

Changes to legislation: *Income and Corporation Taxes Act 1988, Part 2A is up to date with all changes known to be in force on or before 15 February 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) View outstanding changes*

SCHEDULES

SCHEDULE 25

[^{F1}CASES WHERE SECTION 747(3) DOES NOT APPLY]

Textual Amendments

- F1** [Sch. 25](#) heading substituted (with effect in accordance with [Sch. 17 para. 37](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 17 para. 25](#); S.I. 1998/3173, [art. 2](#)

[^{F1}PART 2A

TRADING COMPANIES WITH LIMITED UK CONNECTION

Textual Amendments

- F1** [Sch. 25 Pts. 2A, 2B](#) (paras. 12B-12N) inserted (with effect in accordance with [Sch. 12 para. 14\(2\)](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 12 para. 3](#)

Introductory

- 12B (1) For the purposes of section 748(1)(ba), a controlled foreign company (“C”) is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.
- (2) The requirements are those imposed as to C's—
- (a) business establishment (see paragraph 12C),
 - (b) business activities (see paragraph 12D),
 - (c) UK connection (see paragraph 12E), and
 - (d) finance income and relevant IP income (see paragraph 12F).

Business establishment

- 12C (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.
- (2) For the purposes of sub-paragraph (1)—
- (a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and
 - (b) paragraph 7 (meaning of “business establishment”) applies as it applies for the purposes of paragraph 6(1)(a).

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Business activities

12D (1) The requirement of this paragraph is that—

- (a) C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities, or
- (b) if C is wholly engaged in business falling within paragraph 11(1)(c) (banking etc), C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities which do not constitute investment business.

(2) For this purpose—

“non-exempt activities” means—

- (a) the holding or managing of shares or securities,
- (b) the holding of intellectual property,
- (c) dealing in securities, other than in the capacity of a broker,
- (d) the leasing of any description of property or rights,
- (e) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of C, and
- (f) if C is not a member of an insurance group throughout the accounting period, the effecting or carrying out of contracts of insurance between C and persons related to C;

“investment business” means activities within paragraphs (a) to (d) of paragraph 9(1).

(3) For the purposes of sub-paragraph (2)(f), a person is “related” to C if—

- (a) the person is connected or associated with C,
- (b) the person has a 25 per cent assessable interest in C in the case of the accounting period in question (within the meaning of paragraph 6(4C)), or
- (c) if C is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.

(4) In sub-paragraph (2)—

“broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally;

“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“insurance group” has the meaning given by paragraph 11A(4);

“intellectual property” is to be construed in accordance with paragraph 9(1A);

“member of an insurance group” has the meaning given by paragraph 11A(6).

UK connection

12E (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.

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- (2) C has a significant connection with the United Kingdom during the accounting period if Condition A or B is met.
- (3) Condition A is that—
 - (a) the UK-connected gross income of C's business for that period exceeds 10% of the gross income of that business for that period, and
 - (b) sub-paragraph (4) does not apply.
- (4) This sub-paragraph applies if—
 - (a) at all times in the accounting period there are sufficient individuals working for C in the territory in which it is resident, or in any other territory outside of the United Kingdom, who have the competence and authority to undertake all, or substantially all, of C's business,
 - (b) C's relevant profits for the accounting period do not exceed 10% of C's relevant operating expenses for that period, and
 - (c) the UK-connected gross income of C's business for that period does not exceed 50% of the gross income of that business for that period.
- (5) Condition B is that—
 - (a) the UK-connected related-party business expenditure of C's business for that period exceeds 50% of the total related-party business expenditure of C's business for that period, and
 - (b) during the accounting period C has been involved in a scheme where the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to achieve a reduction in corporation tax or any tax chargeable as if it were corporation tax.
- (6) For the purposes of sub-paragraph (4)(a), individuals are not to be regarded as working for C in any territory unless—
 - (a) they are employed by C in the territory, or
 - (b) they are otherwise directed by C to perform duties on its behalf in the territory.
- (7) In this paragraph—
 - “related-party business expenditure” means any expenditure, other than capital expenditure, which gives rise, directly or indirectly, to income of a person related to C;
 - “relevant profits”, for an accounting period, means the total profits of C for that period calculated in accordance with generally accepted accounting practice (disregarding any capital gains or losses), but before any deduction for interest or tax;
 - “relevant operating expenses” of C means operating expenses of C other than—
 - (a) the cost of goods sold, and
 - (b) related-party business expenditure;
 - “scheme” means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;
 - “UK-connected gross income” means the gross income derived, directly or indirectly, from persons who are within the charge to United Kingdom tax for all or part of the accounting period;

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“UK-connected related-party business expenditure” means related-party business expenditure which gives rise, directly or indirectly, to income of a person within the charge to United Kingdom tax in respect of that income;

“United Kingdom tax” means income tax or corporation tax;

and paragraph 12D(3) (persons “related” to C) applies for the purposes of this paragraph as it applies for the purposes of paragraph 12D(2)(f).

- (8) In the case of a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there, for the purposes of sub-paragraph (7)—
- (a) the gross income derived from that company is so much of the gross income as is attributable to that establishment, and
 - (b) the income received by that company is such of its income as is attributable to that establishment.

Finance income and relevant IP income

- 12F (1) The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period falls within sub-paragraph (2).
- (2) Gross income falls within this sub-paragraph to the extent that it is—
- (a) finance income, or
 - (b) relevant IP income.
- (3) “Finance income” means—
- (a) any amount which in accordance with UK generally accepted accounting practice falls to be recognised as arising from a financial asset, and
 - (b) any return, in relation to an amount, which—
 - (i) is produced for C by an arrangement to which C is party, and
 - (ii) is economically equivalent to interest,
 except to the extent that the return is taken into account in determining an amount within paragraph (a).
- (4) “Relevant IP income” means royalties and receipts of a similar nature arising from intellectual property.
- (5) For the purposes of sub-paragraph (3)(b), the amount of a return is the amount which by virtue of the return would, in calculating C's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to C from a loan relationship.
- (6) But, in calculating that profit for the purposes of sub-paragraph (5), sections 486B(7) and 486C to 486E of CTA 2009 are to be ignored.
- (7) In this paragraph—
- “economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009;
 - “financial asset” means a financial asset as defined for the purposes of UK generally accepted accounting practice or international accounting standards;
 - “intellectual property” is to be construed in accordance with paragraph 9(1A).

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Gross income

- 12G (1) References in this Part of this Schedule to C's gross income are to be construed in accordance with this paragraph.
- (2) C's gross income for an accounting period does not include—
- (a) any distribution that would not be included in C's chargeable profits by reason of it being exempt for the purposes of Part 9A of CTA 2009 (see section 931A of that Act), or
 - (b) any amount that would be taken into account in computing chargeable gains if C were within the charge to corporation tax.
- (3) C's gross income for an accounting period includes—
- (a) any income which accrues during that period to the trustees of a settlement in relation to which C is a settlor or a beneficiary, and
 - (b) any income which accrues during that period to a partnership of which C is a partner, apportioned between C and the other partners on a just and reasonable basis.
- (4) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (3)(a), the income is to be apportioned between C and the other settlors or beneficiaries on a just and reasonable basis.
- (5) In this paragraph—
- “distribution” has the same meaning as in the Corporation Tax Acts (see Part 23 of CTA 2010);
 - “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.]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act Tax Acts: power to modify conferred by [2004 c. 25 s. 18](#)
- Act Taxes Acts modified by 1970 c. 9, Sch. A1 para. 10(7) (as inserted) by [2017 c. 32 s. 60\(3\)](#)
- Act Taxes Acts modified by 1970 c. 9, s. 8(7) (as inserted) by [2017 c. 32 Sch. 14 para. 3\(15\)](#)
- Act Taxes Acts modified by 1970 c. 9, s. 8A(7) (as inserted) by [2017 c. 32 Sch. 14 para. 4\(12\)](#)
- Act applied (with modifications) by [S.I. 2010/875 reg. 16Sch. 2](#) (This amendment not applied to legislation.gov.uk. S.I. 2010/875 was revoked (27.8.2010) by SI 2010/1906, reg. 2 without having come into force)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 109A(4B) inserted by [2005 c. 7 Sch. 4 para. 6\(3\)](#) (This amendment not applied to legislation.gov.uk. The amending provision (2005 c. 7, Sch. 4 para. 6) repealed retrospectively by 2005 c. 22, Sch. 6 para. 4(1)(6))
- Sch. 19AB para. 5(5)(a)(b) words substituted by [S.I. 2001/3629 art. 52\(2\)\(n\)](#) (This amendment not applied to legislation.gov.uk. The words to be substituted do not occur in Sch. 19AB para. 5)