much of it as remains unpaid shall be payable by the responsible company upon service of the notice.
- (7) Where a notice of liability is served under subsection (6) above—
- (a) any interest due on the tax assessed on the assessable company and not paid; and
 - (b) any interest accruing due on that tax after the date of service,
- shall be payable by the responsible company.
- (8) In any case where—
- (a) a notice of liability is served on the responsible company under subsection (6) above, and
 - (b) the relevant tax and any interest payable by the responsible company under subsection (7) above is not paid by that company before the expiry of the period of three months beginning on the date of service of the notice,
- that tax and interest may, without prejudice to the right of recovery from the responsible company, be recovered from the assessable company.
- (9) In this section “the Taxes Acts” has the same meaning as in the Management Act.

Modifications etc. (not altering text)

C2 See 1970(M) s.55(1)(g) and (6A).

Marginal Citations

M10 Source—1984 s.89(1)-(4), (7)-(11)

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VALID FROM 31/07/1998

[^{F15}754A] Returns where it is not established whether acceptable distribution policy applies.

- (1) This section applies where—
 - (a) a company resident in the United Kingdom (“the UK company”) has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;
 - (b) the UK company delivers a company tax return; and
 - (c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.
- (2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.
- (3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.
- (4) In any case where—
 - (a) the UK company acts in pursuance of subsection (2) above, but
 - (b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,
 the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (5) In any case where—
 - (a) the UK company acts in pursuance of subsection (3) above, but
 - (b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,
 the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above (“an ADP amendment”) shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.
- (7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.

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- (8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.
- (9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).
- (10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.
- (11) In this section, “the period allowed for establishing an ADP” means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—
 - (a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or
 - (b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.
- (12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.]

Textual Amendments

- F15** S. 754A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 10; S.I. 1998/3173, art. 2

VALID FROM 31/07/1998

^{F16}754B Determinations requiring the sanction of the Board.

- (1) This section has effect where a determination requiring the Board’s sanction is made for any of the following purposes, that is to say—
 - (a) the giving of a closure notice; or
 - (b) the making of a discovery assessment.
- (2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—
 - (a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or
 - (b) notification of the Board’s approval having been served on that person at or before the time of the giving of the notice,the closure notice or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.

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- (3) A notification under subsection (2)(b) above—
- (a) must be in writing;
 - (b) must state that the Board have given their approval on the basis that—
 - (i) an amount of chargeable profits, and
 - (ii) an amount of creditable tax (which may be nil),
 for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;
 - (c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and
 - (d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.
- (4) For the purposes of this section, the Board’s approval of a determination requiring their sanction—
- (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
 - (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.
- (5) In this section references to a determination requiring the Board’s sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).
- (6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board’s sanction if—
- (a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;
 - (b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and
 - (c) the matters to which the agreement relates include the amount determined.
- (7) In paragraph (a) of subsection (6) above, “the relevant amounts” means—
- (a) the amount of chargeable profits, and
 - (b) the amount of creditable tax (which may be nil),
- for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.
- (8) For the purposes of subsection (6) above an agreement made between an officer of the Board and any person (“the taxpayer”) in relation to any matter shall be taken to be in force at any time if, and only if—
- (a) the agreement is one which has been made or confirmed in writing;
 - (b) that time is after the end of the period of thirty days beginning—
 - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
 - (ii) in any other case, with the day of the agreement’s confirmation in writing; and

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- (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (9) The references in subsection (8) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice—
- (a) stating that the agreement has been made; and
 - (b) setting out the terms of the agreement.
- (10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board’s approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.
- (11) In this section—
- “closure notice” means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);
 - “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).]

Textual Amendments

F16 S. 754B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 11; S.I. 1998/3173, art. 2

755 Information relating to controlled foreign companies

- ^{M11}(1) Where it appears to the Board that a company resident outside the United Kingdom (in this section referred to as a “foreign subsidiary”) may be a controlled foreign company, the Board may, by notice given to any company which appears to them to be a controlling company of the foreign subsidiary, require that company to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of documents) as may be so specified with respect to any matter concerning the foreign subsidiary, being particulars required by the Board for the purposes of this Chapter as being relevant to the affairs of the controlling company, the foreign subsidiary or any connected or associated company.
- (2) In this section “controlling company”, in relation to a foreign subsidiary or any other company, means a company which is resident in the United Kingdom and has, alone or together with other persons so resident, control of the foreign subsidiary or, as the case may be, that other company.
- (3) The Board may by notice given to a company which appears to them to be a controlling company in relation to a foreign subsidiary require that company to make available for inspection any relevant books, accounts, or other documents or records whatsoever of the company itself or, subject to subsection (6) below, of any other company, including the foreign subsidiary, in relation to which it appears to the Board to be a controlling company.

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- (4) In subsection (3) above “relevant” means relevant to—
- (a) the computation of any profits of the foreign subsidiary; or
 - (b) the question whether a direction should be given under section 747(1) with respect to the foreign subsidiary or a connected or associated company or whether any such direction should be amended; or
 - (c) any question as to the amount of the chargeable profits or creditable tax for any accounting period of the foreign subsidiary or a connected or associated company; or
 - (d) any question as to the sum which, in accordance with section 747(4)(a), should be assessed on and recoverable from any person.
- (5) In subsections (1) and (4) above “connected or associated company” means a controlled foreign company with which the foreign subsidiary or the controlling company is connected or associated.
- (6) In any case where—
- (a) under subsection (3) above a company is by notice required to make available for inspection any books, accounts, documents or records of a company other than itself, and
 - (b) it appears to the Board, on the application of the company, that the circumstances are such that the requirement ought not to have effect,
- the Board shall direct that the company need not comply with the requirement.
- (7) If, on an application under subsection (6) above, the Board refuse to give a direction under that subsection, the company concerned may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

Marginal Citations

M11 Source—1984 s.90(1)-(7)

VALID FROM 31/07/1998

[^{F17}755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.

- (1) This section applies in any case where—
- (a) an amount (“the apportioned profit”) of a controlled foreign company’s chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
 - (b) the UK company carries on life assurance business in that one of its accounting periods (“the relevant accounting period”) in which ends the accounting period of the controlled foreign company; and
 - (c) the property or rights which represent the UK company’s relevant interest in the controlled foreign company constitute to any extent assets of the UK company’s long term business fund.

Status: Point in time view as at 27/07/1993. This version of this chapter contains provisions that are not valid for this point in time.

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- (2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business.
- (3) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 in relation to the policy holders’ part of any BLAGAB apportioned profit shall be—
- (a) if a single rate of tax under section 88A(1) of the ^{M12}Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or
 - (b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.
- (4) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to—
- (a) pension business,
 - (b) life reinsurance business, or
 - (c) overseas life assurance business,
- carried on by the UK company.
- (5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the “appropriate rate” for the purposes of—
- (a) section 747(4)(a), and
 - (b) paragraph 1 of Schedule 26,
- shall be nil in relation to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of its long term business fund.
- (6) If, in the case of the relevant accounting period,—
- (a) the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business,
 - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and
 - (c) the apportioned profit is to any extent referable to a category of business specified in paragraphs (a) to (c) of subsection (4) above,
- so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.
- (7) If, in the case of the relevant accounting period,—
- (a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and
 - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,
- so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of the UK company’s long term business fund shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

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- (8) Any set off under paragraph 1 or 2 of Schedule 26 against the UK company's liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against only so much of that liability as is attributable to the eligible part of the apportioned profit.
- (9) Accordingly, in the application of paragraph 2 of Schedule 26 in relation to the apportioned profit, in the definition of "the relevant maximum" in sub-paragraph (3) —
- (a) the reference to the liability to tax referred to in sub-paragraph (1) of that paragraph shall be taken as a reference to only so much of that liability as is attributable to the eligible part of the apportioned profit; and
 - (b) in paragraph (a), for the amount there described there shall be substituted a reference to the eligible part of the apportioned profit.
- (10) For the purposes of this section, the "eligible part" of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders' part.
- (11) For the purposes of this section, the "policy holders' part" of any BLAGAB apportioned profit is—
- (a) in a case where subsection (4) of section 88A of the ^{M13}Finance Act 1989 applies, the whole; and
 - (b) in any other case, the fraction described in subsection (5)(b) of that section.
- (12) In this section—
- "BLAGAB apportioned profit" means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;
- "long term business fund" has the meaning given by section 431(2).
- (13) For the purposes of this section, the part of the apportioned profit which is referable to—
- (a) pension business,
 - (b) life reinsurance business,
 - (c) overseas life assurance business, or
 - (d) basic life assurance and general annuity business,
- carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company's relevant interest in the controlled foreign company.
- (14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.]

Textual Amendments

- F17** S. 755A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 13; S.I. 1998/3173, art. 2

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Modifications etc. (not altering text)

- C3** S. 755A modified (6.4.1999) by [The Individual Savings Account \(Insurance Companies\) Regulations 1998 \(S.I. 1998/1871\)](#), **regs. 1, 5, 18**
- C4** S. 755A modified by the [Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), **reg. 30B** (as inserted (13.10.1999) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 1999 \(S.I. 1999/2636\)](#), **regs. 1, 4**)

Marginal Citations

- M12** 1989 c. 26.
M13 1989 c. 26.

VALID FROM 31/07/1998

[^{F18}755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis.

- (1) This section applies where—
- (a) a controlled foreign company carries on general insurance business in an accounting period;
 - (b) an amount of the company's chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");
 - (c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company's accounting period ends; and
 - (d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.
- (2) The methods which fall within this subsection are—
- (a) the method described in paragraph 52 of Schedule 9A to the ^{M14}Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and
 - (b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (3) Where this section applies—
- (a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company's accounts at any time within twelve months from the date on which the provision was replaced; and
 - (b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).

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- (4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—
- (a) the controlled foreign company, and
 - (b) any person with an interest in the controlled foreign company,
- shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the ^{M15}Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.
- (6) In this section “general insurance business” means insurance business which is general business, as defined in section 1 of the ^{M16}Insurance Companies Act 1982.]

Textual Amendments

F18 S. 755B inserted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 14](#); S.I. 1998/3173, [art. 2](#)

Marginal Citations

M14 1985 c. 6.

M15 1985 c. 6.

M16 1982 c. 50.

VALID FROM 31/07/1998

^{F19}755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.

- (1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—
- (a) carries on general insurance business; and
 - (b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.
- (2) Regulations under subsection (1) above may—
- (a) make different provision for different cases;
 - (b) make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and
 - (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.
- (3) In this section—
- “general insurance business” has the same meaning as in section 755B;

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“non-resident company” means a company resident outside the United Kingdom;

“prescribed” means prescribed in regulations under this section.]

Textual Amendments

F19 S. 755C inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 15; S.I. 1998/3173, art. 2

VALID FROM 28/07/2000

[^{F20}755D “Control” and the two “40 per cent” tests.

- (1) For the purposes of this Chapter “control”, in relation to a company, means the power of a person to secure—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
 - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,that the affairs of the company are conducted in accordance with his wishes.
- (2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.
- (3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—
 - (a) at least 40 per cent, but
 - (b) not more than 55 per cent,of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (5) For the purposes of this Chapter any question—
 - (a) whether a company is controlled by a person, or by two or more persons taken together, or
 - (b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.
- (6) The rights and powers referred to in subsection (5) above are—

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- (a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;
 - (b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;
 - (c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and
 - (d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a “UK connected person”) if the UK connected person were himself the person.
- (7) Rights and powers fall within this subsection to the extent that they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—
 - (i) on behalf of the person;
 - (ii) under the direction of the person; or
 - (iii) for the benefit of the person; and
 - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (8) In subsections (6)(b) to (d) and (7) above, the references to a person’s rights and powers include references to any rights or powers which he either—
- (a) is entitled to acquire at a future date, or
 - (b) will, at a future date, become entitled to acquire.
- (9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.
- (10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.
- (11) References in this section—
- (a) to rights and powers of a person, or
 - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.]

Textual Amendments

F20 S. 755D inserted (with effect in accordance with [Sch. 31 para. 9\(3\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 31 para. 4\(1\)](#)

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756 Interpretation and construction of Chapter IV.

^{M17}(1) In this Chapter “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(2) For the purposes of this Chapter—

- (a) section 839 applies; and
- (b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(3) The following provisions of Part XI apply for the purposes of this Chapter as they apply for the purposes of that Part—

- (a) section 416; and
- (b) section 417(7) to (9);

but, in the application of subsection (6) of section 416 for the purposes of this Chapter, for the words “five or fewer participators” there shall be substituted the words “persons resident in the United Kingdom”.

Marginal Citations

M17 Source—1984 s.91

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