

Status: Point in time view as at 07/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, SCHEDULE 31. (See end of Document for details)

SCHEDULES

SCHEDULE 31

Section 104.

CONTROLLED FOREIGN COMPANIES

Introductory

1 Amend Chapter IV of Part XVII of the Taxes Act 1988 as follows.

Conditions for company to be controlled foreign company

2 (1) Amend section 747 as follows.

(2) After subsection (1) insert—

“(1A) A company which would not, apart from this subsection, fall to be regarded as controlled by persons resident in the United Kingdom shall be taken for the purposes of this Chapter to be so controlled if—

- (a) there are two persons who, taken together, control the company;
- (b) one of those persons is resident in the United Kingdom and is a person in whose case the 40 per cent test in section 755D(3) is satisfied; and
- (c) the other is a person in whose case the 40 per cent test in section 755D(4) is satisfied.”

Designer rate tax provisions: deemed lower level of taxation

3 After section 750 insert—

“750A Deemed lower level of taxation: designer rate tax provisions.

(1) Where—

- (a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and
 - (b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but
 - (c) that local tax is determined under designer rate tax provisions,
- the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.

(2) In subsection (1) above “designer rate tax provisions” means provisions—

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- (a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and
 - (b) which are specified in regulations made by the Board.
- (3) Regulations under subsection (2) above—
- (a) may make different provision for different cases or with respect to different territories; and
 - (b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.
- (4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made.”

“Control and the two “40 per cent” tests

- 4 (1) After section 755C insert—

“755D “Control” and the two “40 per cent” tests.

- (1) For the purposes of this Chapter “control”, in relation to a company, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
 - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with his wishes.
- (2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.
- (3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—
- (a) at least 40 per cent, but
 - (b) not more than 55 per cent,
- of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.
- (5) For the purposes of this Chapter any question—
- (a) whether a company is controlled by a person, or by two or more persons taken together, or
 - (b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,

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shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.

- (6) The rights and powers referred to in subsection (5) above are—
- (a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;
 - (b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;
 - (c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and
 - (d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a “UK connected person”) if the UK connected person were himself the person.
- (7) Rights and powers fall within this subsection to the extent that they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—
 - (i) on behalf of the person;
 - (ii) under the direction of the person; or
 - (iii) for the benefit of the person; and
 - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (8) In subsections (6)(b) to (d) and (7) above, the references to a person’s rights and powers include references to any rights or powers which he either—
- (a) is entitled to acquire at a future date, or
 - (b) will, at a future date, become entitled to acquire.
- (9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.
- (10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.
- (11) References in this section—
- (a) to rights and powers of a person, or
 - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.”

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- (2) In consequence of sub-paragraph (1), in section 756(3) (application of provisions of Part XI)—
- (a) omit paragraph (a); and
 - (b) omit the words following paragraph (b).

Exempt activities: wholesale, distributive, financial or service business

- 5 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.
- (2) In sub-paragraph (2)(b) (company mainly engaged in wholesale, distributive or financial business: percentage of gross trading receipts from connected persons etc) —
- (a) for “or financial” substitute “ financial or service ”; and
 - (b) for the words from “connected” to the end substitute “ persons falling within sub-paragraph (2A) below. ”
- (3) After sub-paragraph (2) insert—
- “(2A) Those persons are—
- (a) persons who are connected or associated with the company;
 - (b) persons who have a 25 per cent assessable interest in the company in the case of the accounting period in question; and
 - (c) if the company is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, persons who are connected or associated with either or both of the two persons mentioned in that subsection.”

Local holding companies

- 6 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.
- (2) In sub-paragraph (3) (local holding companies) after “90 per cent of its gross income during the accounting period in question” insert “ is received by it in the territory in which it is resident and ”.

Other holding companies

- 7 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.
- (2) In sub-paragraph (4) (holding companies other than local holding companies) after “90 per cent of its gross income during the accounting period in question” insert “ falls within sub-paragraph (4ZA) below and ”.
- (3) After sub-paragraph (4) insert—
- “(4ZA) For the purposes of sub-paragraph (4) above, income of the holding company falls within this sub-paragraph if—
- (a) the company from which the holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which the holding company is resident and the income is received by the holding company in that territory; or
 - (b) the income consists of qualifying dividends.”

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- (4) In sub-paragraph (4A) (superior holding companies) at the end of paragraph (b) add “; and
- (c) falls within sub-paragraph (4AA) below.”
- (5) After sub-paragraph (4A) insert—
- “(4AA) For the purposes of sub-paragraph (4A) above, income of the superior holding company falls within this sub-paragraph if—
- (a) the company from which the superior holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which the superior holding company is resident and the income is received by the superior holding company in that territory; or
 - (b) the income consists of qualifying dividends.”
- (6) In sub-paragraph (4B) (companies from which income of superior holding company is derived) in paragraph (b), at the end of sub-paragraph (ii) add “, and
- (iii) falls within sub-paragraph (4BB) below”.
- (7) After sub-paragraph (4B) insert—
- “(4BB) For the purposes of sub-paragraph (4B)(b) above, income of the superior holding company there mentioned falls within this sub-paragraph if—
- (a) the company from which that superior holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which that superior holding company is resident and the income is received by that superior holding company in that territory; or
 - (b) the income consists of qualifying dividends.”
- (8) In sub-paragraph (5) (interpretation of sub-paragraphs (3) to (4B)) after “a reference to a trading company” insert “to which sub-paragraph (5ZA) or (5ZB) below applies.
- (5ZA) This sub-paragraph applies to a trading company”.
- (9) After sub-paragraph (5ZA) insert—
- “(5ZB) This sub-paragraph applies to a trading company if—
- (a) it is a controlled foreign company by virtue of subsection (1A) of section 747; and
 - (b) the person who satisfies the requirement in paragraph (b) of that subsection in relation to the company also controls the holding company or superior holding company.”
- (10) After sub-paragraph (5A) insert—
- “(5B) In this paragraph “qualifying dividend” means any dividend other than one for which the company paying the dividend is entitled to a deduction against its profits for tax purposes under the law of the territory in which it is resident.”
- (11) In sub-paragraph (6) (application of following provisions of Part II of Schedule 25) for “(4)” substitute “(4BB)”.

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Businesses to which requirement as to derivation of receipts applies

- 8 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 11 as follows.
- (2) In sub-paragraph (1) (meaning of “wholesale, distributive or financial business” for purposes of paragraph 6(2)(b))—
- (a) in the opening words, for “or financial” substitute “ financial or service ”;
 - (b) omit the word “and” immediately preceding paragraph (g); and
 - (c) at the end of paragraph (g) add “; and
 - (h) the provision of services not falling within any of the preceding paragraphs.”

Commencement

- 9 (1) Paragraph 2 has effect on and after 21st March 2000.
- (2) Paragraph 3 has effect in relation to any accounting period of a company resident outside the United Kingdom which begins on or after 6th October 1999.
- (3) Paragraph 4 has effect—
- (a) for the purpose of determining whether at any time on or after 21st March 2000 a company resident outside the United Kingdom is to be regarded for the purposes of Chapter IV of Part XVII of the Taxes Act 1988 as controlled by persons resident in the United Kingdom; and
 - (b) for any accounting period of a company resident outside the United Kingdom which begins on or after 21st March 2000.
- (4) Paragraphs 5 to 8 have effect in relation to any accounting period of a controlled foreign company which begins on or after 21st March 2000.
- (5) In this paragraph “accounting period” and “controlled foreign company” have the same meaning as they have in Chapter IV of Part XVII of the Taxes Act 1988.

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