

Status: Point in time view as at 19/07/2011.

Changes to legislation: Income and Corporation Taxes Act 1988, Part 2B is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 25

[^{F1}CASES WHERE SECTION 747(3) DOES NOT APPLY]

Textual Amendments

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

[^{F1}PART 2B

COMPANIES EXPLOITING INTELLECTUAL PROPERTY WITH LIMITED UK CONNECTION

Textual Amendments

- F1** 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

- 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—
- business establishment (see paragraph 12I),
 - intellectual property business (see paragraph 12J),
 - other business activities (see paragraph 12K),
 - UK connection (see paragraph 12L), and
 - 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)—
- 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
 - paragraph 7 (meaning of “business establishment”) applies as it applies for the purposes of paragraph 6(1)(a).

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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.

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

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- (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)).

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.]

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