

SCHEDULES

SCHEDULE 17

CONTROLLED FOREIGN COMPANIES

Section 754

- 9 (1) Section 754 of the Taxes Act 1988 (assessment, recovery and postponement of tax) shall be amended as follows.
- (2) In subsection (1) (provisions of section 747(4)(a) relating to assessment and recovery of a sum as if it were an amount of corporation tax to be taken as applying all enactments applying generally to corporation tax, including certain described enactments)—
- (a) for “assessment and recovery” there shall be substituted “the charging”; and
 - (b) after “including” there shall be inserted “those relating to company tax returns,”.
- (3) After subsection (1) there shall be inserted—
- “(1A) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if—
- (a) any reference to corporation tax included a reference to a sum chargeable under section 747(4)(a) as if it were an amount of corporation tax; and
 - (b) any reference to profits of a company included a reference to an amount of chargeable profits of a controlled foreign company which falls to be apportioned to a company under section 747(3).”
- (4) For subsection (2) (which provides for any sum assessable and recoverable under section 747(4)(a) to be regarded as corporation tax which falls to be assessed for the accounting period in which ends the accounting period of the controlled foreign company and which makes provision as to the contents of a notice of assessment) there shall be substituted—
- “(2) For the purposes of the Taxes Acts, any sum chargeable on a company under section 747(4)(a) is chargeable for the accounting period of the company in which ends that one of the controlled foreign company’s accounting periods the chargeable profits of which give rise to that sum.”
- (5) After subsection (2) there shall be inserted—
- “(2A) Where—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company, and
 - (b) the apportionment falls to be made in accordance with section 752(4) on a just and reasonable basis, and

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- (c) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return,
the Board may determine that another basis is to be used for the apportionment.
- (2B) For the purposes of subsection (2A) above, the Board may by notice require the company making the return—
- (a) to produce to them such documents in the company’s power or possession, and
- (b) to provide them with such information, in such form,
as they may reasonably require for the purpose of determining the basis which is to be used for making the apportionment.
- (2C) The provisions of paragraphs 27 to 29 of Schedule 18 to the Finance Act 1998 (notice to produce documents etc for the purposes of enquiry: supplementary provisions and penalty) shall apply in relation to a notice under subsection (2B) above.
- (2D) Once the Board have determined under subsection (2A) above the basis to be used for the apportionment, matters shall proceed as if that were the only basis allowed by the Tax Acts.
- (2E) A determination under subsection (2A) above may be questioned on an appeal against an amendment, made under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998, of the company’s company tax return, but only on the ground that the basis of apportionment determined by the Board is not just and reasonable.”
- (6) For subsection (3) (appeals) there shall be substituted the following subsections—
- “(3) Where any appeal—
- (a) under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company tax return, or
- (b) under paragraph 48 of that Schedule against a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule),
- involves any question concerning the application of this Chapter in relation to any particular person, that appeal shall be to the Special Commissioners.
- (3A) Where—
- (a) any such question as is mentioned in subsection (3) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them, and
- (b) the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned,
- subsection (3B) below shall apply.
- (3B) Where this subsection applies—
- (a) each of the persons whose liability under this Chapter in respect of the controlled foreign company concerned is likely to be affected

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- by the resolution of the question shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;
- (b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and
 - (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.”
- (7) Subsection (4) shall cease to have effect.
- (8) In subsection (6) (power of Board to serve notice of liability to tax on another company with the same interest where tax assessed by virtue of section 752(6) remains unpaid by the assessable company)—
- (a) for “assessed” and “assessable”, wherever occurring, there shall be substituted “chargeable”;
 - (b) in paragraph (a), for “752(6)” there shall be substituted “747(4)(a)”;
 - (c) in paragraph (b), before “the same interest” there shall be inserted “the whole or any part of”; and
 - (d) at the beginning of the words following paragraph (b) there shall be inserted “the whole or, as the case may be, the corresponding part of”.
- (9) In subsection (7) (liability for interest where notice of liability to tax is served)—
- (a) at the beginning of paragraph (a) there shall be inserted “the whole, or (as the case may be) the corresponding part, of”;
 - (b) in paragraph (a), for “assessed” and “assessable” there shall be substituted “chargeable”; and
 - (c) at the end of paragraph (b), there shall be added “(so far as referable to tax payable by the responsible company by virtue of the notice)”.
- (10) In subsection (8) (recovery of tax and interest from the assessable company where the responsible company fails to pay within the time allowed) for “assessable” there shall be substituted “chargeable”.