

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 36: Schedule 16: Controlled Foreign Companies

Details of the Schedule

Part 1 – Abolition of Acceptable Distribution Policy Exemption

7. Paragraph 1 removes the reference to the acceptable distribution policy (ADP) exemption in section 748 of ICTA which lists the circumstances in which the CFC charging provision in section 747 of ICTA will be disapplied and repeals the ADP rules in Part 1 of Schedule 25 of ICTA.
8. Paragraph 2 makes consequential changes to ICTA.
9. Paragraphs 3 and 4 amend the rules in Schedule 29 to the Finance Act 2002 concerning the calculation of gains and losses arising to a CFC from intangible assets and carry the effect through to the legislation in Corporation Tax Act 2009.
10. Paragraph 5 makes consequential changes to the relevant Finance Acts.
11. Paragraph 6 states that Part 1 of the Schedule has effect in relation to a CFC's accounting periods beginning on or after 1 July 2009.
12. Paragraph 7 sets out that where a CFC has an accounting period which straddles 1 July 2009 it is to be treated as split into two separate accounting periods in order to facilitate the repeal of the ADP exemption.
13. The first of these periods will begin on the first day of the straddling period and end on 30 June 2009; the second will begin on 1 July 2009 and end on the last day of the straddling period. The CFC's chargeable profits and creditable tax should be apportioned between the two periods on a just and reasonable basis.
14. Paragraph 8(1) makes it clear that the amendments do not affect the application of either:
 - the rules in sections 801, 801C and 803A of ICTA concerning the treatment of dividends paid in pursuit of an ADP; or
 - the ADP exemption in Part 1 of Schedule 25 to ICTAin relation to dividends paid on or after 1 July 2009 for periods ending before that date in pursuit of an ADP.
15. Sub-paragraphs (2) and (3) set out a transitional provision which applies where the CFC paid a dividend in the second of the two deemed accounting periods created by paragraph 7. It ensures that the current rules governing how dividends are attributed to accounting periods continue to work appropriately. It does this by saying that the relevant provisions of section 799 of ICTA will have effect as if the reference in it to the last period for which accounts of the CFC were made up were a reference to the first of the two deemed accounting periods provided for by paragraph 7.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

16. The purpose of paragraphs 7 and 8 is to ensure that the ADP exemption remains available to profits accruing prior to 1 July 2009. A CFC which pays a dividend on or after 1 July 2009 for an accounting period ending before that date may still qualify for the ADP exemption for that period if the conditions currently in Part 1 of Schedule 25 are fulfilled.
17. Paragraph 9 states that 'accounting period', 'chargeable profits', 'controlled foreign company' and 'creditable tax' take the meaning given to them for the purposes of the CFC rules.