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## SCHEDULES

### SCHEDULE 42

Section 200

#### CONTROLLED FOREIGN COMPANIES: EXEMPT ACTIVITIES

##### *Introductory*

- 1 Part 2 of Schedule 25 to the Taxes Act 1988 (controlled foreign companies: exempt activities) is amended as follows.

*Companies engaged in wholesale, distributive, financial or service business*

- 2 (1) Paragraph 6 (meaning of “engaged in exempt activities”) is amended as follows.

<sup>F1</sup>(2) .....

- (3) In sub-paragraph (2A) (persons from whom less than 50% of the gross trading receipts of a wholesale etc business of the controlled foreign company must be derived) omit the word “and” immediately preceding paragraph (c) and at the end of that paragraph add “;

- (d) persons not falling within paragraphs (a) to (c) above which are companies resident in the United Kingdom;
- (e) persons not falling within paragraphs (a) to (c) above which are companies not resident in the United Kingdom which carry on business through a branch or agency in the United Kingdom;
- (f) persons not falling within paragraphs (a) to (c) above who are individuals habitually resident in the United Kingdom;

but where the company is a controlled foreign company falling within sub-paragraph (2B) below, paragraphs (d) to (f) above shall be disregarded.”.

- (4) After sub-paragraph (2A) insert—

“(2B) A controlled foreign company falls within this sub-paragraph if either—

- (a) its main business is the effecting or carrying out of contracts of long-term insurance, other than protection business; or
- (b) it is a member of an insurance group and its main business is insuring or reinsuring large risks.

Paragraph 11A below has effect for the interpretation of this sub-paragraph.

- (2C) For the purposes of sub-paragraph (2)(b) above, a company’s gross trading receipts from a business shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (2A)(e) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person’s branch or agency in the United Kingdom.”.

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- (5) In sub-paragraph (4C) (which defines for the purposes of sub-paragraph (2)(b) a “25 per cent assessable interest”, an expression not used in sub-paragraph (2)(b) but used in sub-paragraph (2A)(b)) for “(2)(b)” substitute “ (2A)(b) ”.

#### Textual Amendments

- F1** Sch. 42 para. 2(2) omitted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 16 para. 11(c) (with Sch. 16 paras. 13-20)

#### *Companies engaged in business of banking etc*

- 3 (1) Paragraph 11 (provisions relating to wholesale, distributive, financial or service business) is amended as follows.
- (2) In sub-paragraph (3) (controlled foreign company engaged in business of banking etc) for paragraph (a) (interest from UK company not to be regarded as receipt derived from connected or associated persons) substitute—
- “(a) no payment of interest received from a company resident in the United Kingdom which is connected or associated with the controlled foreign company shall be regarded for the purposes of paragraph 6(2)(b) above as a receipt derived directly or indirectly from a person falling within paragraph 6(2A) above, but”.
- (3) At the end of paragraph (b) of that sub-paragraph (the capitalisation test) add “, and
- (c) it shall also be conclusively presumed that the condition in paragraph 6(2)(b) is not fulfilled if 10% or more of the company’s gross trading receipts from all businesses carried on by it in the accounting period in question, taken together, are receipts other than interest and are directly or indirectly derived from persons—
- (i) which are companies resident in the United Kingdom,
- (ii) which are companies not resident in the United Kingdom but which carry on business through a branch or agency in the United Kingdom, or
- (iii) who are individuals habitually resident in the United Kingdom,
- but for this purpose a company’s gross trading receipts shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (ii) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person’s branch or agency in the United Kingdom.”.

#### *Interpretation of paragraph 6(2B)*

- 4 After paragraph 11 insert—
- “11A(1) This paragraph has effect for the interpretation of paragraph 6(2B) above.
- (2) “Contract of long-term insurance” means any contract falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- (3) “Protection business” means contracts of long-term insurance where—

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- (a) either—
  - (i) the contract has no surrender value; or
  - (ii) the consideration consists of a single premium and the surrender value does not exceed the amount of that premium; and
- (b) the contract makes no provision for its conversion or extension in a manner which would result in its ceasing to fall within paragraph (a) above;

and references to protection business include a reference to reinsurance of protection business.

- (4) “Insurance group” shall be construed in accordance with section 255A(5) of the Companies Act 1985 (meaning of “insurance group” in Part 7) but reading Part 7 of that Act—

- (a) as if it extended to Northern Ireland, and
- (b) as if any reference to a company (within the meaning of that Act) included a reference to a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986,

but does not include such an insurance group if it falls within sub-paragraph (5) below.

- (5) Such an insurance group falls within this sub-paragraph if (within the meaning of that Part as so read) the parent company is a subsidiary undertaking of a parent company which is neither—

- (a) the parent company of an insurance group; nor
- (b) a subsidiary undertaking of the parent company of an insurance group.

- (6) A controlled foreign company is, in accordance with sub-paragraphs (4) and (5) above, a “member of an insurance group” if (within the meaning of that Part as so read) it is the parent company, or a subsidiary undertaking of the parent company, of an insurance group which is by virtue of sub-paragraph (4) above an insurance group for the purposes of paragraph 6(2B) above.

- (7) A company’s main business is “insuring or reinsuring large risks” if (and only if)—

- (a) the company’s main business is the effecting or carrying out of contracts of insurance; and
- (b) 50% or more of its gross trading receipts from that business are derived from insuring or reinsuring large risks.

“Large risks” is defined in paragraph 11B below.

- (8) In this paragraph—

“contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“contract of long-term insurance” has the meaning given by sub-paragraph (2) above.

11B (1) In paragraph 11A above “large risks” means—

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- (a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;
  - (c) risks falling within classes 3, 8, 9, 10, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in sub-paragraph (2) below is satisfied.
- (2) The condition referred to in sub-paragraph (1)(c) above is that, in the case of that business of the policy holder, at least two of the three following criteria were exceeded in the most recent financial year beginning on or after 1st January 1999 for which the information is available—
- (a) balance sheet total: 6.2 million euros;
  - (b) net turnover: 12.8 million euros;
  - (c) number of employees: 250.
- (3) For the purposes of sub-paragraph (2) above as it applies where the policy holder is a company, within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986,—
- (a) “balance sheet total” has the meaning given by section 247(5) of that Act or Article 255(5) of that Order;
  - (b) “net turnover” has the meaning given to “turnover” by section 262(1) of that Act or Article 270(1) of that Order; and
  - (c) “number of employees” has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;
- and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the company shall be proportionately reduced.
- (4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive [83/349/EEC](#)) are drawn up, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to those accounts.
- (5) For the purposes of sub-paragraph (1)(c) above as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to the aggregate of the figures of the description in question for all the members of the professional association, joint venture or temporary grouping.
- (6) In sub-paragraphs (1) to (5) above “business” includes a trade or profession and, for the purposes of sub-paragraph (1)(c) above, any activity of a professional association, joint venture or temporary grouping.
- (7) For the purposes of this paragraph, where an amount is denominated in any accounts in a currency other than the euro, it shall be converted into its equivalent in euros using the London closing exchange rate for that currency and the euro for the last day of the period to which the accounts relate.
- (8) In this paragraph—

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“euro” means the single currency adopted or proposed to be adopted as its currency by a member State in accordance with the Treaty establishing the European Community;

“financial year”, in relation to any person, means the period (not exceeding 12 months) for which that person makes up accounts.”.

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**Changes and effects yet to be applied to :**

- specified provision(s) savings for amendments by 2018 anaw 1, s. 6, Sch. 6 by [S.I. 2019/110 reg. 5](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 57(3) inserted by [2011 c. 11 Sch. 22 para. 4](#)
- s. 87(3)(a)(ia) inserted by [S.I. 2003/2760 Sch. para. 3\(4\)\(a\)](#) (This amendment not applied to legislation.gov.uk. The affecting S.I. is revoked and superseded by [S.I. 2003/2816](#))
- Sch. 12 para. 3(2)(aa) inserted by [2007 asp 3 Sch. 5 para. 32](#) (This effect was superseded by the repeal of Sch. 12 para. 3 by Finance Act 2008 (c. 9), s. 129(4), Sch. 43 para. 16)
- Sch. 12 para. 1A inserted by [2007 c. 15 Sch. 13 para. 147\(2\)](#) (The amending provision was repealed before coming into force.)
- Sch. 12 para. 1A omitted by [2008 c. 9 Sch. 43 para. 9](#) (The amending provision was repealed before coming into force.)