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SCHEDULES

SCHEDULE 16

Section 36

CONTROLLED FOREIGN COMPANIES

PART 1

ABOLITION OF ACCEPTABLE DISTRIBUTION POLICY EXEMPTION

Abolition of acceptable distribution policy exemption

- 1 (1) ICTA is amended as follows.
- (2) In section 748(1) (cases where apportionment under section 747(3) does not apply), omit paragraph (a) (including the “or” at the end).
- (3) In Schedule 25 (supplementary provision in relation to cases where apportionment under section 747(3) does not apply), omit Part 1 (acceptable distribution policy).

Consequential amendments

- 2 (1) ICTA is amended as follows.
- (2) Omit section 754A (returns where it is not established whether acceptable distribution policy applies).
- (3) In section 801 (dividends paid between related companies: relief for UK and third country taxes), omit subsections (2A)(aa), (2B), (6) and (7).
- (4) Omit section 801C (double taxation relief: separate streaming of dividend so far as representing an ADP dividend of a CFC).
- (5) In section 803A (foreign taxation of group as single entity), omit subsection (1A).
- (6) In Schedule 24 (assumptions for calculating chargeable profits, creditable tax and corresponding UK tax of foreign companies), omit—
 - (a) in paragraph 1(3A), paragraph (b)(ii) (and the “and” before it) and the words “or which is an ADP exempt period” (in both places),
 - (b) paragraph 1(6),
 - (c) paragraph (b) of paragraph 2(1) (and the “or” before it),
 - (d) paragraph (b) of paragraph 4(1A) (and the “or” before it),
 - (e) paragraph 4(3A),
 - (f) in paragraph 9(1)(c), “, and is not to be assumed by virtue of paragraph 2(1) (b) above to have been resident,” and
 - (g) paragraph (b) of paragraph 10(1) (and the “or” before it).

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- 3 In paragraph 116 of Schedule 29 to FA 2002 (assumptions for calculating chargeable profits of CFCs in connection with intangible fixed assets), omit paragraph (b) of sub-paragraph (2) (and the “or” before it).
- 4 In section 870 of CTA 2009 (assumptions for calculating chargeable profits of CFCs in connection with intangible fixed assets), omit—
- (a) paragraph (b) of subsection (3) (and the “or” before it), and
 - (b) subsection (7).
- 5 In consequence of the amendments made by paragraphs 1 to 4, omit—
- (a) in FA 1990, section 67(3)(b) and (c),
 - (b) in FA 1994, section 134,
 - (c) in FA 1996, in Schedule 36, paragraphs 3(3), (8) and (9) and 4(2) and (3)(b),
 - (d) in FA 1998, in Schedule 17, paragraphs 10, 17(2) to (5) and 26 to 28,
 - (e) in FA 1999, section 88,
 - (f) in FA 2000, in Schedule 30, paragraph 13,
 - (g) in FA 2001, section 82,
 - (h) in FA 2005, sections 89 and 90,
 - (i) in FA 2007, in Schedule 7, paragraph 56,
 - (j) in FA 2008, section 64(4) and, in Schedule 17, paragraph 29, and
 - (k) in this Act, section 57(4).

Commencement

- 6 The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies beginning on or after 1 July 2009.

Periods straddling 1 July 2009

- 7 (1) Where a controlled foreign company has an accounting period (“the straddling accounting period”) that—
- (a) begins before 1 July 2009, and
 - (b) ends on or after that date,
- the straddling accounting period is to be treated as split.
- (2) Where this paragraph provides that the straddling accounting period is to be treated as “split”—
- (a) that part of the straddling accounting period that falls before 1 July 2009 and that part of the straddling accounting period that falls on or after that date are to be treated for the purposes of Chapter 4 of Part 17, and Part 18, of ICTA^[F1] and Part 2 of TIOPA 2010] as separate accounting periods, and
 - (b) the company's chargeable profits for the straddling accounting period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis.

Textual Amendments

- F1** Words in Sch. 16 para. 7(2)(a) inserted (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. 8 para. 104](#) (with [Sch. 9 paras. 1-9, 22](#))

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Transitional provision

- 8 (1) The amendments made by this Part do not affect the application of sections 801, 801C or 803A of, or Part 1 of Schedule 25 to, ICTA in relation to dividends paid on or after 1 July 2009 if they are paid for accounting periods beginning before that date.
- (2) Sub-paragraph (3) applies where a dividend of a controlled foreign company is paid during the second of the two accounting periods provided for by paragraph 7(2).
- (3) For the purposes of Part 1 of Schedule 25 to ICTA, section 799 of that Act has effect as if the reference in subsection (3)(c) to the last period for which accounts of the company were made up which ended before the dividend became payable were to the first of the two accounting periods provided for by paragraph 7(2).

Interpretation

- 9 The following expressions have the same meaning for the purposes of this Part as they have for the purposes of Chapter 4 of Part 17 of ICTA—
- “accounting period”;
 - “chargeable profits”;
 - “controlled foreign company”;
 - “creditable tax”.

PART 2

AMENDMENT OF EXEMPT ACTIVITIES EXEMPTION

Abolition of special rules for holding companies other than local holding companies

- 10 (1) Part 2 of Schedule 25 to ICTA (exempt activities) is amended as follows.
- (2) In paragraph 6 (definition of exempt activities)—
- (a) in sub-paragraph (1)(c), for “(2), (3), (4) or (4A)” substitute “ (2) or (3) ”,
 - (b) in sub-paragraph (3)(b), omit “or superior holding companies”,
 - (c) omit sub-paragraphs (4) to (4BB),
 - (d) in sub-paragraph (5)—
 - (i) for “sub-paragraphs (3) to (4B)” substitute “ sub-paragraph (3) ”,
 - and
 - (ii) omit “or superior holding company”,
 - (e) in sub-paragraph (5ZA), omit “or superior holding company”,
 - (f) in sub-paragraph (5ZB), omit “or superior holding company”,
 - (g) in sub-paragraph (5A), for “sub-paragraphs (3) to (4B)” substitute “ sub-paragraph (3) ”,
 - (h) omit sub-paragraph (5B),
 - (i) in sub-paragraph (5C), omit “or superior holding company”, and
 - (j) in sub-paragraph (6), for “sub-paragraphs (1) to (4BB) above” substitute “ this paragraph ”.
- (3) In paragraph 8(3) (paragraph 6(1)(b) condition), omit “or superior holding company”.

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- (4) In paragraph 12 (definition of “holding company” etc)—
- (a) in sub-paragraph (1), for “paragraph 12A below and in” substitute “ in ”,
 - (b) in sub-paragraph (4), omit “or (4), as the case may be,”, and
 - (c) in sub-paragraph (5)—
 - (i) in the words before paragraph (a), for “sub-paragraphs (3) and (4)” substitute “ sub-paragraph (3) ”, and
 - (ii) in paragraph (a), omit “or superior holding company”.
- (5) Omit paragraph 12A (definition of “superior holding company” etc).
- 11 In consequence of the amendments made by paragraph 10, omit—
- (a) in FA 1998, in Schedule 17, paragraphs 30(4)(a), (5), (6) and (8), 31, 32(2) and (3)(a) and 33,
 - (b) in FA 2000, in Schedule 31, paragraph 7(2) to (7), (10) and (11), and
 - (c) in FA 2003, in Schedule 42, paragraph 2(2).

Commencement

- 12 (1) The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies beginning on or after the commencement date.
- (2) For this purpose “the commencement date” means—
- (a) in relation to a controlled foreign company other than a qualifying holding company, 1 July 2009, and
 - (b) in relation to a qualifying holding company, 1 July [^{F2}2012].

Textual Amendments

- F2** Word in Sch. 16 para. 12(2)(b) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(2\), 14\(1\)](#)

Meaning of “qualifying holding company” and “exempt holding company”

- 13 (1) In this Part “qualifying holding company” means a controlled foreign company that was an exempt holding company in relation to the last accounting period to end before 1 July 2009.
- (2) For the purposes of sub-paragraph (1) paragraphs 14 and 15 are to be disregarded.
- (3) For the purposes of this Part a company is an “exempt holding company” in relation to an accounting period if—
- (a) throughout the period the company is, within the meaning of Part 2 of Schedule 25 to ICTA, engaged in exempt activities, and
 - (b) paragraph 6(4) or (4A) of that Schedule applies to the company in relation to the period.

Periods straddling 1 July 2009

- 14 (1) Where a controlled foreign company has an accounting period (“the straddling accounting period”) that—
- (a) begins before 1 July 2009, and

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- (b) ends on or after that date,
the straddling accounting period is to be treated as split.
- (2) Where this paragraph provides that the straddling accounting period is to be treated as “split”—
- (a) that part of the straddling accounting period that falls before 1 July 2009 and that part of the straddling accounting period that falls on or after that date are to be treated for the purposes of Chapter 4 of Part 17 of ICTA as separate accounting periods, and
- (b) the company's gross income for the straddling accounting period, and its chargeable profits and creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a time basis according to the respective lengths of the periods.

Qualifying holding companies: periods straddling 1 July [F3 2012]

Textual Amendments

- F3** Word in Sch. 16 para. 15 heading substituted (21.7.2009 retrospective) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(3\)\(c\), 14\(1\)](#)

- 15 (1) Where a qualifying holding company has an accounting period (“the straddling accounting period”) that—
- (a) begins before 1 July [F4 2012], and
- (b) ends on or after that date,
the straddling accounting period is to be treated as split.
- (2) Where this paragraph provides that a straddling accounting period of a company is to be treated as “split”—
- (a) that part of the straddling accounting period that falls before 1 July [F5 2012] and that part of the straddling accounting period that falls on or after that date are to be treated for the purposes of Chapter 4 of Part 17 of ICTA as separate accounting periods, and
- (b) the company's gross income for the straddling accounting period, and its chargeable profits and creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a time basis according to the respective lengths of the periods.

Textual Amendments

- F4** Word in Sch. 16 para. 15(1)(a) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(3\)\(a\), 14\(1\)](#)
- F5** Word in Sch. 16 para. 15(2)(a) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(3\)\(b\), 14\(1\)](#)

Qualifying holding companies: definition of “relevant accounting period”

- 16 For the purposes of paragraph 17 an accounting period of a qualifying holding company is a “relevant accounting period” if it—
- (a) begins on or after 1 July 2009, and

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- (b) ends on or before the 1 July [^{F6}2012].

Textual Amendments

- F6** Word in Sch. 16 para. 16(b) substituted (retrospectively) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(4\), 14\(1\)](#)

Qualifying holding companies: treatment during [^{F7}three years before 1 July 2012]

Textual Amendments

- F7** Word in Sch. 16 para. 17 substituted (21.7.2009 retrospective) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 paras. 9\(5\), 14\(1\)](#)

- 17 (1) In its application in relation to a relevant accounting period of a qualifying holding company, Part 2 of Schedule 25 to ICTA has effect subject to the modifications in this paragraph.
- (2) Sub-paragraph (4) or (4A) of paragraph 6 applies to a company only if—
- (a) the condition specified in that sub-paragraph is met, and
 - (b) conditions A and B are met.
- (3) Condition A is that at all material times the company was a member of a group with the same ultimate corporate parent.
- (4) For this purpose the following times are “material”—
- (a) the beginning of 9 December 2008, and
 - (b) all times during the accounting period in question.
- (5) Condition B is that amount X does not exceed amount Y.
- (6) Amount X is the amount of the company's gross income in the accounting period in question that is non-qualifying gross income.
- (7) Amount Y is (subject to sub-paragraph (8))—
- (a) where there are three reference periods in relation to the company, the greatest of the amounts of the company's non-qualifying gross income in each of those periods,
 - (b) where there are two reference periods in relation to the company, the greater of the amounts of the company's non-qualifying gross income in each of those periods,
 - (c) where there is one reference period in relation to the company, the amount of the company's non-qualifying gross income in that period, or
 - (d) where there is no reference period in relation to the company, the amount of the company's non-qualifying gross income in the period of 12 months ending with 9 December 2008.
- (8) Where the number of days in the period by reference to which amount X is determined is not the same as the number of days in the period by reference to which amount Y is determined, amount Y is to be multiplied by—

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$$\frac{DX}{DY}$$

where—

DX is the number of days in the period by reference to which amount X is determined, and

DY is the number of days in the period by reference to which amount Y is determined.

(9) In this paragraph—

“non-qualifying gross income” means gross income that does not satisfy the test in paragraph 6(3), (4) or (4A) of Schedule 25 to ICTA;

“a reference period”, in relation to a company, means an accounting period of the company that—

- (a) is one of the last three accounting periods of the company to end before 9 December 2008, and
- (b) is an accounting period in relation to which the company is an exempt holding company.

Meaning of “ultimate corporate parent” and “group” for the purposes of paragraph 17(3)

18 (1) In paragraph 17(3) the “ultimate corporate parent”, in relation to a group, means a member of the group that—

- (a) is a body corporate, and
- (b) is not a subsidiary (whether direct or indirect) of another body corporate.

(2) A reference in this paragraph to a body corporate does not include—

- (a) the Crown,
- (b) a Minister of the Crown,
- (c) a government department,
- (d) a Northern Ireland department, or
- (e) a foreign sovereign power.

(3) In paragraph 17(3) and this paragraph “group” has the meaning for the time being given by international accounting standards.

(4) In this paragraph “subsidiary” has the meaning for the time being given by international accounting standards.

Reference periods: anti-avoidance

19 (1) This paragraph applies where, on or after 9 December 2008, a company alters its accounting date so that any period (“period A”) that would otherwise have fallen in an accounting period ending on or after 9 December 2008 falls instead in an accounting period ending before that date.

(2) The reference in paragraph (a) of the definition of “a reference period” in paragraph 17(9) to 9 December 2008 is to be treated as a reference to the beginning of period A.

Interpretation

20 The following expressions have the same meaning for the purposes of this Part as they have for the purposes of Chapter 4 of Part 17 of ICTA—

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“accounting period”;
“chargeable profits”;
“control”;
“controlled foreign company”;
“creditable tax”;
“gross income”.

PART 3

REDUCTION IN CHARGEABLE PROFITS FOR CERTAIN FINANCING INCOME

Reduction in chargeable profits for certain financing income

- 21 ICTA is amended as follows.
- 22 In the following provisions, after “751A” insert “ or 751AA ”
- (a) section 747(3A) and (5A) (imputation of chargeable profits and creditable tax of controlled foreign companies),
 - (b) section 749(10) (residence),
 - (c) section 749A(9) (elections and designations under section 749: supplementary provisions), and
 - (d) section 750(3)(ab) (territories with a lower level of taxation).
- 23 After section 751A insert—

“751AA Reduction in chargeable profits for certain financing income

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company (“the payer”),
 - (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in the relevant accounting period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period (“the chargeable profits”) to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—

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- (a) the chargeable profits are treated as reduced by the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits, for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
 - (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.
 - (5) In subsection (4) “the relevant amount” means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.”
- 24 (1) Section 751B (supplementary) is amended as follows.
- (2) In the heading, for “Section 751A” substitute “ Sections 751A and 751AA ”.
 - (3) In subsections (1), (2), (3) (in each place) and (5), after “751A” insert “ or 751AA ”.
 - (4) In subsection (8)—
 - (a) after “ “the relevant amount” ” insert “—
 - (a) in the case of an appeal in respect of the refusal of an application under section 751A,” and
 - (b) after “mentioned in that subsection” insert “, and
 - (b) in the case of an appeal in respect of the refusal of an application under section 751AA, has the meaning given by subsection (5) of that section.”
 - (5) In subsection (10)—
 - (a) after “751A” insert “ or 751AA ”, and
 - (b) after “751A(1)” insert “ or 751AA(1) ”.

Commencement

- 25 (1) The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies ending on or after 1 January 2010.
- (2) For this purpose “accounting period” and “controlled foreign company” have the same meaning as they have for the purposes of Chapter 4 of Part 17 of ICTA.

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