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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII **U.K.**

#### TAX AVOIDANCE

### CHAPTER IV **U.K.**

#### 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)
- C2 Pt. 17 Ch. 4 modified (10.6.1999) by The Non-resident Companies (General Insurance Business) Regulations 1999 (S.I. 1999/1408), regs. 3-6
- C3 Pt. 17 Ch. 4 modified (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 45(5)(6)

#### 747 **Imputation of chargeable profits and creditable tax of controlled foreign companies** **U.K.**

<sup>M1</sup>(1) If <sup>F1</sup> . . . 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,

<sup>F2</sup> . . . the provisions of this Chapter shall apply in relation to that accounting period.

<sup>F3</sup>(1A) A company which would not, apart from this subsection, fall to be regarded as controlled by persons resident in the United Kingdom shall be taken for the purposes of this Chapter to be so controlled if—

- (a) there are two persons who, taken together, control the company;
- (b) one of those persons is resident in the United Kingdom and is a person in whose case the 40 per cent test in section 755D(3) is satisfied; and

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- (c) the other is a person in whose case the 40 per cent test in section 755D(4) is satisfied.]

[<sup>F4</sup>(1B) In determining, for the purposes of any provision of this Chapter except subsection (1) (a) above, whether a company is a person resident in the United Kingdom, section 249 of the Finance Act 1994 (under which a company is treated as non-resident if it is so treated for double taxation relief purposes) shall be disregarded.]

- (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) [<sup>F5</sup>Subject to section 748, where] 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.

- (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 [<sup>F6</sup>chargeable on] 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 [<sup>F7</sup>which is mentioned in subsection (1) above] or, if there is more than one such rate, the average rate over the whole of that accounting period of the resident company.

[<sup>F8</sup>(4A) Where by virtue of section 747A a company’s chargeable profits for an accounting period are to be computed and expressed in a currency other than sterling, for the purposes of subsection (4)(a) above the apportioned amount shall be taken to be the sterling equivalent of the apportioned amount found in the currency other than sterling.

- (4B) The translation required by subsection (4A) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the accounting period concerned.]

- (5) Tax shall not, by virtue of subsection (4) above, be [<sup>F9</sup>chargeable on] a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—

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- (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 [<sup>F10</sup>25 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.

#### Textual Amendments

- F1** Words in s. 747(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 1(2)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**
- F2** Words in s. 747(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 1(2)(b), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**
- F3** S. 747(1A) inserted (21.3.2000) by Finance Act 2000 (c. 17), Sch. 31 paras. 3, **9(1)**
- F4** S. 747(1B) inserted (1.4.2002) by Finance Act 2002 (c. 23), **s. 90(1)(2)(a)** (with s. 90(2)(b))
- F5** Words in s. 747(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(3)**; S.I. 1998/3173, **art. 2**
- F6** Words in s. 747(4)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(4)(a)**; S.I. 1998/3173, **art. 2**
- F7** Words in s. 747(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(4)(b)**; S.I. 1998/3173, **art. 2**
- F8** S. 747(4A)(4B) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 3**
- F9** Words in s. 747(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(5)(a)**; S.I. 1998/3173, **art. 2**
- F10** Words in s. 747(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(5)(b)**; S.I. 1998/3173, **art. 2**

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

- C4** S. 747 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 54(1)**
- C5** S. 747 modified (with effect in accordance with Sch. 29 Pt. 14 of the modifying Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 116**
- C6** S. 747A(4)(a) restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **2(2)**; S.I. 2003/1282, **art. 2**

#### Marginal Citations

- M1** Source—1984 s.82

### [<sup>F11</sup>747A Special rule for computing chargeable profits. **U.K.**

- (1) Subsection (2) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for—

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- (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 [<sup>F12</sup>an apportionment under section 747(3) has fallen to be made] 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) <sup>F13</sup>.....
- (8) Where <sup>F14</sup>... subsection (6) above does not apply, [<sup>F15</sup>the company's] first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which—
- [<sup>F16</sup>(a) an apportionment under section 747(3) has fallen to be made, or
  - (b) it can reasonably be assumed that such an apportionment would have fallen to be made, but for the fact that the company pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy,]
- [<sup>F17</sup>unless the company is a trading company, in which case paragraph (b) above shall be disregarded in the case of its accounting periods beginning before 28th November 1995.]
- (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;
  - [<sup>F18</sup>(b) “the appointed day” is 23rd March 1995.]
- (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
  - (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 <sup>M2</sup>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.]

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### Textual Amendments

- F11** S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 2**
- F12** Words in s. 747A(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 2(2)**; S.I. 1998/3173, **art. 2**
- F13** S. 747A(7) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 1(2), **Sch. 41 Pt. 5(34)**, Note
- F14** Words in s. 747A(8) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 1(3)(a), **Sch. 41 Pt. 5(34)**, Note
- F15** Words in s. 747A(8) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 1(3)(b)**
- F16** S. 747A(8)(a)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 2(3)**; S.I. 1998/3173, **art. 2**
- F17** Words in s. 747A(8) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 1(3)(c)**
- F18** S. 747A(9)(b) substituted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 19** (with s. 81(4)(5), Sch. 23 para. 25)

### Modifications etc. (not altering text)

- C7** S. 474A(2) modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1, 40**

### Marginal Citations

- M2** 1985 c. 6.

## 748 [F19 Cases where section 747(3) does not apply.] U.K.

[F20M3] (1) No apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company if—

- (a) in respect of that period the company pursues, within the meaning of Part I 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 [F21£50,000] or, if the accounting period is less than 12 months, a proportionately reduced amount; [F22 or
- (e) as respects the accounting period, the company is, within the meaning of regulations made by the Board for the purposes of this paragraph, resident in a territory specified in the regulations and satisfies—
  - (i) such conditions with respect to its income or gains as may be so specified; and
  - (ii) such other conditions (if any) as may be so specified.]

[F23] (1A) Regulations under paragraph (e) of subsection (1) above may—

- (a) make different provision for different cases or with respect to different territories;

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- (b) make provision having effect in relation to accounting periods of controlled foreign 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 Board may think fit.]
- (2)<sup>F24</sup> . . . . .
- (3) Notwithstanding that none of paragraphs (a) to [<sup>F25</sup>(e)] of subsection (1) above applies to an accounting period of a controlled foreign company, [<sup>F26</sup>no apportionment under section 747(3) falls to be made as regards that accounting period if it is the case that]—
- (a) in so far as any of the transactions the results of which are reflected in the profits arising in that accounting period, [<sup>F27</sup>or any two or more transactions taken together, the results of at least one of which are so reflected,] 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.
- [<sup>F28</sup>(4) Where by virtue of section 747A a company's chargeable profits for an accounting period are to be computed and expressed in a currency other than sterling, for the purposes of subsection (1)(d) above its chargeable profits for the period shall be taken to be the sterling equivalent of its chargeable profits found in the currency other than sterling.
- (5) The translation required by subsection (4) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the accounting period concerned.]
- [<sup>F29</sup>(6) This section is subject to section 748A.]

#### Textual Amendments

- F19** S. 748 sidenote substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(9)**; S.I. 1998/3173, **art. 2**
- F20** Words in s. 748(1) substituted (with effect in accordance with Sch. 17 para 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(2)**; S.I. 1998/3173, **art. 2**
- F21** Words in s. 748(1)(d) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(3)**; S.I. 1998/3173, **art. 2**
- F22** S. 748(1)(e) and preceding word inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(4)**; S.I. 1998/3173, **art. 2**
- F23** S. 748(1A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(5)**; S.I. 1998/3173, **art. 2**
- F24** S. 748(2) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(27)**; S.I. 1998/3173, **art. 2**
- F25** Word in s. 748(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(7)**; S.I. 1998/3173, **art. 2**

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- F26** Words in s. 748(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(8)**; S.I. 1998/3173, **art. 2**
- F27** Words in s. 748(3)(a) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 2**
- F28** S. 748(4)(5) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 4**
- F29** S. 748(6) inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 89(1)**

#### Marginal Citations

- M3** Source—1984 s.83

VALID FROM 19/07/2011

### <sup>F30</sup>748Z~~A~~ Exclusion of small profits exemptions **U.K.**

- (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) [<sup>F31</sup>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]

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(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);

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

#### Textual Amendments

**F30** 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

**F31** 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)

#### [<sup>F32</sup>748A Territorial exclusions from exemption under section 748 U.K.]

- (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.]



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### Textual Amendments

**F32** S. 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), s. 89(2)

### [<sup>F33</sup>749 Residence. U.K.]

- (1) Subject to subsections (2) to (4) and (6) 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,—
  - (a) there are in any accounting period two or more territories falling within subsection (1) above, and
  - (b) no election or designation made under paragraph (d) or (e) of subsection (3) below in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to that accounting period,subsection (3) below shall apply with respect to that company and that accounting period.
- (3) Where this subsection applies, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of those territories, 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;
  - (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;
  - (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;
  - (d) if—
    - (i) paragraph (a) above does not apply, and
    - (ii) neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories,in that one of them (if any) which is specified in an election made in relation to that accounting period by any one or more persons who together have a majority assessable interest in the company in that accounting period; and
  - (e) if, in a case falling within paragraph (d) above, the time by which any election under that paragraph in relation to that accounting period must be made in accordance with section 749A(3)(b) expires without such an election having been made, in that one of those territories which the Board justly and reasonably designates in relation to that accounting period.
- (4) If, in the case of any company,—
  - (a) there are in any accounting period two or more territories falling within subsection (1) above, and
  - (b) an election or designation made under paragraph (d) or (e) of subsection (3) above in relation to an earlier accounting period of the company has effect

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by virtue of section 749A(1) in relation to the accounting period mentioned in paragraph (a) above,

the company shall in that accounting period be regarded for the purposes of this Chapter as resident in that one of those territories which is the subject of the election or designation.

- (5) 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.
- (6) In any case where it becomes necessary for the purposes of subsection (3) 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—
- (a) account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories; and
  - (b) the amount of them shall be determined by reference to their market value at that time.
- (7) This section is without prejudice to the provision that may be made in regulations under section 748(1)(e).
- (8) For the purposes of this section, one or more persons together have a "majority assessable interest" in a controlled foreign company in an accounting period of the company if—
- (a) each of them has an assessable interest in the company in that accounting period; and
  - (b) it is likely that, were an apportionment of the chargeable profits of the company for that accounting period made under section 747(3), the aggregate of the amounts which would be apportioned to them is greater than 50 per cent. of the aggregate of the amounts which would be apportioned to all the persons who have an assessable interest in the company in that accounting period.
- (9) For the purposes of subsection (8) above, a person has an "assessable interest" in a controlled foreign company in an accounting period of the company if he is one of the persons who it is likely would be chargeable to tax under section 747(4)(a) on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3).]

#### Textual Amendments

**F33** 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](#)

#### [<sup>F34</sup>749A Elections and designations under section 749: supplementary provisions. **U.K.**

- (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

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- (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;
  - (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.]

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### Textual Amendments

**F34** 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](#)

### [<sup>F34</sup>749B Interests in companies. **U.K.**

- (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;
  - (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.]

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### Textual Amendments

**F34** 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. **U.K.**

- <sup>M4</sup>(1) Without prejudice to [<sup>F35</sup>subsection (5)] of section 749, a company which, by virtue of [<sup>F36</sup>any of subsections (1) to (4)] 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 paid under the law of that territory in respect of the profits of the company which arise in any accounting period is less than [<sup>F37</sup>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—
- [<sup>F38</sup>(a) it shall be assumed for the purposes of Schedule 24 that an apportionment under section 747(3) falls to be made as regards that period; 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 <sup>F39</sup>. . . ; 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.
- [<sup>F40</sup>(5) Subsections (6) and (7) below apply where by virtue of section 747A a company’s chargeable profits for an accounting period are to be computed and expressed in a currency other than sterling.
- (6) For the purposes of subsection (2) above the company’s chargeable profits for the period shall be taken to be the sterling equivalent of its chargeable profits found in the currency other than sterling.
- (7) In applying section 13 for the purposes of making the determination mentioned in subsection (3) above, any reference in section 13 to the amount of the company’s profits for the period on which corporation tax falls finally to be borne shall be construed as a reference to the sterling sum found under subsection (6) above.

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- (8) Any translation required by subsection (6) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the accounting period concerned.]

#### Textual Amendments

- F35** Words in s. 750(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 5(2)(a)**; S.I. 1998/3173, **art. 2**
- F36** Words in s. 750(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 5(2)(b)**; S.I. 1998/3173, **art. 2**
- F37** 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)**
- F38** S. 750(3)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 5(3)**; S.I. 1998/3173, **art. 2**
- F39** Words in s. 750(3)(b) repealed (with effect in accordance with Sch. 30 of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(13)**, Note
- F40** S. 750(5)-(8) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 5**

#### Marginal Citations

- M4** Source—1984 s.85

### [<sup>F41</sup>750A Deemed lower level of taxation: designer rate tax provisions. **U.K.**

- (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
  - (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.]

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### Textual Amendments

**F41** 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 **U.K.**

<sup>M5</sup>(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 [<sup>F42</sup>persons] resident in the United Kingdom;
- (b) whenever the company <sup>F43</sup> . . . commences to carry on business [<sup>F44</sup>unless an accounting period of the company has previously begun as respects which an apportionment under section 747(3) falls or has fallen to be made]; 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
- [<sup>F45</sup>(bb) <sup>F46</sup> . . . . .]
- (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.

(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, [<sup>F47</sup>the Board may by notice] 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 [<sup>F48</sup>the notice] is subsequently amended under subsection (5) below.

(5) If, on further facts coming to the knowledge of the Board after the [<sup>F49</sup>giving of a notice under subsection (4) above], it appears to the Board that any accounting period specified in the [<sup>F50</sup>notice] is not the true accounting period, the Board shall amend the [<sup>F50</sup>notice] so as to specify the true period.

[<sup>F51</sup>(5A) Any notice under subsection (4) above, and notice of any amendment of such a notice under subsection (5) above, shall be given to every person who has an assessable interest (as defined in section 749(9)) in the company in the accounting period in question.]

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- (6) In this Chapter, in relation to an accounting period of a controlled foreign company [<sup>F52</sup>as regards which an apportionment under section 747(3) falls to be made], 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

- F42** 1990 s.89 and Sch.14 para.9 (*correction of errors*)—*deemed always to have had effect. Previously* “the persons”.
- F43** Words in s. 751(1)(b) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(2\)\(a\)](#), [Sch. 27 Pt. 3\(27\)](#), Note; [S.I. 1998/3173](#), [art. 2](#)
- F44** Words in s. 751(1)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(2\)\(b\)](#); [S.I. 1998/3173](#), [art. 2](#)
- F45** 1990 s.67(2), (4) *on and after 20 March 1990.*
- F46** [S. 751\(2\)\(bb\)](#) repealed (retrospective to 30.11.1993) by [Finance Act 1994 \(c. 9\)](#), s. 251(1)(4), [Sch. 26 Pt. 8](#), Note
- F47** Words in s. 751(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by virtue of [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(3\)\(a\)](#); [S.I. 1998/3173](#), [art. 2](#)
- F48** Words in s. 751(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by virtue of [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(3\)\(b\)](#); [S.I. 1998/3173](#), [art. 2](#)
- F49** Words in s. 751(5) substituted (with effect in accordance with Sch. 17 para. 37 of amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(4\)\(a\)](#); [S.I. 1998/3173](#), [art. 2](#)
- F50** Words in s. 751(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(4\)\(b\)](#); [S.I. 1998/3173](#), [art. 2](#)
- F51** [S. 751\(5A\)](#) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(5\)](#); [S.I. 1998/3173](#), [art. 2](#)
- F52** Words in s. 751(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 6\(6\)](#); [S.I. 1998/3173](#), [art. 2](#)

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

- C8** [S. 751\(1\)-\(5A\)](#) applied (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by [Income Tax Act 2007 \(c. 3\)](#), [s. 725\(3\)](#) (with Sch. 2)

#### Marginal Citations

- M5** Source—1984 s.86



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VALID FROM 19/07/2007

## 751A Reduction in chargeable profits for certain activities of EEA business establishments **U.K.**

- (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) 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.

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- (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 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

**[<sup>F53</sup>751A] Reduction in chargeable profits for certain financing income U.K.**

- (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).

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- (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.]

#### Textual Amendments

**F53** 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

#### [<sup>F54</sup>751A Reduction in chargeable profits: failure to qualify for exemptions **U.K.**

- (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

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- (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—
- (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.

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- (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—
- “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

- F54** 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

#### <sup>F55</sup>751A Reduction in chargeable profits following an exempt period **U.K.**

- (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).

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- (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,
- 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

**F55** 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 U.K.**

- (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

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- (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.
- (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.

**[<sup>F56</sup>752 Apportionment of chargeable profits and creditable tax U.K.]**

- (1) This section applies in any case where an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company.
- (2) Where—

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- (a) the persons who have relevant interests in the controlled foreign company at any time in the relevant accounting period have those interests by virtue only of directly or indirectly holding ordinary shares of the company,
- (b) each of those persons satisfies the condition that he is either—
  - (i) resident in the United Kingdom throughout that accounting period, or
  - (ii) resident in the United Kingdom at no time in that accounting period,
 and
- (c) no company which has an intermediate interest in the controlled foreign company at any time in the relevant accounting period has that interest otherwise than by virtue of directly or indirectly holding ordinary shares of the controlled foreign company,

subsection (3) below shall apply.

- (3) Where this subsection applies, the apportionment of the controlled foreign company's chargeable profits and creditable tax (if any) for the relevant accounting period shall be made among the persons who have relevant interests in the company at any time in that period in direct proportion to the percentage of the issued ordinary shares of the controlled foreign company which, in accordance with section 752B, each of those relevant interests represents.
- (4) Where subsection (3) above does not apply, the apportionment of the controlled foreign company's chargeable profits and creditable tax (if any) for the relevant accounting period shall be made on a just and reasonable basis among the persons who have relevant interests in the company at any time in that period.]

#### Textual Amendments

**F56** 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

#### [<sup>F57</sup>752A Relevant interests. U.K.]

- (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



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- (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.
- (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

**F57** 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

[<sup>F57</sup>752B Section 752(3): the percentage of shares which a relevant interest represents. **U.K.**]

- (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—

$$P \times S$$

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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;

“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

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

#### Textual Amendments

**F57** 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

#### [<sup>F57</sup>752C Interpretation of apportionment provisions. U.K.]

- (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.

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(7) In the relevant provisions—

“bare trustee” means a person acting as trustee—

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

**F57** 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. **U.K.**

F58

#### Textual Amendments

**F58** S. 753 repealed (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 8, Sch. 27 Pt. 3(27), Note; S.I. 1998/3173, art. 2

### 754 Assessment, recovery and postponement of tax. **U.K.**

<sup>M6</sup>(1) Subject to the following provisions of this section, the provisions of section 747(4) (a) relating to [<sup>F59</sup>the charging] 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 [<sup>F60</sup>those relating to company tax returns,] 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.

[<sup>F61</sup>(1A) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if—

- (a) any reference to corporation tax included a reference to a sum chargeable under section 747(4)(a) as if it were an amount of corporation tax; and
- (b) any reference to profits of a company included a reference to an amount of chargeable profits of a controlled foreign company which falls to be apportioned to a company under section 747(3).]

[<sup>F62</sup>(2) For the purposes of the Taxes Acts, any sum chargeable on a company under section 747(4)(a) is chargeable for the accounting period of the company in which

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ends that one of the controlled foreign company's accounting periods the chargeable profits of which give rise to that sum.]

[<sup>F63</sup>(2A) Where—

- (a) an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company, and
- (b) the apportionment falls to be made in accordance with section 752(4) on a just and reasonable basis, and
- (c) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return,

the Board may determine that another basis is to be used for the apportionment.

(2B) For the purposes of subsection (2A) above, the Board may by notice require the company making the return—

- (a) to produce to them such documents in the company's power or possession, and
- (b) to provide them with such information, in such form,

as they may reasonably require for the purpose of determining the basis which is to be used for making the apportionment.

(2C) The provisions of paragraphs 27 to 29 of Schedule 18 to the Finance Act 1998 (notice to produce documents etc for the purposes of enquiry: supplementary provisions and penalty) shall apply in relation to a notice under subsection (2B) above.

(2D) Once the Board have determined under subsection (2A) above the basis to be used for the apportionment, matters shall proceed as if that were the only basis allowed by the Tax Acts.

(2E) A determination under subsection (2A) above may be questioned on an appeal against an amendment, made under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998, of the company's company tax return, but only on the ground that the basis of apportionment determined by the Board is not just and reasonable.]

[<sup>F64</sup>(3) Where any appeal—

- (a) under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company tax return, or
- (b) under paragraph 48 of that Schedule against a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule),

involves any question concerning the application of this Chapter in relation to any particular person, that appeal shall be to the Special Commissioners.

(3A) Where—

- (a) any such question as is mentioned in subsection (3) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them, and
- (b) the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned,

subsection (3B) below shall apply.

(3B) Where this subsection applies—

- (a) each of the persons whose liability under this Chapter in respect of the controlled foreign company concerned is likely to be affected by the resolution

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- of the question shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;
- (b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and
- (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.]
- (4) <sup>F65</sup> .....
- (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 [<sup>F66</sup>chargeable] on a company (“the [<sup>F66</sup>chargeable] company”) by virtue of section [<sup>F67</sup>747(4)(a)] 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) [<sup>F68</sup>the whole or any part of] the same interest in the controlled foreign company as is or was held by the [<sup>F66</sup>chargeable] company,
- [<sup>F69</sup>the whole or, as the case may be, the corresponding part of] the tax [<sup>F66</sup>chargeable] on the [<sup>F66</sup>chargeable] 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) [<sup>F70</sup>the whole, or (as the case may be) the corresponding part, of] any interest due on the tax [<sup>F71</sup>chargeable] on the [<sup>F71</sup>chargeable] 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 [<sup>F72</sup>(so far as referable to tax payable by the responsible company by virtue of the notice)].
- (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 [<sup>F73</sup>chargeable] company.
- (9) In this section “the Taxes Acts” has the same meaning as in the Management Act.

#### Textual Amendments

**F59** Words in s. 754(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(2)(a); S.I. 1998/3173, art. 2

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- F60** Words in s. 754(1) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(2)(b)**; S.I. 1998/3173, **art. 2**
- F61** S. 754(1A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(3)**; S.I. 1998/3173, **art. 2**
- F62** S. 754(2) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(4)**; S.I. 1998/3173, **art. 2**
- F63** S. 754(2A)-(2E) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(5)**; S.I. 1998/3173, **art. 2**
- F64** S. 754(3)-(3B) substituted for s. 754(3) (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(6)**; S.I. 1998/3173, **art. 2**
- F65** S. 754(4) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(7), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**
- F66** Words in s. 754(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(a)**; S.I. 1998/3173, **art. 2**
- F67** Words in s. 754(6)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(b)**; S.I. 1998/3173, **art. 2**
- F68** Words in s. 754(6)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(c)**; S.I. 1998/3173, **art. 2**
- F69** Words in s. 754(6) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(d)**; S.I. 1998/3173, **art. 2**
- F70** Words in s. 754(7)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(9)(a)**; S.I. 1998/3173, **art. 2**
- F71** Words in s. 754(7)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(9)(b)**; S.I. 1998/3173, **art. 2**
- F72** Words in s. 754(7)(b) added (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(9)(c)**; S.I. 1998/3173, **art. 2**
- F73** Word in s. 754(8) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(10)**; S.I. 1998/3173, **art. 2**

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

- C9** See 1970(M) s.55(1)(g) and (6A).

**Marginal Citations**

- M6** Source—1984 s.89(1)-(4), (7)-(11)

**[<sup>F74</sup>754A Returns where it is not established whether acceptable distribution policy applies. U.K.]**

- (1) This section applies where—
- 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;
  - the UK company delivers a company tax return; and
  - 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.

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- (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.
- (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.



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- (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

**F74** 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

#### [<sup>F75</sup>754B Determinations requiring the sanction of the Board. **U.K.**

- (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—
- the giving of a closure notice; or
  - 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—
- 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
  - 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.
- (3) A notification under subsection (2)(b) above—
- must be in writing;
  - must state that the Board have given their approval on the basis that—
    - an amount of chargeable profits, and
    - 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;
  - must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and
  - 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—
- must be given specifically in relation to the case in question and must apply to the amount determined; but
  - 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).

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- (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
  - (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).]

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#### Textual Amendments

**F75** 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 **U.K.**

**F76** .....

#### Textual Amendments

**F76** S. 755 repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 12, Sch. 27 Pt. 3(27), Note; S.I. 1998/3173, art. 2

### [<sup>F77</sup>755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business. **U.K.**

- (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 [<sup>F78</sup>long-term insurance fund].
- (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 <sup>M7</sup>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.

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- (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 [<sup>F78</sup>long-term insurance 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 [<sup>F78</sup>long-term insurance 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.
- (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 <sup>M8</sup>Finance Act 1989 applies, the whole; and
  - (b) in any other case, the fraction described in subsection (5)(b) of that section.

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(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;

“<sup>F78</sup>long-term insurance 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

- F77** 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
- F78** Words in s. 755A(1)(c)(5)(7)(12) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), art. 52(1)(j)

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

- C10** S. 755A modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), regs. 1, 5, 18
- C11** 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; and as that reg. 30B is amended by S.I. 2004/822, regs. 1, 24)

#### Marginal Citations

- M7** 1989 c. 26.
- M8** 1989 c. 26.

### <sup>F79</sup>755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis. **U.K.**

(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

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- 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 <sup>M9</sup>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).
- (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 <sup>M10</sup>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.
- [<sup>F80</sup>(6) In this section “general insurance business” means business which consists of the effecting or carrying out of contracts which fall within Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]]

#### Textual Amendments

**F79** 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

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**F80** S. 755B(6) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 44**

#### Marginal Citations

**M9** 1985 c. 6.

**M10** 1985 c. 6.

### [<sup>F81</sup>755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis. **U.K.**

- (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;
  - “non-resident company” means a company resident outside the United Kingdom;
  - “prescribed” means prescribed in regulations under this section.]

#### Textual Amendments

**F81** 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**

### [<sup>F82</sup>755D “Control” and the two “40 per cent” tests. **U.K.**

- (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.

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*Status: Point in time view as at 24/07/2002. This version of this chapter contains provisions that are not valid for this point in time.*

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- (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—
- (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.



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- (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

**F82** 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)

## 756 Interpretation and construction of Chapter IV. **U.K.**

- <sup>M11</sup>(1) In this Chapter—
- [<sup>F83c</sup>“company tax return” means a return required to be made under Schedule 18 to the Finance Act 1998;]
  - “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) <sup>F84</sup> .....
  - (b) section 417(7) to (9);
- <sup>F85</sup> .....

#### Textual Amendments

- F83** S. 756(1): definition of “company tax return” inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 16; S.I. 1998/3173, art. 2
- F84** S. 756(3)(a) repealed (with effect in accordance with Sch. 31 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(2)(a), Sch. 40 Pt. 2(14), Note
- F85** Words in s. 756(3) repealed (with effect in accordance with Sch. 31 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(2)(b), Sch. 40 Pt. 2(14), Note

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**Marginal Citations**

**M11** Source—1984 s.91

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