

EXPLANATORY NOTE

CLAUSE 36 SCHEDULE 16: CONTROLLED FOREIGN COMPANIES

AMENDMENTS 155-157

SUMMARY

1. Clause 36 provides for the amendment of the Controlled Foreign Company (CFC) rules in chapter 4 of part 17 of the Income and Corporation Taxes Act 1988 (ICTA). The detailed amendments are in schedule 16.
2. These amendments make relatively minor changes to Part 2 of Schedule 16 to correct some minor drafting problems. Part 3 is added to regulate the interaction between the rules introduced by Schedule 15 of the Finance Bill and the CFC rules, removing double taxation where it arises.

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3. Part 1 of this Schedule contains a number of consequential amendments to other parts of the Taxes Acts. These include the repeal of section 801(2B) ICTA.
4. Clause 57(6) of the Bill contains a consequential amendment to that section which, by virtue of clause 57(8), will apply to dividends paid on or after 1 April 2008. This will become unnecessary following the repeal of section 801(2B) by this Schedule. This amendment therefore removes clause 57(6) with effect from 1 July 2009.

AMENDMENT 156

5. This amendment corrects a mismatch between two different sets of rules caused by the commencement provisions in Part 1 of Schedule 16.
6. The amendment is needed to ensure consistent treatment of profits arising before and after commencement of this Schedule. It ensures that the commencement provisions apply to both the CFC rules (Part 17, ICTA) and the double taxation relief provisions (Part 18).

AMENDMENT 157

7. Part 3 of the Schedule inserts section 751AA ICTA. The purpose of the new provision is to ensure that a restriction of an interest

deduction under Schedule 15 cannot interact with the CFC rules so as to cause the affected group to suffer double taxation.

8. The new provision is an addition to the CFC rules to allow reductions in chargeable profits for certain financing income.
9. Paragraphs 1 and 2 amend ICTA to take account of the introduction of section 751AA.
10. Paragraph 3 inserts the new section 751AA into the CFC rules in ICTA. It applies where an apportionment is to be made under section 747(3) and;
 - a. the chargeable profits of the CFC contain an amount of income in respect of payment made by another company; and
 - b. the amount brought into account for corporation tax purposes by the payer is reduced by the rules in Part 3 of Schedule 15.
11. It allows the UK company, to which the profits are to be apportioned, to apply to the Commissioners for a reduction in the chargeable profits of the CFC. If the Commissioners grant the application those profits are treated as reduced by the specified amount and the CFC's creditable tax are accordingly reduced on a just and reasonable basis.
12. Paragraph 4 amends the supplementary provision in section 751B, ICTA to take account of section 751AA.

Mr Stephen Timms	155
Schedule 16, page 182, line 32, at end insert ‘and () in this Act, section 57(6).’	
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Schedule 16, page 183, line 4, after ‘17’ insert ‘, and Part 18.’	
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Schedule 16, page 187, line 29, at end insert— ‘Part 3	

REDUCTION IN CHARGEABLE PROFITS FOR CERTAIN FINANCING INCOME

Reduction in chargeable profits for certain financing income

- 21 ICTA is amended as follows.
- 22 In the following provisions, after “751A” insert “or 751AA”—
- (a) section 747(3A) and (5A) (imputation of chargeable profits and creditable tax of controlled foreign companies),
 - (b) section 749(10) (residence),
 - (c) section 749A(9) (elections and designations under section 749: supplementary provisions), and
 - (d) section 750(3)(ab) (territories with a lower level of taxation).
- 23 After section 751A (reduction in chargeable profits for certain activities of EEA business establishments) insert—

“751AA Reduction in chargeable profits for certain financing income

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
 - (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company (“the payer”),
 - (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
 - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in the relevant accounting period.

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- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period ("the chargeable profits") to be reduced by an amount ("the specified amount") specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) the chargeable profits are treated as reduced by the specified amount, and
 - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,
- for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).
- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.
- (5) In subsection (4) "the relevant amount" means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company."
- 24(1) Section 751B (supplementary) is amended as follows.
- (2) In the heading, for "**Section 751A**" substitute "**Sections 751A and 751AA**".
 - (3) In subsections (1), (2), (3) (in each place) and (5), after "751A" insert "or 751AA".
 - (4) In subsection (8)—
 - (a) after "“the relevant amount”" insert "—
 - (a) in the case of an appeal in respect of the refusal of an application under section 751A," and
 - (b) after "mentioned in that subsection" insert ", and
 - (b) in the case of an appeal in respect of the refusal of an application under section 751AA, has the meaning given by subsection (5) of that section."
 - (5) In subsection (10)—
 - (a) after "751A" insert "or 751AA", and
 - (b) after "751A(1)" insert "or 751AA(1)".

Commencement

- 25(1) The amendments made by this Part have effect in relation to accounting periods of controlled foreign companies ending on or after 1 January 2010.
- (2) For this purpose "accounting period" and "controlled foreign company" have the same meaning as they have for the purposes of Chapter 4 of Part 17 of ICTA."

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**FINANCE BILL 2009
CLAUSE 36
SCHEDULE 16**