# SCHEDULES

## SCHEDULE 12

Section 47

CONTROLLED FOREIGN COMPANIES

### PART 1

EXEMPTIONS FOR COMPANIES WITH LIMITED UK CONNECTION

1 (1) Section 748 of ICTA (cases where apportionment of chargeable profits and creditable tax under section 747(3) does not apply) is amended as follows.

(2) In subsection (1), in paragraph (b) for "that Schedule" substitute " Schedule 25 ".

(3) After that paragraph insert—

"(ba) the company is exempt for that period by virtue of Part 2A of that Schedule (exemption for trading companies with limited UK connection); or

(bb) the company is exempt for that period by virtue of Part 2B of that Schedule (exemption for companies exploiting intellectual property with limited UK connection); or".

2 After section 751AA of that Act insert—

**"751AB Reduction in chargeable profits: failure to qualify for exemptions**

(1) This section applies if—

(a) an apportionment under section 747(3) would fall to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,

(b) but for a relevant failure, section 748(1)(ba) or (bb) would have prevented such an apportionment, and

(c) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) "Relevant failure" means—

(a) in the case of section 748(1)(ba), one or both of the following—

(i) a failure to satisfy the requirement of paragraph 12E of Schedule 25 (requirement as to company's UK connection) in circumstances where the requirement would be satisfied if the reference in sub-paragraph (3)(a) of that paragraph to 10% were a reference to 50%, and

(ii) a failure to satisfy the requirement of paragraph 12F of that Schedule (finance income and relevant IP income) in circumstances where the relevant IP income of the controlled foreign company for the accounting period does not exceed 5% of the company's gross income for that period, and

(b) in the case of section 748(1)(bb), a failure to satisfy the requirement of paragraph 12M of that Schedule (finance income).

(3) 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 to an amount specified in the application ("the specified amount").

The specified amount may be nil.

(4) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced to 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).

(5) The Commissioners may grant the application only if—

(a) they are satisfied that the specified amount is not less than the relevant amount, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AC.

(6) "The relevant amount" means—

(a) if the relevant failure is within subsection (2)(a), the sum of—

(i) the excess finance and IP income (if any) for the relevant accounting period, and

(ii) in a case where there is a failure specified in subsection (2)(a)(i), so much (if any) of the net chargeable profits for that period as are not excluded by subsection (8), and

(b) if the relevant failure is within subsection (2)(b)—

(i) the amount (if any) by which the controlled foreign company's finance income for the relevant accounting period exceeds 5% of its gross income for that period, or

(ii) if that amount is a negligible amount, nil.

(7) "The excess finance and IP income" for the relevant accounting period means—

(a) the amount (if any) by which the total of the controlled foreign company's finance income and relevant IP income for that period exceeds 5% of its gross income for that period, or

(b) if that amount is a negligible amount, nil.

(8) Net chargeable profits are excluded by this subsection if, and to the extent that, they can reasonably be regarded—

(a) as representing the net economic value which—

(i) arises to the appropriate body of persons (taken as a whole), and

(ii) is created directly by qualifying work, or

(b) as not being wholly or partly attributable, directly or indirectly, to transactions with persons within the charge to United Kingdom tax.

(9) In subsection (8)(a) "qualifying work" means work which—

(a) is done in the territory in which the controlled foreign company is resident, and

(b) is done in that territory by individuals working for the controlled foreign company there.

(10) A transaction with 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 is within subsection (8)(b) only if the transaction is attributable to activities carried on through that establishment.

(11) For the purposes of subsections (8) and (9)—

(a) section 751A(5), (6) and (9) applies as it applies for the purposes of the equivalent provisions of section 751A, and

(b) paragraph 5(2) to (5) of Schedule 25 (residence of controlled foreign company) applies as it applies in relation to Part 2 of that Schedule.

(12) In this section—

"finance income" has the meaning given by paragraph 12F(3) of Schedule 25 (with references to C read as references to the controlled foreign company);

"relevant IP income" has the meaning given by paragraph 12F(4) of that Schedule;

"net chargeable profits" means chargeable profits excluding so much of those profits as is directly attributable to the finance income or relevant IP income of the controlled foreign company;

"UK-connected gross income" has the same meaning as in paragraph 12E of Schedule 25;

"United Kingdom tax" means corporation tax or income tax;

and paragraph 12G of that Schedule (gross income) applies for the purposes of this section as it applies for the purposes of Part 2A of that Schedule (with references to C read as references to the controlled foreign company)."

3 In Schedule 25 to that Act (cases where section 747(3) does not apply), after Part 2 insert—

## "PART 2A

### TRADING COMPANIES WITH LIMITED UK CONNECTION

**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).

**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.

(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;

“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).

### 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.

## PART 2B

## COMPANIES EXPLOITING INTELLECTUAL PROPERTY WITH LIMITED UK CONNECTION

### Introductory

12H (1) For the purposes of section 748(1)(bb), a 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 12I),

(b) intellectual property business (see paragraph 12J),

(c) other business activities (see paragraph 12K),

(d) UK connection (see paragraph 12L), and

(e) finance income (see paragraph 12M).

### Business establishment

12I (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).

### Intellectual property business

12J (1) The requirement of this paragraph is that C's main business, throughout the accounting period, consists of the exploitation of intellectual property which does not have a relevant UK connection.

(2) For the purposes of sub-paragraph (1), if any part of C's main business consists of the exploitation of intellectual property which has a relevant UK connection, that part is to be ignored if it is an insignificant part of C's main business.

(3) Intellectual property has a relevant UK connection if—

(a) at any time during the accounting period or the 6 years immediately preceding that period, it has been held by a person resident in the United Kingdom, or

(b) activities relating to the creation, maintenance or enhancement of the intellectual property (other than activities of an incidental or insignificant nature) have been carried on by a person who for some or all of the period—

(i) beginning when the activities were first carried on by the person, and

(ii) ending at the end of the accounting period,

was related to C and within the charge to United Kingdom tax.

### Other business activities

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

(a) C does not, at any time during the accounting period, carry on any activities otherwise than in the course of its main business, or

(b) if it carries on any such activities ("secondary activities"), the secondary activities condition is met.

(2) The secondary activities condition is that either—

(a) the secondary activities do not, at any time during the accounting period, constitute a substantial part of the activities of C's business taken as a whole, or

(b) section 748(1)(b) or (ba) would apply to prevent an apportionment under section 747(3) falling to be made as regards that period, if C's business consisted only of the secondary activities carried on by it during the accounting period.

### UK connection

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

(2) C has a significant connection with the United Kingdom during the accounting period if—

(a) all or a substantial proportion of C's gross income for that period consists of income from the exploitation of intellectual property which derives from persons within the charge to United Kingdom tax, or

(b) during that period C incurs expenditure (other than expenditure of an incidental or insignificant nature) on—

(i) R&D sub-contractor payments, or

(ii) the creation, development or maintenance of relevant intellectual property,

and that expenditure forms part of the income of a person who for some or all of that period is related to C and within the charge to United Kingdom tax.

(3) In this paragraph—

"R&D sub-contractor payment" means a payment made by C to another person in respect of research and development contracted out by C to that person;

"relevant intellectual property" means intellectual property which does not have a relevant UK connection (see paragraph 12J(3)) and which C exploits in the course of its main business.

### Finance income

12M The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period consists of finance income (within the meaning of paragraph 12F(3)).

### Interpretation of Part 2B

12N (1) For the purpose of this Part of this Schedule—

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

"United Kingdom tax" means corporation tax or income tax;

and paragraph 12G (meaning of "gross income") applies as it applies for the purposes of Part 2A of this Schedule.

(2) For the purposes of this Part of this Schedule a person is "related" to C at a particular time if at that time—

(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 of C in which that time falls (within the meaning of paragraph 6(4C)), or

(c) if C is a controlled foreign company in the accounting period in which that time falls 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.

(3) 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—

(a) for the purposes of paragraph 12J(3)(b), the activities carried on by the company are such of the activities as are carried on through that establishment,

(b) for the purposes of paragraph 12L(2)(a), the income derived from that company is such of the income so derived as is attributable to that establishment, and

(c) for the purposes of paragraph 12L(2)(b), the income of that company is such of its income as is attributable to that establishment."

## PART 2

### AMENDMENT OF SMALL CHARGEABLE PROFITS EXEMPTION

4 (1) Section 748 of ICTA (cases where apportionment of chargeable profits and creditable tax under section 747(3) does not apply) is amended as follows.

(2) In subsection (1), after paragraph (d) insert—

"(da) the relevant profits for the accounting period, after any adjustment required by subsection (3C), do not exceed—

(i) £200,000, or

(ii) if the accounting period is less than 12 months, a proportionately reduced amount; or".

(3) After subsection (3) insert—

"(3A) The reference in subsection (1)(da) to the relevant profits for an accounting period are to the sum of—

(a) the profits of the company for that period calculated in accordance with generally accepted accounting practice (disregarding any exempt distributions and any capital gains or losses), before any adjustment required or authorised by law in calculating chargeable profits,

(b) any amount which accrues during that period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and

(c) the company's share of any income which accrues during that period to a partnership of which the company is a partner.

(3B) For the purposes of subsection (3A)—

(a) "exempt distribution" means a distribution (within the meaning of Part 23 of CTA 2010) which would be excluded from the company's chargeable profits by reason of it being exempt for the purposes of Part 9A of CTA 2009 (company distributions),

(b) where there is more than one settlor or beneficiary in relation to the settlement mentioned in subsection (3A)(b), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis, and

(c) the company's share of any income which accrues to a partnership as mentioned in subsection (3A)(c) is to be determined by apportioning that income between the company and the other partners on a just and reasonable basis;

and in subsection (3A) and this subsection "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.

(3C) For the purposes of subsection (1)(da), Part 4 of TIOPA 2010 (transfer pricing) applies in relation to the calculation of the relevant profits for the accounting period as it applies in relation to the calculation of the chargeable profits for that period.

(3D) But where the difference made in the amount of the relevant profits for the period as a result of the application of subsection (3C) would (disregarding this subsection) not exceed £50,000, no adjustment under that subsection is to be made."

(4) In subsection (6) for "section" substitute " sections 748ZA and ".

5 After that section insert—

**"748ZA Exclusion of small profits exemptions**

(1) Nothing in section 748(1)(da) prevents an apportionment falling to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company ("X") if condition A, B or C is met.

(2) Condition A is that at any time before the end of the relevant accounting period a scheme is entered into and—

(a) in the absence of this subsection, in consequence of the scheme, section 748(1)(da) would apply to prevent an apportionment falling to be made as regards the relevant accounting period of X, and

(b) the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure that section 748(1)(da) prevents an apportionment falling to be made as regards that period, or that period and one or more other accounting periods of X.

(3) Condition B is that at any time before the end of the relevant accounting period a scheme is entered into and—

(a) in consequence of the scheme profits are shifted to X from another company ("Y"),

(b) the main purpose or one of the main purposes of any party to the scheme in entering into the scheme is to ensure that section 748(1)(da) prevents an apportionment falling to be made as regards the chargeable profits of one or more controlled foreign companies for one or more accounting periods, and

(c) the relevant accounting period of X falls wholly or partly within that accounting period or those accounting periods.

(4) For the purposes of subsection (3), profits are shifted to X from Y if it is reasonable to suppose that in the absence of the scheme, and any similar scheme, the whole or a part of the income which is reflected in X's profits would have been reflected in Y's profits.

(5) Condition C is that, in determining X's chargeable profits for the relevant accounting period—

(a) section 418(5) of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits) has effect so as to treat X, for the purposes of Part 5 of that Act, as bringing into account for that period credits in respect of a loan relationship, or

(b) Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(6) For the purposes of this section—

"apportionment" means an apportionment under section 747(3);

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions."

## PART 3

### TEMPORARY EXEMPTION FOLLOWING REORGANISATION ETC

6 (1) Section 748 of ICTA (cases where section 747(3) does not apply) is amended as follows.

(2) After subsection (1)(e) insert "; or

(f) the accounting period ends during an exempt period in relation to the company (see Part 3A of Schedule 25)."

(3) In subsection (3) for "(e)" substitute " (f) ".

7 After section 751AB of that Act (inserted by paragraph 2 of this Schedule) insert—

**"751AC Reduction in chargeable profits following an exempt period**

(1) This section applies if—

(a) an exempt period in relation to a controlled foreign company ends in accordance with paragraph 15F(2) of Schedule 25 (time exempt period ends if there is an early termination event), other than by reason of an early termination event within paragraph 15F(3)(b),

(b) an accounting period ("the relevant accounting period") of the company ends after that exempt period but before the time the exempt period would have ended had paragraph 15F(2) of that Schedule not applied,

(c) an apportionment under section 747(3) would fall to be made as regards the relevant accounting period, 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 that accounting period ("the chargeable profits") to be reduced to an amount ("the specified amount") specified in the application (which may be nil).

(3) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced to 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—

(a) they are satisfied that the specified amount is not less than the relevant amount, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AB.

(5) "The relevant amount" means the amount (if any) equal to so much of the chargeable profits as it is just and reasonable to regard as referable to—

(a) the relevant transaction which triggered the end of the exempt period, or

(b) any later relevant transaction occurring before the time the exempt period would have ended had paragraph 15F(2) of Schedule 25 not applied.

(6) "Relevant transaction" has the meaning given by paragraph 15E of Schedule 25 (and it does not matter if the transaction occurs pursuant to an agreement entered into by the controlled foreign company before the relevant time (within the meaning of paragraph 15G of that Schedule))."

8 In Schedule 25 to that Act (cases where section 747(3) does not apply), before Part 4 of that Schedule insert—

"PART 3A

EXEMPT PERIODS

### Introductory

15A The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(f).

### Beginning of exempt period

15B (1) An exempt period begins in relation to a company ("X") at a time ("the relevant time") when—

(a) X is resident outside the United Kingdom,

(b) X is controlled by persons resident in the United Kingdom,

(c) there is at least one relevant UK corporate investor in X, and

(d) the requirements of paragraph 15C or 15D are met.

(2) There is a "relevant UK corporate investor in X" at a particular time if, at that time, there is a company which—

(a) is resident in the United Kingdom, and

(b) would, on the assumptions set out in sub-paragraph (3), be a company to which an apportionment of X's chargeable profits for the relevant accounting period would fall to be made in circumstances where section 747(5) would not prevent tax being chargeable on the company under section 747(4).

(3) The assumptions are—

(a) X has chargeable profits for the relevant accounting period,

(b) an apportionment of those profits falls to be made under section 747(3) for that period, and

(c) no reduction of those profits arises under section 751A, 751AA or 751AB.

(4) "The relevant accounting period" means the accounting period of X in which the time mentioned in sub-paragraph (2) falls.

15C (1) The requirements of this paragraph are that—

(a) no company was, at any time before the relevant time, a relevant UK corporate investor in X,

(b) no asset owned by X, or part of the business carried on by X, at the relevant time was previously owned, or carried on, by a company which—

(i) was under the control of persons resident in the United Kingdom at any time it owned the asset or carried on the part of the business, and

(ii) is or has been related to X,

(c) condition A, B, C or D is met, and

(d) no disqualifying relevant transaction occurs (see paragraph 15E).

(2) Condition A is that, immediately before the relevant time, X—
(a) was in existence, but
(b) was not a member of the same group of companies as any person who, at the relevant time, was a controlling UK person.

(3) Condition B is that—
(a) at the relevant time X is controlled by a company which is resident in the United Kingdom, and
(b) immediately before that time, X was controlled by that same company but that company was not then resident in the United Kingdom.

(4) Condition C is that—
(a) at the relevant time—
(i) X is controlled by a company which is resident in the United Kingdom ("the intermediate parent"), and
(ii) the intermediate parent is controlled by a company which is not resident in the United Kingdom ("the parent"), and
(b) immediately before that time X was controlled by the parent but not the intermediate parent.

(5) Condition D is that X—
(a) is a controlled foreign company at the time it is formed, and
(b) is formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies at the time when X begins to control the company or companies.

(6) In this paragraph "controlling UK person" means a person resident in the United Kingdom who alone, or together with other such persons, controls X.

15D (1) The requirements of this paragraph are that—
(a) the relevant time falls after 23 March 2011,
(b) X has an accounting period during which 23 March 2011 falls,
(c) no company was, at any time during that accounting period, a relevant UK corporate investor in X,
(d) no company was, immediately before the relevant time, a relevant UK corporate investor in X,
(e) at the relevant time X is controlled by a company which—
(i) is resident in the United Kingdom, and
(ii) is not under the control of another body corporate, or two or more other bodies corporate taken together, and
(f) no disqualifying relevant transaction occurs (see paragraph 15E).

(2) In determining for the purposes of sub-paragraph (1)(e)(ii) whether a company is under the control of two or more bodies corporate taken

together, a body corporate which holds less than 10% of the issued ordinary shares of that company is to be disregarded.

(3) For the purposes of sub-paragraph (2), a body corporate is treated as holding any shares held by persons who are connected or associated with the body corporate.

**Disqualifying relevant transactions**

15E (1) This paragraph applies for the purposes of paragraph 15C and 15D.

(2) A disqualifying relevant transaction occurs if—

(a) a relevant transaction occurs at the relevant time (whether or not the transaction occurs pursuant to an agreement entered into by X before that time), or

(b) a relevant transaction occurs on or after 9 December 2010 but before the relevant time and that transaction forms part of an avoidance scheme.

(3) "Relevant transaction" means—

(a) the making by X of a loan or advance of an amount (other than a negligible amount) to a person who, at the time it is made, is related to X and subject to United Kingdom tax,

(b) an increase (other than an increase of a negligible amount) in the amount of an existing loan or advance made by X to a person who, at the time of the increase, is related to X and subject to United Kingdom tax,

(c) a change in the terms or conditions of an existing loan or advance made by X where—

(i) the loan or advance is to a person who, at the time the change is made, is related to X and subject to United Kingdom tax, and

(ii) the change has an effect (other than a negligible effect) on the amount of interest payable, or

(d) a transaction to which sub-paragraph (4) applies.

(4) This sub-paragraph applies to a transaction if—

(a) it is referable to an activity carried on by X as part, or the whole, of any non-exempt activities carried on by X,

(b) the results of the transaction are reflected in the profits arising in an accounting period of X and are not negligible in value, and

(c) the results of the transaction alone, or together with the results of one or more other transactions, achieves a reduction in United Kingdom tax.

(5) A transaction achieves, or two or more transactions together achieve, a reduction in United Kingdom tax if, had the transaction or transactions not been effected, any person—

(a) would have been liable for any such tax or for a greater amount of any such tax, or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(6) In this paragraph—

"avoidance scheme" means a scheme the main purpose, or one of the main purposes, of any party to which in entering into the scheme is to secure that section 748(1)(f) prevents an apportionment falling to be made under section 747(3) as regards an accounting period, or accounting periods, of X;

"non-exempt activities" has the meaning given by paragraph 12D(2);

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;

"United Kingdom tax" means corporation tax (or any tax chargeable as if it were corporation tax) or income tax.

**Ending of exempt period**

15F (1) An exempt period ends on the expiry of the period of 24 months which begins immediately after the first accounting period of X to end after the relevant time, unless sub-paragraph (2) applies.

(2) If an early termination event occurs after the relevant time but before the time the exempt period would end under sub-paragraph (1), the exempt period ends immediately before that event.

(3) An early termination event occurs if and when—

(a) a relevant transaction occurs, whether or not the transaction occurs pursuant to an agreement entered into by X before that time, or

(b) where the exempt period began because Condition D was met, X's business does not consist wholly in the holding of shares of companies which X controls, together with activities incidental to the holding of such shares.

**Interpretation of Part 3A**

15G (1) In this Part of this Schedule—

"group" means a company and any other companies it controls;

"the relevant time" has the meaning given by paragraph 15B;

"relevant transaction" has the meaning given by paragraph 15E;

"relevant UK corporate investor in X" has the meaning given by paragraph 15B(2);

"X" is to be construed in accordance with paragraph 15B.

(2) For the purposes of this Part of this Schedule a person is "related" to X at a particular time if—

(a) the person is connected or associated with X at that time,

(b) the person has a 25 per cent assessable interest in X in the case of the accounting period in which that time falls (within the meaning of paragraph 6(4C)), or

(c) if X is a controlled foreign company in the accounting period in which that time falls 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."

## PART 4

### HOLDING COMPANIES: EXTENSION OF TRANSITIONAL PROVISION

9 (1) Part 2 of Schedule 16 to FA 2009 (controlled foreign companies: amendment of exempt activities exemption) is amended as follows.

(2) In paragraph 12 (commencement), in sub-paragraph (2)(b) for "2011" substitute " 2012 ".

(3) In paragraph 15 (qualifying holding companies: periods straddling 1 July 2011)—

(a) in sub-paragraph (1)(a) for "2011" substitute " 2012 ",

(b) in sub-paragraph (2)(a) for "2011" substitute " 2012 ", and

(c) accordingly, in the heading for "*2011*" substitute " *2012* ".

(4) In paragraph 16 (qualifying holding companies: definition of "relevant accounting period"), in paragraph (b) for "2011" substitute " 2012 ".

(5) In the italic heading before paragraph 17 for "*two years before 1 July 2011*" substitute " *three years before 1 July 2012* ".

## PART 5

### MINOR AND CONSEQUENTIAL AMENDMENTS

10 In the following provisions of ICTA, for "or 751AA" substitute " , 751AA, 751AB or 751AC "

(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).

11 In section 751A of that Act (reduction in chargeable profits for certain activities of EEA business establishments), for subsection (4) substitute—

"(4) The Commissioners may grant the application only if—

(a) 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—

(i) arises to the appropriate body of persons (taken as a whole), and

(ii) is created directly by qualifying work, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751AB or 751AC."

12 (1) Section 751B of that Act (sections 751A and 751AA: supplementary) is amended as follows.

(2) For "or 751AA" in subsections (1), (2), (3) (in each place) and (5) substitute " , 751AA, 751AB or 751AC ".

(3) In subsection (2), for paragraph (a) substitute—

"(a) may be made at any time before the end of the application period, and"

(4) In subsection (8), omit the "and" before paragraph (b), and after that paragraph insert—

"(c) in the case of an appeal in respect of the refusal of an application under section 751AB, has the meaning given by subsection (6) of that section, and

(d) in the case of an appeal in respect of the refusal of an application under section 751AC, has the meaning given by subsection (5) of that section."

(5) For subsection (10) substitute—

"(10) In this section—

"the application period" means—

(a) the period within which an amendment to the relevant company tax return may be made by virtue of paragraph 15(4) of Schedule 18 to the Finance Act 1998 (disregarding any extension of that period provided by subsections (3) and (4) of this section or any other enactment), or

(b) if the relevant company tax return is amended under paragraph 34(2)(b) or (2A) of that Schedule as a consequence of the application of this Chapter—

(i) the period of 30 days beginning when the amendment was notified to the company, or

(ii) if an appeal is brought against such an amendment, the period of 30 days beginning when that appeal is finally determined;

"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, 751AA, 751AB or 751AC,

in respect of the chargeable profits of the company for the accounting period mentioned in section 751A, 751AA, 751AB or 751AC."

(6) In the heading for "**and 751AA**" substitute " **to 751AC** ".

13 Omit the following provisions—

(a) in Schedule 17 to FA 1998, paragraph 3(7), and

(b) in Schedule 16 to FA 2009, paragraphs 22 and 24(3) and (5).

## PART 6

### COMMENCEMENT AND TRANSITIONAL PROVISION

14 (1) The amendments made by paragraph 9 are treated as always having had effect.

(2) The other amendments made by this Schedule have effect in relation to accounting periods of controlled foreign companies beginning on or after 1 January 2011.