

DRAFT CLAUSES/SCHEDULES

Controlled foreign companies

1.—(1) Part I of Schedule 25 to the Taxes Act 1988 (acceptable distribution policy) is amended as follows.

Controlled foreign companies: acceptable distribution policy. [j4531]

(2) In paragraph 2 (meaning of acceptable distribution policy) at the end of sub-paragraph (1A) (requirement that payment of dividend is taken into account in computing corporation tax) add “and—

(a) it is chargeable neither under Case I of Schedule D nor under Case VI of that Schedule in circumstances where by virtue of section 436, 439B or 441 profits are computed in accordance with the provisions of this Act applicable to Case I; or

(b) if it is chargeable under Case I, or under Case VI in the circumstances described in paragraph (a), it is not involved in a UK tax avoidance scheme;

and paragraph 2B below has effect for the purposes of paragraph (b) above.”.

(3) After paragraph 2A insert—

“2B.—(1) This paragraph has effect for the purposes of paragraph 2(1A)(b) above.

(2) No payment of dividend by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period.

(3) “UK tax avoidance scheme” means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

(4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—

(a) would have been liable for any such tax or for a greater amount of any such tax; or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(5) In this paragraph—

“arrangement” means an arrangement of any kind, whether in writing or not;

“United Kingdom tax” means corporation tax or any tax chargeable as if it were corporation tax.”.

(4) In paragraph 4 (controlled foreign company dividends passing up a chain of related companies) at the end of sub-paragraph (1) (which provides for a payment made by a controlled foreign company to be regarded as made to a United Kingdom resident) add “and shall be taken to satisfy the conditions in paragraph 2(1A) above”.

(5) At the end of sub-paragraph (1A) of that paragraph (requirement that the subsequent dividend is taken into account in computing corporation tax) add “and—

(a) it is chargeable neither under Case I of Schedule D nor under Case VI of that Schedule in circumstances where by virtue of section 436, 439B or 441 profits are computed in accordance with the provisions of this Act applicable to Case I; or

(b) if it is chargeable under Case I, or under Case VI in the circumstances described in paragraph (a), it is not involved in a UK tax avoidance scheme;

and paragraph 4A below has effect for the purposes of paragraph (b) above.”.

(6) In sub-paragraph (2) of that paragraph (interpretation) after “one company is related to another if” insert “neither is resident in the United Kingdom and”.

(7) After paragraph 4 insert—

“4A.—(1) This paragraph has effect for the purposes of paragraph 4(1A)(b) above.

(2) No payment to a company resident in the United Kingdom which represents the whole or part of a dividend paid by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that—

(a) there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period, and

(b) so much of the dividend as is represented by that payment will (if paragraph 4(1) above has effect) fall to be brought into account in determining whether the controlled foreign company has done so.

(3) “UK tax avoidance scheme” means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

(4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—

(a) would have been liable for any such tax or for a greater amount of any such tax; or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(5) In this paragraph—

“arrangement” means an arrangement of any kind, whether in writing or not;

“United Kingdom tax” means corporation tax or any tax chargeable as if it were corporation tax.”.

(8) This section applies to dividends paid on or after 7th March 2001 by a controlled foreign company for any accounting period of that controlled foreign company which ends on or after that date.

(9) In this section “accounting period” and “controlled foreign company” have the same meaning as they have in Chapter IV of Part XVII of the Taxes Act 1988.