

SCHEDULES

SCHEDULE 17

Section 113.

CONTROLLED FOREIGN COMPANIES

Section 747

- 1 (1) Section 747 of the Taxes Act 1988 (imputation of chargeable profits and creditable tax of controlled foreign companies) shall be amended as follows.
- (2) In subsection (1) (which provides that the provisions of the Chapter shall apply in relation to an accounting period of a company if the Board have reason to believe certain things and so direct)—
- (a) the words “the Board have reason to believe that”, and
 - (b) the words “and the Board so direct”,
- shall cease to have effect.
- (3) In subsection (3) (apportionment of controlled foreign company’s chargeable profits and creditable tax among the persons with an interest in the company) for “Where, by virtue of a direction under subsection (1) above,” there shall be substituted “Subject to section 748, where”.
- (4) In subsection (4)—
- (a) in paragraph (a) (which provides for a sum to be assessed on and recovered from a company resident in the United Kingdom as if it were corporation tax) for “assessed on and recoverable from” there shall be substituted “chargeable on”;
 - (b) in the words following paragraph (b), for “to which the direction under subsection (1) above relates” there shall be substituted “which is mentioned in subsection (1) above”.
- (5) In subsection (5) (tax not to be assessed and recoverable from the resident company unless, among other things, at least 10 per cent. of the controlled foreign company’s chargeable profits are apportioned to the resident company or persons connected or associated with it)—
- (a) for “assessed and recoverable from” there shall be substituted “chargeable on”; and
 - (b) for “10 per cent.” there shall be substituted “25 per cent.”

Section 747A

- 2 (1) Section 747A of the Taxes Act 1988 (special rule for computing chargeable profits) shall be amended as follows.
- (2) In subsection (6), for “a direction has been given under section 747” there shall be substituted “an apportionment under section 747(3) has fallen to be made”.

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- (3) In subsection (8), for paragraphs (a) and (b) there shall be substituted the following paragraphs—
- “(a) an apportionment under section 747(3) has fallen to be made, or
 - (b) it can reasonably be assumed that such an apportionment would have fallen to be made, but for the fact that the company pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy.”.
- (4) In subsection (9) (which defines a company’s commencement day by reference to an appointed day) in paragraph (b), after “the appointed day” there shall be inserted “(which, for ease of reference, is 23rd March 1995)”.

Section 748

- 3 (1) Section 748 of the Taxes Act 1988 (limitations on direction-making power) shall be amended as follows.
- (2) In subsection (1) (no direction to be given if the conditions specified in any of the paragraphs of the subsection are satisfied) for the words preceding paragraph (a) there shall be substituted—
- “(1) No apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company if—”.
- (3) In paragraph (d) of that subsection (cases where chargeable profits do not exceed £20,000 etc) for “£20,000” there shall be substituted “£50,000”.
- (4) After that paragraph there shall be inserted “or
- (e) as respects the accounting period, the company is, within the meaning of regulations made by the Board for the purposes of this paragraph, resident in a territory specified in the regulations and satisfies—
 - (i) such conditions with respect to its income or gains as may be so specified; and
 - (ii) such other conditions (if any) as may be so specified.”
- (5) After subsection (1) there shall be inserted—
- “(1A) Regulations under paragraph (e) of subsection (1) above may—
- (a) make different provision for different cases or with respect to different territories;
 - (b) make provision having effect in relation to accounting periods of controlled foreign companies ending not more than one year before the date on which the regulations are made; and
 - (c) contain such supplementary, incidental, consequential and transitional provision as the Board may think fit.”
- (6) Subsection (2) (which relates to directions under section 747) shall cease to have effect.
- (7) In subsection (3) (which refers to paragraphs (a) to (d) of subsection (1)) for “(d)” there shall be substituted “(e)”.

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- (8) Also in subsection (3), for “no direction may be given under section 747(1) with respect to that accounting period if it appears to the Board that” there shall be substituted “no apportionment under section 747(3) falls to be made as regards that accounting period if it is the case that”.
- (9) For the side-note to the section, there shall be substituted “Cases where section 747(3) does not apply.”

Section 749

- 4 For section 749 of the Taxes Act 1988 (residence and interest) there shall be substituted—

“749 Residence.

- (1) Subject to subsections (2) to (4) and (6) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.
- (2) If, in the case of any company,—
- (a) there are in any accounting period two or more territories falling within subsection (1) above, and
 - (b) no election or designation made under paragraph (d) or (e) of subsection (3) below in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to that accounting period,
- subsection (3) below shall apply with respect to that company and that accounting period.
- (3) Where this subsection applies, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of those territories, namely—
- (a) if, throughout the accounting period, the company’s place of effective management is situated in one of those territories only, in that territory;
 - (b) if, throughout the accounting period, the company’s place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company’s assets is situated;
 - (c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company’s assets is situated;
 - (d) if—
 - (i) paragraph (a) above does not apply, and
 - (ii) neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories,in that one of them (if any) which is specified in an election made in relation to that accounting period by any one or more persons who

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- together have a majority assessable interest in the company in that accounting period; and
- (e) if, in a case falling within paragraph (d) above, the time by which any election under that paragraph in relation to that accounting period must be made in accordance with section 749A(3)(b) expires without such an election having been made, in that one of those territories which the Board justly and reasonably designates in relation to that accounting period.
- (4) If, in the case of any company,—
- (a) there are in any accounting period two or more territories falling within subsection (1) above, and
- (b) an election or designation made under paragraph (d) or (e) of subsection (3) above in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to the accounting period mentioned in paragraph (a) above,
- the company shall in that accounting period be regarded for the purposes of this Chapter as resident in that one of those territories which is the subject of the election or designation.
- (5) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.
- (6) In any case where it becomes necessary for the purposes of subsection (3) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period—
- (a) account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories; and
- (b) the amount of them shall be determined by reference to their market value at that time.
- (7) This section is without prejudice to the provision that may be made in regulations under section 748(1)(e).
- (8) For the purposes of this section, one or more persons together have a “majority assessable interest” in a controlled foreign company in an accounting period of the company if—
- (a) each of them has an assessable interest in the company in that accounting period; and
- (b) it is likely that, were an apportionment of the chargeable profits of the company for that accounting period made under section 747(3), the aggregate of the amounts which would be apportioned to them is greater than 50 per cent. of the aggregate of the amounts which would be apportioned to all the persons who have an assessable interest in the company in that accounting period.
- (9) For the purposes of subsection (8) above, a person has an “assessable interest” in a controlled foreign company in an accounting period of the company if he is one of the persons who it is likely would be chargeable to tax under section 747(4)(a) on an apportionment of the chargeable profits

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and creditable tax (if any) of the company for that accounting period under section 747(3).

749A Elections and designations under section 749: supplementary provisions.

- (1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—
 - (a) the accounting period in relation to which it is made (“the original accounting period”), and
 - (b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.
- (2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—
 - (a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or
 - (b) some other territory also falls within that subsection.
- (3) Any election under section 749(3)(d)—
 - (a) must be made by notice given to an officer of the Board;
 - (b) must be made no later than twelve months after the end of the controlled foreign company’s accounting period in relation to which it is made;
 - (c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;
 - (d) must be signed by the persons making it; and
 - (e) is irrevocable.
- (4) Nothing in—
 - (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
 - (b) Schedule 1A to the Management Act (claims or elections not included in returns),shall apply, whether by virtue of section 754 or otherwise, to an election under section 749(3)(d).
- (5) A designation under section 749(3)(e) is irrevocable.
- (6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting

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period of the controlled foreign company in relation to which the designation is made.

- (7) A notice under subsection (6) above shall specify—
- (a) the date on which the designation was made;
 - (b) the controlled foreign company to which the designation relates;
 - (c) the accounting period of the controlled foreign company in relation to which the designation is made; and
 - (d) the territory designated.
- (8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.

749B Interests in companies.

- (1) For the purposes of this Chapter, the following persons have an interest in a company—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
 - (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;
 - (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and
 - (d) any other person who, either alone or together with other persons, has control of the company.
- (2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.
- (3) For the purposes of subsection (1)(b) above, the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.
- (4) References in subsection (1) above to being entitled to do anything apply where a person—
- (a) is presently entitled to do it at a future date, or
 - (b) will at a future date be entitled to do it;
- but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.
- (5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.
- (6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.

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(7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person's interest in that company, the same interest as the first company has in the second company.

(8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.”

Section 750

5 (1) Section 750 of the Taxes Act 1988 (territories with a lower level of taxation) shall be amended as follows.

(2) In subsection (1) (which refers to certain provisions of section 749)—

(a) for “subsection (3)” there shall be substituted “subsection (5)”; and

(b) for “subsection (1) or subsection (2)” there shall be substituted “any of subsections (1) to (4)”.

(3) In subsection (3), for paragraph (a) (which refers to a direction under section 747(1) and a declaration under paragraph 11(3) of Schedule 24) there shall be substituted—

“(a) it shall be assumed for the purposes of Schedule 24 that an apportionment under section 747(3) falls to be made as regards that period; and”.

Section 751

6 (1) Section 751 of the Taxes Act 1988 (accounting periods and creditable tax) shall be amended as follows.

(2) In subsection (1) (occasions on which an accounting period begins) in paragraph (b) (company commencing to carry on business)—

(a) the words “not being the subject of an earlier direction under section 747(1)” shall cease to have effect; and

(b) after “commences to carry on business” there shall be inserted “unless an accounting period of the company has previously begun as respects which an apportionment under section 747(3) falls or has fallen to be made”.

(3) In subsection (5) (direction may specify accounting period where beginning or end appears uncertain)—

(a) for “a direction under section 747(1) may” there shall be substituted “the Board may by notice”; and

(b) for “the direction” there shall be substituted “the notice”.

(4) In subsection (5) (power to amend so as to specify true accounting period where further facts come to the knowledge of the Board after making a direction)—

(a) for “making of a direction (including facts emerging on an appeal against notice of the making of the direction)” there shall be substituted “giving of a notice under subsection (4) above”; and

(b) for “direction”, in the third and fourth places where it occurs, there shall be substituted “notice”.

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(5) After subsection (5) there shall be inserted—

“(5A) Any notice under subsection (4) above, and notice of any amendment of such a notice under subsection (5) above, shall be given to every person who has an assessable interest (as defined in section 749(9)) in the company in the accounting period in question.”

(6) In subsection (6) (meaning of “creditable tax”) for “in respect of which a direction is given under section 747(1)” there shall be substituted “as regards which an apportionment under section 747(3) falls to be made”.

Section 752

7 For section 752 of the Taxes Act 1988 (apportionment of chargeable profits and creditable tax) there shall be substituted—

“752 Apportionment of chargeable profits and creditable tax.

(1) This section applies in any case where an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company.

(2) Where—

- (a) the persons who have relevant interests in the controlled foreign company at any time in the relevant accounting period have those interests by virtue only of directly or indirectly holding ordinary shares of the company,
- (b) each of those persons satisfies the condition that he is either—
 - (i) resident in the United Kingdom throughout that accounting period, or
 - (ii) resident in the United Kingdom at no time in that accounting period, and
- (c) no company which has an intermediate interest in the controlled foreign company at any time in the relevant accounting period has that interest otherwise than by virtue of directly or indirectly holding ordinary shares of the controlled foreign company,

subsection (3) below shall apply.

(3) Where this subsection applies, the apportionment of the controlled foreign company’s chargeable profits and creditable tax (if any) for the relevant accounting period shall be made among the persons who have relevant interests in the company at any time in that period in direct proportion to the percentage of the issued ordinary shares of the controlled foreign company which, in accordance with section 752B, each of those relevant interests represents.

(4) Where subsection (3) above does not apply, the apportionment of the controlled foreign company’s chargeable profits and creditable tax (if any) for the relevant accounting period shall be made on a just and reasonable basis among the persons who have relevant interests in the company at any time in that period.

752A Relevant interests.

- (1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.
- (2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.
- (3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.
- (4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.
- (5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—
 - (a) a UK resident company; or
 - (b) another related person.
- (6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—
 - (a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and
 - (b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.
- (7) A person who—
 - (a) has a direct interest in a controlled foreign company, but
 - (b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.
- (8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—
 - (a) has the whole or any part of the same interest indirectly, and
 - (b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.
- (9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.
- (10) In this section—

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“related person” means a person who—

- (a) is not a UK resident company, but
- (b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;

“UK resident company” means a company resident in the United Kingdom.

752B Section 752(3): the percentage of shares which a relevant interest represents.

- (1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and

S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

- (2) In subsection (1) above and this subsection—
- “the appropriate fraction”, in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;
 - “the lowest share-linked company”, in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;
 - “share-linked company” means a company which is share-linked to the controlled foreign company in question.
- (3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—
- (a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and
 - (b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.
- (4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that

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period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.

(5) For the purposes of subsection (4) above—

“holding period”, in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

“the relevant percentage”, in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

A is the number of days in the relevant accounting period.

752C Interpretation of apportionment provisions.

(1) In this section “the relevant provisions” means sections 752 to 752B and this section.

(2) For the purposes of the relevant provisions—

(a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;

(b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;

(c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.

(3) For the purposes of the relevant provisions, a company is “share-linked” to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—

(a) of the controlled foreign company, or

(b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or

(c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,

and so on.

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- (4) For the purposes of the relevant provisions, a company (“company A”) has an intermediate interest in a controlled foreign company if (and only if)—
- (a) it has a direct or indirect interest in the controlled foreign company; and
 - (b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.
- (5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.
- (6) Where—
- (a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and
 - (b) subsection (5) above does not apply, but
 - (c) there are one or more identifiable beneficiaries,
- the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.
- (7) In the relevant provisions—
- “bare trustee” means a person acting as trustee—
- (a) for a person absolutely entitled as against the trustee; or
 - (b) for any person who would be so entitled but for being a minor or otherwise under a disability; or
 - (c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;
- “ordinary shares”, in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;
- “the relevant accounting period” means the accounting period mentioned in section 752(1);
- “share” includes a reference to a fraction of a share.”

Section 753

- 8 Section 753 of the Taxes Act 1988 (notices and appeals) shall cease to have effect.

Section 754

- 9 (1) Section 754 of the Taxes Act 1988 (assessment, recovery and postponement of tax) shall be amended as follows.
- (2) In subsection (1) (provisions of section 747(4)(a) relating to assessment and recovery of a sum as if it were an amount of corporation tax to be taken as applying all enactments applying generally to corporation tax, including certain described enactments)—
- (a) for “assessment and recovery” there shall be substituted “the charging”; and

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(b) after “including” there shall be inserted “those relating to company tax returns,”.

(3) After subsection (1) there shall be inserted—

“(1A) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if—

- (a) any reference to corporation tax included a reference to a sum chargeable under section 747(4)(a) as if it were an amount of corporation tax; and
- (b) any reference to profits of a company included a reference to an amount of chargeable profits of a controlled foreign company which falls to be apportioned to a company under section 747(3).”

(4) For subsection (2) (which provides for any sum assessable and recoverable under section 747(4)(a) to be regarded as corporation tax which falls to be assessed for the accounting period in which ends the accounting period of the controlled foreign company and which makes provision as to the contents of a notice of assessment) there shall be substituted—

“(2) For the purposes of the Taxes Acts, any sum chargeable on a company under section 747(4)(a) is chargeable for the accounting period of the company in which ends that one of the controlled foreign company’s accounting periods the chargeable profits of which give rise to that sum.”

(5) After subsection (2) there shall be inserted—

“(2A) Where—

- (a) an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company, and
- (b) the apportionment falls to be made in accordance with section 752(4) on a just and reasonable basis, and
- (c) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return,

the Board may determine that another basis is to be used for the apportionment.

(2B) For the purposes of subsection (2A) above, the Board may by notice require the company making the return—

- (a) to produce to them such documents in the company’s power or possession, and
- (b) to provide them with such information, in such form,

as they may reasonably require for the purpose of determining the basis which is to be used for making the apportionment.

(2C) The provisions of paragraphs 27 to 29 of Schedule 18 to the Finance Act 1998 (notice to produce documents etc for the purposes of enquiry: supplementary provisions and penalty) shall apply in relation to a notice under subsection (2B) above.

(2D) Once the Board have determined under subsection (2A) above the basis to be used for the apportionment, matters shall proceed as if that were the only basis allowed by the Tax Acts.

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(2E) A determination under subsection (2A) above may be questioned on an appeal against an amendment, made under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998, of the company's company tax return, but only on the ground that the basis of apportionment determined by the Board is not just and reasonable."

(6) For subsection (3) (appeals) there shall be substituted the following subsections—

"(3) Where any appeal—

- (a) under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company tax return, or
- (b) under paragraph 48 of that Schedule against a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule),

involves any question concerning the application of this Chapter in relation to any particular person, that appeal shall be to the Special Commissioners.

(3A) Where—

- (a) any such question as is mentioned in subsection (3) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them, and
- (b) the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned,

subsection (3B) below shall apply.

(3B) Where this subsection applies—

- (a) each of the persons whose liability under this Chapter in respect of the controlled foreign company concerned is likely to be affected by the resolution of the question shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;
- (b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and
- (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party."

(7) Subsection (4) shall cease to have effect.

(8) In subsection (6) (power of Board to serve notice of liability to tax on another company with the same interest where tax assessed by virtue of section 752(6) remains unpaid by the assessable company)—

- (a) for "assessed" and "assessable", wherever occurring, there shall be substituted "chargeable";
- (b) in paragraph (a), for "752(6)" there shall be substituted "747(4)(a)";
- (c) in paragraph (b), before "the same interest" there shall be inserted "the whole or any part of"; and
- (d) at the beginning of the words following paragraph (b) there shall be inserted "the whole or, as the case may be, the corresponding part of".

(9) In subsection (7) (liability for interest where notice of liability to tax is served)—

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- (a) at the beginning of paragraph (a) there shall be inserted “the whole, or (as the case may be) the corresponding part, of”;
 - (b) in paragraph (a), for “assessed” and “assessable” there shall be substituted “chargeable”; and
 - (c) at the end of paragraph (b), there shall be added “(so far as referable to tax payable by the responsible company by virtue of the notice)”.
- (10) In subsection (8) (recovery of tax and interest from the assessable company where the responsible company fails to pay within the time allowed) for “assessable” there shall be substituted “chargeable”.

Returns where it is not established whether acceptable distribution policy applies

10 After section 754 of the Taxes Act 1988 there shall be inserted—

“754A Returns where it is not established whether acceptable distribution policy applies.

- (1) This section applies where—
- (a) a company resident in the United Kingdom (“the UK company”) has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;
 - (b) the UK company delivers a company tax return; and
 - (c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.
- (2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.
- (3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.
- (4) In any case where—
- (a) the UK company acts in pursuance of subsection (2) above, but
 - (b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,
- the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (5) In any case where—
- (a) the UK company acts in pursuance of subsection (3) above, but

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- (b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,
the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above (“an ADP amendment”) shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.
- (7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.
- (8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.
- (9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).
- (10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.
- (11) In this section, “the period allowed for establishing an ADP” means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—
- (a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or
 - (b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.
- (12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.”

Determinations requiring the sanction of the Board

11 After section 754A of the Taxes Act 1988 there shall be inserted—

“754B Determinations requiring the sanction of the Board.

- (1) This section has effect where a determination requiring the Board’s sanction is made for any of the following purposes, that is to say—
- (a) the giving of a closure notice; or

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- (b) the making of a discovery assessment.
- (2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—
- (a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or
 - (b) notification of the Board's approval having been served on that person at or before the time of the giving of the notice,
- the closure notice or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.
- (3) A notification under subsection (2)(b) above—
- (a) must be in writing;
 - (b) must state that the Board have given their approval on the basis that—
 - (i) an amount of chargeable profits, and
 - (ii) an amount of creditable tax (which may be nil),for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;
 - (c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and
 - (d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.
- (4) For the purposes of this section, the Board's approval of a determination requiring their sanction—
- (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
 - (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.
- (5) In this section references to a determination requiring the Board's sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).
- (6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board's sanction if—
- (a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;
 - (b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and
 - (c) the matters to which the agreement relates include the amount determined.

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- (7) In paragraph (a) of subsection (6) above, “the relevant amounts” means—
- (a) the amount of chargeable profits, and
 - (b) the amount of creditable tax (which may be nil),
- for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.
- (8) For the purposes of subsection (6) above an agreement made between an officer of the Board and any person (“the taxpayer”) in relation to any matter shall be taken to be in force at any time if, and only if—
- (a) the agreement is one which has been made or confirmed in writing;
 - (b) that time is after the end of the period of thirty days beginning—
 - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
 - (ii) in any other case, with the day of the agreement’s confirmation in writing; and
 - (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (9) The references in subsection (8) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice—
- (a) stating that the agreement has been made; and
 - (b) setting out the terms of the agreement.
- (10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board’s approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.
- (11) In this section—
- “closure notice” means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);
- “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).”

Section 755

- 12 Section 755 of the Taxes Act 1988 (information relating to controlled foreign companies) shall cease to have effect.

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*Treatment of chargeable profits and creditable tax
apportioned to company carrying on life assurance business*

13 After section 755 of the Taxes Act 1988 there shall be inserted—

“755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.

- (1) This section applies in any case where—
 - (a) an amount (“the apportioned profit”) of a controlled foreign company’s chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
 - (b) the UK company carries on life assurance business in that one of its accounting periods (“the relevant accounting period”) in which ends the accounting period of the controlled foreign company; and
 - (c) the property or rights which represent the UK company’s relevant interest in the controlled foreign company constitute to any extent assets of the UK company’s long term business fund.
- (2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business.
- (3) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 in relation to the policy holders’ part of any BLAGAB apportioned profit shall be—
 - (a) if a single rate of tax under section 88A(1) of the Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or
 - (b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.
- (4) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to—
 - (a) pension business,
 - (b) life reinsurance business, or
 - (c) overseas life assurance business,carried on by the UK company.
- (5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the “appropriate rate” for the purposes of—
 - (a) section 747(4)(a), and
 - (b) paragraph 1 of Schedule 26,shall be nil in relation to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of its long term business fund.
- (6) If, in the case of the relevant accounting period,—

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- (a) the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business,
 - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and
 - (c) the apportioned profit is to any extent referable to a category of business specified in paragraphs (a) to (c) of subsection (4) above,
- so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.
- (7) If, in the case of the relevant accounting period,—
- (a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and
 - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,
- so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company's relevant interest so far as represented by assets of the UK company's long term business fund shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.
- (8) Any set off under paragraph 1 or 2 of Schedule 26 against the UK company's liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against only so much of that liability as is attributable to the eligible part of the apportioned profit.
- (9) Accordingly, in the application of paragraph 2 of Schedule 26 in relation to the apportioned profit, in the definition of "the relevant maximum" in sub-paragraph (3)—
- (a) the reference to the liability to tax referred to in sub-paragraph (1) of that paragraph shall be taken as a reference to only so much of that liability as is attributable to the eligible part of the apportioned profit; and
 - (b) in paragraph (a), for the amount there described there shall be substituted a reference to the eligible part of the apportioned profit.
- (10) For the purposes of this section, the "eligible part" of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders' part.
- (11) For the purposes of this section, the "policy holders' part" of any BLAGAB apportioned profit is—
- (a) in a case where subsection (4) of section 88A of the Finance Act 1989 applies, the whole; and
 - (b) in any other case, the fraction described in subsection (5)(b) of that section.
- (12) In this section—
- "BLAGAB apportioned profit" means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;

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“long term business fund” has the meaning given by section 431(2).

- (13) For the purposes of this section, the part of the apportioned profit which is referable to—
- (a) pension business,
 - (b) life reinsurance business,
 - (c) overseas life assurance business, or
 - (d) basic life assurance and general annuity business,
- carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company’s relevant interest in the controlled foreign company.
- (14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.”

*Amendment of return where general insurance business
of foreign company accounted for on non-annual basis*

14 After section 755A of the Taxes Act 1988 there shall be inserted—

“755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis.

- (1) This section applies where—
- (a) a controlled foreign company carries on general insurance business in an accounting period;
 - (b) an amount of the company’s chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
 - (c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company’s accounting period ends; and
 - (d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.
- (2) The methods which fall within this subsection are—
- (a) the method described in paragraph 52 of Schedule 9A to the Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and
 - (b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in subparagraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred

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to in that sub-paragraph as the third year following the underwriting year.

- (3) Where this section applies—
- (a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company's accounts at any time within twelve months from the date on which the provision was replaced; and
 - (b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).
- (4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—
- (a) the controlled foreign company, and
 - (b) any person with an interest in the controlled foreign company,
- shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.
- (6) In this section “general insurance business” means insurance business which is general business, as defined in section 1 of the Insurance Companies Act 1982.”

Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.

15 After section 755B of the Taxes Act 1988 there shall be inserted—

“755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.

- (1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—
 - (a) carries on general insurance business; and
 - (b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.
- (2) Regulations under subsection (1) above may—
 - (a) make different provision for different cases;
 - (b) make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and

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(c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

(3) In this section—

“general insurance business” has the same meaning as in section 755B;

“non-resident company” means a company resident outside the United Kingdom;

“prescribed” means prescribed in regulations under this section.”

Section 756

16 (1) Section 756 of the Taxes Act 1988 (interpretation and construction of Chapter IV) shall be amended as follows.

(2) In subsection (1), after “In this Chapter” there shall be inserted the following definition—

““company tax return” means a return required to be made under Schedule 18 to the Finance Act 1998;”.

Paragraph 1 of Schedule 24

17 (1) In Schedule 24 to the Taxes Act 1988 (assumptions for calculating chargeable profits, creditable tax and corresponding United Kingdom tax of foreign companies) paragraph 1 shall be amended as follows.

(2) Sub-paragraph (3A) (assumption for applying provisions of Schedule 24 which refer to the first accounting period for which a direction is given or which is an ADP exempt period in cases where, as respects the accounting period in question and any earlier ones, no direction has been given and it has not been established that there is an ADP exempt period) shall be amended in accordance with sub-paragraphs (3) to (5) below.

(3) In paragraph (a) (necessity to determine the chargeable profits) after “to determine” there shall be inserted “in the case of any person”.

(4) In paragraph (b) (conditions obtaining at the time in question)—

(a) for sub-paragraph (i) (no direction given) there shall be substituted—

“(i) it has not been established in the case of that person that that or any earlier accounting period of the company is an accounting period in respect of which an apportionment under section 747(3) falls to be made, and”; and

(b) in sub-paragraph (ii) (not established that there is an ADP exempt period) after “it has not been established” there shall be inserted “in the case of that person”.

(5) For the words following paragraph (b) (assumption for purpose of the provisions in question that the accounting period is the first for which a direction is given or which is an ADP exempt period) there shall be substituted—

“in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above, it shall be assumed, for the purposes of those

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provisions of paragraphs 2 and 10 below which refer to the first accounting period in respect of which an apportionment under section 747(3) falls to be made or which is an ADP exempt period, that that period (but not any earlier period) is an accounting period in respect of which such an apportionment falls to be made or which is an ADP exempt period.”

- (6) Sub-paragraph (4) (assumption for applying provisions of Schedule 24 which refer to the first accounting period for which a direction is given in cases where, as respects the accounting period in question and any earlier ones, no direction has been given) shall be amended in accordance with sub-paragraphs (7) to (9) below.
- (7) In paragraph (a) (necessity to determine chargeable profits) after “to determine” there shall be inserted “in the case of any person”.
- (8) For paragraph (b) (no direction given) there shall be substituted—
- “(b) at that time it has not been established in the case of that person that that or any earlier accounting period of the company is an accounting period in respect of which an apportionment under section 747(3) falls to be made.”
- (9) For the words following paragraph (b) (assumption for the purpose of the provisions in question that the accounting period is the first for which a direction is given) there shall be substituted—

“in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above, it shall be assumed, for the purposes of those provisions of paragraph 9 below which refer to the first accounting period in respect of which an apportionment under section 747(3) falls to be made, that such an apportionment falls to be made in respect of that period (but not in respect of any earlier period).”

Paragraph 2 of Schedule 24

- 18 In paragraph 2(1) of Schedule 24 to the Taxes Act 1988 (foreign company assumed to become resident in UK at beginning of first accounting period in respect of which a direction is given or which is an ADP exempt period)—
- (a) in paragraph (a), for “a direction is given under section 747(1)” there shall be substituted “an apportionment under section 747(3) falls to be made”; and
- (b) in the words following paragraph (b), for “a direction is given” there shall be substituted “an apportionment falls to be made”.

Paragraph 4 of Schedule 24

- 19 (1) Paragraph 4 of Schedule 24 to the Taxes Act 1988 (assumption that claims or elections giving maximum relief have been made, subject to notice to the contrary) shall be amended as follows.
- (2) In sub-paragraph (1A)(a) (sub-paragraph (2) to apply to accounting period of foreign company in respect of which a direction is given) for “a direction is given under section 747(1)” there shall be substituted “an apportionment under section 747(3) falls to be made”.

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- (3) In sub-paragraph (2) (notice to be given to the Board at any time not later than the expiry of the appropriate period etc)—
 - (a) for “given to the Board” there shall be substituted “given to an officer of the Board”; and
 - (b) for “the appropriate period” there shall be substituted “the period of twenty months following the end of the accounting period”.
- (4) In consequence of sub-paragraph (3)(b) above, sub-paragraph (2A) shall cease to have effect.
- (5) In sub-paragraph (3) (majority interest in foreign company) in paragraph (b) for “an assessment” there shall be substituted “any liability”.
- (6) In sub-paragraph (3A) (application of sub-paragraph (3) to ADP exempt periods)—
 - (a) in paragraph (a), for “a direction had been duly given under section 747(1)” there shall be substituted “an apportionment under section 747(3) had fallen to be made”;
 - (b) for paragraph (b) there shall be substituted—
 - “(b) such apportionments as are mentioned in sub-paragraph (3) above had been made and such liabilities as are mentioned in that sub-paragraph had arisen.”

Paragraph 9 of Schedule 24

- 20 (1) Paragraph 9 of Schedule 24 to the Taxes Act 1988 (losses in pre-direction accounting periods) shall be amended as follows.
- (2) For “pre-direction”, wherever occurring, there shall be substituted “pre-apportionment”.
 - (3) In sub-paragraph (1) (which provides that, subject to sub-paragraph (2), the paragraph applies where the foreign company incurs a loss in an accounting period preceding the first in respect of which a direction is given etc)—
 - (a) the words “Subject to sub-paragraph (2) below,” shall cease to have effect; and
 - (b) in paragraph (a), for “a direction is given under section 747(1)” there shall be substituted “an apportionment under section 747(3) falls to be made”.
 - (4) Sub-paragraph (2) (which provides that the paragraph does not apply where a declaration is made under paragraph 11(3)) shall cease to have effect.
 - (5) In sub-paragraph (3) (assumption that pre-direction period was first accounting period in respect of which a direction was given) for “a direction was given under section 747(1)” there shall be substituted “an apportionment under section 747(3) fell to be made”.
 - (6) For sub-paragraph (4) (claim to be made by notice given to Board within 60 days of notice under section 753(1) or (3) relating to starting period etc) there shall be substituted—
 - “(4) A claim under sub-paragraph (3) above shall be made by notice given to an officer of the Board within the period of twenty months following the end of the starting period or within such longer period as the Board may in any particular case allow.”

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- (7) Sub-paragraph (5) (which provides for an assumption that Chapter IV was in force before the beginning of the first of the pre-direction periods, and which is of no further practical utility) shall cease to have effect.
- (8) Sub-paragraph (6) (no account to be taken of declaration under paragraph 11(3)) shall cease to have effect.
- (9) At the end of the paragraph there shall be added—

“(7) Nothing in—

- (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
- (b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (3) above.”

Paragraph 10 of Schedule 24

- 21 In paragraph 10 of Schedule 24 to the Taxes Act 1988 (capital allowances) in sub-paragraph (1) (which, subject to paragraphs 11 and 12, provides an assumption where capital expenditure is incurred in an accounting period falling before the first accounting period in respect of which a direction is given or which is an ADP exempt period)—
- (a) for “Subject to paragraphs 11 and 12 below,” there shall be substituted “Subject to paragraph 12 below,”; and
- (b) in paragraph (a), for “a direction is given under section 747(1)” there shall be substituted “an apportionment under section 747(3) falls to be made”.

Paragraph 11 of Schedule 24

- 22 Paragraph 11 of Schedule 24 to the Taxes Act 1988 (power of Board by notice to declare that a specified accounting period is to be treated as the first direction period where it appears that no direction was given as respects that period as a result of capital allowances being claimed) shall cease to have effect.

Paragraph 11A of Schedule 24

- 23 In paragraph 11A of Schedule 24 to the Taxes Act 1988 (capital allowances) sub-paragraphs (3) and (6) (which relate to the application of paragraph 11(1)(c)) shall cease to have effect.

Transfer pricing

- 24 After paragraph 19 of Schedule 24 to the Taxes Act 1988 there shall be inserted—

“Transfer pricing

- 20 (1) Sub-paragraph (2) of paragraph 5 of Schedule 28AA (no potential UK tax advantage where both parties are within charge to income or corporation tax etc) shall be assumed not to apply in any case where,

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apart from that sub-paragraph (and on the assumption in paragraph 1(1) above),—

- (a) paragraph 6 of that Schedule would apply; and
- (b) the company would be the disadvantaged person for the purposes of that paragraph.

(2) Schedule 28AA (transfer pricing etc: provision not at arm's length) shall be assumed not to apply in any case where, apart from this sub-paragraph,—

- (a) the actual provision would (on the assumption in paragraph 1(1) above) confer a potential advantage in relation to United Kingdom taxation on the company;
- (b) the other affected person would be a company resident outside the United Kingdom; and
- (c) each accounting period of that company which falls wholly or partly within the accounting period in question is one as regards which—
 - (i) an apportionment under section 747(3) falls to be made; or
 - (ii) no such apportionment falls to be made by virtue of the period being an ADP exempt period.

(3) In any case where—

- (a) by virtue of sub-paragraph (2) above, Schedule 28AA is assumed not to apply, and
- (b) the actual provision mentioned in paragraph (a) of that sub-paragraph involves (on the assumption in paragraph 1(1) above) any such interest or other distribution out of assets as would constitute a distribution for the purposes of the Corporation Tax Acts by virtue of paragraph (da) of section 209(2),

that interest or distribution out of assets shall be assumed not to constitute such a distribution by virtue of that paragraph.”

Schedule 25

25 For the heading to Schedule 25 to the Taxes Act 1988 (cases excluded from direction-making powers) there shall be substituted—

“Cases where section 747(3) does not apply”.

Paragraph 1 of Schedule 25

26 In paragraph 1 of Schedule 25 to the Taxes Act 1988 (which provides that Part I of the Schedule has effect for the purposes of section 748(1)(a)) there shall be added at the end “and the other provisions of Chapter IV of Part XVII which refer to a company pursuing an acceptable distribution policy”.

Paragraph 2A of Schedule 25

27 (1) Paragraph 2A of Schedule 25 to the Taxes Act 1988 (acceptable distribution policy: modifications of paragraph 2) shall be amended as follows.

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- (2) In sub-paragraph (2) (dividend paid for earlier accounting period which is not an excluded period to be treated as falling within paragraph 2(1)(a)) in paragraph (a) and paragraph (b)—
- (a) for “which immediately precedes” there shall be substituted “immediately preceding”; and
 - (b) for “is not an excluded period” there shall be substituted “which is not an excluded dividend”.
- (3) In sub-paragraph (4) (position where no direction could be given under section 747(1) in respect of earlier accounting period because foreign company pursued acceptable distribution policy) for “no direction could be given in respect of the earlier period under section 747(1)” there shall be substituted “no apportionment under section 747(3) fell to be made in respect of the earlier period”.
- (4) In sub-paragraph (8), before paragraph (a) (definition of “excluded period”) there shall be inserted—
- “(aa) a dividend is an excluded dividend if it is paid, in whole or in part, out of the total profits from which (in accordance with section 747(6) (a)) the chargeable profits for an excluded period are derived.”
- (5) In sub-paragraph (8)(a) (which defines an excluded period as one for which a direction is given under section 747(1)) for “a direction is given under section 747(1)” there shall be substituted “an apportionment under section 747(3) falls to be made”.

Paragraph 3 of Schedule 25

- 28 In paragraph 3(4A) of Schedule 25 to the Taxes Act 1988 (meaning of “net chargeable profits”) in paragraph (b), for “a direction were given under section 747(1)” there shall be substituted “an apportionment under section 747(3) fell to be made”.

Paragraph 5 of Schedule 25

- 29 In paragraph 5(2)(a) of Schedule 25 to the Taxes Act 1988, for “749(3)” there shall be substituted “749(5)”.

Paragraph 6 of Schedule 25

- 30 (1) Paragraph 6 of Schedule 25 to the Taxes Act 1988 (exemption for controlled foreign companies engaged in exempt activities) shall be amended as follows.
- (2) In sub-paragraph (1)(c) (which provides that for a company to be engaged in exempt activities, any of sub-paragraphs (2) to (4) must apply) for “(4)” there shall be substituted “(4A)”.
 - (3) In sub-paragraph (2)(b) (which in certain cases requires less than 50 per cent. of gross trading receipts to be derived from connected or associated persons or persons who have an interest in the company at any time during the accounting period) for “an interest in the company at any time during” there shall be substituted “a 25 per cent. assessable interest in the company in the case of”.

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- (4) In sub-paragraph (3) (local holding companies) in paragraph (b) (controlled companies which are not themselves holding companies but which are otherwise engaged in exempt activities)—
- (a) after “holding companies” there shall be inserted “or superior holding companies”; and
 - (b) after “exempt activities” there shall be inserted “or are, in terms of sub-paragraph (5A) below, exempt trading companies”.
- (5) In sub-paragraph (4) (holding companies other than local holding companies) in paragraph (b) (controlled companies which are not holding companies but which are otherwise engaged in exempt activities)—
- (a) after “holding companies (whether local or not)” there shall be inserted “or superior holding companies”; and
 - (b) after “exempt activities” there shall be inserted “or are, in terms of sub-paragraph (5A) below, exempt trading companies”.
- (6) After sub-paragraph (4) there shall be inserted—
- “(4A) This sub-paragraph applies to a company which is a superior holding company if at least 90 per cent. of its gross income during the accounting period in question—
- (a) represents qualifying exempt activity income of its subsidiaries; and
 - (b) is derived directly from companies which it controls and which fall within sub-paragraph (4B) below.
- (4B) For the purposes of paragraph (b) of sub-paragraph (4A) above, a company falls within this sub-paragraph if—
- (a) throughout the accounting period mentioned in that sub-paragraph, it is not itself a superior holding company but otherwise is, in terms of this Schedule, engaged in exempt activities or is, in terms of sub-paragraph (5A) below, an exempt trading company; or
 - (b) it is itself a superior holding company throughout that period and at least 90 per cent of its gross income during that period—
 - (i) represents qualifying exempt activity income of its subsidiaries, and
 - (ii) is derived directly from companies which it controls and which themselves fall within this paragraph or paragraph (a) above.”
- (7) After sub-paragraph (4B) there shall be inserted—
- “(4C) For the purposes of sub-paragraph (2)(b) above, a person has a 25 per cent. assessable interest in a controlled foreign company in the case of an accounting period of the company if, on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3), at least 25 per cent. of the controlled foreign company’s chargeable profits for the accounting period would be apportioned to that person.”
- (8) In sub-paragraph (5) (extended meaning of references in sub-paragraph (3) or (4) to companies which a holding company controls)—

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- (a) for “sub-paragraph (3) or (4)” there shall be substituted “sub-paragraphs (3) to (4B)”; and
- (b) after “holding company”, in each place where it occurs, there shall be inserted “or superior holding company”.

(9) After sub-paragraph (5) there shall be inserted—

“(5A) For the purposes of sub-paragraphs (3) to (4B) above, a company is an exempt trading company throughout any period if—

- (a) it is a trading company throughout each of its accounting periods which falls wholly or partly within that period; and
- (b) each of those accounting periods is one as regards which—
 - (i) the condition in section 747(1)(c) is not satisfied; or
 - (ii) the conditions in section 748(1)(e) are satisfied; or
 - (iii) the conditions in section 748(3)(a) and (b) are satisfied.”

Paragraph 8 of Schedule 25

- 31 (1) Paragraph 8 of Schedule 25 to the Taxes Act 1988 (which relates to the condition in paragraph 6(1)(b) of that Schedule) shall be amended as follows.
- (2) In sub-paragraph (3) (which applies sub-paragraph (2) with modifications in relation to a holding company) after “In the case of a holding company” there shall be inserted “or superior holding company”.

Paragraph 12 of Schedule 25

- 32 (1) Paragraph 12 of Schedule 25 to the Taxes Act 1988 (meaning of “holding company” in paragraphs 6 and 8(3)) shall be amended as follows.
- (2) In sub-paragraph (1), after “in paragraphs 6 and 8(3) above and” there shall be inserted “paragraph 12A below and in”.
- (3) In sub-paragraph (5) (exclusion of income derived from certain sources) in paragraph (a)—
- (a) after “which is not a holding company” there shall be inserted “or superior holding company”; and
 - (b) after “engaged in exempt activities” there shall be inserted “or, in terms of sub-paragraph (5A) of that paragraph, is an exempt trading company”.

Superior holding companies: supplementary provisions

- 33 After paragraph 12 of Schedule 25 to the Taxes Act 1988 there shall be inserted—
- “12A (1) In paragraphs 6, 8(3) and 12(5) above and this paragraph, “superior holding company” means—
- (a) a company whose business consists wholly or mainly in the holding of shares or securities of companies which—
 - (i) are holding companies or local holding companies; or
 - (ii) are themselves superior holding companies; or
 - (b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly

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or mainly by companies which it controls and which are resident in the territory in which it is resident.

- (2) For the purposes of sub-paragraphs (4A) and (4B) of paragraph 6 above, the income of a company during any period which “represents qualifying exempt activity income of its subsidiaries” is any income of the company during that period which is directly or indirectly derived from companies—
 - (a) which it controls, and
 - (b) which, throughout that period, fall within sub-paragraph (4B) (a) of that paragraph, but
 - (c) which are not holding companies other than local holding companies.
- (3) In determining for the purposes of sub-paragraph (4A) or (4B) of paragraph 6 above the companies from which, and the proportions in which, different descriptions of income of a company are derived (whether directly or indirectly), any dividend shall be taken to be paid out of the appropriate profits.
- (4) Subsections (3) and (4) of section 799 (which provide rules for determining the profits out of which a dividend is to be regarded as paid for the purpose of subsection (1) of that section) shall apply for determining the appropriate profits for the purposes of subsection (3) above as they apply for determining the relevant profits for the purposes of subsection (1) of that section.
- (5) Sub-paragraphs (4) to (6) of paragraph 12 above shall apply in relation to sub-paragraph (4A) or (4B) of paragraph 6 above and a superior holding company as they apply in relation to sub-paragraph (3) or (4) of paragraph 6 above and a holding company, but taking the reference in sub-paragraph (4) of paragraph 12 above to paragraph (a) or (b) of sub-paragraph (1) of that paragraph as a reference to paragraph (a) or (b) of sub-paragraph (1) above.”

Paragraph 1 of Schedule 26

- 34
- (1) In Schedule 26 to the Taxes Act 1988 (reliefs against liability for tax in respect of chargeable profits apportioned to UK resident company) paragraph 1 (trading losses and group relief etc) shall be amended as follows.
 - (2) In sub-paragraph (1) (set-off against liability to tax under section 747(4)(a) where UK resident company entitled to deduction in respect of relevant allowance) the following provisions shall cease to have effect—
 - (a) paragraph (c) (set-off only available if company has no profits or relevant allowance exceeds profits) and the word “and” immediately preceding that paragraph; and
 - (b) in the words following paragraph (c), the words “or, as the case may be, of the excess of it referred to in paragraph (c) above”.
 - (3) In sub-paragraph (2)(a) (which defines the appropriate accounting period as that for which by virtue of section 754(2) the company is regarded as assessed to corporation tax in respect of the chargeable profits concerned) for “regarded as assessed to

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corporation tax” there shall be substituted “chargeable to tax by virtue of this Chapter”.

- (4) Sub-paragraph (4) (time limit for making claims for group relief) shall cease to have effect.
- (5) Sub-paragraph (6) (which modifies section 43 of the Taxes Management Act 1970 in its application for the purposes of the paragraph) shall cease to have effect.

Paragraph 3 of Schedule 26

- 35 (1) Paragraph 3 of Schedule 26 to the Taxes Act 1988 (gains on disposal of shares in controlled foreign companies) shall be amended as follows.
 - (2) In sub-paragraph (1), for paragraph (a) (which refers to a direction having been given in respect of an accounting period of a controlled foreign company) there shall be substituted—
 - “(a) an accounting period of a controlled foreign company (“the apportionment period”) is one in respect of which an apportionment under section 747(3) falls to be made; and”.
 - (3) Accordingly, in paragraphs (b) and (c) of sub-paragraph (1), for the words “the direction period”, in each place where they occur, there shall be substituted “the apportionment period”.
 - (4) In paragraph (d) of sub-paragraph (1) (which refers to a sum being, under section 747(1)(a), assessed and recoverable from a company) for “assessed on and recoverable from” there shall be substituted “chargeable on”.
 - (5) In sub-paragraph (3), for “the direction period” there shall be substituted “the apportionment period”.
 - (6) In sub-paragraph (4), in the words following paragraph (c), for “assessed and recoverable” there shall be substituted “chargeable under section 747(4)(a)”.
 - (7) After subsection (6) there shall be inserted—
 - “(6A) Nothing in—
 - (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
 - (b) Schedule 1A to the Management Act (claims or elections not included in returns),
 shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (6) above.”

Paragraph 4 of Schedule 26

- 36 (1) Paragraph 4 of Schedule 26 to the Taxes Act 1988 (dividends from the controlled foreign company) shall be amended as follows.
 - (2) In sub-paragraph (1), for paragraph (a) (which refers to a direction having been given in respect of an accounting period of a controlled foreign company) there shall be substituted—

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- “(a) an accounting period of a controlled foreign company is one in respect of which an apportionment under subsection (3) of section 747 falls to be made; and”.
- (3) Accordingly, in paragraph (b) of that sub-paragraph for “subsection (3) of that section” there shall be substituted “that subsection”.
- (4) In sub-paragraph (2) (which refers to sums assessed on and recoverable from companies in accordance with s.747(4)(a)) for “assessed on and recoverable from” there shall be substituted “chargeable on”.
- (5) In sub-paragraph (5)(a) (which refers to the amount of tax assessed on and recoverable from the company in accordance with s.747(4)(a)) for “assessed on and recoverable from” there shall be substituted “chargeable on”.

Commencement and transitional provision

- 37 (1) The preceding provisions of this Schedule have effect as respects accounting periods of companies resident in the United Kingdom which end on or after the corporation tax self-assessment appointed day.
- (2) Where by virtue of sub-paragraph (1) above any question as to liability (if any) to tax by virtue of Chapter IV of Part XVII of the Taxes Act 1988 as respects any particular accounting period of a non-resident company which ends before the corporation tax self-assessment appointed day falls to be determined—
- (a) in the case of at least one company resident in the United Kingdom, for an accounting period of its which ends on or after that day, and
- (b) in the case of at least one other such company, for an accounting period of its which ends before that day,
- such separate determinations and computations shall be made as are necessary for determining the liability of the companies which fall within paragraph (a) above and the liability of the companies which fall within paragraph (b) above.
- (3) For the purposes of sub-paragraph (2) above—
- (a) any question as to the liability (if any) of a company falling within paragraph (a) shall be determined as if, in the case of every company resident in the United Kingdom, the accounting period of the non-resident company ended in an accounting period of the company ending on or after the corporation tax self-assessment appointed day; and
- (b) any question as to the liability (if any) of a company falling within paragraph (b) shall be determined as if, in the case of every company resident in the United Kingdom, the accounting period of the non-resident company ended in an accounting period of the company ending before the corporation tax self-assessment appointed day.
- (4) In this paragraph—
- “accounting period”, in relation to a non-resident company, has the same meaning as it has in Chapter IV of Part XVII of the Taxes Act 1988;
- “the corporation tax self-assessment appointed day” means the day which is the appointed day for the purposes of section 199 of the Finance Act 1994 (corporation tax self-assessment);
- “non-resident company” means a company resident outside the United Kingdom.