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**Changes to legislation:** Finance Act 2011, Paragraph 33 is up to date with all changes known to be in force on or before 13 April 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

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## SCHEDULES

### SCHEDULE 13

#### PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS ETC

#### PART 3

##### COMMENCEMENT AND TRANSITIONAL PROVISION

###### *Condition B of motive test*

- 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).

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

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

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

- Sch. 23 para. 45(1)(ia) inserted by [2017 c. 10 Sch. 11 para. 6\(3\)](#)
- Sch. 23 para. 2(1A) inserted by [S.I. 2019/397 reg. 2\(2\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)
- Sch. 23 para. 15A inserted by [S.I. 2019/397 reg. 2\(3\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)