

Status: Point in time view as at 01/05/1995.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1995, SCHEDULE 25. (See end of Document for details)

SCHEDULES

SCHEDULE 25 **U.K.**

Section 133.

CONTROLLED FOREIGN COMPANIES

Introduction

- 1 In this Schedule—
- (a) paragraph 2 contains an amendment designed to secure that in certain cases the chargeable profits of a company resident outside the United Kingdom are to be computed and expressed in the currency used in its accounts;
 - (b) the other paragraphs contain amendments connected with that amendment.

The principal amendment

- 2 The following section shall be inserted after section 747 of the Taxes Act 1988—

“747A Special rule for computing chargeable profits.

- (1) Subsection (2) below applies where for the purposes of this Chapter a company’s chargeable profits fall to be determined for—
 - (a) the first relevant accounting period of the company, or
 - (b) any subsequent accounting period of the company.
- (2) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for its first relevant accounting period.
- (3) Subsection (4) below applies where for the purposes of this Chapter a company’s chargeable profits fall to be determined for any accounting period of the company which—
 - (a) begins on or after the appointed day, and
 - (b) falls before the company’s first relevant accounting period.
- (4) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for the accounting period concerned.
- (5) For the purposes of this section the first relevant accounting period of the company shall be found in accordance with subsections (6) to (8) below.
- (6) Where a direction has been given under section 747 as regards an accounting period of the company which begins before its commencement day, its first relevant accounting period is its accounting period which begins on its commencement day.

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- (7) Where the company is a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which a direction has been given under section 747.
- (8) Where the company is not a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which—
- (a) a direction has been given under section 747, or
 - (b) it can reasonably be assumed that a direction would have been given under section 747 but for the fact that it pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy.
- (9) For the purposes of this section—
- (a) a company’s commencement day is the first day of its first accounting period to begin after the day preceding the appointed day;
 - (b) the appointed day is such day as may be appointed under section 165(7)(b) of the ^{M1}Finance Act 1993 (which relates to exchange gains and losses).
- (10) References in this section to the accounts of a company—
- (a) are to the accounts which the company is required by the law of its home State to keep, or
 - (b) if the company is not required by the law of its home State to keep accounts, are to the accounts of the company which most closely correspond to the individual accounts which companies formed and registered under the ^{M2}Companies Act 1985 are required by that Act to keep;
- and for the purposes of this subsection the home State of a company is the country or territory under whose law the company is incorporated or formed.”

Marginal Citations

M1 1993 c. 34.

M2 1985 c. 6.

Connected amendments

- 3 In section 747 of the Taxes Act 1988 (imputation of chargeable profits and creditable tax of controlled foreign companies) the following subsections shall be inserted after subsection (4)—
- “(4A) Where by virtue of section 747A a company’s chargeable profits for an accounting period are to be computed and expressed in a currency other than sterling, for the purposes of subsection (4)(a) above the apportioned amount shall be taken to be the sterling equivalent of the apportioned amount found in the currency other than sterling.

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- (4B) The translation required by subsection (4A) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the accounting period concerned.”
- 4 In section 748 of the Taxes Act 1988 (limitations on direction-making power) the following subsections shall be inserted after subsection (3)—
- “(4) Where by virtue of section 747A a company’s chargeable profits for an accounting period are to be computed and expressed in a currency other than sterling, for the purposes of subsection (1)(d) above its chargeable profits for the period shall be taken to be the sterling equivalent of its chargeable profits found in the currency other than sterling.
- (5) The translation required by subsection (4) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the accounting period concerned.”
- 5 In section 750 of the Taxes Act 1988 (territories with a lower level of taxation) the following subsections shall be inserted after subsection (4)—
- “(5) Subsections (6) and (7) below apply where by virtue of section 747A a company’s chargeable profits for an accounting period are to be computed and expressed in a currency other than sterling.
- (6) For the purposes of subsection (2) above the company’s chargeable profits for the period shall be taken to be the sterling equivalent of its chargeable profits found in the currency other than sterling.
- (7) In applying section 13 for the purposes of making the determination mentioned in subsection (3) above, any reference in section 13 to the amount of the company’s profits for the period on which corporation tax falls finally to be borne shall be construed as a reference to the sterling sum found under subsection (6) above.
- (8) Any translation required by subsection (6) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the accounting period concerned.”
- 6 (1) Schedule 24 to the Taxes Act 1988 (assumptions for calculating chargeable profits etc.) shall be amended as mentioned in sub-paragraphs (2) to (5) below; and—
- (a) the amendment made by sub-paragraph (2) below shall be deemed always to have had effect, and
- (b) paragraph 1(4) of Schedule 16 to the ^{M3}Finance Act 1984 shall be deemed always to have had effect subject to the same amendment.
- (2) In paragraph 1 (general assumptions for calculating chargeable profits etc.) in sub-paragraph (4) (assumption for certain purposes that a direction has been given) before the words “it shall be assumed” there shall be inserted “ in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above ”.
- (3) Paragraph 4A (computation of basic profits or losses of a trade) shall be deemed never to have been inserted.
- (4) The following paragraph shall be inserted after paragraph 11—

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- “11A(1) This paragraph applies where by virtue of section 747A the company’s chargeable profits for an accounting period (the period in question) are to be computed and expressed in a currency (the relevant foreign currency) other than sterling.
- (2) For the purposes of making in relation to the period in question any calculation which—
- (a) falls to be made under the enactments relating to capital allowances, and
 - (b) takes account of amounts arrived at under those enactments in relation to accounting periods falling before the company’s commencement day (within the meaning given by section 747A(9)),
- it shall be assumed that any such amount is the equivalent, expressed in the relevant foreign currency, of the amount expressed in sterling.
- (3) For the purposes of the application in relation to the period in question of paragraph 11(1)(c) above, it shall be assumed that the company’s chargeable profits for the period are the sterling equivalent of its chargeable profits found in the relevant foreign currency.
- (4) For the purposes of the application of section 34, 35 or 96 of the 1990 Act (motor cars and dwelling-houses) in relation to expenditure incurred in the period in question, it shall be assumed that any sterling sum mentioned in any of those sections is the equivalent, expressed in the relevant foreign currency, of the amount expressed in sterling.
- (5) The translation required by sub-paragraph (2) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the first day of the period in question.
- (6) The translation required by sub-paragraph (3) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the period in question.
- (7) The translation required by sub-paragraph (4) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the day on which the expenditure concerned was incurred.”
- (5) The following shall be inserted after paragraph 12—

Exchange gains and losses

“13 Paragraphs 14 to 19 below apply for the purposes of the application of Chapter II of Part II of the ^{M4}Finance Act 1993.

- “14 (1) This paragraph applies where—
- (a) by virtue of section 747A the company’s chargeable profits for an accounting period are to be computed and expressed in a particular currency (the relevant currency),
 - (b) in an accrual period an asset or contract was held, or a liability was owed, by the company, and

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- (c) the accrual period falls within or constitutes the accounting period concerned.
- (2) It shall be assumed that—
- (a) the local currency for the purposes of sections 125 to 127 of the ^{M5}Finance Act 1993 is the relevant currency, and
- (b) section 149 of that Act (local currency to be used) does not apply as regards the accrual period concerned.
- “15 Where the accounting period mentioned in section 139(1) of the ^{M6}Finance Act 1993 is one for which, by virtue of section 747A, the company’s chargeable profits are to be computed and expressed in a currency other than sterling—
- (a) section 142(1) to (4) of that Act shall be assumed not to apply as regards that period;
- (b) section 142(5) and (6) of that Act shall be assumed not to apply as regards the next accounting period of the company.
- “16 (1) This paragraph applies where the last relevant accounting period for the purposes of section 146 of the ^{M7}Finance Act 1993 is one for which by virtue of section 747A the company’s chargeable profits are to be computed and expressed in a particular currency (the relevant currency).
- (2) Subsections (10), (11) and (14) of section 146 of the ^{M8}Finance Act 1993 shall be assumed not to apply.
- “17 Where by virtue of section 747A the company’s chargeable profits for an accounting period are to be computed and expressed in a particular currency, the references in section 148(9) of the ^{M9}Finance Act 1993 to sterling shall be assumed to be references to that particular currency.
- “18 (1) This paragraph applies where the accounting period mentioned in paragraph (b) of subsection (11) of section 153 of the ^{M10}Finance Act 1993 is one for which, by virtue of section 747A, the company’s chargeable profits are to be computed and expressed in a particular currency (the relevant currency).
- (2) That subsection shall have effect as if the reference to the local currency of the trade for the accounting period were a reference to the relevant currency.
- “19 (1) This paragraph applies where—
- (a) Chapter II of Part II of the ^{M11}Finance Act 1993 falls to be applied as regards an accounting period of the company;
- (b) under that Chapter, an exchange gain or an exchange loss accrued to the company for an accrual period constituting or falling within an earlier accounting period of the company, and
- (c) the accounting period mentioned in paragraph (b) above falls before the company’s first relevant accounting period.
- (2) It shall be assumed, for the purposes of applying Chapter II of Part II of the ^{M12}Finance Act 1993 as respects the accounting period mentioned in subparagraph (1)(a) above, that the exchange gain or loss mentioned in subparagraph (1)(b) above never existed.

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- (3) In sub-paragraph (1) above—
- (a) references to an exchange gain are to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
 - (b) references to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss;
 - (c) the reference in sub-paragraph (1)(b) to an exchange gain or an exchange loss accruing is to the gain or loss accruing before the application of any of sections 131, 136, 137 and 140 of the ^{M13}Finance Act 1993 in relation to the accounting period mentioned in sub-paragraph (1)(b);
 - (d) references to the first relevant accounting period of the company shall be construed in accordance with section 747A.”

Marginal Citations

M3	1984 c. 43.
M4	1993 c. 34.
M5	1993 c. 34.
M6	1993 c. 34.
M7	1993 c. 34.
M8	1993 c. 34.
M9	1993 c. 34.
M10	1993 c. 34.
M11	1993 c. 34.
M12	1993 c. 34.
M13	1993 c. 34.

- 7 The following section shall be inserted after section 168 of the ^{M14}Finance Act 1993—

“168A Application of Chapter to certain companies becoming resident in the United Kingdom.

- (1) In a case where—
- (a) by virtue of section 751 of the Taxes Act 1988, an exchange gain or an exchange loss accrues to a company for an accrual period constituting or falling within an accounting period during which the company is resident outside the United Kingdom, and
 - (b) the company subsequently becomes resident in the United Kingdom, the company shall be treated, for the purposes of applying this Chapter to accounting periods beginning on or after the date when the company becomes resident in the United Kingdom, as if the exchange gain or loss mentioned in paragraph (a) above never existed.
- (2) In this section—
- (a) references to an exchange gain are to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
 - (b) references to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss;

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- (c) the reference in paragraph (a) of subsection (1) above to an exchange gain or an exchange loss accruing is to the gain or loss accruing before the application of any of sections 131, 136, 137 and 140 above in relation to the accounting period mentioned in that paragraph.”

Marginal Citations

M14 1993 c. 34.

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