

Status: Point in time view as at 27/07/1999. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: Income and Corporation Taxes Act 1988, PART I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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

PART I

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 [^{F2}and the other provisions of Chapter IV of Part XVII which refer to a company pursuing an acceptable distribution policy].

Textual Amendments

- F2** Words in Sch. 25 para. 1 inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 26; S.I. 1998/3173, art. 2

- 2 (1) Subject to [^{F3}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^{F4}. . . ; and
 - (b) the dividend is paid during, or not more than eighteen months after the expiry of, [^{F5}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*
 - ^{F6}(d) the [^{F7}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 [^{F7}is not less than][^{F8}90 per cent. of the company's net chargeable profits] for the accounting period referred to in paragraph (a) above or, where subparagraph (4) or (5) below applies, of the appropriate portion of those profits;

^{F4}

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[^{F9}(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.]

[^{F10}(1B) A dividend paid by a company shall not fall within sub-paragraph (1)(d) above if, and to the extent that, the profits which are the relevant profits in relation to the dividend derive from dividends or other distributions paid to the company at any time which are dividends or other distributions—

- (a) to which section 208 applied; or
- (b) to which that section would have applied if the company had been resident in the United Kingdom at that time.

Subsections (3) and (4) of section 799 (double taxation relief: computation of underlying tax) apply for the purposes of this sub-paragraph as they apply for the purposes of subsection (1) of that section.]

(2) ^{F11}

[^{F12}(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, 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—

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- (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—

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 [^{F13}net chargeable 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—

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- (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

- F3** 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)
- F4** 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
- F5** 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)
- F6** 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.
- F7** 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)
- F8** Words in Sch. 25 para. 2(1)(d) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(2)(a)
- F9** 1990 s.67(3)(b) in relation to dividends paid on or after 20 March 1990.
- F10** Sch. 25 para. 2(1B) inserted (with application in accordance with s. 88(2) of the amending Act) by Finance Act 1999 (c. 16), s. 88(1)
- F11** 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
- F12** 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)
- F13** Words in Sch. 25 para. 2(6) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(2)(b)

- 2A (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company^{F14} . . . 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”) [^{F15}immediately preceding] the relevant accounting period and [^{F16}which is not an excluded dividend] 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 [^{F15}immediately preceding] the preceding period and [^{F16}which is not an excluded dividend] 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.

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- (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, [^{F17}no apportionment under section 747(3) fell to be made in respect of the earlier period], 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,
 - (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 [^{F18}net chargeable profits] is to be read as a reference to relevant profits.
- (6) ^{F19}
- (7) ^{F19}
- (8) For the purposes of this paragraph—
- [^{F20}(aa) a dividend is an excluded dividend if it is paid, in whole or in part, out of the total profits from which (in accordance with section 747(6)(a)) the chargeable profits for an excluded period are derived,]
 - (a) a period is an excluded period if it is an accounting period in respect of which [^{F21}an apportionment under section 747(3) falls to be made], 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.

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Textual Amendments

- F14** Words in [Sch. 25 para. 2A\(1\)](#) repealed (with effect in accordance with s. 182 of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 36 para. 4\(3\)\(a\)](#), [Sch. 41 Pt. 5\(34\)](#), Note
- F15** Words in [Sch. 25 para. 2A\(2\)\(a\)\(b\)](#) substituted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 27\(2\)\(a\)](#); S.I. 1998/3173, [art. 2](#)
- F16** Words in [Sch. 25 para. 2A\(2\)\(a\)\(b\)](#) substituted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 27\(2\)\(b\)](#); S.I. 1998/3173, [art. 2](#)
- F17** Words in [Sch. 25 para. 2A\(4\)](#) substituted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 27\(3\)](#); S.I. 1998/3173, [art. 2](#)
- F18** Words in [Sch. 25 para. 2A\(5\)\(c\)](#) substituted (with effect in accordance with s. 182 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 36 para. 4\(3\)\(b\)](#)
- F19** [Sch. 25 para. 2A\(6\)\(7\)](#) repealed (with effect in accordance with s. 182 of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 36 para. 4\(3\)\(c\)](#), [Sch. 41 Pt. 5\(34\)](#), Note
- F20** [Sch. 25 para. 2A\(8\)\(aa\)](#) inserted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 27\(4\)](#); S.I. 1998/3173, [art. 2](#)
- F21** Words in [Sch. 25 para. 2A\(8\)\(a\)](#) substituted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 27\(5\)](#); S.I. 1998/3173, [art. 2](#)

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) ^{F22}
- (2) ^{F22}

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(3) ^{F22}

(4) ^{F22}

[^{F23}(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 [^{F24}an apportionment under section 747(3) fell to be made] 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, ^{F25} . . . [^{F26}the chargeable profits] of the controlled foreign company referred to in that paragraph for any accounting period.

Textual Amendments

- F22** Sch. 25 para. 3(1)-(4) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(4)(a), **Sch. 41 Pt. 5(34)**, Note
- F23** 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)**
- F24** Words in Sch. 25 para. 3(4A)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 28**; S.I. 1998/3173, **art. 2**
- F25** Words in Sch. 25 para. 3(5) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(4)(b), **Sch. 41 Pt. 5(34)**, Note
- F26** 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)**

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*
- ^{F27}(d) the subsequent dividend is paid out of profits which are derived, directly or indirectly, from the whole or part of the initial dividend,

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so much of the initial dividend as is represented by the subsequent dividend shall be regarded as paid to the United Kingdom resident.

[^{F28}(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

F27 *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.*

F28 *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.
- (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;

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“United Kingdom tax” means corporation tax or any tax chargeable as if it were corporation tax.

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