

## SCHEDULES

### SCHEDULE 24

Section 747(6).

#### ASSUMPTIONS FOR CALCULATING CHARGEABLE PROFITS, CREDITABLE TAX AND CORRESPONDING UNITED KINGDOM TAX OF FOREIGN COMPANIES

##### *General*

- 1 (1) The company shall be assumed to be resident in the United Kingdom.
- (2) Nothing in sub-paragraph (1) above requires it to be assumed that there is any change in the place or places at which the company carries on its activities.
- (3) For the avoidance of doubt, it is hereby declared that, if any sums forming part of the company's profits for an accounting period have been received by the company without any deduction of or charge to tax by virtue of section 47 or 48 the effect of the assumption in sub-paragraph (1) above is that those sums are to be brought within the charge to tax for the purposes of calculating the company's chargeable profits or corresponding United Kingdom tax.
- (4) In any case where—
  - (a) it is at any time necessary for any purpose of Chapter IV of Part XVII to determine the chargeable profits of the company for an accounting period, and
  - (b) at that time no direction has been given under section 747(1) with respect to that or any earlier accounting period of the company,it shall be assumed, for the purpose of any of the following provisions of this Schedule which refer to the first accounting period in respect of which a direction is given under that section, that such a direction has been given for that period (but not for any earlier period).
- (5) Nothing in this Schedule affects any liability for, or the computation of, corporation tax in respect of a trade which is carried on by a company resident outside the United Kingdom through a branch or agency in the United Kingdom.
- 2 (1) The company shall be assumed to have become resident in the United Kingdom (and, accordingly, within the charge to corporation tax) at the beginning of the first accounting period in respect of which a direction is given under section 747(1) and that United Kingdom residence shall be assumed to continue throughout subsequent accounting periods of the company (whether or not a direction is given in respect of all or any of them) until the company ceases to be controlled by persons resident in the United Kingdom.
- (2) Except in so far as the following provisions of this Schedule otherwise provide, for the purposes of calculating a company's chargeable profits or corresponding United Kingdom tax for any accounting period which is not the first such period referred to in sub-paragraph (1) above (and, in particular, for the purpose of applying any relief which is relevant to two or more accounting periods), it shall be assumed that

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*Status: This is the original version (as it was originally enacted).*

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a calculation of chargeable profits or, as the case may be, corresponding United Kingdom tax has been made for every previous accounting period throughout which the company was, by virtue of sub-paragraph (1) above, assumed to have been resident in the United Kingdom.

3       The company shall be assumed not to be a close company.

4       (1) Subject to sub-paragraph (2) below, where any relief under the Corporation Tax Acts is dependent upon the making of a claim or election, the company shall be assumed to have made that claim or election which would give the maximum amount of relief and to have made that claim or election within any time limit applicable to it.

(2) If, by notice given to the Board at any time not later than the expiry of the time for the making of an appeal under section 753 or within such longer period as the Board may in any particular case allow, the United Kingdom resident company which has or, as the case may be, any two or more United Kingdom resident companies which together have, a majority interest in the company so request, the company shall be assumed—

- (a) not to have made any claim or election specified in the notice; or
- (b) to have made a claim or election so specified, being different from one assumed by sub-paragraph (1) above but being one which (subject to compliance with any time limit) could have been made in the case of a company within the charge to corporation tax; or
- (c) to have disclaimed or required the postponement, in whole or in part, of an allowance if (subject to compliance with any time limit) a company within the charge to corporation tax could have disclaimed the allowance or, as the case may be, required such a postponement.

(3) For the purposes of this paragraph, a United Kingdom resident company has, or two or more United Kingdom resident companies together have, a majority interest in the company if on the apportionment of the company's chargeable profits for the relevant accounting period under section 747(3) more than half of the amount of those profits—

- (a) which are apportioned to all United Kingdom resident companies, and
- (b) which give rise to an assessment on any such companies under subsection (4) (a) of that section,

are apportioned to the United Kingdom resident company or companies concerned.

(4) In sub-paragraph (3) above “the relevant accounting period” means the accounting period or, as the case may be, the first accounting period in which the relief in question is or would be available in accordance with sub-paragraph (1) above.

*Group relief etc.*

5       The company shall be assumed to be neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

6       (1) In relation to section 247 it shall be assumed—

- (a) that the conditions for the making of an election under subsection (1) are not fulfilled with respect to dividends paid or received by the company; and
- (b) that the conditions for the making of an election under subsection (4) are not fulfilled with respect to payments made or received by the company.

- (2) References in sub-paragraph (1) above to dividends or payments received by the company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.
- 7 The company shall be assumed not to be a subsidiary to which the benefit of any advance corporation tax may be surrendered under section 240.

#### *Company reconstructions*

- 8 Without prejudice to the operation of section 343 in a case where the company is the predecessor, within the meaning of that section, and a company resident in the United Kingdom is the successor, within the meaning of that section—
- (a) the assumption that the company is resident in the United Kingdom shall not be regarded as requiring it also to be assumed that the company is within the charge to tax in respect of a trade for the purposes of that section, and
  - (b) except in so far as the company is actually within that charge (by carrying on the trade through a branch or agency in the United Kingdom), it shall accordingly be assumed that the company can never be the successor, within the meaning of that section, to another company (whether resident in the United Kingdom or not).

#### *Losses in pre-direction accounting periods*

- 9 (1) Subject to sub-paragraph (2) below, this paragraph applies in any case where the company incurred a loss in a trade in an accounting period—
- (a) which precedes the first accounting period in respect of which a direction is given under section 747(1) (“the starting period”); and
  - (b) which ended less than six years before the beginning of the starting period; and
  - (c) in which the company was not resident in the United Kingdom;
- and in this paragraph any such accounting period is referred to as a “pre-direction period”.
- (2) This paragraph does not apply in any case where a declaration is made under paragraph 11(3) below specifying an accounting period of the company which begins before, or is the same as, the first pre-direction period in which the company incurred a loss as mentioned in sub-paragraph (1) above.
- (3) If a claim is made for the purpose by the United Kingdom resident company or companies referred to in paragraph 4(2) above, the chargeable profits (if any) of the company for accounting periods beginning with that pre-direction period which is specified in the claim and in which a loss is incurred as mentioned in sub-paragraph (1) above shall be determined (in accordance with the provisions of this Schedule other than this paragraph) on the assumption that that pre-direction period was the first accounting period in respect of which a direction was given under section 747(1).
- (4) A claim under sub-paragraph (3) above shall be made by notice given to the Board within 60 days of the date of the notice under subsection (1) or subsection (3) of section 753 relating to the starting period or within such longer period as the Board may in any particular case allow.

- (5) For the purposes of a claim under sub-paragraph (3) above, it shall be assumed that Chapter IV of Part XVII was in force before the beginning of the first of the pre-direction periods.
- (6) In determining for the purposes of this paragraph which accounting period of the company is the starting period, no account should be taken of the effect of any declaration under paragraph 11(3) below.

*Capital allowances*

- 10 (1) Subject to paragraphs 11 and 12 below, if, in an accounting period falling before the beginning of the first accounting period in respect of which a direction is given under section 747(1), the company incurred any capital expenditure on the provision of machinery or plant for the purposes of its trade, that machinery or plant shall be assumed, for the purposes of Chapter I of Part III of the Finance Act 1971, to have been provided for purposes wholly other than those of the trade and not to have been brought into use for the purposes of that trade until the beginning of that first accounting period, and paragraph 7 of Schedule 8 to that Act (expenditure treated as equivalent to market value at the time the machinery or plant is brought into use) shall apply accordingly.
- (2) This paragraph shall be construed as one with Chapter I of Part III of the Finance Act 1971.
- 11 (1) This paragraph applies in any case where it appears to the Board that the reason why no direction was given under section 747(1) in respect of an accounting period which precedes the starting period was that the effect of any allowance which would be assumed for that preceding period by virtue of this Schedule would be such that—
  - (a) the company would not have been considered to be subject in that accounting period to a lower level of taxation in the territory in which it was resident; or
  - (b) the company would have had no chargeable profits for that accounting period; or
  - (c) the chargeable profits of the company for that accounting period would not have exceeded £20,000 or such smaller amount as was appropriate in accordance with section 748(1)(d).
- (2) In this paragraph “the starting period” means the first accounting period in respect of which a direction is given under section 747(1) and, in a case where a claim is made under sub-paragraph (3) of paragraph 9 above, no account shall be taken of the effect of that sub-paragraph in determining which accounting period is the starting period for the purposes of this paragraph.
- (3) If, in a case where this paragraph applies, the Board so declare by notice given to every company to which, in accordance with section 753(1), notice of the making of the direction relating to the starting period is required to be given, the chargeable profits of that period and every subsequent accounting period and the corresponding United Kingdom tax for every subsequent accounting period shall be determined (in accordance with the provisions of this Schedule other than this paragraph) on the assumption that the accounting period specified in the declaration was the first accounting period in respect of which a direction was given and, accordingly, as if allowances had been assumed in respect of that accounting period and any subsequent accounting period which precedes the starting period.

- (4) Nothing in sub-paragraph (3) above affects the operation of paragraph 9(3) above in a case where the accounting period specified in a claim under paragraph 9(3) above begins before the period specified in a declaration under sub-paragraph (3) above.
- (5) Subject to sub-paragraph (6) below, the Board shall not make a declaration under sub-paragraph (3) above with respect to an accounting period which precedes the starting period unless the facts are such that—
- (a) assuming the company to have been subject in that period to a lower level of taxation in the territory in which it was resident, and
  - (b) assuming the company to have had in that period chargeable profits of such an amount that the condition in section 748(1)(d) would not be fulfilled, a direction could have been given in respect of that period under section 747(1).
- (6) In its application to a company falling within section 749(3), sub-paragraph (5) above shall have effect with the omission of paragraph (a).
- (7) In this paragraph “allowance” means an allowance under Chapter I of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971.

*Unremittable overseas income*

- 12 For the purposes of the application of section 584 to the company’s income it shall be assumed—
- (a) that any reference in paragraph (a) or paragraph (b) of subsection (1) of that section to the United Kingdom is a reference to both the United Kingdom and the territory in which the company is in fact resident; and
  - (b) that a notice under subsection (2) of that section (expressing a wish to be assessed in accordance with that subsection) may be given on behalf of the company by the United Kingdom resident company or companies referred to in paragraph 4(2) above.