



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 2

#### DOUBLE TAXATION RELIEF

### CHAPTER 2

#### DOUBLE TAXATION RELIEF BY WAY OF CREDIT

##### *Insurance companies*

#### **96 Companies with overseas branches: restriction of credit**

- (1) Subsection (4) applies if credit for foreign tax—
- (a) which is payable in respect of insurance business carried on by a company through a permanent establishment in the non-UK territory, and
  - (b) which is calculated otherwise than wholly by reference to profits arising in the non-UK territory,

is to be allowed (in accordance with this Part) against corporation tax charged under section 35 of CTA 2009 or section 436A of ICTA in respect of the profits, calculated in accordance with the provisions applicable for the purposes of section 35 of CTA 2009, of life assurance business or gross roll-up business carried on by the company in an accounting period (in this section called “the relevant UK-taxable profits”).

- (2) For the purposes of subsection (1)(b), the cases in which foreign tax is “calculated otherwise than wholly by reference to profits arising in the non-UK territory” are those cases in which the charge to tax in the non-UK territory is within subsection (3).
- (3) A charge to tax is within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in calculating the amount

---

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

---

chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.

- (4) If this subsection applies, the amount of the credit is not to exceed the greater of—
- (a) any such part of the foreign tax as is charged by reference to profits arising in the non-UK territory, and
  - (b) the shareholders' share of the foreign tax.
- (5) For the purposes of subsection (4), the shareholders' share of the foreign tax is so much of that tax as is represented by the fraction—

$$\frac{A}{B}$$

where—

A is an amount equal to the amount of the relevant UK-taxable profits before making any deduction authorised by subsection (7), and

B is an amount equal to the excess of—

- (a) the amount taken into account as receipts of the company in calculating those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over
  - (b) the amount taken into account as expenses in calculating those profits.
- (6) If there is no such excess, or if the profits are greater than any excess, the whole of the foreign tax is the shareholders' share; and, subject to that, if there are no profits, none of the foreign tax is the shareholders' share.
- (7) If, by virtue of this section, the credit for any foreign tax is less than it otherwise would be, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the relevant UK-taxable profits.

## **97 Companies with more than one category of business: restriction of credit**

- (1) Subsection (2) has effect if—
- (a) an insurance company carries on more than one category of long-term business in an accounting period, and
  - (b) there arises to the company in that period any income or gain (“the relevant income”) in respect of which credit for foreign tax is to be allowed under the arrangements.
- (2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E of ICTA) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section and with the provisions of section 98, is attributable to that category of business.
- (3) If the relevant income arises from an asset which is linked solely to a category of business, the whole of the foreign tax is attributable to that category of business, unless section 98(3) applies.
- (4) If the relevant income arises from foreign business assets, the whole of the foreign tax is attributable to gross roll-up business, unless section 98(3) applies.

---

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

---

- (5) If subsection (3) does not apply and the category of business in question is—
- (a) basic life assurance and general annuity business, or
  - (b) PHI business,
- the fraction of the foreign tax that is attributable to that category of business is the fraction given by—

### The referable part of the relevant income

---

### The whole of the relevant income

where “the referable part” of the relevant income is the part of the relevant income which is referable to that category of business by virtue of any provision of section 432A of ICTA.

- (6) Section 98(2) and (3) apply if the category of business in question is gross roll-up business.
- (7) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (6) and section 98(2) and (3).
- (8) If under this section or section 98(2) and (3) an amount of foreign tax is for the purposes of this section attributable to gross roll-up business, credit in respect of the foreign tax so attributable is allowed only against corporation tax in respect of profits charged under section 436A of ICTA (charge on profits from gross roll-up business).

## 98 Attribution for section 97 purposes if category is gross roll-up business

- (1) Subsections (2) and (3) apply for the purposes of section 97 in accordance with section 97(6), and in this section “the relevant income” has the meaning given by section 97(1).
- (2) If—
- (a) section 97(3) does not apply, and
  - (b) some or all of the relevant income is taken into account in accordance with section 83 of FA 1989 in an account in relation to which the provisions of section 432C of ICTA apply,

the fraction of the foreign tax that is attributable to gross roll-up business is the fraction given by—

### The referable part of the relevant income

---

### The whole of the relevant income

where “the referable part” of the relevant income is the part of the relevant income which is referable to gross roll-up business by virtue of any provision of section 432C of ICTA.

- (3) If some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of FA 1989 the amount referred to in section 432E(1) of ICTA as the net amount, the fraction of the foreign tax that is attributable to gross roll-up business is the fraction given by—

---

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

---

## The referable part of INV

### The whole of INV

where—

“INV” is the investment income taken into account in that determination, and  
 “the referable part” of INV is the part of INV which would be referable to gross roll-up business by virtue of section 432E of ICTA if INV were the only amount included in the net amount.

- (4) The Treasury may by regulations amend subsection (3); and the regulations may include amendments having effect in accounting periods during which they are made.

## 99 Allocation of expenses etc in calculations under section 35 of CTA 2009

- (1) Subsection (2) has effect if—
- (a) an insurance company carries on any category of insurance business in a period of account,
  - (b) a calculation in accordance with the provisions applicable for the purposes of section 35 of CTA 2009 (charge on trade profits) falls to be made in relation to that category of business for that period, and
  - (c) there arises to the company in that period any income or gain in respect of which credit for foreign tax is to be allowed under the arrangements.
- (2) The amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned (“the relevant income”) is to be limited by treating the amount of the relevant income as reduced in accordance with sections 100 and 101.
- (3) In determining the amount of credit for foreign tax which is to be allowed as mentioned in subsection (2), the relevant income is not to be reduced except in accordance with that subsection.
- (4) If a 75% subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—
- (a) the purpose, or one of the main purposes, of the scheme or arrangement is to prevent or restrict the application of subsection (2) to the insurance company, and
  - (b) the subsidiary does not carry on insurance business of any description, the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary is to be found by setting off against that item the amount of expenses that would be attributable to it under section 100(1) if that item had arisen directly to the insurance company.
- (5) If the credit allowed for any foreign tax is, by virtue of subsection (2), less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the profits of the category of business concerned.
- (6) If, by virtue of subsection (4), the credit allowed for any foreign tax is less than it would be apart from that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the income of the 75% subsidiary.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

- (7) For the purposes of the operation of this section in relation to any income or gain in respect of which credit is to be allowed under the arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction of the foreign tax that is attributable to that category of business in accordance with sections 97 and 98.

#### **100 First limitation for purposes of section 99(2)**

- (1) The first limitation for the purposes of section 99(2) is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.
- (2) For the purposes of subsection (1), the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.
- (3) In subsection (2) “the appropriate fraction” means the fraction given by—

$$\frac{RI}{TI}$$

where—

RI is the amount of the relevant income before any reduction in accordance with section 99(2), and

TI is the total income of the category of business concerned for the period of account in question, but if that would result in TI being nil, TI is instead the amount described in subsection (4).

- (4) That amount is so much in total of the income and gains—
- which arise to the company in the period of account in question, and
  - in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,
- as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).
- (5) Subsection (4) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).
- (6) In this section “the relevant income” has the meaning given by section 99(2).

#### **101 Second limitation for purposes of section 99(2)**

- (1) If—
- the amount of the relevant income after any reduction under section 100(1), exceeds—
  - the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,
- the second limitation is to treat the relevant income as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.
- (2) In subsection (1) “the relevant fraction” means the fraction given by—

---

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

---

## *RI*

### The referable share of total relievable income and gains

where—

“RI” is the amount of the relevant income before any reduction in accordance with section 99(2), and

“the referable share of total relievable income and gains” is so much in total of the income and gains—

- (a) which arise to the company in the period of account in question, and
- (b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

- (3) In subsection (1), any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.
- (4) Subsection (2) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).
- (5) In this section “the relevant income” has the meaning given by section 99(2).

#### **102 Interpreting sections 99 to 101 for life assurance or gross roll-up business**

- (1) This section has effect for the interpretation of sections 99 to 101 if the category of business concerned—
  - (a) is life assurance business, or
  - (b) is gross roll-up business.
- (2) The “total income” of the category of business concerned for the period of account in question is the amount (if any) by which—
  - (a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business, exceeds—
  - (b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, as is referable to that category of business.
- (3) If any amounts are to be brought into account in accordance with section 83 of FA 1989, the amounts that are referable to the category of business concerned are to be determined for the purposes of subsection (2) in accordance with sections 432B to 432G of ICTA.
- (4) The “total relevant expenses” of the category of business concerned for any period of account is the amount of the claims incurred—
  - (a) increased by any increase in the liabilities of the company, or
  - (b) reduced (but not below nil) by any decrease in the liabilities of the company.

---

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

---

- (5) For the purposes of subsection (4), the amounts to be taken into account in the case of any period of account are the amounts as shown in the company's periodical return for the period so far as referable to the category of business concerned.

### **103 Interpreting sections 99 to 101 for other insurance business**

- (1) This section has effect for the interpretation of sections 99 to 101 if the category of business concerned—
- (a) is not life assurance business, and
  - (b) is not gross roll-up business.
- (2) The “total income” of the category of business concerned for any period of account is the amount (if any) by which—
- (a) the sum of the amounts specified in subsection (3), exceeds—
  - (b) the sum of the amounts specified in subsection (4).
- (3) The amounts mentioned in subsection (2)(a) are—
- (a) earned premiums, net of reinsurance,
  - (b) investment income and gains, and
  - (c) other technical income, net of reinsurance.
- (4) The amounts mentioned in subsection (2)(b) are—
- (a) acquisition costs,
  - (b) the change in deferred acquisition costs, and
  - (c) losses on investments.
- (5) The “total relevant expenses” of the category of business concerned for any period of account is the sum of—
- (a) the claims incurred, net of reinsurance,
  - (b) the changes in other technical provisions, net of reinsurance,
  - (c) the change in the equalisation provision, and
  - (d) investment management expenses,
- unless that sum is a negative amount, in which case the total relevant expenses is to be taken to be nil.
- (6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) are the amounts taken into account for the purposes of corporation tax.
- (7) Expressions used—
- (a) in the paragraphs of subsections (3) to (5), and
  - (b) in the provisions of section B of Part 1 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) which relate to the profit and loss account format (within the meaning of paragraph 1(1) and (2) of that Schedule),
- have the same meaning in those paragraphs as they have in those provisions.

---

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies. (See end of Document for details)*

---

#### **104 Interpreting sections 100 and 101: amounts referable to category of business**

- (1) This section applies for the purposes of the operation of sections 100 and 101 in relation to any income or gain in respect of which credit is to be allowed under any double taxation arrangements or under unilateral relief arrangements for a territory outside the United Kingdom.
- (2) The amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction found under subsection (3).
- (3) Apply sections 97 and 98 in relation to—
  - (a) that category of business,
  - (b) the income or gain, and
  - (c) the double taxation arrangements, or unilateral relief arrangements, mentioned in subsection (1),

in order to find the fraction of the foreign tax that is attributable to that category of business.



**Status:**

Point in time view as at 01/04/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Insurance companies.