



Finance Act 2016

2016 CHAPTER 24

PART 1

INCOME TAX

Receipts from intellectual property

42 Receipts from intellectual property: territorial scope

(1) In section 577 of ITTOIA 2005 (territorial scope of Part 5 charges), at the end insert—

“(5) See also section 577A (territorial scope of Part 5 charges: receipts from intellectual property).”

(2) After that section insert—

“577A Territorial scope of Part 5 charges: receipts from intellectual property

(1) References in section 577 to income which is from a source in the United Kingdom include income arising where—

- (a) a royalty or other sum is paid in respect of intellectual property by a person who is non-UK resident, and
- (b) the payment is made in connection with a trade carried on by that person through a permanent establishment in the United Kingdom.

(2) Subsection (3) applies where a royalty or other sum is paid in respect of intellectual property by a person who is non-UK resident in connection with a trade carried on by that person only in part through a permanent establishment in the United Kingdom.

(3) The payment referred to in subsection (2) is to be regarded for the purposes of subsection (1)(b) as made in connection with a trade carried on through a

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permanent establishment in the United Kingdom to such extent as is just and reasonable, having regard to all the circumstances.

(4) In determining for the purposes of section 577 whether income arising is from a source in the United Kingdom, no regard is to be had to arrangements the main purpose of which, or one of the main purposes of which, is to avoid the effect of the rule in subsection (1).

(5) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“intellectual property” has the same meaning as in section 579;

“permanent establishment”—

(a) in relation to a company, is to be read (by virtue of section 1007A of ITA 2007) in accordance with Chapter 2 of Part 24 of CTA 2010, and

(b) in relation to any other person, is to be read in accordance with that Chapter but as if references in that Chapter to a company were references to that person.”

(3) The amendments made by subsections (1) and (2) have effect in relation to royalties or other sums paid in respect of intellectual property on or after 28 June 2016.

(4) It does not matter for the purposes of subsection (4) of section 577A of ITTOIA 2005 (as inserted by this section) whether the arrangements referred to in that subsection are entered into before, or on or after, 28 June 2016.

(5) Where arrangements are disregarded under subsection (4) of section 577A of ITTOIA 2005 (as inserted by this section) in relation to a payment of a royalty or other sum which—

(a) is made before 28 June 2016, but

(b) is due on or after that day,

the payment is to be regarded for the purposes of subsection (1) of that section as made on the date on which it is due.

(6) In determining the date on which a payment is due for the purposes of subsection (5), disregard the arrangements referred to in that subsection.

(7) Where—

(a) an intellectual property royalty payment within the meaning of section 917A of ITA 2007 is made on or after 28 June 2016,

(b) the payment is made under arrangements (within the meaning of that section) entered into before that day,

(c) the arrangements are not DTA tax avoidance arrangements for the purposes of that section,

(d) it is reasonable to conclude that the main purpose, or one of the main purposes, of the arrangements was to obtain a tax advantage by virtue of any provisions of a foreign double taxation arrangement, and

(e) obtaining that tax advantage is contrary to the object and purpose of those provisions,

the arrangements are to be regarded as DTA tax avoidance arrangements for the purposes of section 917A of ITA 2007 in relation to the payment.

(8) In subsection (7)—

“foreign double taxation arrangement” means an arrangement made by two or more territories outside the United Kingdom with a view to affording relief from double taxation in relation to tax chargeable on income (with or without other tax relief);

“tax advantage” is to be construed in accordance with section 208 of FA 2013 but as if references in that section to “tax” were references to tax chargeable on income under the law of a territory outside the United Kingdom.

(9) Where—

- (a) a royalty is paid on or after 28 June 2016,
- (b) the right in respect of which the royalty is paid was created or assigned before that day,
- (c) section 765(2) of ITTOIA 2005 does not apply in relation to the payment, and
- (d) it is reasonable to conclude that the main purpose, or one of the main purposes, of any person connected with the creation or assignment of the right was to take advantage, by means of that creation or assignment, of the law of any territory giving effect to Council Directive 2003/49/EC of 3rd June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member States,

section 758 of ITTOIA 2005 does not apply in relation to the payment.

43 Receipts from intellectual property: diverted profits tax

(1) Part 3 of FA 2015 (diverted profits tax) is amended as follows.

(2) In section 79 (charge to tax), at the end insert—

“(6) But banking surcharge profits and notional banking surcharge profits, to the extent that they are determined by reference to notional PE profits (or what would have been notional PE profits) for an accounting period, do not include any amount which is (or would have been) included in notional PE profits for that period by virtue of section 88(5)(b).”

(3) In section 88 (which relates to the calculation of taxable diverted profits), for subsection (5) substitute—

“(5) Notional PE profits”, in relation to an accounting period, means an amount equal to the sum of—

- (a) the amount of profits (if any) which would have been the chargeable profits of the foreign company for that period, attributable (in accordance with sections 20 to 32 of CTA 2009) to the avoided PE, had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the trade mentioned in section 86(1)(b), and
- (b) an amount equal to the total of royalties or other sums which are paid by the foreign company during that period in connection with that trade in circumstances where the payment avoids the application of section 906 of ITA 2007 (duty to deduct tax).

(5A) For the purposes of subsection (5)(b) a payment of a royalty or other sum avoids the application of section 906 of ITA 2007 if—

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- (a) that section does not apply in relation to the payment, but
 - (b) that section would have applied in relation to the payment had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the trade mentioned in section 86(1)(b).”
- (4) In section 100 (credit for UK or foreign tax on same profits), for the heading substitute “Credits for tax on the same profits”.
- (5) In section 100, after subsection (2) insert—
 - “(2A) Subsection (2)(b) does not allow a credit against a liability to diverted profits tax if or to the extent that the liability arises by virtue of section 88(5)(b) (payments of royalties etc).”
- (6) In section 100, after subsection (4) insert—
 - “(4A) Subsection (4B) applies where—
 - (a) a company’s notional PE profits for an accounting period include an amount under section 88(5)(b) determined by reference to a royalty or other sum,
 - (b) the company’s liability to diverted profits tax for the accounting period is determined by reference to taxable diverted profits calculated under section 91(4) or (5), and
 - (c) those taxable diverted profits include an amount of relevant taxable income referred to in section 91(4)(b) or (5)(b) determined by reference to the same royalty or other sum.
 - (4B) A credit equal to the company’s liability to diverted profits tax for that accounting period which arises by virtue of section 88(5)(b) in respect of the royalty or other sum, to the extent that it is included in relevant taxable income for the purposes of section 91(4)(b) or (5)(b), is allowed against the company’s total liability to diverted profits tax for that period.
 - (4C) Subsection (4D) applies where—
 - (a) by reason of the payment of a royalty or other sum a company’s liability to diverted profits tax for an accounting period includes liability arising by virtue of section 88(5)(b),
 - (b) the royalty or other sum is paid to a person who is resident in a country or territory outside the United Kingdom, and
 - (c) under any relevant provision relief would have been due to that person had the avoided PE been a permanent establishment in the United Kingdom through which the company carried on the trade mentioned in section 86(1)(b).
 - (4D) Such credit as is just and reasonable having regard to the amount of the relief referred to in subsection (4C)(c) is allowed against the company’s liability to diverted profits tax.
 - (4E) In subsection (4C)(c) “relevant provision” means—
 - (a) the provision of a double taxation arrangement (as defined by section 2(4) of TIOPA 2010), or
 - (b) section 758 of ITTOIA 2005 (exemption for certain interest and royalty payments).”

- (7) The amendments made by this section have effect in relation to accounting periods ending on or after 28 June 2016.
- (8) For the purposes of section 88(5)(b) of FA 2015 as substituted by this section, a royalty or other sum which would not otherwise be regarded as paid during an accounting period ending on or after 28 June 2016 is to be regarded as so paid if—
 - (a) for the purposes of section 906 of ITA 2007 it is regarded as paid on a date during that period by virtue of section 40(6), or
 - (b) for the purposes of section 577A(1) of ITTOIA 2005 it is regarded as paid on a date during that period by virtue of section 42(5).