Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 3

MISCELLANEOUS PROVISIONS

Deduction for foreign tax where no credit allowed

112 Deduction from income for foreign tax (instead of credit against UK tax)

(1) The amount of any income arising in any place outside the United Kingdom is reduced for the purposes of the Tax Acts—

(a) by any amount which has been paid in respect of non-UK tax on that income in the place where the income arose, or

(b) if subsection (2) applies, by the lesser amount mentioned in that subsection.

(2) This subsection applies if credit would, were it allowable in respect of the income, be reduced under section 39 (reduction by reference to accrued income losses) to the lesser amount given by section 39(5).

[[F1](2A) But if X is less than Y, an amount equal to the difference between X and Y must be subtracted from the amount by which any income of a person ("the relevant income") is reduced under subsection (1)(a).

(2B) In subsection (2A)—

X is the amount of the relevant income that the person would (disregarding this section) be required to bring into account for income tax or corporation tax

purposes, less any deduction that the person would be allowed to make for the amount paid in respect of non-UK tax, and

Y is the amount of the relevant income (that is to say, the amount on which the amount in respect of non-UK tax is paid).**]**

(3) If—

(a) income of any person ("P") is reduced under subsection (1) by an amount paid in respect of tax on that income in the place where the income arose, and

[F2(b) a tax authority makes a payment by reference to that tax, and that payment—

(i) is made to P or a person connected with P, or

(ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into,**]**

the amount of P's income is increased by the amount of the payment.

[F3(3A) Subsection (3B) applies if—

(a) the requirements of section 49A(1)(a) to (c) are met,

(b) amounts have been paid in respect of non-UK tax on loan relationship credits falling within section 49A(1)(c) which arise in an accounting period of the relevant UK company, and

(c) apart from subsection (3B), Z would exceed

$$R \times S$$

where—

Z is—

i the total amount of any reductions under subsection (1) for amounts paid in respect of that non-UK tax, less

ii the total amount of any increases under subsection (3) for payments made by reference to that non-UK tax, and

c R and S have the same meaning as in section 49A(2).

R and S have the same meaning as in section 49A(2).

(3B) The total amount of the reductions under subsection (1) is to be reduced so that Z equals**]**

$$R \times S$$

(4) Subsection (1)—

(a) has effect subject to section 31(2)(a) (no deduction for foreign tax if credit allowed and UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

[F4(aa) has effect subject to section 71B(2) (reduction of foreign tax paid on profits of overseas permanent establishment),**]**

(b) has effect subject to section 143(5) and (6) (no deduction for special withholding tax if UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

(c) does not apply to income the tax on which is to be calculated by reference to the amount of income received in the United Kingdom, and

(d) does not require any income to be reduced by an amount of underlying tax which, under section 60(3), is to be left out of account for the purposes of section 57.

(5) Subsection (1) has effect for corporation tax purposes despite—

(a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and

(b) section 906(1) of that Act (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In **[**F5this section**]** "non-UK tax" means tax under the law of a territory outside the United Kingdom.

(7) For the purposes of subsection (3), whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

[F6(8) In subsection (3)(b)(ii) "scheme" includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.**]**

Textual Amendments

F1 S. 112(2A)(2B) inserted (with effect in accordance with Sch. 11 para. 7(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 7(1)**

F2 S. 112(3)(b) substituted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(4)**

F3 S. 112(3A)(3B) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 14(2)**, 21

F4 S. 112(4)(aa) inserted (15.3.2018) by Finance Act 2018 (c. 3), **s. 30(4)**

F5 Words in s. 112(6) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 14(3)**, 21

F6 S. 112(8) inserted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(5)**

113 Deduction from capital gain for foreign tax (instead of credit against UK tax)

(1) Subsection (2) applies to tax if it is—

(a) chargeable under the law of any territory outside the United Kingdom on the disposal of an asset, and

(b) borne by the person making the disposal.

(2) The tax is allowable as a deduction in the calculation of the gain.

(3) Subsection (2) is subject to—

(a) Chapters 1 and 2 so far as they apply for corporation tax purposes (see, in particular, section 31),

(b) Chapters 1 and 2 so far as they apply for capital gains tax purposes (see, in particular, section 31), and

(c) section 143 (which includes provision about taking account of special withholding tax when calculating a gain for capital gains tax purposes).

(4) In subsection (1) "asset" and "disposal" have the same meaning as in TCGA 1992 (see, in particular, section 21 and the following provisions of TCGA 1992).

114 Time limits for action if tax adjustment makes reduction too large or too small

(1) Subsection (2) applies to a claim or assessment if—

(a) the amount of any reduction under section 112(1) or 113(2) becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any territory outside the United Kingdom, or a person's income is increased under section 112(3),

(b) the adjustment or increase gives rise to the claim or assessment, and

(c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.

(2) No time-limit rule applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means (as the case may be)—

(a) an assessment, adjustment, increase or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 112(1) or increase is to be made under section 112(3), or

(b) an assessment, adjustment or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 113(2).

(4) In subsection (2) "time-limit rule" means anything—

(a) in TMA 1970,

(b) in ICTA,

(c) in TCGA 1992, or

(d) in any other provision of the Tax Acts,

limiting the time for the making of assessments or limiting the time for the making of claims for relief.

115 Duty to give notice that adjustment has rendered reduction too large

(1) This section applies if—

(a) the amount of any of a person's income is reduced under section 112(1),

(b) that reduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom or an increase under section 112(3), and

(c) the adjustment or increase is not a Lloyd's adjustment.

(2) This section also applies if—

(a) a deduction is allowed under section 113(2) in the case of a person making a disposal, and

(b) that deduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom.

(3) The person must give notice that the original reduction has become excessive as a result of the making of an adjustment or increase.

(4) Notice under subsection (3) is to be given—

(a) to an officer of Revenue and Customs, and

(b) within one year from when the adjustment or increase was made.

(5) If the person fails to comply with the requirements imposed by subsections (3) and (4), the person is liable to a penalty not greater than the amount given by—

$$A - B$$

where—
A is the amount of tax payable by the person for the reduction period after giving effect to the reduction that ought to be made under section 112(1) or (as the case may be) under section 113(2), and
B is the amount that would have been the tax payable by the person for that period after giving effect instead to the original reduction.

(6) In subsection (5) "the reduction period" means the tax year, or accounting period of a company for corporation tax purposes, for which the original reduction was made.

(7) For the purposes of subsection (1)(c), the adjustment or increase is a "Lloyd's adjustment" if the consequences of the adjustment or increase in relation to the reduction are to be given effect in accordance with regulations under—

(a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or

(b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).

(8) In subsection (2) "disposal" has the same meaning as in TCGA 1992 (see, in particular, section 21(2) and the following provisions of TCGA 1992).

(9) In this section so far as it relates to capital gains tax "notice" means notice in writing.

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Deduction for foreign tax where no credit allowed.