



Finance Act 2019

2019 CHAPTER 1

PART 1

DIRECT TAXES

International matters

21 Permanent establishments: preparatory or auxiliary activities

- (1) Section 1143 of CTA 2010 (permanent establishments: preparatory or auxiliary activities) is amended as follows.
- (2) In subsection (2), at the end insert “and are not part of a fragmented business operation”.
- (3) After subsection (2) insert—
 - “(2A) Activities are “part of a fragmented business operation” if—
 - (a) they are carried on (whether at the same place or at different places in the same territory) by the company or a person closely related to the company,
 - (b) they constitute complementary functions that are part of a cohesive business operation, and
 - (c) subsection (2B) applies.
 - (2B) This subsection applies if—
 - (a) the overall activity resulting from the combination of the functions mentioned in subsection (2A)(b) is not activity that is only of a preparatory or auxiliary character, or
 - (b) the company or a person closely related to the company has a permanent establishment in the territory by reason of carrying on any of those functions.

Status: This is the original version (as it was originally enacted).

- (2C) A person who is not a company is to be treated for the purposes of subsection (2B)(b) as having a permanent establishment in a territory if, were the person a company, the person would have a permanent establishment in the territory.
- (2D) For the purposes of this section, one person (“A”) is closely related to another person (“B”) if—
- (a) A is able to secure that B acts in accordance with A’s wishes (or vice versa),
 - (b) B can reasonably be expected to act, or typically acts, in accordance with A’s wishes (or vice versa),
 - (c) a third person is able to secure that A and B act in accordance with the third person’s wishes,
 - (d) A and B can reasonably be expected to act, or typically act, in accordance with a third person’s wishes, or
 - (e) the 50% investment condition is met in relation to A and B.
- (2E) The 50% investment condition is met in relation to A and B if—
- (a) A has a 50% investment in B (or vice versa), or
 - (b) a third person has a 50% investment in each of A and B,
- and section 259ND of TIOPA 2010 (meaning of “50% investment”) applies for the purposes of determining whether a person has a “50% investment”.
- (4) In subsection (3), for “For this purpose” substitute “In this section”.
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 January 2019.
- (6) For the purposes of subsection (5), if a company has an accounting period beginning before, and ending on or after, that date (“the straddling period”)—
- (a) so much of the straddling period as falls before that date, and so much of it as falls on or after that date, are treated as separate accounting periods, and
 - (b) if it is necessary to apportion an amount for the straddling period to the two separate periods, it is to be apportioned—
 - (i) on a time basis according to the respective length of the separate periods, or
 - (ii) if that would produce a result that is unjust or unreasonable, on a just and reasonable basis.