



Finance Act 2002

2002 CHAPTER 23

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

OTHER PROVISIONS

International matters

88 Extension of power to give effect to double taxation arrangements

^{F1}(1)

(2) The following amendments are consequential on that above—

(a) in sections ^{F2}... 812(2), ^{F2}... ^{F3}... of the Taxes Act 1988, for “with the government of” substitute “in relation to”;

^{F4}(b)

^{F4}(c)

^{F5}(d)

^{F5}(e)

^{F6}(f)

(3) This section applies on and after the date on which this Act is passed in relation to arrangements made before that date (as well as in relation to arrangements made on or after that date).

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Cross Heading: International matters. (See end of Document for details)

Textual Amendments

- F1** S. 88(1) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 1](#) (with Sch. 9 paras. 1-9, 22)
- F2** Words in s. 88(2)(a) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 1](#) (with Sch. 9 paras. 1-9, 22)
- F3** Words in s. 88(2)(a) repealed (19.7.2006) by [Finance Act 2006 \(c. 25\), Sch. 26 Pt. 8\(2\)](#)
- F4** S. 88(2)(b)(c) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 1](#) (with Sch. 9 paras. 1-9, 22)
- F5** S. 88(2)(d)(e) repealed (19.7.2006) by [Finance Act 2006 \(c. 25\), Sch. 26 Pt. 8\(2\)](#)
- F6** S. 88(2)(f) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 1](#) (with Sch. 9 paras. 1-9, 22)

89 Controlled foreign companies: territorial exclusions from s.748 exemptions

- (1) In section 748 of the Taxes Act 1988 (controlled foreign companies: cases where no apportionment falls to be made under section 747(3)) after subsection (5) insert—

“(6) This section is subject to section 748A.”.

- (2) After section 748 of the Taxes Act 1988 insert—

Territorial exclusions from exemption under section 748

- (1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—
- (a) is a company incorporated in a territory to which this section applies as respects that accounting period; or
 - (b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or
 - (c) at any time in that accounting period carries on business through a branch or agency in such a territory.
- (2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through branches or agencies in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.
- (3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.
- (4) Regulations under subsection (3) above—
- (a) may make different provision for different cases or with respect to different territories; and

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- (b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.
- (5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”
- (3) This section has effect in relation to accounting periods of controlled foreign companies beginning on or after the day on which this Act is passed.
- (4) In this section “accounting period” and “controlled foreign company” have the same meaning as in Chapter 4 of Part 17 of the Taxes Act 1988.

90 Controlled foreign companies and treaty non-resident companies

- (1) In section 747 of the Taxes Act 1988 (imputation of chargeable profits and creditable tax of controlled foreign companies), after subsection (1A) insert—

“(1B) In determining, for the purposes of any provision of this Chapter except subsection (1)(a) above, whether a company is a person resident in the United Kingdom, section 249 of the Finance Act 1994 (under which a company is treated as non-resident if it is so treated for double taxation relief purposes) shall be disregarded.”

- (2) Subsection (1)—

- (a) shall be deemed to have come into force on 1st April 2002, and

- [^{F7}(b) does not apply to a company (“the non-resident company”) that—

- (i) by virtue of section 249 of the Finance Act 1994 was treated as resident outside the United Kingdom, and not resident in the United Kingdom, immediately before that date, and

- (ii) has not subsequently ceased to be so treated,

- unless condition A or B is met in relation to the non-resident company at any time on or after 22nd March 2006.]

- [^{F8}(3) Condition A is met in relation to the non-resident company at any time on or after 22nd March 2006 if—

- (a) immediately before 22nd March 2006 the non-resident company does not own directly or indirectly any company as a subsidiary company, and

- (b) at any time on or after that date the non-resident company becomes the direct or indirect owner of a UK resident company as a subsidiary company.

- (4) Condition B is met in relation to the non-resident company at any time on or after 22nd March 2006 if—

- (a) immediately before 22nd March 2006 the non-resident company owns directly or indirectly any company as a subsidiary company (which may be a UK resident company),

- (b) at any time (“the relevant time”) on or after that date the non-resident company becomes the direct or indirect owner of any UK resident company as a subsidiary company (or, as the case may be, another UK resident company), and

- (c) directly or indirectly in consequence of, or otherwise in connection with, the ownership mentioned in paragraph (b) there is a qualifying change in activities.

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- (5) There is a qualifying change in activities if, at the relevant time or any subsequent time,—
- (a) there is a major change in the nature, conduct or scale of the non-resident company’s activities, or
 - (b) there is a major change in the nature, conduct or scale of the activities of the group of companies of which the non-resident company is a member.
- (6) In this section references to directly or indirectly owning a company are references to owning it—
- (a) directly or through another company or companies, or
 - (b) partly directly and partly through another company or companies.
- (7) In this section references to ownership are to be read as references to beneficial ownership.
- (8) In this section “UK resident company”, in relation to any time, means any company which is resident in the United Kingdom at that time.]

Textual Amendments

- F7** S. 90(2)(b) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 78\(2\)](#)
F8 S. 90(3)-(8) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 78\(3\)](#)

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