

SCHEDULES

SCHEDULE 19

LARGE BUSINESSES: TAX STRATEGIES AND SANCTIONS

PART 1

INTERPRETATION

Purpose of Part 1

- 1 This Part defines terms for the purposes of this Schedule.

“Relevant body”

- 2 (1) “Relevant body” means a UK company or any other body corporate (wherever incorporated), but does not include a limited liability partnership.
- (2) A relevant body is a “foreign” relevant body (or member of a group or sub-group) if it is incorporated outside the United Kingdom.

“UK company”

- 3 (1) “UK company” means a company which is (or is treated as if it is) formed and registered under the Companies Act 2006, unless it falls within sub-paragraph (2).
- (2) The term “UK company” does not include a company which is—
- (a) an open-ended investment company within the meaning of section 613 of CTA 2010, or
 - (b) an investment trust within the meaning of section 1158 of CTA 2010.

“UK permanent establishment”

- 4 (1) “UK permanent establishment” means a permanent establishment in the United Kingdom of a foreign relevant body.
- (2) In sub-paragraph (1) “permanent establishment” has the same meaning as it has for the purposes of the Corporation Tax Acts (see section 1141 to 1144 of CTA 2010).

“Qualifying company”

- 5 (1) A UK company is a “qualifying company” in any financial year (subject to any regulations under sub-paragraph (5)) if sub-paragraph (2) or (3) applies to it.
- (2) This sub-paragraph applies to the company if, at the end of the previous financial year—
- (a) it satisfied the qualification test for a UK company, and

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- (b) was not a member of a UK group or a UK sub-group.
- (3) This sub-paragraph applies to the company if, at the end of the previous financial year—
 - (a) it was a member of a foreign group,
 - (b) the group met the qualification test for a group, and
 - (c) it was not a member of a UK sub-group of that foreign group.
- (4) The qualification test for a UK company is that the company satisfied either or both of the following conditions (by reference to the previous financial year)—

1. The company’s turnover	More than £200 million
2. The company’s balance sheet total	More than £2 billion.
- (5) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule (or any such purpose specified in the regulations).
- (6) For the purposes of this paragraph a UK permanent establishment of a foreign relevant body is to be treated as if it were—
 - (a) a UK company, and
 - (b) if the foreign relevant body is a member of a UK group or a UK sub-group, a member of that group or sub-group.

“Group” and related expressions

- 6 (1) “Group” means two or more relevant bodies which together constitute—
 - (a) an MNE Group (see paragraph 7), or
 - (b) a group other than an MNE group (see paragraph 8).
- (2) “UK group” means a group whose head is a relevant body incorporated in the United Kingdom.
- (3) “Foreign group” means a group whose head is a foreign relevant body.
- (4) For the purposes of sub-paragraphs (2) and (3) it is immaterial where other members of the group are incorporated.
- 7 (1) “MNE Group” has the same meaning (subject to sub-paragraph (2) below) as in the OECD Model Legislation in the OECD Country-by-Country Reporting Implementation Package as contained in the OECD’s Guidance on Transfer Pricing Documentation and Country-by-Country Reporting published in 2014.
- (2) Paragraph (ii) (excluded MNE Group) of the Implementation Package is not part of the definition applied by sub-paragraph (1) above for the purposes of this Schedule.
- (3) In sub-paragraph (1) “OECD” means the Organisation for Economic Co-operation and Development.
- 8 (1) A “group other than an MNE group” means a group consisting of two or more relevant bodies—
 - (a) each of which is a member of the group by virtue of sub-paragraph (3) or (4),
 - (b) at least two of which are UK companies,
 which is not an MNE Group.

- (2) For the purposes of the condition in sub-paragraph (1)(b) a UK permanent establishment of a foreign member of a group is to be treated as if it were a UK company and a member of the group.
 - (3) A relevant body is a member of a group if—
 - (a) another relevant body is its 51% subsidiary, or
 - (b) it is a 51% subsidiary of another relevant body.
 - (4) Two relevant bodies are members of the same group if—
 - (a) one is a 51% subsidiary of the other, or
 - (b) both are 51% subsidiaries of another relevant body.
 - (5) Chapter 3 of Part 24 of CTA 2010 (meaning of 51% subsidiary) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (but with the modification in sub-paragraph (6)).
 - (6) It applies as if references to a body corporate were references to a relevant body.
- 9 A group is headed by whichever relevant body within the group is not a 51% subsidiary of another relevant body within the group (and “head”, in relation to the group, means that body).

“Qualifying group”

- 10 (1) A group is a “qualifying group” in any financial year if, at the end of the previous financial year—
- (a) in the case of a group other than an MNE Group, the group satisfied the qualification test for such a group (subject to any regulations under sub-paragraph (6)), or
 - (b) in the case of an MNE Group—
 - (i) there was a mandatory reporting requirement in respect of the group under regulations made under section 122 of FA 2015 (country-by-country reporting), or
 - (ii) there would have been such a requirement if the head of the group were resident in the United Kingdom for tax purposes.
- (2) The qualification test for a group other than an MNE Group is that the group satisfied either or both of the following conditions (by reference to the previous financial year)

1. Group turnover	More than £200 million
2. Group balance sheet total	More than £2 billion.

- (3) In sub-paragraph (2)—
- (a) “group turnover” means the aggregate turnover of the UK companies that are members of the group at the end of the previous financial year, and
 - (b) “group balance sheet total”, means the aggregate balance sheet totals for all those UK companies.
- (4) Where the financial year of a UK company within in the group does not end on the same day as the previous financial year of the head of the group, the figures from the company that are to be included in the aggregate figures are those for the company’s

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financial year ending last before the end of the previous financial year of the head of the group.

- (5) For the purposes of assessing the turnover or balance sheet total of the group, sub-paragraphs (3) and (4) apply as if a UK permanent establishment of a foreign member of the group were a UK company and a member of the group.
- (6) The Treasury may by regulations provide—
- (a) that a group other than an MNE Group which is of a specified description is not a qualifying group for the purposes, or any specified purpose, of this Schedule, or
 - (b) that a relevant body, or a UK permanent establishment, of a specified description is to be disregarded in determining whether the qualification test is satisfied by a group other than an MNE Group;
- and in this sub-paragraph “specified” means specified in the regulations.
- (7) In this paragraph “financial year”, in relation to a group, means a financial year of the head of the group.

“UK sub-group” and “head” (in relation to a UK sub-group)

- 11 (1) A “UK sub-group” consists of two or more relevant bodies that would be a UK group, but for the fact that they are members of a larger group headed by a relevant body incorporated outside the United Kingdom.
- (2) A UK sub-group is headed by the company or other relevant body incorporated in the United Kingdom that is not a 51% subsidiary of another member of the UK sub-group (and “head”, in relation to the sub-group, means that company or body).

“UK partnership”, “qualifying partnership” and “representative partner”

- 12 (1) “UK partnership” means a body of any of the following descriptions which is carrying on a trade, business or profession with a view to profit—
- (a) a partnership within the meaning of the Partnership Act 1890,
 - (b) a limited partnership registered under the Limited Partnerships Act 1907, or
 - (c) a limited liability partnership incorporated in the United Kingdom.
- (2) A UK partnership is a “qualifying partnership” in a financial year, if it satisfied the qualification test for a UK partnership at the end of the previous financial year (subject to any regulations under sub-paragraph (4)).
- (3) The qualification test for a UK partnership is that the partnership satisfied either or both of the following conditions (by reference to the previous financial year)—

1. The partnership’s turnover	More than £200 million
2. The partnership’s balance sheet total	More than £2 billion.

- (4) The Treasury may by regulations provide that a UK partnership of a description specified in the regulations is not a qualifying partnership for the purposes of this Schedule (or any such purpose specified in the regulations).

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- (5) “Representative partner”, in relation to a UK partnership, means the partner who is required by a notice served under or by virtue of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of HMRC.

“Financial year”

- 13 “Financial year”—
- (a) in relation to a UK company, has the meaning given by the Companies Act 2006 (see section 390 of that Act),
 - (b) in relation to any other relevant body, means any period in respect of which a profit and loss account for the body’s undertaking is required to be made up (whether by its constitution or by the law under which it is established), whether that period is a year or not,
 - (c) in relation to a UK partnership, means any period of account for which its representative partner has provided or is required to provide a partnership statement under a return issued under section 12AB TMA 1970.

“Turnover” and “balance sheet total”

- 14 (1) “Turnover”—
- (a) in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act), and
 - (b) in relation to a UK partnership or a UK permanent establishment, has a corresponding meaning.
- (2) “Balance sheet total”, in relation to a UK company, UK partnership or UK permanent establishment and a financial year, means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year.

“UK taxation”

- 15 (1) “UK taxation” means —
- (a) income tax,
 - (b) corporation tax, including any amount assessable or chargeable as if it were corporation tax or treated as if it were corporation tax,
 - (c) value added tax,
 - (d) amounts for which the company is accountable under PAYE regulations,
 - (e) diverted profits tax,
 - (f) insurance premium tax,
 - (g) annual tax on enveloped dwellings,
 - (h) stamp duty land tax,
 - (i) stamp duty reserve tax,
 - (j) petroleum revenue tax;
 - (k) customs duties,
 - (l) excise duties,
 - (m) national insurance contributions.
- (2) In relation to a tax strategy required to be published by Part 2, “UK taxation” refers to the taxes or duties mentioned above so far as relating to or affecting the bodies or body to which the required tax strategy relates.