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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1998, Paragraph 11. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 17

#### CONTROLLED FOREIGN COMPANIES

##### *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
  - (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—

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- (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.
- (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

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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).”

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