

*Status: Point in time view as at 03/05/1994. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: Income and Corporation Taxes Act 1988, SCHEDULE 25 is up to date with all changes known to be in force on or before 10 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

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

Section 748.

#### <sup>M1</sup>CASES EXCLUDED FROM DIRECTION-MAKING POWERS

##### Marginal Citations

**M1** Source-1984 Sch.17; 1987 (No.2) s.65

### PART I **U.K.**

#### ACCEPTABLE DISTRIBUTION POLICY

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

2 (1) Subject to [<sup>F1</sup>paragraph 2A] below, a controlled foreign company pursues an acceptable distribution policy in respect of a particular accounting period if, and only if—

(a) a dividend which is not paid out of specified profits is paid for that accounting period<sup>F2</sup>. . . ; and

(b) the dividend is paid during, or not more than eighteen months after the expiry of, [<sup>F3</sup>that period] or at such later time as the Board may, in any particular case, allow; and

(c) *the dividend is paid at a time when the company is not resident in the United Kingdom (whether or not it is at that time a controlled foreign company); and*

<sup>F4</sup>(d) the [<sup>F5</sup>amount] of the dividend or, if there is more than one, of the aggregate of those dividends which is paid to persons resident in the United Kingdom [<sup>F5</sup>is not less than] 50 per cent. of the company's available profits for the accounting period referred to in paragraph (a) above or, where sub-paragraph (4) or (5) below applies, of the appropriate portion of those profits;

<sup>F2</sup> . . . . .

[<sup>F6</sup>(1A) A payment of dividend to a company shall not fall within sub-paragraph (1)(d) above unless it is taken into account in computing the company's income for corporation tax.]

(2) <sup>F7</sup> . . . . .

[<sup>F8</sup>(3) For the purposes of this paragraph and paragraph 2A below, a dividend which is not paid for the period or periods the profits of which are, in relation to the dividend,

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the relevant profits for the purposes of section 799 shall be treated (subject to sub-paragraph (3A) below) as so paid.

- (3A) For the purposes of this paragraph and paragraph 2A below—
- (a) where a dividend is paid for a period which is not an accounting period but falls wholly within an accounting period, it shall be treated as paid for that accounting period, and
  - (b) where a dividend (“the actual dividend”) is paid for a period which falls within two or more accounting periods—
    - (i) it shall be treated as if it were a number of separate dividends each of which is paid for so much of the period as falls wholly within an accounting period, and
    - (ii) the necessary apportionment of the amount of the actual dividend shall be made to determine the amount of the separate dividends.]

- (4) This sub-paragraph applies where—
- (a) throughout the accounting period in question all the issued shares of the controlled foreign company are of a single class, and
  - (b) at the end of that accounting period some of those shares are held by persons resident outside the United Kingdom, and
  - (c) at no time during that accounting period does any person have an interest in the company other than an interest derived from the issued shares of the company;

and in a case where this sub-paragraph applies the appropriate portion for the purposes of sub-paragraph (1)(d) above is the fraction of which the denominator is the total number of the issued shares of the company at the end of the accounting period in question and, subject to sub-paragraph (8) below, the numerator is the number of those issued shares by virtue of which persons resident in the United Kingdom have interests in the company at that time.

- (5) This sub-paragraph applies where—
- (a) throughout the accounting period in question there are only two classes of issued shares of the controlled foreign company and, of those classes, one (“non-voting shares”) consists of non-voting fixed-rate preference shares and the other (“voting shares”) consists of shares which carry the right to vote in all circumstances at general meetings of the company; and
  - (b) at the end of that accounting period some of the issued shares of the company are held by persons resident outside the United Kingdom; and
  - (c) at no time during that accounting period does any person have an interest in the company other than an interest derived from non-voting or voting shares;

and in a case where this sub-paragraph applies the appropriate portion of the profits referred to in sub-paragraph (1)(d) above is the amount determined in accordance with sub-paragraph (6) below.

- (6) The amount referred to in sub-paragraph (5) above is that given by the formula—

$$\frac{PyQ}{R} + \frac{(X-P)yY}{Z}$$

where—

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P is the amount of any dividend falling within (a) and (b) of sub-paragraph (1) above which is paid in respect of the non-voting shares or, if there is more than one such dividend, of the aggregate of them;

Q is, subject to sub-paragraph (8) below, the number of the non-voting shares by virtue of which persons resident in the United Kingdom have interests in the company at the end of the accounting period in question;

R is the total number at that time of the issued non-voting shares;

X is the available profits for the accounting period in question;

Y is, subject to sub-paragraph (8) below, the number of voting shares by virtue of which persons resident in the United Kingdom have interests in the company at the end of that accounting period; and

Z is the total number at that time of the issued voting shares.

- (7) For the purposes of sub-paragraph (5)(a) above, non-voting fixed-rate preference shares are shares—
- (a) which are fixed-rate preference shares as defined in paragraph 1 of Schedule 18; and
  - (b) which either carry no right to vote at a general meeting of the company or carry such a right which is contingent upon the non-payment of a dividend on the shares and which has not in fact become exercisable at any time prior to the payment of a dividend for the accounting period in question.
- (8) In any case where the immediate interests held by persons resident in the United Kingdom who have indirect interests in a controlled foreign company at the end of a particular accounting period do not reflect the proportion of the shares or, as the case may be, shares of a particular class in the company by virtue of which they have those interests (as in the case where they hold, directly or indirectly, part of the shares in a company which itself holds, directly or indirectly, some or all of the shares in the controlled foreign company) the number of those shares shall be treated as reduced for the purposes of sub-paragraph (4) or (6) above, as the case may be, to such number as may be appropriate having regard to—
- (a) the immediate interests held by the persons resident in the United Kingdom; and
  - (b) any intermediate shareholdings between those interests and the shares in the controlled foreign company.
- (9) The definition of “profits” in section 747(6)(b) does not apply to any reference in this paragraph to specified profits or to relevant profits for the purposes of section 799.

#### Textual Amendments

- F1** Words in [Sch. 25 para. 2\(1\)](#) substituted (with application in accordance with [s. 134\(5\)](#) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 134\(2\)\(a\)\(i\)](#)
- F2** Words in [Sch. 25 para. 2\(1\)](#) repealed (with application in accordance with [s. 134\(5\)](#) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 134\(2\)\(a\)\(ii\)\(v\), Sch. 26 Pt. 5\(15\)](#), Note
- F3** Words in [Sch. 25 para. 2\(1\)\(b\)](#) substituted (with application in accordance with [s. 134\(5\)](#) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 134\(2\)\(a\)\(iii\)](#)
- F4** Repealed by 1990 s.67(3)(a) and s.132 and Sch.19 Part IV in relation to dividends paid on or after 20 March 1990.
- F5** Words in [Sch. 25 para. 2\(1\)\(d\)](#) substituted (with application in accordance with [s. 134\(5\)](#) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 134\(2\)\(a\)\(iv\)](#)
- F6** 1990 s.67(3)(b) in relation to dividends paid on or after 20 March 1990.

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- F7** Sch. 25 para. 2(2) repealed (with application in accordance with s. 134(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 134(2)(b), Sch. 26 Pt. 5(15), Note
- F8** Sch. 25 para. 2(3)(3A) substituted for para. 2(3) (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), s. 134(2)(c)

- 2A (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company which is not a trading company pursues an acceptable distribution policy in respect of a particular accounting period (“the relevant accounting period”).
- (2) Subject to sub-paragraph (4) below, where the distribution condition is satisfied in relation to the relevant accounting period, then, in addition to any dividend which falls within paragraph 2(1)(a) above apart from this paragraph—
- (a) any dividend which is paid for the accounting period (“the preceding period”) which immediately precedes the relevant accounting period and is not an excluded period shall be treated as falling within that paragraph, and
  - (b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period which immediately precedes the preceding period and is not an excluded period shall be treated as falling within that paragraph,
- and so on; and in this sub-paragraph “dividend” means a dividend not paid out of specified profits.
- (3) For the purposes of this paragraph, the distribution condition is satisfied in relation to any accounting period if—
- (a) a dividend or dividends are paid for the period to persons resident in the United Kingdom,
  - (b) the amount or, as the case may be, aggregate amount of any dividends falling within paragraph (a) above is not less than—
    - (i) the relevant profits for that period, or
    - (ii) where paragraph 2(4) or (5) above applies (with the modifications of paragraph 2 made by sub-paragraph (5) below), the appropriate portion of those profits, and
  - (c) any dividends falling within that paragraph are paid not later than the time by which any dividend paid for the relevant accounting period is required by paragraph 2(1)(b) above to be paid;
- or if there are no relevant profits for the period.
- (4) Where, by reason only of the fact that a company pursued an acceptable distribution policy in respect of any accounting period (“the earlier period”) earlier than the relevant accounting period, no direction could be given in respect of the earlier period under section 747(1), sub-paragraph (2) above shall apply to any dividend required to be taken into account for the purpose of showing that the company pursued an acceptable distribution policy in respect of the earlier period only to the extent (if any) to which that dividend was not required to be taken into account for that purpose.
- (5) The modifications of paragraph 2 above referred to in sub-paragraph (3)(b) above are that—
- (a) the references in sub-paragraphs (4) and (5) to the accounting period in question are to be read as references to the accounting period for which the dividend or dividends are paid,

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- (b) the references in those sub-paragraphs to sub-paragraph (1)(d) are to be read as references to sub-paragraph (3)(b) above, and
  - (c) the reference in the definition of “X” in sub-paragraph (6) to available profits is to be read as a reference to relevant profits.
- (6) Paragraph 2(1)(d) above shall have effect as if for “50 per cent. of the company’s available profits” there were substituted “90 per cent. of the company’s net chargeable profits”.
- (7) In paragraph 2(6) above, the definition of “X” shall have effect as if the reference to available profits were a reference to net chargeable profits.
- (8) For the purposes of this paragraph—
- (a) a period is an excluded period if it is an accounting period in respect of which a direction is given under section 747(1), and
  - (b) relevant profits for any accounting period are the profits which would be the relevant profits of that period for the purposes of section 799 if a dividend were actually paid for that period.

VALID FROM 11/05/2001

- 2B
- (1) This paragraph has effect for the purposes of paragraph 2(1A)(b) above.
  - (2) No payment of dividend by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period.
  - (3) “UK tax avoidance scheme” means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.
  - (4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—
    - (a) would have been liable for any such tax or for a greater amount of any such tax; or
    - (b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.
  - (5) In this paragraph—
    - “arrangement” means an arrangement of any kind, whether in writing or not;
    - “United Kingdom tax” means corporation tax or any tax chargeable as if it were corporation tax.

- 3
- (1) Subject to sub-paragraphs (2) and (5) below, for the purposes of this Part of this Schedule, the available profits of a controlled foreign company for any accounting period shall be ascertained by—
    - (a) determining what would be the relevant profits of that period for the purposes of section 799 if a dividend were paid for that period; and

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- (b) deducting so much of those relevant profits as consists of an excess of capital profits over capital losses.
- (2) If, for any accounting period of the controlled foreign company which is of less than 12 months duration, the available profits, as ascertained under sub-paragraph (1) above, are less than the chargeable profits (determined on the additional assumptions in section 750(3)(a)) then, if the Board so declare, for the purposes of this Part of this Schedule the available profits for the accounting period shall be those chargeable profits.
- (3) The definition of “profits” in section 747(6)(b) does not apply to the reference in sub-paragraph (1)(a) above to relevant profits for the purposes of section 799.
- (4) In sub-paragraph (1)(b) above “capital profits” means gains—
- (a) which accrue on the disposal of assets; and
  - (b) which, if the company were within the charge to corporation tax in respect of the activities giving rise to those disposals, would not be taken into account as receipts in computing the company’s income or profits or gains or losses for the purposes of the Income Tax Acts;
- and the expression “capital losses” shall be construed accordingly.
- [<sup>F9</sup>(4A) Subject to sub-paragraph (5) below, for the purposes of this Part of this Schedule, the net chargeable profits of a controlled foreign company for any accounting period are—
- (a) its chargeable profits for that period, less
  - (b) the amount (if any) which, if a direction were given under section 747(1) in respect of the period, would be the company’s unrestricted creditable tax for that period;
- and for the purposes of this sub-paragraph “unrestricted creditable tax” in relation to a company’s accounting period means the amount which would be its creditable tax for that period if the reference in section 751(6)(a) to Part XVIII did not include section 797]
- (5) In any case where—
- (a) a controlled foreign company pays a dividend for any period out of specified profits, and
  - (b) those profits represent dividends received by the company, directly or indirectly, from another controlled foreign company,
- so much of those specified profits as is equal to the dividend referred to in paragraph (a) above shall be left out of account in determining, for the purposes of this Part of this Schedule, the available profits [<sup>F10</sup>or, where the company is not a trading company, the chargeable profits] of the controlled foreign company referred to in that paragraph for any accounting period.

#### Textual Amendments

- F9** Sch. 25 para. 3(4A) inserted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), s. 134(4)(a)
- F10** Words in Sch. 25 para. 3(5) inserted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), s. 134(4)(b)

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- 4 (1) For the purposes of this Part of this Schedule, where—
- (a) a controlled foreign company pays a dividend (“the initial dividend”) to another company which is also not resident in the United Kingdom, and
  - (b) that other company or another company which is related to it pays a dividend (“the subsequent dividend”) to a United Kingdom resident, and
  - (c) *the subsequent dividend is paid at a time when the company paying it is not resident in the United Kingdom; and*
  - <sup>F11</sup>(d) the subsequent dividend is paid out of profits which are derived, directly or indirectly, from the whole or part of the initial dividend,
- so much of the initial dividend as is represented by the subsequent dividend shall be regarded as paid to the United Kingdom resident.

<sup>F12</sup>(1A) A payment to a company shall not be a subsequent dividend within the meaning of sub-paragraph (1)(b) above unless it is taken into account in computing the company’s income for corporation tax.]

- (2) For the purposes of this paragraph, one company is related to another if the other—
- (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly,
- at least 10 per cent. of the voting power in the first-mentioned company; and where one company is so related to another and that other is so related to a third company, the first company is for the purposes of this paragraph related to the third, and so on where there is a chain of companies, each of which is related to the next.

#### Textual Amendments

**F11** *Repealed by 1990 s.67(3)(a) and s.132 and Sch.19 Part IV in relation to dividends paid on or after 20 March 1990.*

**F12** *1990 s.67(3)(c) in relation to dividends paid on or after 20 March 1990.*

VALID FROM 11/05/2001

- 4A (1) This paragraph has effect for the purposes of paragraph 4(1A)(b) above.
- (2) No payment to a company resident in the United Kingdom which represents the whole or part of a dividend paid by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that—
- (a) there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period, and
  - (b) so much of the dividend as is represented by that payment will (if paragraph 4(1) above has effect) fall to be brought into account in determining whether the controlled foreign company has done so.
- (3) “UK tax avoidance scheme” means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

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- (4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—
- (a) would have been liable for any such tax or for a greater amount of any such tax; or
  - (b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.
- (5) In this paragraph—
- “arrangement” means an arrangement of any kind, whether in writing or not;
  - “United Kingdom tax” means corporation tax or any tax chargeable as if it were corporation tax.

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

### EXEMPT ACTIVITIES

- 5 (1) The provisions of this Part of this Schedule have effect for the purposes of paragraph (b) of subsection (1) of section 748.
- (2) In the case of a controlled foreign company—
- (a) which is, by virtue of section 749(3), presumed to be resident in a territory in which it is subject to a lower level of taxation, and
  - (b) the business affairs of which are, throughout the accounting period in question, effectively managed in a territory outside the United Kingdom other than one in which companies are liable to tax by reason of domicile, residence or place of management,
- references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to the territory falling within paragraph (b) above, or, if there is more than one, to that one of them which may be notified to the Board by the United Kingdom resident company or companies referred to in paragraph 4(2) of Schedule 24.
- 6 (1) Throughout an accounting period a controlled foreign company is engaged in exempt activities if, and only if, each of the following conditions is fulfilled—
- (a) that, throughout that accounting period, the company has a business establishment in the territory in which it is resident; and
  - (b) that, throughout that accounting period, its business affairs in that territory are effectively managed there; and
  - (c) that any of sub-paragraphs (2) to (4) below applies to the company.
- (2) This sub-paragraph applies to a company if—
- (a) at no time during the accounting period in question does the main business of the company consist of either—
    - (i) investment business, or



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- (ii) dealing in goods for delivery to or from the United Kingdom or to or from connected or associated persons; and
    - (b) in the case of a company which is mainly engaged in wholesale, distributive or financial business in that accounting period, less than 50 per cent. of its gross trading receipts from that business is derived directly or indirectly from connected or associated persons.
  - (3) This sub-paragraph applies to a company which is a holding company if at least 90 per cent. of its gross income during the accounting period in question is derived directly from companies which it controls and which, throughout that period—
    - (a) are resident in the territory in which the holding company is resident; and
    - (b) are not themselves holding companies, but otherwise are, in terms of this Schedule, engaged in exempt activities;and a holding company to which this sub-paragraph applies is in this Part of this Schedule referred to as a “local holding company”.
  - (4) This sub-paragraph applies to a company which is a holding company, but not a local holding company, if at least 90 per cent. of its gross income during the accounting period in question is derived directly from companies which it controls and which, throughout that period—
    - (a) are local holding companies; or
    - (b) are not themselves holding companies (whether local or not), but otherwise are, in terms of this Schedule, engaged in exempt activities.
  - (5) Any reference in sub-paragraph (3) or (4) above to a company which a holding company controls includes a reference to a trading company in which the holding company holds the maximum amount of ordinary share capital which is permitted under the law of the territory—
    - (a) in which the trading company is resident; and
    - (b) from whose laws the trading company derives its status as a company.
  - (6) The following provisions of this Part of this Schedule have effect in relation to sub-paragraphs (1) to (4) above.
- 7
- (1) For the purposes of paragraph 6(1)(a) above, a “business establishment”, in relation to a controlled foreign company, means premises—
    - (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence; and
    - (b) from which the company’s business in the territory in which it is resident is wholly or mainly carried on.
  - (2) For the purposes of sub-paragraph (1) above the following shall be regarded as premises—
    - (a) an office, shop, factory or other building or part of a building; or
    - (b) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; or
    - (c) a building site or the site of a construction or installation project;but such a site as is referred to in paragraph (c) above shall not be regarded as premises unless the building work or the project, as the case may be, has a duration of at least twelve months.

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- 8 (1) Subject to sub-paragraph (4) below, the condition in paragraph 6(1)(b) above shall not be regarded as fulfilled unless—
- (a) the number of persons employed by the company in the territory in which it is resident is adequate to deal with the volume of the company’s business; and
  - (b) any services provided by the company for persons resident outside that territory are not in fact performed in the United Kingdom.
- (2) For the purposes of sub-paragraph (1)(a) above, persons who are engaged wholly or mainly in the business of the company and whose remuneration is paid by a person connected with, and resident in the same territory as, the company shall be treated as employed by the company.
- (3) In the case of a holding company, sub-paragraph (2) above shall apply with the omission of the words “wholly or mainly”.
- (4) For the purposes of sub-paragraph (1)(b) above, no account shall be taken of services—
- (a) provided through a branch or agency of the controlled foreign company if the profits or gains of the business carried on through the branch or agency are within the charge to tax in the United Kingdom; or
  - (b) provided through any other person whose profits or gains from the provision of the services are within the charge to tax in the United Kingdom and who provides the services for a consideration which is, or which is not dissimilar from what might reasonably be expected to be, determined under a contract entered into at arm’s length; or
  - (c) which are no more than incidental to services provided outside the United Kingdom.
- 9 (1) Subject to sub-paragraph (3) below, for the purposes of paragraph 6(2)(a)(i) above, each of the following activities constitutes investment business—
- (a) the holding of securities, [<sup>F13</sup>or intellectual property];
  - (b) dealing in securities, other than in the capacity of a broker;
  - (c) the leasing of any description of property or rights; and
  - (d) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of the controlled foreign company in question.
- [<sup>F14</sup>(1A) In sub-paragraph (1)(a) above “intellectual property” means patents, registered designs, copyright and design right (or any similar rights under the law of a country outside the United Kingdom)].
- (2) In sub-paragraph (1)(b) above “broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally.
- (3) For the purposes of paragraph 6(2) above, in the case of a company which is mainly engaged in banking or any similar business falling within paragraph 11(1)(c) below, nothing in sub-paragraph (1) above shall require the main business of the company to be regarded as investment business.

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#### Textual Amendments

- F13** Words in Sch. 25 para. 9(1)(a) substituted (1.8.1989) by [Copyright, Designs and Patents Act 1988 \(c. 48\), s. 305\(3\)](#), [Sch. 7 para. 36\(9\)](#); S.I. 1989/816, [art. 2](#)
- F14** Sch. 25 para. 9(1A) inserted (1.8.1989) by [Copyright, Designs and Patents Act 1988 \(c. 48\), s. 305\(3\)](#), [Sch. 7 para. 36\(9\)](#); S.I. 1989/816, [art. 2](#)

- 10 Goods which are actually delivered into the territory in which the controlled foreign company is resident shall not be taken into account for the purposes of paragraph 6(2)(a)(ii) above.
- 11 (1) For the purposes of paragraph 6(2)(b) above, each of the following activities constitutes wholesale, distributive or financial business—
- (a) dealing in any description of goods wholesale rather than retail;
  - (b) the business of shipping or air transport, that is to say, the business carried on by an owner of ships or the business carried on by an owner of aircraft (“owner” including, for this purpose, any charterer);
  - (c) banking or any similar business involving the receipt of deposits, loans or both and the making of loans or investments;
  - (d) the administration of trusts;
  - (e) dealing in securities in the capacity of a broker, as defined in paragraph 9(2) above;
  - (f) dealing in commodity or financial futures; and
  - (g) insurance business which is long-term business or general business, as defined in section 1 of the <sup>M2</sup>Insurance Companies Act 1982.
- (2) In a case where the gross trading receipts of a company include an amount in respect of the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall be a deduction in calculating the company’s gross trading receipts for the purposes of paragraph 6(2)(b) above.
- (3) In the case of a controlled foreign company engaged in a banking or other business falling within sub-paragraph (1)(c) above—
- (a) no payment of interest received from a company resident in the United Kingdom shall be regarded for the purposes of paragraph 6(2)(b) above as a receipt derived directly or indirectly from connected or associated persons, but
  - (b) it shall be conclusively presumed that the condition in paragraph 6(2)(b) above is not fulfilled if, at any time during the accounting period in question, the amount by which the aggregate value of the capital interests in the company held directly or indirectly by—
    - (i) the persons who have control of the company, and
    - (ii) any person connected or associated with those persons,exceeds the value of the company’s fixed assets is 15 per cent. or more of the amount by which the company’s outstanding capital exceeds that value.
- (4) For the purposes of this paragraph, in relation to a controlled foreign company—

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- (a) “capital interest” means an interest in the issued share capital or reserves of the company or in a loan to or deposit with the company or the liability of a guarantor under a guarantee given to or for the benefit of the company;
  - (b) except in the case of the liability of a guarantor, the value of a capital interest is its value as shown in the company’s accounts;
  - (c) in the case of the liability of a guarantor, the value shall be taken to be the market value of the benefit which the controlled foreign company derives from the provision of the guarantee;
  - (d) the value of the company’s fixed assets means the value, as shown in the company’s accounts, of the plant, premises and trade investments employed in the company’s business; and
  - (e) “outstanding capital” means the total value of all the capital interests in the company, less the value, as shown in the company’s accounts, of any advances made by the company to persons resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above.
- (5) For the purposes of sub-paragraph (4) above—
- (a) “trade investments”, in relation to a controlled foreign company, means securities any profit on the sale of which would not be brought into account as a trading receipt in computing the chargeable profits of an accounting period in which that profit arose; and
  - (b) the reference in paragraph (e) to advances made to a person by the controlled foreign company includes, in the case of a company which is a person resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above, any securities of that company which are held by the controlled foreign company but are not trade investments, as defined in paragraph (a) above;
- and in this sub-paragraph “securities” includes stocks and shares.
- (6) In the application of paragraph 6(2)(b) above in the case of a controlled foreign company engaged in insurance business of any kind—
- (a) the reference to gross trading receipts which are derived directly or indirectly from connected or associated persons is a reference to those which, subject to sub-paragraph (7) below, are attributable, directly or indirectly, to liabilities undertaken in relation to any of those persons or their property;
  - (b) the only receipts to be taken into account are commissions and premiums received under insurance contracts;
  - (c) so much of any such commission or premium as is returned is not to be taken into account; and
  - (d) when a liability under an insurance contract is reinsured, in whole or in part, the amount of the premium which is attributable, directly or indirectly, to that liability shall be treated as reduced by so much of the premium under the reinsurance contract as is attributable to that liability.
- (7) In determining, in relation to a controlled foreign company to which sub-paragraph (6) above applies, the gross trading receipts referred to in paragraph (a) of that sub-paragraph, there shall be left out of account any receipts under a local reinsurance contract which are attributable to liabilities which—
- (a) are undertaken under an insurance contract made in the territory in which the company is resident; and

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- (b) are not reinsured under any contract other than a local reinsurance contract; and
  - (c) relate either to persons who are resident in that territory and are neither connected nor associated with the company or to property which is situated there and belongs to persons who are not so connected or associated;
- and in paragraph (a) above “insurance contract” does not include a reinsurance contract.
- (8) In sub-paragraph (7) above “local reinsurance contract” means a reinsurance contract—
- (a) which is made in the territory in which the controlled foreign company is resident; and
  - (b) the parties to which are companies which are resident in that territory.
- (9) For the purposes of sub-paragraphs (7) and (8) above, any question as to the territory in which a company is resident shall be determined in accordance with section 749 and, where appropriate, paragraph 5(2) above; and, for the purpose of the application of those provisions in accordance with this sub-paragraph, the company shall be assumed to be a controlled foreign company.

#### Marginal Citations

M2 1982 c. 50.

VALID FROM 27/11/2002

- 11A (1) This paragraph has effect for the interpretation of paragraph 6(2B) above.
- (2) “Contract of long-term insurance” means any contract falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- (3) “Protection business” means contracts of long-term insurance where—
- (a) either—
    - (i) the contract has no surrender value; or
    - (ii) the consideration consists of a single premium and the surrender value does not exceed the amount of that premium; and
  - (b) the contract makes no provision for its conversion or extension in a manner which would result in its ceasing to fall within paragraph (a) above;
- and references to protection business include a reference to reinsurance of protection business.
- (4) “Insurance group” shall be construed in accordance with section 255A(5) of the Companies Act 1985 (meaning of “insurance group” in Part 7) but reading Part 7 of that Act—
- (a) as if it extended to Northern Ireland, and
  - (b) as if any reference to a company (within the meaning of that Act) included a reference to a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986,

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but does not include such an insurance group if it falls within sub-paragraph (5) below.

- (5) Such an insurance group falls within this sub-paragraph if (within the meaning of that Part as so read) the parent company is a subsidiary undertaking of a parent company which is neither—
- (a) the parent company of an insurance group; nor
  - (b) a subsidiary undertaking of the parent company of an insurance group.
- (6) A controlled foreign company is, in accordance with sub-paragraphs (4) and (5) above, a “member of an insurance group” if (within the meaning of that Part as so read) it is the parent company, or a subsidiary undertaking of the parent company, of an insurance group which is by virtue of sub-paragraph (4) above an insurance group for the purposes of paragraph 6(2B) above.
- (7) A company’s main business is “insuring or reinsuring large risks” if (and only if)—
- (a) the company’s main business is the effecting or carrying out of contracts of insurance; and
  - (b) 50% or more of its gross trading receipts from that business are derived from insuring or reinsuring large risks.
- “Large risks” is defined in paragraph 11B below.
- (8) In this paragraph—
- “contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- “contract of long-term insurance” has the meaning given by sub-paragraph (2) above.

VALID FROM 27/11/2002

- 11B (1) In paragraph 11A above “large risks” means—
- (a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;
  - (c) risks falling within classes 3, 8, 9, 10, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in sub-paragraph (2) below is satisfied.
- (2) The condition referred to in sub-paragraph (1)(c) above is that, in the case of that business of the policy holder, at least two of the three following criteria were exceeded in the most recent financial year beginning on or after 1st January 1999 for which the information is available—
- (a) balance sheet total: 6.2 million euros;
  - (b) net turnover: 12.8 million euros;
  - (c) number of employees: 250.

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- (3) For the purposes of sub-paragraph (2) above as it applies where the policy holder is a company, within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986,—
- (a) “balance sheet total” has the meaning given by section 247(5) of that Act or Article 255(5) of that Order;
  - (b) “net turnover” has the meaning given to “turnover” by section 262(1) of that Act or Article 270(1) of that Order; and
  - (c) “number of employees” has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;
- and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the company shall be proportionately reduced.
- (4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC) are drawn up, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to those accounts.
- (5) For the purposes of sub-paragraph (1)(c) above as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to the aggregate of the figures of the description in question for all the members of the professional association, joint venture or temporary grouping.
- (6) In sub-paragraphs (1) to (5) above “business” includes a trade or profession and, for the purposes of sub-paragraph (1)(c) above, any activity of a professional association, joint venture or temporary grouping.
- (7) For the purposes of this paragraph, where an amount is denominated in any accounts in a currency other than the euro, it shall be converted into its equivalent in euros using the London closing exchange rate for that currency and the euro for the last day of the period to which the accounts relate.
- (8) In this paragraph—
- “euro” means the single currency adopted or proposed to be adopted as its currency by a member State in accordance with the Treaty establishing the European Community;
  - “financial year”, in relation to any person, means the period (not exceeding 12 months) for which that person makes up accounts.

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

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

VALID FROM 31/07/1998

- 12A (1) In paragraphs 6, 8(3) and 12(5) above and this paragraph, “superior holding company” means—
- (a) a company whose business consists wholly or mainly in the holding of shares or securities of companies which—
    - (i) are holding companies or local holding companies; or



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- (ii) are themselves superior holding companies; or
  - (b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.
- (2) For the purposes of sub-paragraphs (4A) and (4B) of paragraph 6 above, the income of a company during any period which “represents qualifying exempt activity income of its subsidiaries” is any income of the company during that period which is directly or indirectly derived from companies—
- (a) which it controls, and
  - (b) which, throughout that period, fall within sub-paragraph (4B)(a) of that paragraph, but
  - (c) which are not holding companies other than local holding companies.
- (3) In determining for the purposes of sub-paragraph (4A) or (4B) of paragraph 6 above the companies from which, and the proportions in which, different descriptions of income of a company are derived (whether directly or indirectly), any dividend shall be taken to be paid out of the appropriate profits.
- (4) Subsections (3) and (4) of section 799 (which provide rules for determining the profits out of which a dividend is to be regarded as paid for the purpose of subsection (1) of that section) shall apply for determining the appropriate profits for the purposes of subsection (3) above as they apply for determining the relevant profits for the purposes of subsection (1) of that section.
- (5) Sub-paragraphs (4) to (6) of paragraph 12 above shall apply in relation to sub-paragraph (4A) or (4B) of paragraph 6 above and a superior holding company as they apply in relation to sub-paragraph (3) or (4) of paragraph 6 above and a holding company, but taking the reference in sub-paragraph (4) of paragraph 12 above to paragraph (a) or (b) of sub-paragraph (1) of that paragraph as a reference to paragraph (a) or (b) of sub-paragraph (1) above.

VALID FROM 19/07/2011

[<sup>F15</sup>PART 2A U.K.]

TRADING COMPANIES WITH LIMITED UK CONNECTION

**Textual Amendments**

**F15** Sch. 25 Pts. 2A, 2B (paras. 12B-12N) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 3

*Introductory*

- 12B (1) For the purposes of section 748(1)(ba), a controlled foreign company (“C”) is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.

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- (2) The requirements are those imposed as to C's—
- (a) business establishment (see paragraph 12C),
  - (b) business activities (see paragraph 12D),
  - (c) UK connection (see paragraph 12E), and
  - (d) finance income and relevant IP income (see paragraph 12F).

*Business establishment*

- 12C (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.
- (2) For the purposes of sub-paragraph (1)—
- (a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and
  - (b) paragraph 7 (meaning of “business establishment”) applies as it applies for the purposes of paragraph 6(1)(a).

*Business activities*

- 12D (1) The requirement of this paragraph is that—
- (a) C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities, or
  - (b) if C is wholly engaged in business falling within paragraph 11(1)(c) (banking etc), C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities which do not constitute investment business.
- (2) For this purpose—
- “non-exempt activities” means—
- (a) the holding or managing of shares or securities,
  - (b) the holding of intellectual property,
  - (c) dealing in securities, other than in the capacity of a broker,
  - (d) the leasing of any description of property or rights,
  - (e) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of C, and
  - (f) if C is not a member of an insurance group throughout the accounting period, the effecting or carrying out of contracts of insurance between C and persons related to C;
- “investment business” means activities within paragraphs (a) to (d) of paragraph 9(1).
- (3) For the purposes of sub-paragraph (2)(f), a person is “related” to C if—
- (a) the person is connected or associated with C,
  - (b) the person has a 25 per cent assessable interest in C in the case of the accounting period in question (within the meaning of paragraph 6(4C)), or

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(c) if C is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.

(4) In sub-paragraph (2)—

“broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally;

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

“insurance group” has the meaning given by paragraph 11A(4);

“intellectual property” is to be construed in accordance with paragraph 9(1A);

“member of an insurance group” has the meaning given by paragraph 11A(6).

#### *UK connection*

12E (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.

(2) C has a significant connection with the United Kingdom during the accounting period if Condition A or B is met.

(3) Condition A is that—

(a) the UK-connected gross income of C's business for that period exceeds 10% of the gross income of that business for that period, and

(b) sub-paragraph (4) does not apply.

(4) This sub-paragraph applies if—

(a) at all times in the accounting period there are sufficient individuals working for C in the territory in which it is resident, or in any other territory outside of the United Kingdom, who have the competence and authority to undertake all, or substantially all, of C's business,

(b) C's relevant profits for the accounting period do not exceed 10% of C's relevant operating expenses for that period, and

(c) the UK-connected gross income of C's business for that period does not exceed 50% of the gross income of that business for that period.

(5) Condition B is that—

(a) the UK-connected related-party business expenditure of C's business for that period exceeds 50% of the total related-party business expenditure of C's business for that period, and

(b) during the accounting period C has been involved in a scheme where the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to achieve a reduction in corporation tax or any tax chargeable as if it were corporation tax.

(6) For the purposes of sub-paragraph (4)(a), individuals are not to be regarded as working for C in any territory unless—

(a) they are employed by C in the territory, or

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(b) they are otherwise directed by C to perform duties on its behalf in the territory.

(7) In this paragraph—

“related-party business expenditure” means any expenditure, other than capital expenditure, which gives rise, directly or indirectly, to income of a person related to C;

“relevant profits”, for an accounting period, means the total profits of C for that period calculated in accordance with generally accepted accounting practice (disregarding any capital gains or losses), but before any deduction for interest or tax;

“relevant operating expenses” of C means operating expenses of C other than—

- (a) the cost of goods sold, and
- (b) related-party business expenditure;

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

“UK-connected gross income” means the gross income derived, directly or indirectly, from persons who are within the charge to United Kingdom tax for all or part of the accounting period;

“UK-connected related-party business expenditure” means related-party business expenditure which gives rise, directly or indirectly, to income of a person within the charge to United Kingdom tax in respect of that income;

“United Kingdom tax” means income tax or corporation tax;

and paragraph 12D(3) (persons “related” to C) applies for the purposes of this paragraph as it applies for the purposes of paragraph 12D(2)(f).

(8) In the case of 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, for the purposes of sub-paragraph (7)—

- (a) the gross income derived from that company is so much of the gross income as is attributable to that establishment, and
- (b) the income received by that company is such of its income as is attributable to that establishment.

*Finance income and relevant IP income*

12F (1) The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period falls within sub-paragraph (2).

(2) Gross income falls within this sub-paragraph to the extent that it is—

- (a) finance income, or
- (b) relevant IP income.

(3) “Finance income” means—

- (a) any amount which in accordance with UK generally accepted accounting practice falls to be recognised as arising from a financial asset, and
- (b) any return, in relation to an amount, which—
  - (i) is produced for C by an arrangement to which C is party, and
  - (ii) is economically equivalent to interest,

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except to the extent that the return is taken into account in determining an amount within paragraph (a).

- (4) “Relevant IP income” means royalties and receipts of a similar nature arising from intellectual property.
- (5) For the purposes of sub-paragraph (3)(b), the amount of a return is the amount which by virtue of the return would, in calculating C's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to C from a loan relationship.
- (6) But, in calculating that profit for the purposes of sub-paragraph (5), sections 486B(7) and 486C to 486E of CTA 2009 are to be ignored.
- (7) In this paragraph—
  - “economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009;
  - “financial asset” means a financial asset as defined for the purposes of UK generally accepted accounting practice or international accounting standards;
  - “intellectual property” is to be construed in accordance with paragraph 9(1A).

#### *Gross income*

- 12G (1) References in this Part of this Schedule to C's gross income are to be construed in accordance with this paragraph.
- (2) C's gross income for an accounting period does not include—
    - (a) any distribution that would not be included in C's chargeable profits by reason of it being exempt for the purposes of Part 9A of CTA 2009 (see section 931A of that Act), or
    - (b) any amount that would be taken into account in computing chargeable gains if C were within the charge to corporation tax.
  - (3) C's gross income for an accounting period includes—
    - (a) any income which accrues during that period to the trustees of a settlement in relation to which C is a settlor or a beneficiary, and
    - (b) any income which accrues during that period to a partnership of which C is a partner, apportioned between C and the other partners on a just and reasonable basis.
  - (4) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (3)(a), the income is to be apportioned between C and the other settlors or beneficiaries on a just and reasonable basis.
  - (5) In this paragraph—
    - “distribution” has the same meaning as in the Corporation Tax Acts (see Part 23 of CTA 2010);
    - “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and
    - “partner” is to be read accordingly.

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VALID FROM 19/07/2011

## PART 2B U.K.

### COMPANIES EXPLOITING INTELLECTUAL PROPERTY WITH LIMITED UK CONNECTION

#### *Introductory*

- 12H (1) For the purposes of section 748(1)(bb), a company (“C”) is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.
- (2) The requirements are those imposed as to C's—
- (a) business establishment (see paragraph 12I),
  - (b) intellectual property business (see paragraph 12J),
  - (c) other business activities (see paragraph 12K),
  - (d) UK connection (see paragraph 12L), and
  - (e) finance income (see paragraph 12M).

#### *Business establishment*

- 12I (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.
- (2) For the purposes of sub-paragraph (1)—
- (a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and
  - (b) paragraph 7 (meaning of “business establishment”) applies as it applies for the purposes of paragraph 6(1)(a).

#### *Intellectual property business*

- 12J (1) The requirement of this paragraph is that C's main business, throughout the accounting period, consists of the exploitation of intellectual property which does not have a relevant UK connection.
- (2) For the purposes of sub-paragraph (1), if any part of C's main business consists of the exploitation of intellectual property which has a relevant UK connection, that part is to be ignored if it is an insignificant part of C's main business.
- (3) Intellectual property has a relevant UK connection if—
- (a) at any time during the accounting period or the 6 years immediately preceding that period, it has been held by a person resident in the United Kingdom, or
  - (b) activities relating to the creation, maintenance or enhancement of the intellectual property (other than activities of an incidental or insignificant nature) have been carried on by a person who for some or all of the period—
    - (i) beginning when the activities were first carried on by the person, and
    - (ii) ending at the end of the accounting period,
 was related to C and within the charge to United Kingdom tax.

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*Other business activities*

- 12K (1) The requirement of this paragraph is that—
- (a) C does not, at any time during the accounting period, carry on any activities otherwise than in the course of its main business, or
  - (b) if it carries on any such activities (“secondary activities”), the secondary activities condition is met.
- (2) The secondary activities condition is that either—
- (a) the secondary activities do not, at any time during the accounting period, constitute a substantial part of the activities of C's business taken as a whole, or
  - (b) section 748(1)(b) or (ba) would apply to prevent an apportionment under section 747(3) falling to be made as regards that period, if C's business consisted only of the secondary activities carried on by it during the accounting period.

*UK connection*

- 12L (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.
- (2) C has a significant connection with the United Kingdom during the accounting period if—
- (a) all or a substantial proportion of C's gross income for that period consists of income from the exploitation of intellectual property which derives from persons within the charge to United Kingdom tax, or
  - (b) during that period C incurs expenditure (other than expenditure of an incidental or insignificant nature) on—
    - (i) R&D sub-contractor payments, or
    - (ii) the creation, development or maintenance of relevant intellectual property,and that expenditure forms part of the income of a person who for some or all of that period is related to C and within the charge to United Kingdom tax.
- (3) In this paragraph—
- “R&D sub-contractor payment” means a payment made by C to another person in respect of research and development contracted out by C to that person;
  - “relevant intellectual property” means intellectual property which does not have a relevant UK connection (see paragraph 12J(3)) and which C exploits in the course of its main business.

*Finance income*

- 12M The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period consists of finance income (within the meaning of paragraph 12F(3)).

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### *Interpretation of Part 2B*

- 12N (1) For the purpose of this Part of this Schedule—
- “intellectual property” is to be construed in accordance with paragraph 9(1A);
- “United Kingdom tax” means corporation tax or income tax;
- and paragraph 12G (meaning of “gross income”) applies as it applies for the purposes of Part 2A of this Schedule.
- (2) For the purposes of this Part of this Schedule a person is “related” to C at a particular time if at that time—
- (a) the person is connected or associated with C,
  - (b) the person has a 25 per cent assessable interest in C in the case of the accounting period of C in which that time falls (within the meaning of paragraph 6(4C)), or
  - (c) if C is a controlled foreign company in the accounting period in which that time falls by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.
- (3) In the case of 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—
- (a) for the purposes of paragraph 12J(3)(b), the activities carried on by the company are such of the activities as are carried on through that establishment,
  - (b) for the purposes of paragraph 12L(2)(a), the income derived from that company is such of the income so derived as is attributable to that establishment, and
  - (c) for the purposes of paragraph 12L(2)(b), the income of that company is such of its income as is attributable to that establishment.]

## PART III U.K.

### THE PUBLIC QUOTATION CONDITION

- 13 (1) The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(c).
- (2) Subject to paragraph 14 below, a controlled foreign company fulfils the public quotation condition with respect to a particular accounting period if—
- (a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, the public and, throughout that accounting period, are beneficially held by the public; and
  - (b) within the period of 12 months ending at the end of the accounting period, any such shares have been the subject of dealings on a recognised stock exchange situated in the territory in which the company is resident; and



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- (c) within that period of 12 months the shares have been quoted in the official list of such a recognised stock exchange.
- 14 (1) The condition in paragraph 13(2) above is not fulfilled with respect to an accounting period of a controlled foreign company if at any time in that period the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.
- (2) For the purposes of paragraph 13(2) above shares in a controlled foreign company shall be deemed to be beneficially held by the public if they are held by any person other than—
- (a) a person connected or associated with the company; or
  - (b) a principal member of the company;
- and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
- 15 (1) References in this Part of this Schedule to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.
- (2) For the purposes of this Part of this Schedule—
- (a) a person is a principal member of a controlled foreign company if he possesses a percentage of the voting power in the company of more than 5 per cent. and—
    - (i) where there are more than five such persons, if he is one of the five persons who possess the greatest percentages, or
    - (ii) if, because two or more persons possess equal percentage of the voting power in the company, there are no such five persons, he is one of six or more persons (so as to include those two or more who possess the equal percentages) who possess the greatest percentages; and
  - (b) a principal member's holding consists of the shares which carry the voting power possessed by him.
- (3) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.
- (4) In this Part of this Schedule “shares” include “stock”.

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VALID FROM 19/07/2011

[<sup>F16</sup>PART 3A U.K.]

EXEMPT PERIODS

**Textual Amendments**

**F16** Sch. 25 Pt. 3A (paras. 15A-15G) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 12 para. 8

*Introductory*

15A The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(f).

*Beginning of exempt period*

15B (1) An exempt period begins in relation to a company (“X”) at a time (“the relevant time”) when—

- (a) X is resident outside the United Kingdom,
- (b) X is controlled by persons resident in the United Kingdom,
- (c) there is at least one relevant UK corporate investor in X, and
- (d) the requirements of paragraph 15C or 15D are met.

(2) There is a “relevant UK corporate investor in X” at a particular time if, at that time, there is a company which—

- (a) is resident in the United Kingdom, and
- (b) would, on the assumptions set out in sub-paragraph (3), be a company to which an apportionment of X's chargeable profits for the relevant accounting period would fall to be made in circumstances where section 747(5) would not prevent tax being chargeable on the company under section 747(4).

(3) The assumptions are—

- (a) X has chargeable profits for the relevant accounting period,
- (b) an apportionment of those profits falls to be made under section 747(3) for that period, and
- (c) no reduction of those profits arises under section 751A, 751AA or 751AB.

(4) “The relevant accounting period” means the accounting period of X in which the time mentioned in sub-paragraph (2) falls.

15C (1) The requirements of this paragraph are that—

- (a) no company was, at any time before the relevant time, a relevant UK corporate investor in X,
- (b) no asset owned by X, or part of the business carried on by X, at the relevant time was previously owned, or carried on, by a company which—

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- (i) was under the control of persons resident in the United Kingdom at any time it owned the asset or carried on the part of the business, and
    - (ii) is or has been related to X,
  - (c) condition A, B, C or D is met, and
  - (d) no disqualifying relevant transaction occurs (see paragraph 15E).
- (2) Condition A is that, immediately before the relevant time, X—
- (a) was in existence, but
  - (b) was not a member of the same group of companies as any person who, at the relevant time, was a controlling UK person.
- (3) Condition B is that—
- (a) at the relevant time X is controlled by a company which is resident in the United Kingdom, and
  - (b) immediately before that time, X was controlled by that same company but that company was not then resident in the United Kingdom.
- (4) Condition C is that—
- (a) at the relevant time—
    - (i) X is controlled by a company which is resident in the United Kingdom (“the intermediate parent”), and
    - (ii) the intermediate parent is controlled by a company which is not resident in the United Kingdom (“the parent”), and
  - (b) immediately before that time X was controlled by the parent but not the intermediate parent.
- (5) Condition D is that X—
- (a) is a controlled foreign company at the time it is formed, and
  - (b) is formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies at the time when X begins to control the company or companies.
- (6) In this paragraph “controlling UK person” means a person resident in the United Kingdom who alone, or together with other such persons, controls X.
- 15D (1) The requirements of this paragraph are that—
- (a) the relevant time falls after 23 March 2011,
  - (b) X has an accounting period during which 23 March 2011 falls,
  - (c) no company was, at any time during that accounting period, a relevant UK corporate investor in X,
  - (d) no company was, immediately before the relevant time, a relevant UK corporate investor in X,
  - (e) at the relevant time X is controlled by a company which—
    - (i) is resident in the United Kingdom, and
    - (ii) is not under the control of another body corporate, or two or more other bodies corporate taken together, and
  - (f) no disqualifying relevant transaction occurs (see paragraph 15E).
- (2) In determining for the purposes of sub-paragraph (1)(e)(ii) whether a company is under the control of two or more bodies corporate taken together, a body corporate

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which holds less than 10% of the issued ordinary shares of that company is to be disregarded.

- (3) For the purposes of sub-paragraph (2), a body corporate is treated as holding any shares held by persons who are connected or associated with the body corporate.

*Disqualifying relevant transactions*

15E (1) This paragraph applies for the purposes of paragraph 15C and 15D.

(2) A disqualifying relevant transaction occurs if—

- (a) a relevant transaction occurs at the relevant time (whether or not the transaction occurs pursuant to an agreement entered into by X before that time), or
- (b) a relevant transaction occurs on or after 9 December 2010 but before the relevant time and that transaction forms part of an avoidance scheme.

(3) “Relevant transaction” means—

- (a) the making by X of a loan or advance of an amount (other than a negligible amount) to a person who, at the time it is made, is related to X and subject to United Kingdom tax,
- (b) an increase (other than an increase of a negligible amount) in the amount of an existing loan or advance made by X to a person who, at the time of the increase, is related to X and subject to United Kingdom tax,
- (c) a change in the terms or conditions of an existing loan or advance made by X where—
  - (i) the loan or advance is to a person who, at the time the change is made, is related to X and subject to United Kingdom tax, and
  - (ii) the change has an effect (other than a negligible effect) on the amount of interest payable, or
- (d) a transaction to which sub-paragraph (4) applies.

(4) This sub-paragraph applies to a transaction if—

- (a) it is referable to an activity carried on by X as part, or the whole, of any non-exempt activities carried on by X,
- (b) the results of the transaction are reflected in the profits arising in an accounting period of X and are not negligible in value, and
- (c) the results of the transaction alone, or together with the results of one or more other transactions, achieves a reduction in United Kingdom tax.

(5) A transaction achieves, or two or more transactions together achieve, a reduction in United Kingdom tax if, had the transaction or transactions not been effected, any person—

- (a) would have been liable for any such tax or for a greater amount of any such tax, or
- (b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(6) In this paragraph—

“avoidance scheme” means a scheme the main purpose, or one of the main purposes, of any party to which in entering into the scheme is to secure

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that section 748(1)(f) prevents an apportionment falling to be made under section 747(3) as regards an accounting period, or accounting periods, of X;  
“non-exempt activities” has the meaning given by paragraph 12D(2);  
“scheme” means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;  
“United Kingdom tax” means corporation tax (or any tax chargeable as if it were corporation tax) or income tax.

*Ending of exempt period*

- 15F (1) An exempt period ends on the expiry of the period of 24 months which begins immediately after the first accounting period of X to end after the relevant time, unless sub-paragraph (2) applies.
- (2) If an early termination event occurs after the relevant time but before the time the exempt period would end under sub-paragraph (1), the exempt period ends immediately before that event.
- (3) An early termination event occurs if and when—
- (a) a relevant transaction occurs, whether or not the transaction occurs pursuant to an agreement entered into by X before that time, or
  - (b) where the exempt period began because Condition D was met, X's business does not consist wholly in the holding of shares of companies which X controls, together with activities incidental to the holding of such shares.

*Interpretation of Part 3A*

- 15G (1) In this Part of this Schedule—
- “group” means a company and any other companies it controls;
  - “the relevant time” has the meaning given by paragraph 15B;
  - “relevant transaction” has the meaning given by paragraph 15E;
  - “relevant UK corporate investor in X” has the meaning given by paragraph 15B(2);
  - “X” is to be construed in accordance with paragraph 15B.
- (2) For the purposes of this Part of this Schedule a person is “related” to X at a particular time if—
- (a) the person is connected or associated with X at that time,
  - (b) the person has a 25 per cent assessable interest in X in the case of the accounting period in which that time falls (within the meaning of paragraph 6(4C)), or
  - (c) if X is a controlled foreign company in the accounting period in which that time falls by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.]

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## PART IV U.K.

### REDUCTIONS IN UNITED KINGDOM TAX AND DIVERSION OF PROFITS

- 16 (1) The provisions of this Part of this Schedule have effect for the purposes of section 748(3).
- (2) Any reference in paragraphs 17 and 18 below to a transaction—
- (a) is a reference to a transaction reflected in the profits arising in an accounting period of a controlled foreign company; and
  - (b) includes a reference to two or more such transactions taken together.
- 17 (1) A transaction achieves a reduction in United Kingdom tax if, had the transaction not been effected, any person—
- (a) would have been liable for any such tax or for a greater amount of any such tax; or
  - (b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.
- (2) In this Part of this Schedule and section 748(3) “United Kingdom tax” means income tax, corporation tax or capital gains tax.
- 18 It is the main purpose or one of the main purposes of a transaction to achieve a reduction in United Kingdom tax if this is the purpose or one of the main purposes—
- (a) of the controlled foreign company concerned; or
  - (b) of a person who has an interest in that company at any time during the accounting period concerned.
- 19 (1) The existence of a controlled foreign company achieves a reduction in United Kingdom tax by a diversion of profits from the United Kingdom in an accounting period if it is reasonable to suppose that, had neither the company nor any company related to it been in existence—
- (a) the whole or a substantial part of the receipts which are reflected in the controlled foreign company’s profits in that accounting period would have been received by a company or individual resident in the United Kingdom; and
  - (b) that company or individual or any other person resident in the United Kingdom either—
    - (i) would have been liable for any United Kingdom tax or for a greater amount of any such tax; or
    - (ii) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.
- (2) For the purposes of sub-paragraph (1) above, a company is related to a controlled foreign company if—
- (a) it is resident outside the United Kingdom; and
  - (b) it is connected or associated with the controlled foreign company; and
  - (c) in relation to any company or companies resident in the United Kingdom, it fulfils or could fulfil, directly or indirectly, substantially the same functions as the controlled foreign company.

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- (3) Any reference in sub-paragraph (1) above to a company resident in the United Kingdom includes a reference to such a company which, if the controlled foreign company in question were not in existence, it is reasonable to suppose would have been established.

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