



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 2

#### DOUBLE TAXATION RELIEF

### CHAPTER 3

#### MISCELLANEOUS PROVISIONS

##### *Interpretation of double taxation arrangements*

#### **130 Interpreting provision about UK taxation of profits of foreign enterprises**

- (1) Subsection (4) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).
- (2) The provision is that the profits of an enterprise within subsection (3) are not to be subject to United Kingdom tax except so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.
- (3) An enterprise is within this subsection if the enterprise—
  - (a) is resident outside the United Kingdom, or
  - (b) carries on a trade, or profession or business, the control or management of which is situated outside the United Kingdom.
- (4) The provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.
- (5) Subsection (4)—
  - (a) does not apply in relation to income of a person resident in the United Kingdom if section 858 of ITTOIA 2005 (UK resident partner is taxable on

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share of firm's income despite any double taxation arrangements) applies to the income, and

- (b) does not apply in relation to income of a company resident in the United Kingdom if section 1266(2) of CTA 2009 (UK resident company that is partner in a firm is taxable on share of firm's income despite any double taxation arrangements) applies to the income.

- (6) A person is resident in the United Kingdom for the purposes of this section if the person is resident in the United Kingdom for the purposes of the double taxation arrangements.

### **131 Interpreting provision about interest influenced by special relationship**

- (1) Subsections (3) and (6) apply if double taxation arrangements—
  - (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and
  - (b) contain a special relationship rule.
- (2) A “special relationship rule” is provision that—
  - (a) applies if the amount of the interest paid is, because of a special relationship, greater than the amount (“the ordinary amount”) that would have been paid in the absence of the relationship, and
  - (b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.
- (3) The special relationship rule is to be read as requiring account to be taken of all factors, including—
  - (a) the question whether the loan would have been made at all in the absence of the special relationship,
  - (b) the amount which the loan would have been in the absence of the special relationship, and
  - (c) the rate of interest, and the other terms, which would have been agreed in the absence of the special relationship.
- (4) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the debt on which interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).
- (5) If—
  - (a) a company (“L”) makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of L's business to make loans generally,
 the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (3).
- (6) The special relationship rule is to be read as requiring the taxpayer—
  - (a) to show that there is no special relationship, or
  - (b) if there is a special relationship, to show the amount of interest that would have been paid in the absence of the relationship.

**132 Interpreting provision about royalties influenced by special relationship**

- (1) Subsection (3) and section 133 apply if double taxation arrangements—
  - (a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and
  - (b) contain a special relationship rule.
- (2) A “special relationship rule” is provision that—
  - (a) applies if the amount of the royalties paid is, because of a special relationship, greater than the amount (“the ordinary amount”) that would have been paid in the absence of the relationship, and
  - (b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.
- (3) The special relationship rule is to be read as requiring account to be taken of all factors, including—
  - (a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the special relationship,
  - (b) the rate or amounts of royalties, and the other terms, which would have been agreed in the absence of the special relationship, and
  - (c) if subsection (4) applies, the factors specified in subsection (5).
- (4) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—
  - (a) the person (“PR”) who is liable to pay the royalties,
  - (b) a person who is, or has at any time been, an associate of PR,
  - (c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by PR, or
  - (d) a person who is, or has at any time been, an associate of a person within paragraph (c).
- (5) The factors mentioned in subsection (3)(c) are—
  - (a) the amounts which were paid under the transaction, or under each of the transactions in a series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,
  - (b) the amounts which would have been paid under that transaction, or under each of those transactions, in the absence of a special relationship, and
  - (c) the question whether the transaction, or series of transactions, would have taken place in the absence of a special relationship.
- (6) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).
- (7) For the purposes of this section, a person (“A”) is an associate of another person (“B”) at a given time if—
  - (a) A was directly or indirectly participating in the management, control or capital of B at that time, or
  - (b) the same person was, or the same persons were, directly or indirectly participating in the management, control or capital of A and B at that time.

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- (8) For the interpretation of subsection (7), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (7) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

**133 Special relationship rule for royalties: matters to be shown by taxpayer**

- (1) If this section applies (as to which, see section 132(1)), the special relationship rule is to be read as requiring the taxpayer to show—
- (a) the absence of any special relationship, or
  - (b) as the case may be, the rate or amounts of royalties that would have been payable in the absence of the special relationship.
- (2) The requirement under subsection (1)(a) includes whichever is applicable of the following requirements.
- (3) The first of those requirements is—
- (a) to show that no person of any of the descriptions in section 132(4)(a) to (d) has previously been the beneficial owner of the asset in respect of which the royalties are paid, and
  - (b) to show that no person of any of those descriptions has previously been the beneficial owner of any asset which that asset represents or from which it is derived.
- (4) The second of those requirements is—
- (a) to show that the transaction, or series of transactions, mentioned in section 132(5)(a) would have taken place in the absence of a special relationship, and
  - (b) to show the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of a special relationship.