

SCHEDULES

SCHEDULE 15

Section 48

CONTROLLED FOREIGN COMPANIES

Imputation of chargeable profits and creditable tax of controlled foreign companies

1 (1) Section 747 of ICTA (imputation of chargeable profits and creditable tax of controlled foreign companies) is amended as follows.

(2) After subsection (3) insert—

“(3A) In the case of an apportionment to a company resident in the United Kingdom which has made an application under section 751A which has been granted, subsection (3) above has effect subject to that section.”

(3) After subsection (5) insert—

“(5A) Where the resident company has made an application under section 751A which has been granted, it shall be assumed for the purposes of subsection (5) above that—

- (a) each of the persons who are connected or associated with the resident company has made an application under that section to the same effect, and
- (b) all the applications have been granted.”

Residence

2 In section 749 of ICTA (residence), insert at the end—

“(10) For the purposes of subsection (8) and (9) above, the effect of any application under section 751A shall be disregarded.”

Elections and designations under section 749: supplementary provisions

3 In section 749A of ICTA (elections and designations under section 749: supplementary provisions), insert at the end—

“(9) For the purposes of this section the effect of any application under section 751A shall be disregarded.”

Territories with a lower level of taxation

4 In section 750(3) of ICTA (territories with a lower level of taxation), after the “and” at the end of paragraph (a) insert—

“(ab) there shall be disregarded the effect of any application under section 751A; and”.

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Reduction in chargeable profits for certain activities of EEA business establishments

5 In ICTA, after section 751 insert—

“751A Reduction in chargeable profits for certain activities of EEA business establishments

- (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) throughout that period the controlled foreign company has a business establishment in an EEA territory,
 - (c) throughout that period there are individuals who work for the controlled foreign company in that territory, and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that 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 to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) those 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 those 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 amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—
- (a) arises to the appropriate body of persons (taken as a whole), and
 - (b) is created directly by qualifying work.
- (5) For the purposes of subsection (4) “net economic value” does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.
- (6) For the purposes of subsection (4) “the appropriate body of persons” means—
- (a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and

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- (b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,
and for the purposes of this subsection “group of companies” means a company and any other companies of which it has control.
- (7) For the purposes of subsection (4) “qualifying work” means work which—
 - (a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and
 - (b) is done in that territory by individuals working for the controlled foreign company there.
- (8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).
- (9) For the purposes of this section individuals are not to be regarded as working for a company in any territory unless—
 - (a) they are employed by the company in the territory, or
 - (b) they are otherwise directed by the company to perform duties on its behalf in the territory.

751B Section 751A: supplementary

- (1) An application by a company under section 751A—
 - (a) must be made in such form as the HMRC Commissioners may determine,
 - (b) must be accompanied by such documents (or copies of documents) in the company’s possession or power as those Commissioners may reasonably require for the purpose of determining whether to grant the application, and
 - (c) must contain such information as those Commissioners may reasonably require for that purpose.
- (2) An application by a company under section 751A—
 - (a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and
 - (b) may be amended or withdrawn at any time before the application is determined by those Commissioners.
- (3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.
- (4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).

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- (5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.
- (6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.
- (7) On an appeal—
- (a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,
 - (b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and
 - (c) in any other case, the Special Commissioners must confirm the refusal.
- (8) For the purposes of subsection (7) “the relevant amount” means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.
- (9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.
- (10) In this section “relevant company tax return”, in relation to a company, means the return for the accounting period for which—
- (a) any sum is chargeable on the company under section 747(4)(a), or
 - (b) any sum would be so chargeable but for section 751A,
- in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).
- (11) In this section “the HMRC Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.”

Interpretation

- 6 In section 756 of ICTA (interpretation and construction of Chapter 4 of Part 17), after subsection (1) insert—
- “(1A) In this Chapter “EEA territory”, in relation to any time, means a territory which is an EEA state at that time other than the United Kingdom.
- (1B) But a territory is not to be regarded for the purposes of subsection (1A) above as an EEA state at any time if—
- (a) it is not a member State at that time, and
 - (b) there are no arrangements made in relation to the territory having effect by virtue of section 173 of the Finance Act 2006 (international tax enforcement arrangements) at that time.”

Exempt activities test

- 7 (1) Part 2 of Schedule 25 to ICTA (supplementary provision in relation to cases where apportionment under section 747(3) does not apply: exempt activities) is amended as follows.
- (2) In paragraph 5, after sub-paragraph (1) insert—
- “(1A) Except as provided in paragraph 8 below, the provisions of this Part of this Schedule apply in relation to a company which is resident in an EEA territory in the same way as they apply in relation to a company which is resident elsewhere.”
- (3) In paragraph 8, in sub-paragraph (1), after “fulfilled” insert “in relation to a company which is not resident in an EEA territory”.
- (4) Insert at the end of that paragraph—
- “(5) The condition in paragraph 6(1)(b) above shall not be regarded as fulfilled in relation to a company which is resident in an EEA territory unless there are sufficient individuals working for the company in the territory who have the competence and authority to undertake all, or substantially all, of the company’s business.
- (6) For the purposes of sub-paragraph (5) above, individuals are not to be regarded as working for a company in any territory unless—
- (a) they are employed by the company in the territory, or
- (b) they are otherwise directed by the company to perform duties on its behalf in the territory.”

Abolition of public quotation exemption

- 8 (1) In section 748(1) of ICTA (cases where apportionment under section 747(3) does not apply), omit paragraph (c) (together with the “or” at the end of it).
- (2) In Schedule 25 to ICTA (supplementary provision in relation to cases where apportionment under section 747(3) does not apply), omit Part 3 (the public quotation condition).

Discovery assessments

- 9 In paragraph 44(3) of Schedule 18 to FA 1998 (discovery assessment: situation not disclosed by return or related documents etc), in the definition of “relevant claim”, insert at the end “or an application under section 751A of the Taxes Act 1988 made by or on behalf of the company which affects the company’s tax return for the period in question”.

Commencement

- 10 (1) The amendments made by this Schedule have effect in relation to accounting periods of controlled foreign companies beginning on or after 6th December 2006.
- (2) In the case of an accounting period (a “straddling period”) of a controlled foreign company—
- (a) beginning before 6th December 2006, and

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- (b) ending on or after that date,
the amendments made by this Schedule have effect as if, for the purposes of Chapter 4 of Part 17 of ICTA, so much of the straddling period as falls before that date, and so much of the straddling period as falls on or after that date, were separate accounting periods.
- (3) The company's chargeable profits for the straddling 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.
- (4) Each of the following expressions—
“accounting period”,
“chargeable profits”,
“controlled foreign company”, and
“creditable tax”,
has the same meaning in this paragraph as in Chapter 4 of Part 17 of ICTA.