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SCHEDULES

SCHEDULE 13

PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS ETC

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISION

Commencement

31 The amendments made by this Schedule come into force on the day on which this Act is passed.

Condition B of motive test

32 (1) This paragraph applies in relation to a company carrying on business through a permanent establishment in an accounting period which is the first relevant accounting period or an accounting period beginning less than 12 months after the beginning of the first relevant accounting period (an "affected relevant accounting period") if the company carried on the business through the permanent establishment throughout the period of 12 months ending with the day before that on which this Act is passed ("the pre-commencement year").

(2) Condition B in section 18H of CTA 2009 (as inserted by this Schedule) is assumed to be met in relation to an affected relevant accounting period if—

(a) the gross income attributable to the permanent establishment for the affected relevant accounting period does not exceed by more than 10% the gross income attributable to the permanent establishment for the period of 12 months ending immediately before the beginning of the first relevant accounting period (or, if the affected relevant accounting period is less than 12 months, such proportion of that gross income as the length of the affected relevant accounting period bears to 12 months),

(b) there has been no major change in the nature or conduct of the business carried on through the permanent establishment in the period ("the relevant period") beginning with the pre-commencement year and ending with the end of the affected relevant accounting period, and

(c) no asset attributable to the permanent establishment was previously owned, and no part of the business carried on through the permanent establishment in the affected relevant accounting period was previously carried on, by a company whose chargeable profits and creditable tax (if any) for any accounting period ending within the relevant period were (or, but for an agreement made or undertaking given, would have been) apportioned under section 747(3) of ICTA.

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(3) For the purposes of sub-paragraph (2) "major change in the nature or conduct of the business" includes—
- (a) a major change in the type of property dealt in, or services or facilities provided, in the business, and
- (b) a major change in customers, outlets or markets of the business.

(4) A reference in sub-paragraph (3) to a change includes a change which is achieved gradually as a result of a series of transfers.

33 (1) This paragraph applies in relation to a company ("company A") carrying on business through a permanent establishment in an accounting period which is the first relevant accounting period or an accounting period beginning less than 12 months after the beginning of the first relevant accounting period (an "affected relevant accounting period") if a company which—
- (a) was a non-UK resident company, and
- (b) was controlled by company A,

("company B") carried on the business throughout the period of 12 months ending with the day before that on which this Act is passed ("the pre-commencement year").

(2) Condition B in section 18H of CTA 2009 (as inserted by this Schedule) is assumed to be met in relation to an affected relevant accounting period if—
- (a) the gross income attributable to the permanent establishment for the affected relevant accounting period does not exceed by more than 10% the gross income of the business for the period of 12 months ending immediately before the beginning of the first relevant accounting period of the company (or, if the affected relevant accounting period is less than 12 months, such proportion of that gross income as the length of the affected relevant accounting period bears to 12 months),
- (b) there has been no major change in the nature or conduct of the business carried on through the permanent establishment in the period ("the relevant period") beginning with the pre-commencement year and ending with the end of the affected relevant accounting period,
- (c) company B was not a company whose chargeable profits and creditable tax (if any) for any accounting period ending within the relevant period were (or, but for an agreement made or undertaking given, would have been) apportioned under section 747(3) of ICTA, and
- (d) no asset attributable to the permanent establishment was previously owned, and no part of the business carried on through the permanent establishment in the affected relevant accounting period was previously carried on, by such a company.

(3) Sub-paragraphs (3) and (4) of paragraph 32 apply for the purposes of sub-paragraph (2).

(4) Section 1124 of CTA 2010 (meaning of "control") applies for the purposes of this paragraph.

Large pre-commencement losses

34 (1) This paragraph applies if—
- (a) there is a relevant losses amount exceeding £50 million in the case of a company in relation to any relevant foreign territory for any accounting

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period beginning within the period of 6 years ending with the day before that on which this Act is passed, and

(b) (apart from this paragraph) the accounting period would not be an affected prior accounting period for the purposes of section 18J(2) of CTA 2009 (as inserted by this Schedule).

(2) The accounting period, and every later accounting period of the company before the first relevant accounting period of the company which would not otherwise be an affected prior accounting period for those purposes, is an affected prior accounting period for those purposes.

35 (1) This paragraph applies if—

(a) section 18O of CTA 2009 (as inserted by this Schedule) applies in relation to a transfer of business, and

(b) (apart from this paragraph) the effect of subsection (4) of that section would be that a relevant losses amount falling within paragraph 34(1)(a) would be ignored for the purposes of section 18J(2) of that Act.

(2) There is to be added to the adjusted foreign permanent establishments amount in relation to the accounting period of the transferee in which the transfer took place a negative amount equal to that relevant losses amount.

Section 62A of CAA 2001

36 For the purposes of section 62A of CAA 2001 (as inserted by this Schedule)—

(a) where the qualifying expenditure in respect of the plant or machinery, or of the group of assets of which it forms part, in question does not exceed £50 million, an accounting period ending more than 12 months before the day on which this Act is passed is not a relevant preceding accounting period, and

(b) where it does, any accounting period beginning within the period of 6 years ending with the day before that on which this Act is passed which (apart from this paragraph) would not be a relevant preceding accounting period is such a period.

Section 43(8) of TIOPA 2010: free assets

37 Until provision made under subsection (8) of section 43 of TIOPA 2010 (as substituted by this Schedule) has effect, "free assets" in subsection (7) of that section has the meaning given by regulation 3 of the Non-resident Insurance Companies Regulations 2003 (S.I. 2003/2714).

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