

Status: Point in time view as at 08/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 17 is up to date with all changes known to be in force on or before 28 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 17

Section 37

INTERNATIONAL MOVEMENT OF CAPITAL

PART 1

ABOLITION OF EXISTING REGIME

- 1 In ICTA, omit—
 - (a) section 765 (prior Treasury consent required for certain transactions involving movement of capital outside Europe),
 - (b) section 765A (HMRC to be given information about certain transactions involving movement of capital within Europe),
 - (c) section 766 (offence of failure to comply with section 765), and
 - (d) section 767 (interpretation).
- 2 In section 98 of TMA 1970 (special returns etc)—
 - (a) omit subsection (5),
 - (b) in the first column of the Table, omit “section 765A(2)(b);”, and
 - (c) in the second column of the Table, omit “section 765A(2)(a);”.
- 3 In consequence of the amendments made by paragraphs 1 and 2, omit—
 - (a) in FA 1988, section 105(6), and
 - (b) in FA 1990, section 68(1), (2) and (3)(b) to (d).

PART 2

REPORTING REQUIREMENT

Reporting requirement

- 4 (1) If a UK corporate parent is a reporting body at the time a reportable event takes place or a reportable transaction is carried out, it must, within 6 months of that time, make a report to an officer of Revenue and Customs.
 - (2) The report must contain such information relating to the event or transaction, or persons connected with the event or transaction, as is specified in regulations made by the Commissioners.
 - (3) The purpose of the report is to enable the Commissioners to consider whether the event or transaction results, directly or indirectly, in an advantage for any person in respect of corporation tax or any other tax or duty.
 - (4) In this Schedule “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

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Meaning of “reporting body”

- 5 (1) For the purposes of this Schedule a body corporate (“body A”) is a reporting body at any time if, at that time—
- (a) it is a UK corporate parent, and
 - (b) condition A, B, C or D is met.
- (2) Condition A is that body A is not controlled by a body corporate resident outside the United Kingdom.
- (3) Condition B is that—
- (a) body A is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”), and
 - (b) no other relevant UK body corporate is controlled by the foreign parent.
- (4) Condition C is that —
- (a) body A is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”),
 - (b) one or more other UK corporate parents are controlled by the foreign parent, and
 - (c) body A is not a party to an arrangement under paragraph 6.
- (5) Condition D is that—
- (a) body A is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”),
 - (b) one or more other UK corporate parents are controlled by the foreign parent, and
 - (c) body A is a party to an arrangement under paragraph 6 and is the nominated reporting body under that arrangement.

Groups with more than one UK corporate parent: nomination of single reporting body

- 6 (1) Sub-paragraph (2) applies where—
- (a) a UK corporate parent is controlled by a body corporate resident outside the United Kingdom (“the foreign parent”), and
 - (b) one or more other UK corporate parents are controlled by the foreign parent.
- (2) Two or more of the UK corporate parents controlled by the foreign parent may enter into an arrangement under which one of their number (“the nominated reporting body”) is nominated to exercise, on behalf of all of them, the functions conferred under this Schedule on a reporting body.
- (3) A party to an arrangement under this paragraph may withdraw from the arrangement.
- (4) The Commissioners may by regulations make provision about entering into and withdrawing from an arrangement under this paragraph.
- (5) Regulations under sub-paragraph (4) may, in particular, include provision—
- (a) as to the form and manner in which bodies may enter into, or a body may withdraw from, an arrangement,
 - (b) requiring a person to give information to HMRC in connection with entering into or withdrawing from an arrangement, and

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- (c) as to circumstances in which a body is to be treated as having withdrawn from an arrangement.

Meaning of “UK corporate parent”

- 7 In this Schedule “UK corporate parent” means a body corporate that—
- (a) is resident in the United Kingdom,
 - (b) controls one or more bodies corporate that are not resident in the United Kingdom, and
 - (c) is not controlled by—
 - (i) a body corporate that is resident in the United Kingdom, or
 - (ii) two or more bodies corporate taken together each of which is resident in the United Kingdom.

Reportable events and transactions

- 8 (1) For the purposes of this Schedule an event or transaction is “reportable”, in relation to a reporting body, if—
- (a) it is of a value exceeding £100 million,
 - (b) it is within sub-paragraph (2), and
 - (c) it is not an excluded transaction (see paragraph 9).
- (2) An event or transaction is within this sub-paragraph if—
- (a) it is an issue of shares or debentures by a foreign subsidiary,
 - (b) it is a transfer by the reporting body, or a transfer caused or permitted by the reporting body, of shares or debentures of a foreign subsidiary in which the reporting body has an interest,
 - (c) where the reporting body is a party to an arrangement under paragraph 6, it is a transfer by another party to the arrangement, or a transfer caused or permitted by such a party, of shares or debentures of a foreign subsidiary in which that party has an interest,
 - (d) it results in a foreign subsidiary becoming, or ceasing to be, a controlling partner in a partnership, or
 - (e) it is of a description specified in regulations made by the Commissioners.
- (3) For the purposes of sub-paragraph (2)(d) a foreign subsidiary is a “controlling partner” in a partnership if, whether alone or taken together with one or more other partners that are subsidiaries, it controls the partnership.
- (4) The Commissioners may by regulations make provision about how the value of an event or transaction is to be determined for the purposes of this paragraph.
- (5) Regulations under sub-paragraph (4) may, in particular, in the case of a transaction that is one of a series of transactions, include provision attributing to the transaction the value of other transactions in the series.
- (6) Regulations under this paragraph may—
- (a) make provision by reference to standards or other documents issued by any person, or
 - (b) make different provision for different cases or purposes.

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- (7) The Commissioners may by order amend sub-paragraph (1)(a) so as to substitute a higher amount for the amount for the time being mentioned there.

Excluded transactions

- 9 (1) For the purposes of this Schedule a transaction is “excluded” if—
- (a) it is carried out in the ordinary course of a trade,
 - (b) all the parties to the transaction are, at the time the transaction is carried out, resident in the same territory,
 - (c) it consists in giving to the bankers of a foreign subsidiary any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers,
 - (d) it consists in a foreign subsidiary giving to an insurance company any security for the payment of any sum due or to become due from that subsidiary to that company by reason of any transaction entered into with that subsidiary by that company in the ordinary course of that company's business by way of investment of its funds, or
 - (e) it is of a description specified in regulations made by the Commissioners.
- (2) Regulations under sub-paragraph (1)(e)—
- (a) may make provision by reference to standards or other documents issued by any person, and
 - (b) may make different provision for different cases or purposes.

Penalty for failure to comply with reporting requirement

- 10 In section 98 of TMA 1970 (special returns etc), in the second column of the Table, insert at the end “paragraph 4 of Schedule 17 to FA 2009.”

Regulations and orders

- 11 (1) Regulations and orders under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations or an order under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Interpretation

- 12 (1) For the purposes of this Schedule “control”, in relation to a body corporate, 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 body or any other body corporate, or
 - (b) by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate,
- that the affairs of the body are conducted in accordance with that person's wishes.
- (2) Where two or more persons, taken together, have the power mentioned in sub-paragraph (1), they are taken for the purposes of this Schedule to control the body corporate.

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- (3) For the purposes of this Schedule “control” in relation to a partnership, means the right to a share of more than 50% of the assets, or of more than 50% of the income, of the partnership.
- (4) In this Schedule—
- “foreign” means resident outside the United Kingdom;
 - “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership, and “partner” is to be read accordingly;
 - “subsidiary”, in relation to a reporting body, means a body corporate that is controlled by—
 - (a) the reporting body, or
 - (b) where the reporting body is a party to an arrangement under paragraph 6, any party to the arrangement.
- (5) [^{F1}Section 150 of TIOPA 2010] (meaning of “transaction” and “series of transactions”) applies for the purposes of this Schedule.

Textual Amendments

- F1** Words in Sch. 17 para. 12(5) substituted (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. 150](#) (with Sch. 9 paras. 1-9, 22)

PART 3

COMMENCEMENT ETC

Commencement

- 13 This Schedule has effect in relation to events taking place and transactions carried out on or after 1 July 2009.

Transitional provision

- 14 (1) In its application in relation to an event taking place or a transaction carried out before 1 October 2009, paragraph 4(1) has effect as if it required any report under that provision to be made before 1 April 2010.
- (2) Any regulations under this Schedule that are made within the period of one year beginning on the day on which this Act is passed may be made so as to have effect from any time on or after 1 July 2009.

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