

Finance Act, 2008

Section 64 - Controlled foreign companies

2) In section 747 (imputation of chargeable profits of controlled foreign companies)- (1) Chapter 4 of Part 17 of ICTA (controlled foreign companies) is amended as follows. (a) in subsection (6), before "and" at the end of paragraph (a) insert- "(aa) any reference in this Chapter to its chargeable profits for an accounting period includes (subject to subsections (7) to (9)) income which accrues during that accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary;", and (b) after that subsection insert- "(7) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in subsection (6)(aa), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis. (8) Where income within subsection (6)(aa) is included in the chargeable profits of a company, any dividend or other distribution received by the company which derives from that income is not included in the chargeable profits of the company to the extent that it is so derived. (9) Any income within subsection (6)(aa) which would (apart from this subsection)- (a) be included in the chargeable profits of a company which is a beneficiary in relation to a settlement and apportioned under subsection (3), and (b) be included in the chargeable profits of a company which is a settlor in relation to the settlement and apportioned under that subsection, is not to be included in the chargeable profits of the company which is a settlor." (3) In section 755D (meaning of control)- (a) after subsection (1) insert- "(1A) For the purposes of this Chapter a person also controls a company if the person possesses, or is entitled to acquire, such rights as would- (a) if the whole of the income of the company were distributed, entitle the person to receive the greater part of the amount so distributed, (b) if the whole of the company's share capital were disposed of, entitle the person to receive the greater part of the proceeds of the disposal, or (c) in the event of the winding-up of the company or in any other circumstances, entitle the person to receive the greater part of the assets of the company which would then be available for distribution.", and (b) in subsection (2), after "above" insert "or satisfy subsection (1A) above". (4) In paragraph 2A of Schedule 25 (acceptable distribution policy)- (a) in sub-paragraph (2), for "sub-paragraph (4)" substitute "subparagraphs (4) and (4A)", and (b) after sub-paragraph (4) insert- "(4A) Sub-paragraph (2) does not apply where the distribution condition is satisfied in relation to the relevant accounting period, but- (a) the relevant profits for that period do not include income within sub-paragraph (4B), and (b) if that income were included, the distribution condition would not be satisfied in relation to that period. (4B) The income within this sub-paragraph is- (a) any income which accrues during the relevant accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis. (4C) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (4B)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis. (4D) In sub-paragraph (4B)(b) "partnership" includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly." (5) In paragraph 6 of Schedule 25 (definition of exempt activities), after subparagraph (5B) insert- "(5C) For the purposes of this paragraph, the gross income of a holding company or a superior holding company during an accounting period includes- (a) any income which accrues during that period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis. (5D) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (5C)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis. (5E) In sub-paragraph (5C)(b) "partnership" includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly." (6) The amendments made by subsections

(2) and (5) have effect in relation to income accruing on or after 12 March 2008. (7) The amendments made by subsection (3) have effect for determining whether, at any time on or after 12 March 2008, a company is controlled by persons resident in the United Kingdom for the purposes of Chapter 4 of Part 17 of ICTA. (8) The amendments made by subsection (4) have effect in relation to any dividend paid on or after 12 March 2008. (9) In relation to an accounting period of a company beginning before, and ending on or after, 12 March 2008 ("the straddling period"), the amendments made by this section have effect as if, for the purposes of Chapter 4 of Part 17 of ICTA, so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods. (10) The company's chargeable profits for the straddling period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis. (11) In this section "accounting period", "chargeable profits" and "creditable tax" have the same meaning as in Chapter 4 of Part 17 of ICTA.

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