



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 2

#### DOUBLE TAXATION RELIEF

### CHAPTER 1

#### DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

##### *Unilateral relief arrangements*

#### **8 Interpretation: “unilateral relief arrangements” means rules 1 to 9, etc**

- (1) In this Part “unilateral relief arrangements”, in relation to a territory outside the United Kingdom, means the rules set out in sections 9 to 17.
- (2) In sections 11 to 17, and in Chapter 2 (except section 29) in its application to relief under unilateral relief arrangements, references to tax payable or paid under the law of a territory outside the United Kingdom include only—
  - (a) taxes which are charged on income and which correspond to income tax,
  - (b) taxes which are charged on income or chargeable gains and which correspond to corporation tax, and
  - (c) taxes which are charged on capital gains and which correspond to capital gains tax.
- (3) For the purposes of subsection (2), tax may correspond to income tax, corporation tax or capital gains tax even though it—
  - (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

**9 Rule 1: the unilateral entitlement to credit for non-UK tax**

## (1) Credit for tax—

- (a) paid under the law of the territory,
- (b) calculated by reference to income arising, or any chargeable gain accruing, in the territory, and
- (c) corresponding to UK tax,

is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.

## (2) Credit for tax—

- (a) paid under the law of the territory,
- (b) calculated by reference to any capital gain accruing in the territory, and
- (c) corresponding to UK tax,

is to be allowed against any capital gains tax calculated by reference to that gain.

## (3) For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.

## (4) For the purposes of subsection (1)(c), tax corresponds to UK tax if—

- (a) it is charged on income and corresponds to income tax, or
- (b) it is charged on income or chargeable gains and corresponds to corporation tax.

## (5) For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.

## (6) For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—

- (a) is payable under the law of a province, state or other part of a country, or
- (b) is levied by or on behalf of a municipality or other local body.

## (7) If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of “in the territory”.

## (8) Subsections (1) and (2) are subject to sections 11 and 12.

**10 Rule 2: accrued income profits**

## (1) Subsection (2) applies if—

- (a) a person is treated under section 628(5) of ITA 2007 as making accrued income profits in an interest period,
- (b) the person would, were the person to become entitled in the relevant tax year to any interest on the securities concerned, be liable in respect of the interest to tax chargeable under ITTOIA 2005 on relevant foreign income, and
- (c) the person is liable under the law of the territory to tax in respect of interest payable on the securities at the end of the interest period or the person would be so liable if the person were entitled to that interest.

## (2) Credit is to be allowed against income tax calculated by reference to the accrued income profits.

- (3) The amount of the credit allowed under subsection (2) is given by—

$$\text{AIP} \times \text{FTR}$$

where—

AIP is the amount of the accrued income profits, and

FTR is the rate of tax to which the person is or would be liable as mentioned in subsection (1)(c).

- (4) Subsection (2) is subject to section 11.
- (5) In subsection (1)(b) “the relevant tax year” means the tax year in which, under section 617(2) of ITA 2007, the accrued income profits are treated as made.
- (6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.

## **11 Rule 3: interaction between double taxation arrangements and rules 1 and 2**

- (1) Credit for tax paid under the law of the territory is not allowed under section 9 or 10 in the case of any income or gains if any credit for that tax is allowable in respect of that income or those gains under double taxation arrangements made in relation to the territory.
- (2) If credit in respect of an amount of tax may be allowed under double taxation arrangements made in relation to the territory, credit is not allowed under section 9 or 10 in respect of that tax.
- (3) If double taxation arrangements made in relation to the territory contain express provision to the effect that relief by way of credit is not to be given under the arrangements in cases or circumstances specified or described in the arrangements, credit is not allowed under section 9 or 10 in those cases or circumstances.

## **12 Rule 4: cases in which, and calculation of, credit allowed for tax on dividends**

- (1) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed only if section 13, 14, 15 or 16 so provides.
- (2) If credit is allowed in principle as a result of at least one of sections 14, 15 and 16, any tax in respect of P’s profits that is paid by P under the law of the territory is to be taken into account in considering whether any, and (if so) what, credit is in fact to be allowed under section 9 in respect of the dividend.
- (3) If credit is allowed in principle as a result of at least one of sections 15 and 16, there is to be taken into account, as if it were tax payable under the law of the territory, any tax that would be so taken into account under section 63(5) if the recipient of the dividend—
- directly or indirectly controlled, or
  - were a subsidiary of a company that directly or indirectly controlled, at least 10% of the voting power in P.
- (4) For the purposes of subsection (3), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

**13 Rule 5: credit for tax charged directly on dividend**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if—
  - (a) the overseas tax is charged directly on the dividend (whether by charge to tax, deduction of tax at source or otherwise), and
  - (b) neither P nor the recipient of the dividend would have borne any of that tax if the dividend had not been paid.

**14 Rule 6: credit for underlying tax on dividend paid to 10% associate of payer**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if conditions A and B are met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, at least 10% of the voting power in P.
- (5) For the purposes of subsection (4), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

**15 Rule 7: credit for underlying tax on dividend paid to sub-10% associate**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if each of conditions A to C is met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, less than 10% of the voting power in P.
- (5) If condition B is met, in subsection (6) “the held percentage” means the voting power in P which is directly or indirectly controlled by—

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

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- (a) the recipient, or
  - (b) a company of which the recipient is a subsidiary.
- (6) Condition C is that—
- (a) the held percentage has been reduced below 10%,
  - (b) the recipient shows that the reduction below the 10% limit (and any further reduction)—
    - (i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and
    - (ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and
  - (c) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.
- (7) For the purposes of subsection (6) a company is an “associate” if—
- (a) the company is neither the recipient nor a parent,
  - (b) before the reduction, the voting power in P that is in question was controlled otherwise than directly by the recipient, and
  - (c) the company is relevant for determining whether, before the reduction, the recipient—
    - (i) indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in P.
- (8) In subsections (6) and (7) “parent” means a company of which the recipient is a subsidiary.
- (9) In subsection (6) “the relevant voting power” means—
- (a) the voting power in P as a result of which relief was due under section 14 before the reduction, or
  - (b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

## **16 Rule 8: credit for underlying tax on dividend paid by exchanged associate**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if each of conditions A to C is met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

- (4) Condition B is that the recipient—
- (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, less than 10% of the voting power in P.
- (5) If condition B is met, in subsection (6) “the held percentage” means the voting power in P which is directly or indirectly controlled by—
- (a) the recipient, or
  - (b) a company of which the recipient is a subsidiary.
- (6) Condition C is that—
- (a) the held percentage has been acquired in exchange for voting power in another company (“X”),
  - (b) before the exchange, the recipient—
    - (i) directly or indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in X,
  - (c) the recipient shows that the exchange (and any reduction after the exchange) —
    - (i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and
    - (ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and
  - (d) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.
- (7) For the purposes of subsection (6) a company is an “associate” if—
- (a) the company is neither the recipient nor a parent,
  - (b) before the exchange, the voting power in X that is in question was controlled otherwise than directly by the recipient, and
  - (c) the company is relevant for determining whether, before the exchange, the recipient—
    - (i) indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in X.
- (8) In subsections (6) and (7) “parent” means a company of which the recipient is a subsidiary.
- (9) In subsection (6) “the relevant voting power” means—
- (a) the voting power in X as a result of which relief was due under section 14 before the exchange, or
  - (b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

**17 Rule 9: credit in relation to dividends for spared tax**

- (1) Subsection (2) applies if—
- (a) under the law of the territory, an amount of tax (“the spared tax”) would, but for a relief, have been payable by a company resident in the territory (“company A”) in respect of any of its profits,
  - (b) company A pays a dividend out of those profits to another company resident in the territory (“company B”),
  - (c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom (“company C”), and
  - (d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, as a result of the operation of section 20(2) in relation to double taxation arrangements made in relation to the territory, to treat the spared tax for the purposes of Chapter 2 as having been payable.
- (2) The spared tax is to be taken into account—
- (a) for the purposes of sections 9 to 16, and
  - (b) subject to section 31(4), for the purposes of Chapter 2 in its application to relief under these rules in relation to the dividend paid to company C,
- as if it had been payable and paid.
- (3) References in these rules and that Chapter—
- (a) to tax payable or chargeable, or
  - (b) to tax not chargeable directly or by deduction,
- are to be read in accordance with subsection (2).
- (4) Except as provided by subsection (2), in relation to any dividend paid—
- (a) by a company resident in the territory,
  - (b) to a company resident in the United Kingdom,
- credit as a result of these rules is not to be given under section 63(5) in respect of tax which would have been payable under the law of the territory, or under the law of any other territory outside the United Kingdom, but for a relief.
- (5) Subsection (4) has effect despite any double taxation arrangements—
- (a) made in relation to the territory, or
  - (b) made in relation to any other territory outside the United Kingdom,
- which make provision about a relief given, under the law of the territory in relation to which the arrangements are made, with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom.
- (6) In this section “these rules” means sections 9 to 16 and this section.