Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

Modifications etc. (not altering text)

C1 Pt. 2 modified by 1988 c. 1, Sch. 19ABA paras. 26-28 (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 34(3)** (with Sch. 9 paras. 1-9, 22))

C2 Pt. 2 applied by 2010 c. 4, s. 269DL(6) (as inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 1**)

CHAPTER 1

DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

Double taxation arrangements

2 Giving effect to arrangements made in relation to other territories

(1) If Her Majesty by Order in Council declares—

(a) that arrangements specified in the Order have been made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to taxes within subsection (3), and

(b) that it is expedient that those arrangements should have effect,

those arrangements have effect.

[F1(1A) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.**]**

(2) If arrangements have effect under subsection (1), they have effect in accordance with section 6.

(3) The taxes are—

(a) income tax,

(b) corporation tax,

(c) capital gains tax,

(d) petroleum revenue tax, and

(e) any taxes imposed by the law of the territory that are of a similar character to taxes within paragraphs (a) to (d).

(4) In this Part "double taxation arrangements" means arrangements that have effect under subsection (1).

Textual Amendments

F1 S. 2(1A) inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by Finance Act 2018 (c. 3), **s. 32(1)(4)**

3 Arrangements may include retrospective or supplementary provision

(1) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision for relief from tax for periods before the passing of this Act, or

(b) provision for relief from tax for periods before the making of the arrangements.

(2) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision as to income that is not subject to double taxation,

(b) provision as to chargeable gains that are not subject to double taxation, F2...

(c) provision as to foreign-field consideration that is not subject to double taxation **[**F3or

(d) provision conferring (with or without other functions) functions relating to the determination of matters arising under the arrangements on a public authority in the United Kingdom or in a territory outside the United Kingdom.**]**

(3) In subsection (2)(c) "foreign-field consideration" means consideration brought into charge to tax under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

Textual Amendments

F2 Word in s. 3(2)(b) omitted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 32(2)(a)(4)**

F3 S. 3(2)(d) and word inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by Finance Act 2018 (c. 3), **s. 32(2)(b)(4)**

4 Meaning of "double taxation" in sections 2 and 3

(1) For the purposes of sections 2 and 3, any amount within subsection (2) is to be treated as having been payable.

(2) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of the territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in double taxation arrangements.

(3) References in sections 2 and 3 to double taxation are to be read in accordance with subsection (1).

5 Orders under section 2: contents and procedure

(1) If an Order under section 2 ("the later Order") revokes an earlier Order under that section, the later Order may contain transitional provisions that appear to Her Majesty to be necessary or expedient.

(2) An Order under section 2 is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

6 The effect given by section 2 to double taxation arrangements

(1) Subject to this Part and Part 18 of ICTA, double taxation arrangements have effect in accordance with subsections (2) to (4) despite anything in any enactment.

(2) Double taxation arrangements have effect in relation to income tax and corporation tax so far as the arrangements provide—

(a) for relief from income tax or corporation tax,

(b) for taxing income of non-UK resident persons that arises from sources in the United Kingdom,

(c) for taxing chargeable gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(d) for determining the income or chargeable gains to be attributed to non-UK resident persons,

(e) for determining the income or chargeable gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, **[**F4or **]**

(f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, F5...

F5(g) . . . . . .

(3) Double taxation arrangements have effect in relation to capital gains tax so far as the arrangements provide—

(a) for relief from capital gains tax,

(b) for taxing capital gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(c) for determining the capital gains to be attributed to non-UK resident persons,

(d) for determining the capital gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, or

(e) for determining the capital gains to be attributed to UK resident persons who have special relationships with non-UK resident persons.

(4) Double taxation arrangements have effect in relation to petroleum revenue tax so far as the arrangements provide for relief from petroleum revenue tax charged under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

(5) In the case of relief under this Chapter that is not also relief under Chapter 2, the relief is not available in respect of special withholding tax (a corresponding rule applies in relation to relief under Chapter 2 as a result of the definition of foreign tax given by section 21).

(6) Relief under subsection (2)(a), (3)(a) or (4) requires a claim.

(7) In subsection (3) "UK resident person" and "non-UK resident person" have the meaning given by section 989 of ITA 2007.

(8) In subsection (5) "special withholding tax" has the same meaning as in Part 3 (see section 136).

Textual Amendments

F4 Word in s. 6(2) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by Finance Act 2016 (c. 24), **Sch. 1 para. 68(2)(a)**

F5 S. 6(2)(g) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(2)(b)**

7 General regulations

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations generally for carrying out the provisions of the treaty sections or any double taxation arrangements.

(2) Regulations under subsection (1) may in particular provide for securing that relief from taxation imposed by the law of the territory to which any double taxation arrangements relate does not enure for the benefit of persons not entitled to that relief.

(3) Subsection (4) applies to tax if—

(a) the tax is deductible from a payment but, in order to comply with double taxation arrangements, has not been deducted, and

(b) it is discovered that the arrangements did not apply to that payment.

(4) Regulations under subsection (1) may in particular provide for authorising recovery of tax to which this subsection applies—

(a) by assessment on the person entitled to the payment from which the tax is not deducted, or

(b) by deduction from subsequent payments.

(5) In subsection (1) "the treaty sections" means—

sections 2 to 6,

section 134(1), and
section 134(3) to (6) so far as relating to section 134(1).

(6) This section does not apply in relation to—
(a) petroleum revenue tax, or
(b) taxes imposed by the law of a territory outside the United Kingdom that—
(i) are of a similar character to petroleum revenue tax, and
(ii) are not of a similar character to income tax, corporation tax or capital gains tax.

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—

$$AIP \times FTR$$

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—

(a) directly or indirectly controlled, or

(b) 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—

(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.

CHAPTER 2

DOUBLE TAXATION RELIEF BY WAY OF CREDIT

Effect to be given to credit for foreign tax allowed against UK tax

18 Entitlement to credit for foreign tax reduces UK tax by amount of the credit

(1) Subsection (2) applies if—

(a) under double taxation arrangements, or

(b) under unilateral relief arrangements for a territory outside the United Kingdom,

credit is to be allowed against any income tax, corporation tax or capital gains tax chargeable in respect of any income or chargeable gain.

(2) The amount of those taxes chargeable in respect of the income or gain is to be reduced by the amount of the credit.

(3) In subsection (1) "credit"—

(a) in relation to double taxation arrangements, means credit for tax payable under the law of the territory in relation to which the arrangements are made, and

(b) in relation to unilateral relief arrangements for a territory outside the United Kingdom, means credit for tax payable under the law of that territory,

but see sections 12(3) and 63(5) (dividends: certain tax payable otherwise than under the law of a territory treated as payable under that law).

[F6(3A) References in subsection (3) to tax payable under the law of a territory outside the United Kingdom do not include tax paid by a company in relation to which an election under section 18A of CTA 2009 (exemption for profits or losses of overseas permanent establishments) has effect in respect of a relevant profits amount or relevant losses amount within the meaning of that section.**]**

(4) Subsection (2) applies subject to—

(a) the following provisions of this Chapter,

(b) section 106 (Chapter 1 and this Chapter operate for capital gains tax purposes separately from their operation for the purposes of other United Kingdom taxes), and

(c) Chapter 2 of Part 18 of ICTA (double taxation relief: pooling of foreign dividends paid before 1 July 2009).

(5) Credit is allowed under subsection (2) against any tax only if, under the arrangements concerned, credit is allowable against that tax.

(6) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.

Textual Amendments

F6 S. 18(3A) inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 26**, 31

19 Time limits for claims for relief under section 18(2)

(1) Subsections (2) and (3) apply to a claim for relief under section 18(2).

(2) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to income tax or capital gains tax for a tax year, the claim must be made on or before—

(a) the fourth anniversary of the end of that tax year, or

(b) if later, the 31 January following the tax year in which the foreign tax is paid.

(3) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to corporation tax for an accounting period, the claim must be made not more than—

(a) four years after the end of that accounting period, or

(b) if later, one year after the end of the accounting period in which the foreign tax is paid.

20 Foreign tax includes tax spared because of international development relief

(1) Subsections (2) and (4) apply if the arrangements are double taxation arrangements.

(2) For the purposes of this Chapter, any amount within subsection (3) is to be treated as having been payable.

(3) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of that territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in double taxation arrangements.

(4) References in this 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).

(5) Subsections (2) and (4) have effect subject to—

(a) subsection (6), and

(b) sections 31(4) and 32(5) (income and gains not to be increased in calculations under section 31 or 32 by amounts treated by this section as having been payable).

(6) If section 63(5) applies because conditions A and B in section 63 are met, relief is not given in accordance with section 63(5) (relief for certain tax underlying dividends paid between related companies) because of this section unless double taxation arrangements make express provision for the relief.

(7) Subsection (6) does not affect the operation of section 17(2) (treatment, for purposes of unilateral relief, of dividend paid by foreign company that has received dividends from a company benefiting from tax-sparing relief).

Interpretation of Chapter

21 Meaning of "the arrangements", "the non-UK territory", "foreign tax" etc

(1) In this Chapter (except section 18)—

"the arrangements" means the arrangements mentioned in section 18(1),

"the non-UK territory" means the territory mentioned in section 18(3),

"foreign tax" means tax chargeable under the law of the non-UK territory—

(a) for which credit may be allowed under the arrangements, and

(b) which is not special withholding tax, and

"underlying tax" means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction.

(2) In subsection (1) "special withholding tax" has the same meaning as in Part 3 (see section 136).

(3) The definitions in subsection (1) are to be read with sections 17(3) and 20(4) (meaning of references to tax payable or chargeable, and of references to tax not chargeable directly or by deduction).

(4) See also section 8(2) (meaning of references to tax payable or paid under the law of a territory outside the United Kingdom).

Credits where same income charged to income tax in more than one tax year

22 Credit for foreign tax on overlap profit if credit for that tax already allowed

(1) Subsection (2) applies in relation to foreign tax ("FT") paid in respect of any income if—

(a) the income is overlap profit, and

(b) credit for FT would have been allowed under section 18(2) against income tax chargeable for a tax year ("year L") in respect of the income but for the fact that credit for FT had been allowed against income tax chargeable in respect of the income for a previous tax year.

(2) Credit for FT is allowed against income tax chargeable for year L in respect of the income.

(3) The amount of credit allowed for year L under subsection (2) in respect of the income must not exceed the difference between—

(a) T, and

(b) the amount of credit which was in fact allowed, under subsection (2) or section 18(2), in respect of the income for any earlier tax year or years.

(4) For the purposes of subsection (3)(a), T is the amount ("A") of the foreign tax charged on the income, but this is subject to subsections (5) to (7).

(5) If Y exceeds FP—

$$T = \frac{Y}{FP} \times A$$

where—
Y is the number of tax years for which credit is allowed, under subsection (2) or section 18(2), against income tax in respect of the income, and
FP is the number of foreign periods of assessment.

(6) For the purposes of subsection (5), a tax year or foreign period of assessment for which part only of the income is charged to tax is counted not as one year or period but as a fraction of a year or period, the fraction being—

$$\frac{P}{W}$$

where—
P is that part of the income, and
W is the whole of the income.

(7) If the same income is charged to different foreign taxes for different foreign periods of assessment—

(a) subsection (5) (read with subsection (6)) is to be applied separately to each of those taxes, and

(b) T is the sum of those taxes after subsection (5) has been applied to them in accordance with paragraph (a).

(8) In this section—

"overlap profit" has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see **[**F7sections 204 and 204A**]** of that Act), and

"foreign period of assessment", in relation to any income, means a period for which the income is, under the law of the non-UK territory, charged to the foreign tax concerned.

Textual Amendments

F7 Words in s. 22(8) substituted (with effect in accordance with Sch. 3 para. 13 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 3 para. 12(a)**

23 Time limits for claims for relief under section 22(2)

(1) Relief under section 22(2) requires a claim.

(2) Any claim for relief by way of credit under section 22(2) against income tax for any tax year must be made on or before the fifth anniversary of the 31 January following that tax year, subject to subsection (3).

(3) If there is more than one tax year in respect of which such relief may be given, any claim for the relief must be made on or before the fifth anniversary of the 31 January following the later of those tax years.

24 Claw-back of relief under section 22(2)

(1) Subsections (4) and (5) apply if—

(a) credit against income tax for any tax year is allowed under section 22(2) in respect of any income ("the original income"), and

(b) the original income, or any part of it, contributes to an amount which, under section 205 or 220 of ITTOIA 2005, is deducted in calculating profits of a later tax year ("the later year").

(2) For the purposes of subsections (4) and (5), amount A is the difference between—

(a) the amount of the credit which, as a result of the application of sections 18(2) and 22(2) and subsection (5) of this section, has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (1), and

(b) the amount of the credit which, ignoring sections 22 and 23 and this section, would have been allowed under section 18(2) against income tax in respect of so much of the original income as contributes as mentioned in subsection (1).

(3) For the purposes of subsections (4) and (5), amount B is the amount of credit which, on the assumption that no amount were deducted under section 205 or 220 of ITTOIA 2005, would be allowable under section 18(2) against income tax in respect of income arising in the later year from the same source as the original income.

(4) If amount A exceeds amount B—

(a) no credit is allowed for income arising from that source in the later year,

(b) an amount of income tax equal to the excess is charged for the later year, and

(c) the liable person is liable for the tax.

(5) If amount B exceeds amount A, the liable person is allowed for the later year an amount of credit equal to the excess.

(6) In subsections (4) and (5) "the liable person" means the person liable for income tax charged on the income (if any) arising in the later year from the same source as the original income.

(7) For the purposes of subsections (1) to (6), it is to be assumed that, where an amount is deducted under section 220 of ITTOIA 2005, each of the overlap profits added together at Step 1 of the calculation in subsection (3) of that section contributes to that amount in the proportion which that overlap profit bears to the total that is the result of that Step.

(8) In this section—

(a) "overlap profit" has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see **[**F8sections 204 and 204A**]** of that Act), and

(b) references to income arising in any year include income received in the year that is income on which income tax is to be calculated by reference to the amount of income received in the United Kingdom.

Textual Amendments

F8 Words in s. 24(8) substituted (with effect in accordance with Sch. 3 para. 13 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 3 para. 12(b)**

Cases in which credit not allowed

25 Credit not allowed if relief allowed against overseas tax

(1) Subsection (2) applies if relief may be allowed—

(a) under the arrangements, or

(b) under the law of the non-UK territory in consequence of the arrangements,

in respect of an amount of tax that would, but for the relief, be payable under the law of that territory.

(2) Credit under section 18(2) is not allowed in respect of that tax, whether or not the relief has been used.

26 Credit not allowed under arrangements unless taxpayer is UK resident

(1) Credit under section 18(2) against income tax, corporation tax or capital gains tax for a chargeable period is not allowed unless the person in respect of whose income or chargeable gains the tax is chargeable is UK resident for that period.

(2) Sections 28 to 30 (credit under unilateral relief arrangements allowed to some non-UK resident persons) contain exceptions to subsection (1).

(3) In subsection (1) so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

(4) In subsection (1) so far as it relates to capital gains tax "UK resident" has the meaning given by section 989 of ITA 2007.

27 Credit not allowed if person elects against credit

Credit under section 18(2) against income tax, corporation tax or capital gains tax charged on any income or chargeable gains of a person is not allowed if the person elects for credit not to be allowed in respect of that income or those gains.

Exceptions to requirement to be UK resident

28 Unilateral relief for Isle of Man or Channel Islands tax

(1) Subsection (2) applies if the arrangements—

(a) are unilateral relief arrangements for a territory outside the United Kingdom, and

(b) provide for credit to be allowed for tax paid under the law of the Isle of Man ("the Isle of Man tax").

(2) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Isle of Man tax if the person in respect of whose income or chargeable gains the UK tax is payable is—

(a) resident for that period in the United Kingdom, or

(b) resident for that period in the Isle of Man.

(3) Subsection (4) applies if the arrangements—

(a) are unilateral relief arrangements for a territory outside the United Kingdom, and

(b) provide for credit to be allowed for tax paid under the law of any of the Channel Islands ("the Channel Islands tax").

(4) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Channel Islands tax if the person in respect of whose income or chargeable gains the UK tax is payable is—

(a) resident for that period in the United Kingdom, or

(b) resident for that period in any of the Channel Islands.

(5) Each of the following is a UK tax for the purposes of this section—

(a) income tax,

(b) corporation tax, and

(c) capital gains tax.

(6) In subsections (2) and (4) so far as they relate to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

29 Unilateral relief for tax on income from employment or office

(1) Subsection (3) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.

(2) In subsection (3) "overseas tax" means tax—

(a) paid under the law of the territory,

(b) charged on income and corresponding to income tax or to corporation tax, and

(c) calculated by reference to income from an office or employment the duties of which are performed wholly or mainly in the territory.

(3) Credit for overseas tax may be allowed under section 18(2) against income tax for a tax year—

(a) calculated by reference to that income, and

(b) charged on employment income,

if the person performing the duties is resident in the United Kingdom, or resident in the territory, for that year.

(4) For the purposes of subsection (2)(b) tax may correspond to income tax or corporation 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.

30 Unilateral relief for non-UK tax on non-resident's UK branch or agency etc

(1) Subsection (2) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.

(2) Credit for tax within subsection (3) or (4) may be allowed under section 18(2) against any of the UK taxes if the territory is not one in which the person or company concerned is liable to tax by reason of domicile, residence or place of management.

(3) Tax is within this subsection if the arrangements provide for credit for it to be allowed against income tax or corporation tax, and it is paid under the law of the territory in respect of the income or chargeable gains—

(a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or

(b) of a permanent establishment in the United Kingdom of a non-UK resident company.

(4) Tax is within this subsection if the arrangements provide for credit for it to be allowed against capital gains tax, and it is paid under the law of the territory in respect of the capital gains—

(a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or

(b) of a permanent establishment in the United Kingdom of a non-UK resident company.

(5) Relief under subsection (2) may not exceed the relief which would have been available if—

(a) the branch or agency, or permanent establishment, had been a UK resident person, and

(b) the income or gains had been income or gains of that person.

(6) Each of the following is a UK tax for the purposes of subsection (2)—

(a) income tax,

(b) corporation tax, and

(c) capital gains tax.

(7) In this section so far as it relates to capital gains tax—

"branch or agency" has the meaning given by section 10(6) of TCGA 1992,

"company" has the same meaning as in TCGA 1992 (see section 288 of that Act),

"permanent establishment", in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010, and

"UK resident" or "non-UK resident", in relation to a company or other person, has the meaning given by section 989 of ITA 2007.

Calculating income or gains in respect of which credit is allowed

31 Calculation of income or gain where remittance basis does not apply

(1) Subsection (2) applies if—

(a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or gain, and

(b) section 32(2) (cases where UK tax payable by reference to amount received in UK) does not apply.

(2) In calculating the amount of the income or gain for the purposes of income tax, corporation tax or capital gains tax—

(a) no deduction is to be made for foreign tax or special withholding tax, whether in respect of the same or any other income or gain, and

(b) if the credit is for foreign tax in respect of a dividend, the amount of the dividend is to be treated as increased by any underlying tax within subsection (3).

(3) In relation to a dividend, underlying tax is within this subsection if—

(a) under the arrangements it is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend,

(b) because the amount given by Step 2 of the calculation under section 58 is more than the amount given by Step 3 of that calculation, it is not to be taken into account in considering the questions mentioned in paragraph (a), or

(c) under section 60(3) it is not to be taken into account in considering those questions.

(4) The amount of any income or gain is not to be increased under subsection (2)(b) by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.

(5) Subsections (1) to (4) have effect for the purposes of corporation tax 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 CTA 2009 (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In this section "special withholding tax" means special withholding tax—

(a) within the meaning of Part 3 (see section 136), and

(b) in respect of which a claim has been made under that Part.

32 Calculation of amount received where UK tax charged on remittance basis

(1) Subsection (2) applies if—

(a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or capital gain, and

(b) income tax or capital gains tax is payable by reference to the amount received in the United Kingdom.

(2) For the purposes of whichever of income tax and capital gains tax is payable as mentioned in subsection (1)(b), the amount received is to be treated as increased—

(a) by the amount of the foreign tax in respect of the income or gain,

(b) by the amount of any special withholding tax levied in respect of the income or gain, but see subsection (4), and

(c) if the credit is for foreign tax in respect of a dividend, by any underlying tax that under the arrangements is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend.

(3) For the purposes of subsection (4), a gain is a "special gain" if—

(a) it is a chargeable gain that accrues to a person on a disposal by the person of assets,

(b) the consideration for the disposal consists of or includes an amount of savings income, and

(c) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.

(4) If the credit is for foreign tax in respect of a gain that is a special gain, the amount of the increase under subsection (2)(b) is given by—

$$\text{AWT} \times \frac{\text{GUK}}{\text{SG} - \text{AWT}}$$

where—
AWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal concerned,
GUK is the amount of the gain received in the United Kingdom, and
SG is the amount of the gain.

(5) The amount of any income or gain is not to be increased under this section by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.

(6) In this section—

"savings income" has the same meaning as in Part 3 (see section 136), and

"special withholding tax" means special withholding tax—

(a) within the meaning of Part 3 (see section 136), and

(b) in respect of which a claim has been made under that Part.

Limits on credit: general rules

33 Limit on credit: minimisation of the foreign tax

(1) The credit under section 18(2) must not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the non-UK territory, and

(b) under double taxation arrangements made in relation to that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and

(b) making elections for tax purposes.

(3) For the purposes of subsection (1), any question as to the steps which it would have been reasonable for a person to take is to be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part.

34 Reduction in credit: payment by reference to foreign tax

(1) Subsection (2) applies if—

(a) credit for foreign tax is to be allowed to a person ("P") under the arrangements, and

[F9(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.**]**

(2) The amount of that credit is to be reduced by an amount equal to that payment.

(3) Whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

[F10(4) In subsection (1)(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

F9 S. 34(1)(b) substituted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(2)**

F10 S. 34(4) inserted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(3)**

35 Disallowed credit: use as a deduction

(1) Subsection (2) applies if the application of section 36(2) or 42(2) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

(2) The taxpayer's income is to be treated as reduced by the amount of the disallowed credit.

(3) Subsection (4) applies if the application of section 40(2) prevents an amount of credit for foreign tax from being allowable against capital gains tax.

(4) The taxpayer's chargeable gains are to be treated as reduced by the amount of the disallowed credit.

(5) Subsection (2) or (4) applies only so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.

(6) For the purposes of subsection (5), payment of the foreign tax is to be taken into account despite section 31(2).

Limit on, and reduction of, credit against income tax

36 Amount of limit

(1) This section is about the amount of credit allowed under section 18(2) against a person's income tax for any tax year.

(2) The amount of credit in respect of income from any particular source must not exceed the difference between—

(a) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - X$$

and

(b) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - (X + C)$$

(3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of income from more than one source, apply subsection (2) successively to the income from each source, taking the sources in the order which will result in the greatest reduction in the person's income tax liability for the tax year.

(4) In subsection (2)—

TI is the person's total income for the tax year,

X is the income (if any) to which subsection (2) has already been applied, and

C is the income in respect of which the credit is to be allowed.

(5) The rules for calculating an amount of income tax under subsection (2) are—

(a) the calculation is to be made in accordance with sections 31 and 32, and

(b) no credit is to be allowed for foreign tax, and

(c) no reduction is to be made under section 26 of FA 2005 (trusts for the benefit of a vulnerable beneficiary), but

(d) any other income tax reduction under the Income Tax Acts is to be made.

(6) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.

(7) For the purposes of subsection (3) the following are "tax-relief arrangements"—

(a) double taxation arrangements, and

(b) unilateral relief arrangements for a territory outside the United Kingdom.

37 Credit against tax on trade income: further rules

(1) Apply section 36(2) in accordance with subsections (2) to (5) if the tax against which the credit is to be allowed is income tax on trade income.

(2) Treat the reference to income from any particular source as a reference to trade income arising out of a transaction, arrangement or asset.

(3) C is the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(4) In calculating an amount of income tax under section 36(2) deduct, from the income arising out of the transaction, arrangement or asset in connection with which the credit arises, deductions which would be allowed in a calculation of the taxpayer's liability in respect of that income.

(5) Treat section 36(3) as referring—

(a) to trade income instead of income, and

(b) to a transaction, arrangement or asset instead of a source.

(6) In subsection (4) "deductions" includes a just and reasonable apportionment of deductions that relate—

(a) partly to the income arising out of the transaction, arrangement or asset in connection with which the credit arises, and

(b) partly to other matters.

(7) In this section "trade income" means income chargeable to tax under—

(a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts), or

(b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts).

38 Credit against tax on royalties: further rules

(1) Subsection (2) applies if—

(a) the arrangements are double taxation arrangements, and

(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.

(2) For the purposes of section 36(2)—

(a) royalty income arising in more than one foreign jurisdiction in a tax year in respect of the asset is to be treated as a single item of income, and

(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.

(3) In this section "foreign jurisdiction" means a jurisdiction outside the United Kingdom.

39 Credit reduced by reference to accrued income losses

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that a person is entitled under section 18(2) to credit against income tax.

(3) Condition B is that the income tax is calculated by reference to income consisting of interest in respect of which the person is entitled under section 679 of ITA 2007 (no income tax on interest so far as matched by accrued income losses) to an exemption from liability to income tax.

(4) Condition C is that—

(a) the arrangements are unilateral relief arrangements for a territory outside the United Kingdom and the credit is allowed as a result of section 9, or

(b) the arrangements are double taxation arrangements and the credit is allowed as a result of the inclusion in the arrangements of any provision corresponding to that section.

(5) The amount of the credit is to be reduced to the amount given by—

$$\frac{I - E}{I} \times C$$

where—
I is the amount of the interest,
E is the amount of the exemption, and
C is the amount the credit would be apart from this subsection.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning in this section as in that Chapter.

Limit on credit against capital gains tax

40 Amount of limit

(1) This section is about the amount of credit allowed under section 18(2) against a person's capital gains tax for any tax year.

(2) The amount of credit in respect of any particular capital gain must not exceed the difference between—

(a) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - X$$

and

(b) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - (X + C)$$

(3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of more than one capital gain, apply subsection (2) successively to each capital gain, taking the gains in the order which will result in the greatest reduction in the person's capital gains tax liability for the tax year.

(4) In subsection (2)—

TG is the total amount of the chargeable gains accruing to the person in the tax year,
X is the total amount of the gains (if any) to which subsection (2) has already been applied, and
C is the amount of the gain in respect of which the credit is to be allowed.

(5) The rules for calculating an amount of capital gains tax under subsection (2) are—
(a) the calculation is to be made in accordance with sections 31 and 32, and
(b) no credit is to be allowed for foreign tax.

(6) For the purposes of subsection (3) the following are "tax-relief arrangements"—
(a) double taxation arrangements, and
(b) unilateral relief arrangements for a territory outside the United Kingdom.

Limit on total credit against income tax and capital gains tax

41 Amount of limit

(1) In subsection (2) "the total credit" means—

$$F + G$$

where—
F is the total credit, under all tax-relief arrangements, allowed under section 18(2) against a person's income tax for any tax year, and
G is the total credit, under all tax-relief arrangements, allowed under section 18(2) against the person's capital gains tax for that tax year.

(2) The total credit is not to be more than—

$$I + C - A$$

where—
I is the total income tax payable by the person for the tax year,
C is the total capital gains tax payable by the person for the tax year, and
A is the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by the person in the tax year.

(3) In calculating I and C for the purposes of subsection (2), no reduction is to be made for credit under section 18(2).

(4) Subsection (2) applies in addition to sections 36 and 40.

(5) For the purposes of subsection (1) the following are "tax-relief arrangements"—
(a) double taxation arrangements, and
(b) unilateral relief arrangements for a territory outside the United Kingdom.

Limit on credit against corporation tax

42 Amount of limit

(1) Subsection (2) is about the amount of credit allowed under section 18(2) against corporation tax to which a company is liable in respect of any income or chargeable gain.

(2) The credit must not exceed—

$$R \times IG$$

where—
R is the rate of corporation tax payable by the company, before any credit under this Part, on the company's income or chargeable gains for the accounting period in which the income arises or the gain accrues, and
IG is the amount of the income or gain (but see subsection (3)).

(3) For the purposes of applying subsection (2), IG is reduced (or extinguished) by any amount allocated to it under—

section 52(2) (general deductions),

section 53(2) (earlier years' deficits on loan relationships),

section 54(2) or (4) (debits on loan relationships),

section 55(5) (current year's deficits on loan relationships), or

section 56(2) (debits on intangible fixed assets).

(4) Subsection (2) is to be read with—

section 43, which, if the company has a permanent establishment outside the United Kingdom, is about attributing profits to the establishment for the purposes of applying subsection (2),

sections 44 to 49, which modify how subsection (2) applies in connection with allowing credit against tax on trade income (as defined in section 44), **[**[F11]section 49B, which requires subsection (2) to be applied separately to certain non-trading credits, and**]**

sections 50 and 51, which require subsection (2) to be applied as if corporation tax were charged in a modified way on profits of the company for the period from loan relationships and intangible fixed assets.

[[F12](5) See also section 49A which contains an additional limit on credit allowed in certain cases involving CFCs.**]**

Textual Amendments

F11 Words in s. 42(4) substituted (with effect in accordance with s. 292(9)(10) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(6)**

F12 S. 42(5) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 12**, 21

Modifications etc. (not altering text)

C3 S. 42 excluded by 2010 c. 4, s. 269DL(8)(a) (as inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 1**)

[F13 43 Profits attributable to permanent establishments for purposes of section 42(2)

(1) This section applies in determining for the purposes of section 42(2) the amount of the profits of a UK resident company on which corporation tax is or would be chargeable that is attributable to a permanent establishment of the company in a territory outside the United Kingdom.

(2) The amount of the profits of the company that is attributable to the permanent establishment is the amount that the permanent establishment would have made if it were a distinct and separate enterprise which—

(a) engaged in the same or similar activities under the same or similar conditions, and

(b) dealt wholly independently with the company.

(3) In applying subsection (2) assume that—

(a) the permanent establishment has the same credit rating as the company, and

(b) (subject to subsection (5)) the permanent establishment has such equity and loan capital as it could reasonably be expected to have if the equity and loan capital of the company were allocated in accordance with subsection (4).

(4) The allocation is one made on a just and equitable basis between the permanent establishments in territories outside the United Kingdom through which the company carries on business and the entity that the company would consist of if each such permanent establishment were an entity distinct and separate from the company.

(5) If the permanent establishment is in a full treaty territory (within the meaning of Chapter 3A of Part 2 of CTA 2009) subsection (3)(b) has effect subject to the double taxation arrangements having effect in relation to the territory.

(6) Subsections (3)(b) to (5) prevail over any allotment of equity or loan capital to the permanent establishment made by the company.

(7) If the company is an insurance company F14..., in applying subsection (2) assume that the permanent establishment has such free assets as it would have in the circumstances described in that subsection.

(8) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision as to the meaning of "free assets" in subsection (7).]

Textual Amendments

F13 S. 43 substituted (19.7.2011) by Finance Act 2011 (c. 11), Sch. 13 paras. 27, 31, **37**

F14 Words in s. 43(7) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 233**

44 Credit against tax on trade income

(1) Apply section 42(2) in accordance with subsections (2) and (3) if the tax against which the credit is to be allowed is corporation tax on income that is trade income.

(2) The amount of the credit must not exceed the corporation tax attributable to the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(3) In calculating the amount of corporation tax attributable to any income, take into account—

(a) deductions which would be allowed in calculating the company's liability, and

(b) expenses of a company connected with the company, so far as reasonably attributable to the income,

but see section 49 (restriction if company is a bank or is connected with a bank).

(4) In subsection (3)(a) "deductions" includes a just and reasonable apportionment of deductions that relate—

(a) partly to the transaction, arrangement or asset from which the income arises, and

(b) partly to other matters.

(5) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of subsection (3)(b).

(6) In this section "trade income" means—

(a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),

(b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),

(c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and

(d) any other income or profits which by a provision of ICTA is or are—

(i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or

(ii) calculated in the same way as the profits of a trade,

but does not include income to which section 99 of this Act (insurance companies) applies.

(7) In subsection (6) the references—

(a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and

(b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,

do not include income that would, but for the repeal by CTA 2009 of section 103 of ICTA (post-cessation receipts where pre-cessation profits calculated on an earnings basis and other post-cessation receipts that become due or are ascertained after cessation), have been chargeable to corporation tax under that section.

45 Credit against tax on trade income: anti-avoidance rules

(1) If a company ("A") carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person ("B") a main purpose of which is to alter the effect of section 44(2) and (3) in relation to A, income received in pursuance of the scheme or arrangement is to be treated for the purposes of section 44(2) and (3) as trade income of B (and not as income of A).

(2) Income of a person ("D") is to be treated for the purposes of section 44 as trade income (if it is not otherwise trade income) of D if—

(a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person ("C"),

(b) had C received the income, it would be reasonable to assume that it would be trade income of C, and

(c) a main purpose of the scheme or arrangement is to produce the result that section 44(2) and (3) will not have effect in relation to the income because it is received by D.

(3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to the transaction.

(4) In subsection (3)—

"relevant person" means—

(a) D, or

(b) any other connected person who is a party to the scheme or arrangement mentioned in subsection (2), and

"relevant transaction" means any of the transactions giving rise to the income mentioned in subsection (2)(b).

(5) In subsections (2) to (4) "connected person" means a person with whom D is connected.

(6) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of subsection (5).

(7) In this section "trade income" has the same meaning as in section 44.

46 Applying section 44(2): asset in hedging relationship with derivative contract

(1) If an asset is in a hedging relationship with a derivative contract, section 44(2) applies in relation to the asset as if the income arising from the asset is the income arising from the asset and the contract taken together, subject to subsection (2).

(2) Take account of the income or loss from the derivative contract only so far as reasonably attributable to the hedging relationship.

(3) For the purposes of subsection (1), an asset is in a hedging relationship with a derivative contract if—

(a) the asset is acquired as a hedge of risk in connection with the contract, or

(b) the contract is entered into as a hedge of risk in connection with the asset.

(4) If an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that is conclusive for the purposes of subsection (3).

47 Applying section 44(2): royalty income

(1) Subsection (2) applies if—

(a) the arrangements are double taxation arrangements, and

(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.

(2) For the purposes of section 44(2)—

(a) royalty income arising in more than one foreign jurisdiction in an accounting period in respect of the asset is to be treated as income arising from a single asset, and

(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.

(3) In this section "foreign jurisdiction" means a jurisdiction outside the United Kingdom.

48 Applying section 44(2): "portfolio" of transactions, arrangements or assets

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that transactions, arrangements or assets are treated by a taxpayer as a series or group ("the portfolio").

(3) Condition B is that credits for foreign tax arise in respect of the portfolio.

(4) Condition C is that—

(a) it is not reasonably practicable to prepare a separate calculation of income for the purposes of section 44(2) in respect of each transaction, arrangement or asset, or

(b) a separate calculation of income in respect of each transaction, arrangement or asset for the purposes of section 44(2) would not, compared with an aggregated calculation, make a material difference to the amount of credit for foreign tax which is allowable.

(5) The income arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 44(2) in a just and reasonable manner.

49 Restricting section 44(3) if company is a bank or connected with a bank

(1) Section 44(3) is subject to subsection (2) of this section if—

(a) the company is a bank or is connected with a bank, and

(b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.

(2) The amount of the notional funding costs is to be included in the amount to be taken into account under section 44(3), but only so far as it exceeds the amount of the included funding costs.

(3) In this section—

"the company" means the company mentioned in section 44(3)(a),

"included funding costs" means the total of the funding costs that are—

(a) incurred by the company, or any company connected with the company, in respect of capital used to fund the relevant transaction, and

(b) included in the amount to be taken into account under section 44(3) before the application of subsection (2) of this section,

"notional funding costs" means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way,

"the relevant bank" means the bank that is the company, or with which the company is connected, and

"the relevant transaction" means the transaction, arrangement or asset from which the income mentioned in section 44(1) arises.

(4) The following provisions apply for the purposes of this section—

section 1120 of CTA 2010 (meaning of "bank"), and

section 1122 of CTA 2010 (meaning of "connected").

[F15 49A Limit on credit in cases involving qualifying loan relationships of CFCs

(1) This section applies if—

(a) a claim is made under Chapter 9 of Part 9A (controlled foreign companies: exemptions for profits from qualifying loan relationships) in relation to an accounting period ("the relevant period") of a CFC ("the creditor CFC"),

(b) in the relevant period, the creditor CFC has a qualifying loan relationship in relation to which another CFC is the ultimate debtor by virtue of section 371IG(4) or (5), and

(c) a UK resident company ("the relevant UK company") has loan relationship credits which arise in the relevant period from—

(i) loan B (see section 371IG(3)(b)), or

(ii) loans out of which loan B is wholly or partly funded (directly or indirectly).

(2) So far as any credit allowed under section 18(2) to the relevant UK company is referable to loan relationship credits falling within subsection (1)(c) which arise in an accounting period of the relevant UK company, the credit must not exceed—

$$R \times S$$

where—

R has the same meaning as in section 42(2), and

S is—

(a) the relevant UK company's share of the relevant profit amount (see subsection (4)), or

(b) if only X% of the total amount of the loan relationship credits falling within subsection (1)(c) arises in the accounting period, X% of the relevant UK company's share of the relevant profit amount.

(If the amount given by the formula above is nil, no credit is allowed.)

(3) The limit on credit contained in subsection (2) is in addition to the limit given by section 42(2).

(4) Take the following steps to determine the relevant profit amount and the relevant UK company's share of that amount.

Step 1 Determine the total amount of the loan relationship credits which arise in the relevant period from loan B to the person who made loan B.

Step 2 Deduct from the amount determined at step 1 above the credits from the creditor CFC's qualifying loan relationship determined at step 1 in section 371IF for the relevant period. The result is the relevant profit amount.

Step 3 On a just and reasonable basis, apportion the relevant profit amount amongst all the persons falling within subsection (5) (although the amount apportioned to a person may be nil). The relevant UK company's share of the relevant profit amount is the amount apportioned to it (and is nil if no amount is apportioned to it).

(5) The following persons (apart from the creditor CFC) fall within this subsection—

(a) the person who made loan B, and

(b) any person who has made or received a loan out of which loan B is wholly or partly funded (directly or indirectly).

(6) In this section—

(a) references to loan B do not include any part of loan B—

(i) which loan A (see section 371IG(3)(a)) is not made and used to fund, or

(ii) in relation to which the requirement of section 371IG(3)(c) is not met,

(b) "loan relationship credit" means, in relation to a person, a credit which the person has under Part 5 of CTA 2009 or would have were the person a UK resident company within the charge to corporation tax, and

(c) "loan" has the same meaning as it has in Chapter 9 of Part 9A.**]**

Textual Amendments

F15 S. 49A inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 13**, 21

[F16 49B Applying section 42(2) to non-trading credits from loan relationships etc

(1) Subsection (2) applies for the purposes of section 42(2) if—

(a) the company has a non-trading credit relating to an item, and

(b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax.

(2) Credit for the foreign tax in respect of that item must not exceed—

$$R \times (NTC - D)$$

where—

R has the same meaning as in section 42(2),

NTC is the amount of the non-trading credit, and

D is the amount given by subsection (3).

(3) D in the formula in subsection (2) is calculated as follows—

Step 1 Calculate the total amount ("TNTD") of the non-trading debits which are to be brought into account by the company—

(a) in the same accounting period, and

(b) in respect of the same loan relationship, derivative contract or intangible fixed asset,

as the non-trading credit.

Step 2 Calculate the total ("A") of the amounts which, as amount D, have already been deducted under subsection (2) from other non-trading credits which are to be brought into account in the same period and in respect of the same relationship, contract or asset.

Step 3 Calculate the amount given by—

TNTD – A

Step 4 If the amount calculated at step 3 is greater than or equal to NTC, then D equals NTC. Otherwise, D is the amount calculated at step 3.

(4) In this section—

"intangible fixed asset" has the same meaning as in Part 8 of CTA 2009,

"non-trading credit" means—

(a) a non-trading credit for the purposes of Part 5 of CTA 2009 (which is about loan relationships but also has application in relation to deemed loan relationships and derivative contracts), or

(b) a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"non-trading debit" means—

(a) a non-trading debit for the purposes of Part 5 of CTA 2009, or

(b) a non-trading debit for the purposes of Part 8 of CTA 2009.**]**

Textual Amendments

F16 S. 49B inserted (with effect in accordance with s. 292(9)(10) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(7)**

Calculating tax for purposes of section 42(2)

50 Tax for period on loan relationships

(1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) Assume that the charge to corporation tax on income, as applied by section 299 of CTA 2009, is charged on TNTC, not on the non-trading profits that the company has for the period in respect of its loan relationships.

(3) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships), and

"TNTC" is the total amount of the company's non-trading credits for the period.

51 Tax for period on intangible fixed assets

(1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) Assume that the charge to corporation tax on income, as applied by section 752 of CTA 2009, is charged on TNTC, not on the non-trading gains arising to the company in the period on intangible fixed assets.

(3) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"TNTC" is the total amount of the company's non-trading credits for the period.

Allocation of deductions etc to profits for purposes of section 42

52 General deductions

(1) Subsection (2) applies for the purposes of section 42 if in the accounting period there is any amount ("the deduction") that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description.

(2) The company may allocate the deduction in such amounts, and to such of its profits for the period, as it thinks fit.

53 Earlier years' non-trading deficits on loan relationships

(1) Subsection (2) applies for the purposes of section 42 if an amount ("the deficit") is carried forward to the period under section 457(1) of CTA 2009 (non-trading deficits on loan relationships set against profits of subsequent years).

(2) The deficit can be allocated only to the company's non-trading profits for the period, but the company may allocate the deficit to such of those profits, and in such amounts, as the company thinks fit.

(3) In this section "non-trading profits" has the meaning given by section 457(5) of CTA 2009.

54 Non-trading debits on loan relationships

(1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - (CB + CF + GR)$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit, but this is subject to subsection (4).

(3) Subsection (4) applies for the purposes of section 42 if—

(a) the company has at least one non-trading credit for the period that is eligible for double taxation relief, and

(b) the company sets the whole or part of XS against profits of the period in pursuance of a current-year provision or claim.

(4) So much of the company's non-trading debits as is equal to that amount of XS must be allocated to the profits against which that amount of XS is set in pursuance of the current-year provision or claim.

(5) In this section, if the company has a non-trading deficit ("D") on its loan relationships for the period—

CB is so much of D as is the subject of a carry-back claim,

CF is so much of D as is carried forward to a subsequent accounting period in accordance with a carry-forward provision,

GR is so much of D as is surrendered as group relief under section 99 of CTA 2010, and

if

$$D — (CB + CF + GR)$$

(6) For the purposes of subsections (1) and (3), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(7) In this section—

"carry-back claim" means a claim—

(a) under section 389(1) of CTA 2009 (insurance companies: carry-back, to earlier accounting periods, of non-trading deficit on loan relationships), or

(b) under section 459(1)(b) **[**[F17]or 463B(1)(b)**]** of CTA 2009 (carry-back: other companies),

"carry-forward provision" means—

(a) section 391 of CTA 2009 (insurance companies), or

(b) section 457(1) **[**[F18], 463G(5) or 463H(4)**]** of CTA 2009 (other companies),

"current-year provision or claim" means—

(a) section 388(1) of CTA 2009 (insurance companies: non-trading deficit on loan relationships set against current year's profits), or

(b) a claim under section 459(1)(a) **[**[F19]or 463B(1)(a)**]** of CTA 2009 (other companies: setting of deficit against current year's profits),

"non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships),

"non-trading debit" means a non-trading debit for the purposes of that Part, and

"TNTD" is the total amount of the company's non-trading debits for the period.

Textual Amendments

F17 Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 176(a)**

F18 Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 176(b)**
F19 Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 176(c)**

55 Current year's non-trading deficits on loan relationships

(1) Subsection (5) applies for the purposes of section 42 if conditions A and B are met.

(2) Condition A is that the company—

(a) has no non-trading credits for the period, or

(b) has non-trading credits for the period but none of those credits is eligible for double taxation relief.

(3) For the purposes of subsection (2)(b), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) Condition B is that an amount ("the deficit") is set against any of the company's profits for the period—

(a) under section 388(1) of CTA 2009 (insurance company's non-trading deficit on loan relationships set against current year's profits), or

(b) under section 459(1)(a) **[**F20or 463B(1)(a)**]** of CTA 2009 (other company's non-trading deficit on loan relationships set against current year's profits).

(5) The deficit can be allocated only to profits against which the deficit is set under section 388(1) **[**F21, 459(1)(a) or 463B(1)(a)**]** of CTA 2009.

(6) In this section "non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships).

Textual Amendments

F20 Words in s. 55(4)(b) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 177(a)**
F21 Words in s. 55(5) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 177(b)**

56 Non-trading debits on intangible fixed assets

(1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - CF$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit.

(3) In subsection (2)—

TNTD is the total amount of the company's non-trading debits for the period, and

CF is the amount (if any) carried forward to the next accounting period under section 753(3) of CTA 2009 (carry forward of non-trading loss so far as neither subject to a claim to set it against profits of current period nor surrendered by way of group relief).

(4) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(5) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"non-trading debit" means a non-trading debit for the purposes of that Part.

Taking account of foreign tax underlying dividends

57 Credit in respect of dividend: taking account of underlying tax

(1) Subsections (2) and (3) apply if, as a result of provision made by the arrangements, underlying tax is to be taken into account in considering whether any and (if so) what credit is to be allowed against corporation tax, income tax or capital gains tax in respect of a dividend.

(2) The amount of underlying tax to be taken into account as a result of the provision is to be calculated—

(a) under section 58 if the dividend is one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, and

(b) under section 61 if the dividend is not one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom.

(3) No underlying tax is to be taken into account as a result of the provision if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of the territory in respect of an amount determined by reference to the dividend.

(4) See also—

(a) section 63 (underlying tax paid in the United Kingdom, or otherwise outside the non-UK territory, treated in some cases as underlying tax paid in the non-UK territory), and

(b) section 65 (underlying tax paid in respect of profits of a company which pays a dividend treated in some cases as underlying tax paid in respect of profits of company to which dividend is paid).

58 Calculation if dividend paid by non-resident company to resident company

(1) A calculation under this section (see section 57(2)(a)) is as follows—

Step 1 Calculate the amount of the foreign tax borne on the relevant profits by the company paying the dividend.

Step 2 Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

Step 3 Calculate the amount given by—

$$(D + PA) \times M$$

where—
D is the amount of the dividend,
PA is the amount given by the calculation at Step 2, and
M is the rate of corporation tax applicable to profits of the recipient for the accounting period in which the dividend is received or, if there is more than one such rate, the average rate over the whole of that accounting period.

Step 4 If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

(a) set off against the recipient's own tax under that law, or

(b) paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

Step 5 If the amount given by the calculation at Step 2 is less than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 4.

Step 6 If the amount given by the calculation at Step 2 is equal to or more than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 3 but reduced by any amount calculated at Step 4.

(2) In this section "UT" means the amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1).

59 Meaning of "relevant profits" in section 58

(1) This section applies for the purposes of section 58.

(2) "Relevant profits", if the dividend is within subsection (3), means the profits in respect of which the dividend is treated as paid for the purposes of section 931H of CTA 2009 (dividends derived from transactions not designed to reduce tax).

(3) A dividend is within this subsection if—

(a) it is received in an accounting period of the recipient in which the recipient is not a small company for the purposes of Part 9A of CTA 2009 (company distributions: see section 931S of that Act), and

(b) for the purposes of section 931H of that Act, it is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section).

(4) "Relevant profits", if the dividend is not within subsection (3) but is paid for a specified period, means—

(a) the distributable profits of that period, plus

(b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

(5) "Relevant profits", if the dividend is not within subsection (3) and is not paid for a specified period, means—

(a) the distributable profits of the last period for which accounts of the company were made up which ended before the dividend became payable, plus

(b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

(6) In subsection (4)(b) or (5)(b), the reference to distributable profits of preceding periods does not include—

(a) profits previously distributed, or

(b) profits previously treated as relevant profits for the purposes of **[**F22section 58 or 61 of this Act**]**, section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.

(7) For the purposes of subsection (4)(b) or (5)(b), the profits of the most recent preceding period are to be taken into account first, then the profits of the next most recent preceding period, and so on.

(8) In this section "distributable profits", in relation to a company, means the profits available for distribution as shown in accounts relating to the company—

(a) drawn up in accordance with the law of the country or territory under whose law the company is incorporated or formed, and

(b) making no provision for reserves, bad debts, impairment losses or contingencies other than such as is required to be made under the law of that country or territory.

(9) The reference in subsection (6)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

Textual Amendments

F22 Words in s. 59(6)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by Taxation (International and Other Provisions) Act 2010 (Amendment) Order 2010 (S.I. 2010/2901), arts. 1(1), **4(2)**

60 Underlying tax to be left out of account on claim to that effect

(1) Subsection (2) applies if—

(a) under the arrangements a company resident in the United Kingdom makes a claim for an allowance by way of credit in accordance with this Chapter, and

(b) the claim relates to a dividend paid to the company by a company resident outside the United Kingdom.

(2) The claim may be framed so as to exclude amounts of underlying tax specified for the purpose in the claim.

(3) Any amounts of underlying tax so excluded are to be left out of account for the purposes of section 57.

61 Calculation if section 58 does not apply

A calculation under this section (see section 57(2)(b)) is as follows—

Step 1 Calculate the amount of the foreign tax borne on the relevant profits by the body corporate paying the dividend.

Step 2 Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

Step 3 If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

set off against the recipient's own tax under that law, or

paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

Step 4 The amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1) is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 3.

62 Meaning of "relevant profits" in section 61

(1) This section applies for the purposes of section 61.

(2) "Relevant profits", if the dividend is paid for a specified period, means—

(a) the profits of that period, plus

(b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.

(3) "Relevant profits", if the dividend is not paid for a specified period but is paid out of specified profits, means those profits.

(4) "Relevant profits", if the dividend is paid neither for a specified period nor out of specified profits, means—

(a) the profits of the last period for which accounts of the body corporate paying the dividend were made up which ended before the dividend became payable, plus

(b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.

(5) In subsection (2)(b) or (4)(b), the reference to distributable profits of preceding periods does not include—

(a) profits previously distributed, or

(b) profits previously treated as relevant profits for the purposes of **[**F23section 58 or 61 of this Act**]**, section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.

(6) For the purposes of subsection (2)(b) or (4)(b), the profits of the most recent preceding period are first to be taken into account, then the profits of the next most recent preceding period, and so on.

(7) In this section "distributable profits", in relation to a period, means profits available for distribution of the period.

(8) The reference in subsection (5)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

Textual Amendments

F23 Words in s. 62(5)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by Taxation (International and Other Provisions) Act 2010 (Amendment) Order 2010 (S.I. 2010/2901), arts. 1(1), **4(3)**

Taking account of tax underlying dividends that is not foreign tax

63 Non-UK company dividend paid to 10% investor: relief for UK and other tax

(1) If condition A is met, and one of conditions B and C is met, subsection (5) applies for the purpose of allowing, under the arrangements, credit against corporation tax in respect of a dividend paid by a company resident outside the United Kingdom ("the overseas company") to another company ("the recipient company").

(2) Condition A is that the recipient company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the overseas company.

(3) Condition B is that the recipient company is resident in the United Kingdom.

(4) Condition C is that—

(a) the recipient company is resident outside the United Kingdom, but

(b) the dividend forms part of the profits of a permanent establishment of the recipient company in the United Kingdom.

(5) There is to be taken into account, as if it were tax payable under the law of the territory ("territory R") in which the overseas company is resident—

(a) any income tax or corporation tax payable by the overseas company in respect of its profits, and

(b) any tax which, under the law of any territory outside the United Kingdom other than territory R, is payable by the overseas company in respect of its profits.

(6) For the purposes of subsection (2), one company ("S") is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in S.

Tax underlying dividend treated as underlying tax paid by dividend's recipient

64 Meaning of "dividend-paying chain" of companies

(1) For the purposes of sections 65, 67 and 70 there is a dividend-paying chain if—

(a) condition A is met, and

(b) one of conditions B to D is met.

(2) Condition A is that a company ("the second company") pays a dividend to another company ("the first company").

(3) Condition B is that there is a third company which is a 10% associate of, and pays a dividend to, the second company.

(4) Condition C is that there is a succession of companies consisting of—

(a) a third company which is a 10% associate of, and pays a dividend to, the second company, and

(b) a fourth company which is a 10% associate of, and pays a dividend to, the third company.

(5) Condition D is that there is a succession of companies consisting of—

(a) a third company which is a 10% associate of, and pays a dividend to, the second company, and

(b) two or more companies (the fourth and fifth companies, and so on) each of which is a 10% associate of, and pays a dividend to, the company above it in the succession.

(6) For the purposes of this section, a company ("X") is a 10% associate of another company ("H") if H—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in X or at least 10% of the ordinary share capital of X.

(7) For the purposes of subsection (6), a company ("S") is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in S.

65 Relief for underlying tax paid by company lower in dividend-paying chain

(1) Subsection (4) applies if conditions E and F are met.

(2) Condition E is that there is a dividend-paying chain (see section 64) in which—

(a) the first company is the recipient company mentioned in section 63, and

(b) the second company is the overseas company mentioned in that section.

(3) Condition F is that there is underlying tax, payable by a company ("L") lower in the chain than the second company, that would be taken into account under this Part if—

(a) the dividend paid by L to the company ("K") above L in the chain had been paid—

(i) by a company resident outside the United Kingdom to a company resident in the United Kingdom, and

(ii) at the time when the dividend paid by the second company is received by the first company, and

(b) double taxation arrangements had provided for the underlying tax to be taken into account.

(4) The underlying tax is to be treated—

(a) for the purposes of section 63(5), and

(b) for the purposes of subsection (3),

as tax paid by K in respect of its profits, but see section 66 (limitations).

(5) In applying section 63 for the purpose of deciding whether condition F is met, read section 63(2) as if " , or at least 10% of the ordinary share capital of, " were inserted after "at least 10% of the voting power in".

(6) Section 58 (first method of calculating amount of underlying tax to be taken into account) does not apply for the purposes of subsections (3) and (4) unless the company referred to in subsection (2)(a) is resident in the United Kingdom and, even if that company is resident in the United Kingdom, section 58 applies for those purposes only—

(a) if K and L are not resident in the same territory, or

(b) in such other cases as may be prescribed by regulations made by the Treasury.

(7) Section 61 (second method of calculation) applies for the purposes of subsections (3) and (4) if section 58 does not apply for those purposes.

66 Limitations on section 65(4)

(1) Section 65(4) is subject to the limitations set out in subsections (2) and (3).

(2) No tax is to be taken into account in respect of a dividend paid by a company resident in the United Kingdom except—

(a) corporation tax, and

(b) any tax for which the company is entitled to credit under this Part.

(3) No tax is to be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account, under the provisions of this Part other than section 65(4), had the other company been resident in the United Kingdom.

Tax underlying dividends: restriction of relief, and particular cases

67 Restriction of relief if underlying tax at rate higher than rate of corporation tax

(1) Subsection (6) applies if—

(a) conditions A and B are met, and

(b) one of conditions C and D is met.

(2) Condition A is that a company ("the claimant company") makes a claim for an allowance by way of credit in accordance with this Part.

(3) Condition B is that the claim relates to underlying tax on a dividend paid to the claimant company by a company resident outside the United Kingdom ("the overseas company").

(4) Condition C is that the underlying tax is, or includes, an amount in respect of tax payable at a high rate by the overseas company and—

(a) that amount would not be, or would not be included in, the underlying tax, or

(b) any part of that amount would not be included in the underlying tax,

but for the existence of, or but for there having been, an avoidance scheme (see section 68).

(5) Condition D is that—

(a) there is a dividend-paying chain (see section 64) in which—

(i) the first company is the claimant company, and

(ii) the second company is the overseas company, and

(b) the underlying tax is, or includes, an amount in respect of tax payable at a high rate by a company lower in the chain than the overseas company and—

(i) that amount would not be, or would not be included in, the underlying tax, or

(ii) any part of that amount would not be included in the underlying tax,

but for the existence of, or but for there having been, an avoidance scheme (see section 68).

(6) The amount of credit to which the claimant company is entitled on the claim is to be determined as if the tax payable at a high rate had instead been tax at the relievable rate.

(7) For the purposes of this section, tax payable by a company is "tax payable at a high rate" so far as the amount payable exceeds the amount that would represent tax at the relievable rate on the profits of the company which, for the purposes of this Part, are taken to bear the payable tax.

(8) In this section "the relievable rate" means the rate of corporation tax in force when the dividend mentioned in subsection (3) was paid.

68 Meaning of "avoidance scheme" in section 67

(1) In section 67 "avoidance scheme" means any scheme or arrangement in respect of which each of conditions A to C is met.

(2) Condition A is that the purpose, or one of the main purposes, of the scheme or arrangement is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.

(3) Condition B is that the parties to the scheme or arrangement include—

(a) the company which is the claimant company for the purposes of section 67,

(b) a company related to the claimant company, or

(c) a person connected with the claimant company.

(4) Condition C is that the parties to the scheme or arrangement include a person who was not under the control of the claimant company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

(5) For the purposes of subsection (3)(b), a company ("R") is related to the claimant company if the claimant company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in R.

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

(7) For the purposes of subsection (4), a person who is a party to a scheme or arrangement is to be taken to have been under the control of the claimant company at all the following times—

(a) any time when the claimant company would have been taken (in accordance with sections 450 and 451 of CTA 2010) to have had control of the person for the purposes of Part 10 of CTA 2010 (close companies),

(b) any time when the claimant company would have been so taken if sections 450 and 451 of CTA 2010 applied (with the necessary modifications) in the case of partnerships and unincorporated associations as they apply in the case of companies, and

(c) any time when the person acted in relation to the scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of the claimant company.

(8) For the purposes of subsection (5), the claimant company is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in the claimant company.

(9) In this section "arrangement" means an arrangement of any kind, whether in writing or not.

69 Dividends paid out of transferred profits

(1) This section applies if—

(a) a company resident outside the United Kingdom ("company A") has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits,

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than as a result of the payment of a dividend to company B, and

(c) company B pays a dividend out of those profits to another company, wherever resident.

(2) If this section applies, this Part has effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b).

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom is not to exceed the amount which would have been allowable to that company had those profits become profits of company B as a result of the payment of a dividend by company A to company B.

70 Underlying tax reflecting interest on loans

(1) Subsection (2) applies if—

(a) a bank, or a company connected with a bank, makes a claim for an allowance by way of credit in accordance with this Chapter,

(b) there is a dividend-paying chain (see section 64) in which—

(i) the first company is the claimant, and

(ii) the second company is a company resident outside the United Kingdom,

(c) the claimant—

(i) controls directly or indirectly, or

(ii) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the second company,

(d) the claim relates to underlying tax on a dividend paid by the second company,

(e) that underlying tax is, or includes, tax payable under the law of a territory outside the United Kingdom on, or by reference to, interest or dividends

earned or received in the course of its business by a company ("the receiving company") which is—

(i) the second company, or

(ii) a company lower in the chain than the second company, and

(f) section 44 would have applied to the receiving company had it been resident in the United Kingdom.

(2) The amount of the credit for the tax mentioned in subsection (1)(e) ("the non-UK tax") is not to exceed the sum equal to corporation tax, at the rate in force at the time the non-UK tax was chargeable, on—

$$ID - E$$

where—
ID is the amount of the interest or dividends mentioned in subsection (1)(e), and
E is the amount of the receiving company's expenditure which is properly attributable to the earning of that interest or those dividends.

(3) For the purposes of subsection (1)(a)—

(a) "bank" means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and

(b) whether a company is connected with a bank is determined in accordance with section 1122 of CTA 2010.

(4) For the purposes of subsection (1)(c), the claimant is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in the claimant.

71 Foreign taxation of group as single entity

(1) Subsections (2) and (3) apply in relation to a claim for credit in respect of underlying tax in relation to a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom if, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in the territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of—

(a) that company and another company resident in the territory, or

(b) that company and two or more other companies resident in the territory,

taken together as a single taxable entity.

(2) This Part, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1)(a) or (b) (the "non-resident companies") to another company ("the payee company"), has effect as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the payee company if the company which actually pays the dividend is related to the payee company.

(3) In particular, this Part has effect as if—

(a) the relevant profits for the purposes of section 58 is a single aggregate figure in respect of that single company, and

(b) the tax paid in the territory by the responsible company is tax paid in the territory by that single company.

(4) For the purposes of this section, a company ("X") is related to another company ("H") if H—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in X.

(5) For the purposes of subsection (4), H is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in H.

Unrelieved foreign tax on profits of overseas permanent establishment

72 Application of section 73(1)

(1) Section 73(1) applies if, in an accounting period of a company resident in the United Kingdom—

(a) the amount of the credit for foreign tax which under the arrangements would, if section 42 were ignored, be allowable against corporation tax in respect of the company's qualifying income from an overseas permanent establishment, exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the company's qualifying income from that overseas permanent establishment.

(2) For the purposes of subsection (1) and section 73(1), the company's qualifying income from an overseas permanent establishment is the profits of the overseas permanent establishment which are—

(a) profits, chargeable under Chapter 2 of Part 3 of CTA 2009, of a trade carried on partly, but not wholly, outside the United Kingdom, [F24]...

[F24](b) . . . . . .

(3) In sections 73 to 78—

"the company" means the company mentioned in subsection (1),

"the excess" means the excess referred to in that subsection,

"the PE" means the overseas permanent establishment mentioned in that subsection, and

"period A" means the accounting period mentioned in that subsection.

Textual Amendments

F24 S. 72(2)(b) and word omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 234**

73 Carry-forward and carry-back of unrelieved foreign tax

(1) For the purposes of allowing credit relief under this Part, the excess is to be treated—

(a) as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in the accounting period after

period A (whether or not the company in fact has any qualifying income from that source in the accounting period after period A), or

(b) in accordance with the rules in section 74, as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in one or more of the recent periods, or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(2) If in period A the company ceases to have the PE, the excess, so far as it is not treated as mentioned in subsection (1)(b), is to be reduced to nil (so that none of the excess is to be treated as mentioned in subsection (1)(a)).

(3) If an amount is treated as mentioned in subsection (1)(b) it is not to be so treated for the purpose of any further application of subsection (1).

(4) In subsection (1)(b) "recent period" means an accounting period which is earlier than period A but begins not more than 3 years before period A.

74 Rules for carrying back unrelieved foreign tax

(1) This section sets out the rules mentioned in section 73(1)(b).

(2) The first rule is that—

(a) credit for the excess, or for any remaining balance of the excess, is allowed against corporation tax in respect of a later recent period, before

(b) credit for any of the excess is allowed against corporation tax in respect of any earlier recent period.

(3) The second rule is that, before allowing credit for any of the excess against corporation tax in respect of income of any particular accounting period ("period P"), credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of period P, other than amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period other than period P, and

(b) then for amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period before period P.

(4) In subsection (2) "recent period" means an accounting period which is earlier than period A but begins not more than 3 years before period A.

75 Two or more establishments treated as a single establishment

(1) Subsection (2) applies if, under the law of a territory outside the United Kingdom, tax is charged in respect of the profits of two or more overseas permanent establishments in that territory, taken together.

(2) For the purposes of the provisions of sections 72 to 78 other than the excepted provisions, those overseas permanent establishments are to be treated as if they together constituted a single overseas permanent establishment.

(3) In subsection (2) "the excepted provisions" means section 73(2), this section and section 77.

76 Former and subsequent establishments regarded as distinct establishments

(1) If the company—

(a) at any time ceases to have a particular overseas permanent establishment in a particular territory ("the old establishment"), but

(b) subsequently again has an overseas permanent establishment in that territory ("the new establishment"),

the old establishment and the new establishment are, for the purposes of the provisions of sections 72 to 78 other than the excepted provisions, to be regarded as different overseas permanent establishments.

(2) In subsection (1) "the excepted provisions" means sections 73(2), 75 and 77.

77 Claims for relief under section 73(1)

(1) The excess is to be treated as mentioned in section 73(1) only on a claim.

(2) A claim under subsection (1) must specify—

(a) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(a), and

(b) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(b).

(3) A claim under subsection (1) must be made not more than—

(a) 4 years after the end of period A, or

(b) if later, 1 year after the end of the accounting period in which the foreign tax concerned is paid.

78 Meaning of "overseas permanent establishment"

(1) For the purposes of sections 72 to 76 "overseas permanent establishment" means a permanent establishment through which the company carries on a trade in a territory outside the United Kingdom.

(2) In subsection (1) "permanent establishment"—

(a) if the arrangements are double taxation arrangements **[**F25which contain a relevant non-discrimination provision**]**, has the meaning given by the arrangements, and

(b) if the arrangements are double taxation arrangements **[**F26which do not contain a relevant non-discrimination provision**]**, or if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom, **[**F27has the meaning given by the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development in July 2010 ("the OECD") or such other document published by the OECD in place of it as is designated from time to time by order made by the Treasury.**]**

[F28(3) In subsection (2) "relevant non-discrimination provision" means a provision to the effect that the taxation on a permanent establishment of an enterprise of a state which is party to the arrangements (a "contracting state") is not to be less favourably levied in any other contracting state than the taxation levied on enterprises of that other contracting state carrying on the same activities.**]**

Textual Amendments

F25 Words in s. 78(2)(a) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(a)**, 31

F26 Words in s. 78(2)(b) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(b)(i)**, 31

F27 Words in s. 78(2)(b) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(b)(ii)**, 31

F28 S. 78(3) inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(3)**, 31

Action after adjustment of amount payable by way of UK or foreign tax

79 Time limits for action if tax adjustment makes credit excessive or insufficient

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

(a) the amount of any credit given under the arrangements is reduced under section 34, or 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 other territory,

(b) the reduction or adjustment 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) Nothing in—

(a) the Tax Acts, and

(b) the enactments relating to capital gains tax,

limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

80 Duty to give notice that adjustment has rendered credit excessive

(1) This section applies if—

(a) any credit for foreign tax has been allowed to a person under the arrangements,

(b) later, the amount of that credit is reduced under section 34, or 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, and

(c) the reduction or adjustment is not a Lloyd's adjustment (see subsection (5)).

(2) The person must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.

(3) Notice under subsection (2) is to be given—

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

(b) within one year from when the reduction or adjustment is made.

(4) If the person fails to comply with the requirements imposed by subsections (2) and (3), the person is liable to a penalty not greater than the amount by which the credit has been reduced or has become excessive as a result of the adjustment.

(5) For the purposes of subsection (1)(c), the reduction or adjustment is a "Lloyd's adjustment" if the consequences of the reduction or adjustment in relation to the credit 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).

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

Schemes and arrangements designed to increase relief: anti-avoidance

81 Giving a counteraction notice

(1) Subsection (2) applies if an officer of Revenue and Customs considers, on reasonable grounds, that each of conditions A to D of section 82 is or may be met in relation to a person.

(2) The officer may give the person a notice which—

(a) informs the person of the officer's view under subsection (1),

(b) specifies the chargeable period in relation to which the officer formed that view,

(c) specifies, if the amount of foreign tax considered by the officer to meet condition B of section 82 is an amount of underlying tax, the body corporate whose payment of foreign tax is relevant to that underlying tax, and

(d) informs the person that, as a result of the giving of the notice, section 90(2) will apply in relation to the person's tax return for the chargeable period specified if each of conditions A to D of section 82 is met in relation to that period.

(3) Section 92 (when notice may be given after tax return made) imposes limits on when the power under subsection (2) is exercisable.

(4) In this section "foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory.

(5) In this section so far as it relates to capital gains tax—

"chargeable period" means tax year (see section 288(1ZA) of TCGA 1992), and

"notice" means notice in writing.

82 Conditions for the purposes of section 81(1)

(1) Conditions A to D are the conditions mentioned in section 81(1).

(2) Condition A is that, in respect of any income or chargeable gain—

(a) taken into account for the purposes of determining a person's liability to UK tax in a chargeable period, or

(b) to be taken into account for the purposes of determining a person's liability to UK tax in a chargeable period,

there is an amount of foreign tax for which, under the arrangements, credit is allowable against UK tax for the period.

(3) Condition B is that there is a scheme or arrangement the main purpose of which, or one of the main purposes of which, is to cause an amount of foreign tax to be taken into account in the person's case for the period.

(4) Condition C is that the scheme or arrangement is within section 83.

(5) Condition D is that T is more than a minimal amount, where T is the sum of—

(a) the total amount of the claims for credit that the person has made, or is in a position to make, for the period ("the counteraction period"), and

(b) the total amount of all connected-person claims.

(6) In subsection (5) "connected-person claim" means a claim that any person connected to the person has made, or is in a position to make, for any chargeable period that overlaps the counteraction period by at least one day.

(7) In this section—

"chargeable period", in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992),

"foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory, and

"UK tax" means income tax, corporation tax or capital gains tax.

(8) Section 286 of TCGA 1992 (meaning of "connected") applies for the purposes of subsection (6) so far as applying in relation to capital gains tax.

83 Schemes and arrangements referred to in section 82(4)

(1) For the purposes of section 82(4), a scheme or arrangement is within this section if it is within subsection (2) or (4).

(2) A scheme or arrangement is within this subsection if—

(a) it is not an underlying-tax scheme or arrangement, and

(b) one or more of sections 84 to 88 apply to it.

(3) For the purposes of this section, a scheme or arrangement is an "underlying-tax" scheme or arrangement if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by an overseas-resident body corporate to be taken into account in a person's case.

(4) A scheme or arrangement is within this subsection if—

(a) it is an underlying-tax scheme or arrangement, and

(b) one or more of sections 84 to 88 would, on the assumption in subsection (5), apply to it.

(5) The assumption is that the body corporate is resident in the United Kingdom.

(6) Nothing in subsection (5) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.

(7) In subsection (3) "overseas-resident" means resident in a territory outside the United Kingdom.

84 Section 83(2) and (4): schemes enabling attribution of foreign tax

(1) This section applies to a scheme or arrangement if—

(a) the scheme or arrangement enables a participant to pay, in respect of a source of income or chargeable gain, an amount of foreign tax, and

(b) all or part of that amount of foreign tax is properly attributable to another source of income or chargeable gain.

(2) In subsection (1) "participant" means a person who is party to, or concerned in, the scheme or arrangement.

85 Section 83(2) and (4): schemes about effect of paying foreign tax

(1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person ("C") who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for **[**F29in respect of the payment of an amount of foreign tax ("the FT amount")**]**.

[F30(2) The condition is that, when C entered into the scheme or arrangement, it could reasonably be expected that the effect on the foreign-tax total of the FT amount being paid or payable would be to increase that total by less than amount X.**]**

(3) In **[**F31subsection (2)**]**—

"the foreign-tax total" means the amount found by—

(a) totalling the amounts of foreign tax paid or payable by the participants in respect of the transaction or transactions forming part of the scheme or arrangement, and

(b) taking into account any reliefs that arise to the participants, including any reliefs arising to any one or more of the participants as a consequence of **[**F32the FT amount being paid or payable F33...**]**, and

"amount X" means the amount allowable to C as a credit in respect of the payment of the FT amount.

(4) In subsection (3)—

"participant" means a person who is party to, or concerned in, the scheme or arrangement, and

"reliefs" means reliefs, deductions, reductions or allowances against or in respect of any tax.

(5) In subsection (1) so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

Textual Amendments

F29 Words in s. 85(1) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(a)**

F30 S. 85(2) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(b)**

F31 Words in s. 85(3) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(c)(i)**

F32 Words in s. 85(3) substituted (with effect in relation to amounts of foreign tax payable on or after 21.10.2009 in accordance with Sch. 11 para. 3 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 2(3)**

F33 Words in s. 85(3) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(c)(ii)**

[F34 85A Section 83(2) and (4): schemes involving deemed foreign tax

(1) This section applies to a scheme or arrangement if in relation to a claimant—

(a) an amount ("amount X") is treated by virtue of a provision of the Tax Acts as if it were an amount of foreign tax paid or payable **[**F35by the claimant**]** in respect of a source of income, and

(b) condition A or B is met.

(2) Condition A is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement, no real foreign tax would be paid or payable by a participant.

(3) Condition B is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement—

(a) an amount of real foreign tax ("the RFT amount") would be paid or payable by a participant, but

(b) the effect on the foreign-tax total of the RFT amount being so paid or payable would be to increase the foreign-tax total by less than the amount allowable to the claimant as a credit in respect of amount X.

(4) In this section—

" claimant " means a person who for a chargeable period has claimed, or is in a position to claim, for any credit that under the arrangements is to be allowed for foreign tax;

" the foreign-tax total " has the meaning given by section 85(3), except that the reference to "the FT amount being paid or payable **[**F36by C**]**" must be read as a reference to "the RFT amount being paid or payable by any of them";

" income " includes a chargeable gain;

" participant " means a person who is party to, or concerned in, the scheme or arrangement;

" real foreign tax " means—

(a) in a case involving section 10 (accrued income profits), the foreign tax chargeable in respect of the interest on the securities, as mentioned in subsection (1)(c) of that section,

(b) F37...

(c) in any other case, the foreign tax chargeable in respect of the source of income of which the source mentioned in subsection (1)(a) is representative.**]**

Textual Amendments

F34 S. 85A inserted (with effect in accordance with Sch. 11 para. 4(2)(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 4(1)**

F35 Words in s. 85A(1)(a) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 5(2)(a)**

F36 Words in s. 85A(4) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 5(2)(b)**

F37 Words in s. 85A(4) omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, **Sch. 29 para. 48(2)**

86 Section 83(2) and (4): schemes about claims or elections etc

(1) This section applies to a scheme or arrangement if F38...—

(a) a step is taken by a participant, or

(b) a step that could have been taken by a participant is not taken,

and that action or failure to act has the effect of increasing, or giving rise to, a claim by a participant for an allowance by way of credit under this Part.

(2) The steps mentioned in subsection (1) are steps that may be taken—

(a) under the law of any territory, or

(b) under double taxation arrangements made in relation to any territory.

(3) The steps mentioned in subsection (1) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and

(b) making elections for tax purposes.

[F39(3A) Reference in subsection (1) to a step that is taken or not taken by a participant includes one that was taken or not taken by a participant before the scheme or arrangement was made.

(3B) The reason for taking or not taking a step does not matter so long as it has the effect mentioned in subsection (1).**]**

(4) In subsection (1) "participant" means a person who is party to, or concerned in, the scheme or arrangement.

Textual Amendments

F38 Words in s. 86(1) omitted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 6(1)(a)**

F39 S. 86(3A)(3B) inserted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 6(1)(b)**

87 Section 83(2) and (4): schemes that would reduce a person's tax liability

(1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for foreign tax.

(2) The condition is that amount A is less than amount B.

(3) Amount A is the amount of UK tax payable by the person in respect of income and chargeable gains arising in the chargeable period.

(4) Amount B is the amount of UK tax that would be payable by the person in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.

(5) In this section "UK tax" means income tax, corporation tax and capital gains tax.

(6) In this section so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

88 Section 83(2) and (4): schemes involving tax-deductible payments

(1) This section applies to a scheme or arrangement if the scheme or arrangement includes—

(a) the making by a person ("P") of a relevant payment or payments, and

(b) the giving, in respect of the payment or payments, of qualifying consideration.

(2) For the purposes of subsection (1), a payment is a "relevant payment" if all or part of it may be brought into account—

(a) in calculating P's income for the purposes of income tax or corporation tax, or

(b) in calculating P's chargeable gains for the purposes of capital gains tax.

(3) For the purposes of subsection (1), consideration is "qualifying consideration" if—

(a) all or part of it consists of a payment made to P or a person connected with P, and

(b) tax is chargeable in respect of the payment under the law of a territory outside the United Kingdom.

(4) In this section "payment" includes a transfer of money's worth.

(5) For the purposes of this section, whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

89 Contents of counteraction notice

(1) Subsections (2) and (3) apply if an officer of Revenue and Customs gives a person a counteraction notice.

(2) The notice may specify the adjustments that, in the view of the officer, section 90 requires the person to make.

(3) If the notice specifies under section 81(2)(c) a body corporate resident outside the United Kingdom, the adjustments specified may include treating the body as having paid, or being liable to pay, only so much foreign tax as would have been allowed to it as a credit if—

(a) it were resident in the United Kingdom, and

(b) a counteraction notice had been given to it as regards an amount of foreign tax.

(4) In this section "foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory.

90 Consequences of counteraction notices

(1) If—

(a) a counteraction notice has been given to a person in respect of a chargeable period specified in the notice, and

(b) that chargeable period is a chargeable period in relation to which each of conditions A to D of section 82 is met,

subsection (2) applies to the person's tax return for the period.

(2) The person must in the return make, or must amend the return so as to make, such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 82.

91 Counteraction notices given before tax return made

(1) Subsection (2) applies if—

(a) an officer of Revenue and Customs gives a counteraction notice to a person before the person has made the person's tax return for the chargeable period specified in the notice, and

(b) the person makes a tax return for that period before the end of the 90 days beginning with the day on which the notice is given.

(2) The person may—

(a) make a tax return that disregards the notice, and

(b) at any time after making the return and before the end of the 90 days, amend the return for the purpose of complying with the provision referred to in the notice.

(3) Subsection (2)(b) does not prevent the return becoming incorrect if the return—

(a) is not amended in accordance with subsection (2)(b) for the purpose of complying with the provision referred to in the notice, but

(b) ought to have been so amended.

92 Counteraction notices given after tax return made

(1) This section applies if—

(a) a person has made a tax return for a chargeable period, and

(b) ignoring the restrictions imposed by this section, an officer of Revenue and Customs has power to give the person a counteraction notice in relation to the period.

(2) The officer may give the person a counteraction notice in relation to the period only if a notice of enquiry has been given to the person in respect of the return.

(3) After any enquiries into the return have been completed **[**F40in relation to any matters**]**, the officer may give the person a counteraction notice **[**F41relating to those matters**]** in relation to the period only if conditions E and F are met.

(4) Condition E is that, at the time the enquiries **[**F42referred to in subsection (3)**]** were completed, no officer of Revenue and Customs could have been reasonably expected, on the basis of the information made available to Her Majesty's Revenue and

Customs before that time, to have been aware that the circumstances were such that a counteraction notice could have been given to the person in relation to the period.

(5) Condition F is that—

(a) the person was requested to provide information during an enquiry into the return **[**F43(so far as relating to the matters in question)**]**, and

(b) if the person had duly complied with the request, an officer of Revenue and Customs could have been reasonably expected to give the person a counteraction notice in relation to the period.

(6) Section 94 sets out the circumstances in which, for the purposes of condition E, information is made available.

Textual Amendments

F40 Words in s. 92(3) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 38(2)(a)**

F41 Words in s. 92(3) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 38(2)(b)**

F42 Words in s. 92(4) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 38(3)**

F43 Words in s. 92(5)(a) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 38(4)**

93 Amendment, closure notices and discovery assessments in section 92 cases

(1) This section applies if a person is given a counteraction notice in relation to a chargeable period after having made a tax return for the period.

(2) The person may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the 90 days beginning with the day on which the notice is given.

(3) If the counteraction notice is given after the person has been given a notice of enquiry in relation to the return, no closure notice may be given in relation to the return before the deadline.

[F44(3A) Subsection (3) does not apply to a partial closure notice which does not relate to any matter to which the counteraction notice relates.**]**

(4) If the counteraction notice is given after any enquiries into the return are completed, **[**F45so far as relating to the matters to which the counteraction notice relates,**]** no discovery assessment may be made as regards the income or chargeable gain to which the counteraction notice relates before the deadline.

(5) In subsections (3) and (4) "the deadline" means—

(a) the end of the 90 days beginning with the day on which the counteraction notice is given, or

(b) if earlier, the amendment of the return for the purpose of complying with the provision referred to in the counteraction notice.

(6) Subsection (2) does not prevent the return becoming incorrect if the return—

(a) is not amended in accordance with subsection (2) for the purpose of complying with the provision referred to in the counteraction notice, but

(b) ought to have been so amended.

Textual Amendments

F44 S. 93(3A) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 39(2)**

F45 Words in s. 93(4) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 39(3)**

94 Information made available for the purposes of section 92(4)

(1) This section applies for the purposes of section 92(4), and in this section—

"the period",

"the person", and

"the return",

mean (respectively) the chargeable period, the person and the tax return mentioned in section 92(1).

(2) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 or 8A of TMA 1970 (personal or trustee's return) and the information—

(a) is contained in the return,

(b) is contained in the person's return under that section for either of the two immediately preceding tax years,

(c) is contained in documents accompanying a return within paragraph (a) or (b), or

(d) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).

(3) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 of TMA 1970 (personal return), the person carries on a trade, profession or business in partnership and the information—

(a) is contained in a return under section 12AA of TMA 1970 (partnership return) with respect to the partnership for the period,

(b) is contained in a return under section 12AA of TMA 1970 with respect to the partnership for either of the two immediately preceding tax years,

(c) is contained in documents accompanying a return within paragraph (a) or (b), or

(d) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).

(4) Information is made available to Her Majesty's Revenue and Customs if the return is a company tax return and the information—

(a) is contained in the return,

(b) is contained in the person's company tax return for either of the two immediately preceding accounting periods,

(c) is contained in documents accompanying a return within paragraph (a) or (b), or

(d) is, or is contained in documents which are, produced or provided by the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).

(5) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 or 8A of TMA 1970 and the information —

(a) is contained in any claim made as regards the period by, or on behalf of, the person acting in the same capacity as that in which the person made the return,

(b) is contained in any documents accompanying such a claim, or

(c) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into such a claim.

(6) Information is made available to Her Majesty's Revenue and Customs if the return is a company tax return and the information—

(a) is contained in a claim made by or on behalf of the person as regards the period,

(b) is contained in an application under section 751A of ICTA (applications relating to controlled foreign companies) made by or on behalf of the person which affects the return,

(c) is contained in any documents accompanying such a claim or application, or

(d) is, or is contained in documents which are, produced or provided by the person to an officer of Revenue and Customs for the purposes of any enquiries into such a claim or application.

(7) Information is made available to Her Majesty's Revenue and Customs if the existence of the information, and the relevance of the information as regards exercise of power to give the person a counteraction notice in relation to the period—

(a) could reasonably be expected to be inferred by an officer of Revenue and Customs from information falling within subsections (2) to (6), or

(b) are notified in writing by or on behalf of the person to an officer of Revenue and Customs.

95 Interpretation of sections 89 to 94

(1) This section applies for the purposes of sections 89 to 94, and subsection (4) applies also for the purposes of subsection (8).

(2) "Chargeable period", in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992).

(3) "Closure notice" means a notice under—

(a) section 28A or 28B of TMA 1970 (completion of enquiry into personal, trustee's or partnership return), or

(b) paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry into company return).

(4) "Company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule (company returns).

(5) "Counteraction notice" means a notice under section 81(2).

(6) "Discovery assessment" means an assessment under—

(a) section 29 of TMA 1970 (assessment to income tax or capital gains tax), or
(b) paragraph 41 of Schedule 18 to FA 1998 (assessment on company).

(7) "Notice of enquiry" means a notice under—
(a) section 9A or 12AC of TMA 1970 (enquiry into personal, trustee's or partnership return), or
(b) paragraph 24 of Schedule 18 to FA 1998 (enquiry into company return).

(8) "Tax return" means—
(a) a return under section 8, 8A or 12AA of TMA 1970 (personal return, trustee's return or partnership return), or
(b) a company tax return.

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 [F46]... in respect of the profits [F47]... of **[**[F48]non-BLAGAB long-term 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 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.

Textual Amendments

F46 Words in s. 96(1) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 235(a)**

F47 Words in s. 96(1) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 235(b)**

F48 Words in s. 96(1) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 235(c)**

[F49 97 Companies with more than one category of business: restriction of credit

(1) This section applies 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 Part 2 of FA 2012, to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with subsection (3), is attributable to that category of business.

(3) The fraction of the foreign tax that is attributable to the category of business in question is the fraction given by—

$$\frac{RPRI}{TRI}$$

where—

RPRI is the amount of the relevant income referable to the category of business in question in accordance with section 97A, and

TRI is the total amount of the relevant income.

Textual Amendments

F49 Ss. 97, 97A substituted (17.7.2012) for s. 97 by Finance Act 2012 (c. 14), **Sch. 16 para. 236**

97A Commercial allocation of relevant income to different categories of long-term business

(1) The amount of the relevant income that, for the purposes of section 97, is to be regarded as referable to a category of business is to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the relevant income arises.

(2) A method is an "acceptable commercial method" if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of section 97 for determining for a period of account the amount of any income or gain arising in the period that is referable to a particular category of long-term business carried on by the company.

(3) The Treasury may make regulations for the purposes of this section—

(a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and

(b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

(4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account must be consistent with the method adopted for the purposes of section 98 or 115 of FA 2012 for that period.**]**

Textual Amendments

F49 Ss. 97, 97A substituted (17.7.2012) for s. 97 by Finance Act 2012 (c. 14), **Sch. 16 para. 236**

[F50]98 Attribution for section 97 purposes if category is gross roll-up business

. . . . . .

Textual Amendments

F50 S. 98 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 237**

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.

(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 **[**[F51]97A**]**.

Textual Amendments

F51 Word in s. 99(7) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 238**

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—

(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)).

(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—

(a) the amount of the relevant income after any reduction under section 100(1),

exceeds—

(b) 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—

$$\frac{RI}{\text{The referable share of total relievable income and gains}}$$

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).

[F52]102 Interpreting sections 99 to 101 for life assurance or gross roll-up business

. . . . . .

Textual Amendments

F52 S. 102 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 239**

103 Interpreting sections 99 to 101 [F53]...

(1) This section has effect for the interpretation of sections 99 to 101 [F54]...

(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.

Textual Amendments

F53 Words in s. 103 heading omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 240(3)**

F54 Words in s. 103(1) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 240(2)**

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 **[**[F55]97A**]** 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.

Textual Amendments

F55 Word in s. 104(3) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 241**

CHAPTER 3

MISCELLANEOUS PROVISIONS

Application of Part for capital gains tax purposes

105 Meaning of "chargeable gain"

In this Part so far as it relates to capital gains tax "chargeable gain" has the same meaning as in TCGA 1992 (see, in particular, section 15(2) of that Act).

106 Chapters 1 and 2 apply to capital gains tax separately from other taxes

(1) Subsection (2) applies if foreign gains tax may be brought into account under Chapters 1 and 2 so far as they apply for capital gains tax purposes.

(2) The foreign gains tax is not to be taken into account under those Chapters so far as they apply otherwise than for capital gains tax purposes.

(3) Subsection (2) applies whether or not relief in respect of the foreign gains tax is given under those Chapters so far as they apply for capital gains tax purposes.

(4) Foreign non-gains tax is not be taken into account under those Chapters so far as they apply for capital gains tax purposes.

(5) In this section—

"foreign gains tax" means any tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is of a similar character to capital gains tax, and

"foreign non-gains tax" means tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is not foreign gains tax.

When foreign tax disregarded in applying Part for corporation tax purposes

107 Disregard of foreign tax referable to derivative contract

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to so much of a notional interest payment as, on such an apportionment, is attributable to a time when the company is not a party to the derivative contract concerned.

(3) For the purposes of this section, a payment is a "notional interest payment" if—

(a) a derivative contract specifies—

(i) a notional principal amount,

(ii) a period, and

(iii) a rate of interest,

(b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and

(c) the value of the rate is the same at all times as that of the specified rate of interest.

108 Disregard of foreign tax attributable to interest under a loan relationship

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

(3) Tax within subsection (2) is not to be disregarded under subsection (1) if the tax is also within section 109 or 110.

109 Repo cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial sale under or in accordance with any debtor repo relating to the relationship, and

(b) that time is in the period for which the repo has effect.

(2) In this section—

"debtor repo" has the meaning given by the repo-definition section,

"the initial sale", in relation to a debtor repo, means the sale mentioned in condition C in the repo-definition section, and

"the repo-definition section" means section 548 of CTA 2009.

(3) In this section, a reference to the period for which a debtor repo has effect is to the period from the making of the initial sale until the earlier of—

(a) the time when the subsequent purchase mentioned in condition D in the repo-definition section takes place, and

(b) the time when it becomes apparent that that subsequent purchase will not take place.

110 Stock-lending cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial transfer under or in accordance with any stock lending arrangement relating to that relationship, and

(b) that time is in the period for which the arrangement has effect.

(2) In this section—

"the initial transfer", in relation to a stock lending arrangement, means the transfer mentioned in section 263B(1)(a) of TCGA 1992, and

"stock lending arrangement" has the meaning given by section 263B of TCGA 1992.

(3) In this section, a reference to the period for which a stock lending arrangement has effect is to the period from the making of the initial transfer until the earlier of—

(a) the time when the transfer mentioned in section 263B(1)(b) of TCGA 1992 takes place, and

(b) the time when it becomes apparent that that transfer will not take place.

Special rules for discretionary trusts

111 When payment to beneficiary treated as arising from foreign source

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that a payment is made by trustees of a settlement.

(3) Condition B is that income tax is treated under section 494 of ITA 2007 (treatment of discretionary payments by trustees) as having been paid in relation to the payment.

(4) Condition C is that the income arising under the settlement includes taxed overseas income.

(5) Condition D is that the trustees certify—

(a) that the payment is one made out of income consisting of, or including, taxed overseas income of an amount, and from a source, stated in the certificate, and

(b) that that amount of taxed overseas income arose to the trustees not earlier than 6 years before the end of the tax year in which the payment is made.

(6) The person to whom the payment is made may claim that the payment, up to the certified amount, is to be treated for the purposes of this Part as income received by the person—

(a) from the certified source, and

(b) in the tax year in which the payment is made.

(7) In this section "taxed overseas income", in relation to a settlement, means income in respect of which the trustees are entitled to credit under this Part for tax under the law of a territory outside the United Kingdom.

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).

[F56(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

[F57(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.

[F58(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),

(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 **[**F59this 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.

[F60(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

F56 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)**

F57 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)**

F58 S. 112(3A)(3B) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 14(2)**, 21

F59 Words in s. 112(6) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 14(3)**, 21

F60 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.

European cross-border transfers of business

116 Introduction to section 117

(1) Subject to subsections (4) to (6), section 117 applies if condition A or B is met.

(2) Condition A is that—

(a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and

(b) the transfer includes—

(i) the transfer of an asset or liability representing a loan relationship,

(ii) the transfer of rights and liabilities under a derivative contract, or

(iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.

(3) Condition B is that—

(a) a company resident in the United Kingdom transfers part of its business to one or more companies,

(b) the part of the transferor's business which is transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,

(c) at least one transferee is resident in a member State other than the United Kingdom,

(d) the transferor continues to carry on a business after the transfer,

(e) the condition in subsection (2)(b) is met, and

(f) the transfer—

(i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or

(ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company

acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

(4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one.

(5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one, and

(c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.

(6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—

(i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a member State, and

(ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—

(i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and

(ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and

(c) only applies as respects the transfer so mentioned if—

(i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and

(ii) the transferor makes a claim under this section in respect of the transfer so mentioned.

(7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).

(8) For the purposes of this section, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

117 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State, losses arising on the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and

(b) that any relief due to the transferor under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the transfer of business mentioned in section 116(2)(a) or (3)(a) is not effected for genuine commercial reasons, or

(b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—

(a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.

(5) In subsection (4) "the appropriate applicant" means—

(a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(i) or (ii) is concerned, the companies mentioned in section 116(2)(a) or (3)(a), and

(b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(iii) is concerned, the transferor.

(6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

European cross-border mergers

[F61]118 Introduction to section 119

(1) Section 119 applies if each of conditions A to E is met and—

(a) in the case of a merger within subsection (2)(a) or (b), condition F is met,

(b) in the case of a merger within subsection (2)(c), conditions F and G are met, and

(c) in the case of a merger within subsection (2)(d), condition G is met.

(2) Condition A is that—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),

F62(b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a **[**F63registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969**]**, in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),

(c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

(d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(3) Condition B is that each merging company is resident in a member State.

(4) Condition C is that the merging companies are not all resident in the same State.

(5) Condition D is that in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment (but see subsection (9)).

(6) Condition E is that the transfer mentioned in subsection (5) includes—

(a) the transfer of an asset or liability representing a loan relationship,

(b) the transfer of rights and liabilities under a derivative contract, or

(c) the transfer of intangible fixed assets—

(i) that are chargeable intangible assets in relation to company A immediately before the transfer, and

(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.

(7) Condition F is that—

(a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or

(b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

(8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).

(9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 119 applies in respect of such a transfer as is mentioned in subsection (6)(c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).

(10) For the purposes of this section, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(11) In this section—

"co-operative society" means a **[**F64registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969**]** or a similar society governed by the law of a member State other than the United Kingdom,

"SE" and "SCE" have the same meaning as in CTA 2009 (see section 1319 of that Act),

"the transferee" means—

(a) in relation to a merger within subsection (2)(a), the SE,

(b) in relation to a merger within subsection (2)(b), the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and

"transferor" means—

(a) in relation to a merger within subsection (2)(a), a company merging to form the SE,

(b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.

Textual Amendments

F61 S. 118(11) amendment to earlier affecting provision 2014 c. 14 Sch. 4 para. 171(3) (1.8.2014) by Finance Act 2014 (c. 26), **Sch. 39 paras. 14(b)**, 15

F62 S. 118(2)(b) amendment to earlier affecting provision 2014 c. 14 Sch. 4 para. 171(2) (1.8.2014) by Finance Act 2014 (c. 26), **Sch. 39 paras. 14(a)**, 15

F63 Words in s. 118(2)(b) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 171(2)** (with Sch. 5) (as amended by 2014 c. 26, Sch. 39 paras. 14(a), 15)

F64 Words in s. 118(11) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 171(3)** (with Sch. 5) (as amended by 2014 c. 26, Sch. 39 paras. 14(b), 15)

119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers

Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State, losses arising on that transfer are set against gains arising on that transfer, and

(b) that any relief due to company A under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the merger is not effected for genuine commercial reasons, or

(b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the merger—

(a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.

(5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

(6) In this section "company A", "the merger" and "the merging companies" have the same meaning as in section 118.

Transparent entities involved in cross-border transfers and mergers

120 Introduction to section 121

(1) Section 121 applies if, as a result of—

(a) a relevant loan relationship transaction,

(b) a relevant derivative contracts transaction, or

(c) a relevant intangible fixed assets transaction,

tax would have been chargeable under the law of a member State other than the United Kingdom in respect of a relevant profit but for the Mergers Directive.

(2) In this section "relevant loan relationship transaction" means—

(a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 421(3)(c) or (4)(f) of that Act were met,

and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger of a kind mentioned in section 431(2) of that Act which meets—

(i) conditions B to D in section 431,

(ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and

(iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,

and in relation to which one or more of the merging companies is a transparent entity.

(3) In this section "relevant derivative contracts transaction" means—

(a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 674(2)(c) or (3)(f) of that Act were met,

and in relation to which the transferor is a transparent entity, or

(b) a merger of a kind mentioned in section 682(2) of that Act which meets—

(i) conditions B to D in section 682,

(ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and

(iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,

and in relation to which one or more of the merging companies is a transparent entity.

(4) In this section "relevant intangible fixed assets transaction" means—

(a) a transfer—

(i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger—

(i) which is of a kind mentioned in section 821(2) of that Act,

(ii) which meets conditions B and C in section 821,

(iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,

(iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,

(v) in the course of which no qualifying assets are transferred to which section 818 of that Act (company reconstruction involving transfer of business) applies, and

(vi) in relation to which one or more of the merging companies is a transparent entity.

(5) In this section "relevant profit" means—

(a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,

(b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,

(c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,

(d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to another company in the course of the merger,

(e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent, and

(f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.

(6) In this section "transparent entity" means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

121 Tax treated as chargeable in respect of relevant transactions

(1) This Part applies, and any double taxation arrangements apply, as if the tax that would have been chargeable as mentioned in section 120(1) had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State mentioned in section 120(1), losses arising on the relevant transfer are set against profits arising on it, and

(b) that any relief available under that law is claimed.

(3) In this section "the relevant transfer" means—

(a) the transfer of assets or liabilities mentioned in section 120(5)(a) or (b),

(b) the transfer of rights and liabilities mentioned in section 120(5)(c) or (d), or

(c) the transfer of intangible fixed assets mentioned in section 120(5)(e) or (f).

Cross-border transfers and mergers: chargeable gains

122 Tax treated as chargeable in respect of gains on transfer of non-UK business

(1) Subsection (3) applies if—

(a) section 140C or 140F of TCGA 1992 applies, and

(b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.

(2) In this section—

"company A"—

(a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and

(b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,

"the host State" means the member State (other than the United Kingdom) mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,

"the transfer" means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and

"the transfer subsections" means—

(a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident "company" to one resident in another member State),

(b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident "company" to transferees including a "company" resident in another member State), and

(c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident "company" or co-operative society to one resident in another member State, as part of genuine merger of two or more "companies" or societies).

(3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.

(4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.

(5) For the purposes of subsection (4) "the required basis" is that—

(a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and

(b) any relief available to company A under the law of the host State has been duly claimed.

Interpretation of sections related to the Mergers Directive

123 Interpretation of sections 116 to 122

In sections 116 to 122 and this section—

"company" means any entity listed as a company in **[**[F65]Part A of Annex I**]** to the Mergers Directive,

"derivative contract" has the same meaning as in Part 7 of CTA 2009,

"intangible fixed assets" and "chargeable intangible assets", in relation to any person, have the same meaning as in Part 8 of CTA 2009,

"loan relationship" has the same meaning as in Part 5 of CTA 2009,

"the Mergers Directive" means Council Directive **[**[F66]2009/133/EC,**]**

"proceeds of realisation", in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and

"recognised for tax purposes" has the same meaning as in Part 8 of CTA 2009.

Textual Amendments

F65 Words in s. 123 substituted (1.7.2011) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2011 (S.I. 2011/1431), regs. 1(2), **5(a)**

F66 Words in s. 123 substituted (1.7.2011) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2011 (S.I. 2011/1431), regs. 1(2), **5(b)**

Cases about being taxed otherwise than in accordance with double taxation arrangements

124 Giving effect to solutions to cases and mutual agreements resolving cases

(1) Subsections (2) and (4) apply if under, and for the purposes of, double taxation arrangements made in relation to a territory outside the United Kingdom—

(a) a person presents, to the Commissioners for Her Majesty's Revenue and Customs or to an authority in the territory, a case concerning the person's being taxed (whether in the United Kingdom or the territory) otherwise than in accordance with the arrangements, and

(b) the Commissioners arrive at a solution to the case or make a mutual agreement with an authority in the territory for the resolution of the case.

(2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(4) A claim for relief under any provision of—

(a) the Tax Acts,

(b) the enactments relating to capital gains tax, or

(c) the enactments relating to petroleum revenue tax,

may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the person affected, even if that involves making the claim after a deadline imposed by another enactment.

125 Effect of, and deadline for, presenting a case

(1) This section applies if double taxation arrangements include provision for a person to present a case—

(a) to the Commissioners for Her Majesty's Revenue and Customs, or

(b) to an officer of Revenue and Customs,

concerning the person's being taxed otherwise than in accordance with the arrangements.

(2) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and

(b) is accordingly not subject to section 42 of TMA 1970 or any other enactment relating to the making of such claims.

(3) Any such case must be presented before the end of—

(a) the period of 6 years following the end of the chargeable period to which the case relates, or

(b) such longer period as may be specified in the arrangements.

The Arbitration Convention

126 Meaning of "the Arbitration Convention"

In sections 127 and 128 "the Arbitration Convention" means the Convention, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23 July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).

127 Giving effect to agreements, decisions and opinions under the Convention

(1) In this section "Convention determination" means—

(a) an agreement or decision, made under the Arbitration Convention by the Commissioners for Her Majesty's Revenue and Customs (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Arbitration Convention, on the elimination of double taxation.

(2) Subsection (3) applies if the Arbitration Convention requires the Commissioners to give effect to a Convention determination.

(3) The Commissioners are to give effect to the Convention determination despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(4) An adjustment under subsection (3) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(5) An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

128 Disclosure under the Convention

(1) The obligation as to secrecy imposed by any enactment does not prevent—

(a) the Commissioners for Her Majesty's Revenue and Customs, or

(b) any authorised Revenue and Customs official,

from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under the Convention.

(2) In this section "Revenue and Customs official" means any person who is or was—

(a) a Commissioner for Her Majesty's Revenue and Customs,
(b) an officer of Revenue and Customs,
(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
(d) a person acting on behalf of an officer of Revenue and Customs, or
(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

Disclosure of information

129 Disclosure where relief given overseas for tax paid in the United Kingdom

(1) Subsection (2) applies if the law of a territory outside the United Kingdom makes provision allowing, in respect of the payment of—
(a) income tax,
(b) corporation tax,
(c) capital gains tax, or
(d) petroleum revenue tax,
relief from tax payable under that law.

(2) The obligation as to secrecy imposed upon Revenue and Customs officials by—
(a) the Tax Acts,
(b) the enactments relating to capital gains tax, and
(c) the enactments relating to petroleum revenue tax,
does not prevent disclosure, to the authorised officer of the authorities of the territory, of such facts as may be necessary to enable the proper relief to be given under the law of the territory.

(3) The reference in subsection (1) to tax payable under the law of the territory includes 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,
(c) taxes which are charged on capital gains and which correspond to capital gains tax, and
(d) taxes which—
(i) are charged on amounts corresponding to amounts on which petroleum revenue tax is charged, and
(ii) correspond to petroleum revenue tax.

(4) For the purposes of subsection (3), tax may correspond to income tax, corporation tax, capital gains tax or petroleum revenue 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.

(5) In this section "Revenue and Customs official" means any person who is or was—
(a) a Commissioner for Her Majesty's Revenue and Customs,
(b) an officer of Revenue and Customs,

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
(d) a person acting on behalf of an officer of Revenue and Customs, or
(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

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 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.

[F67 130A Interpreting provision about UK taxation of pensions etc

(1) Subsection (3) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).

(2) The provision is that pensions and other similar remuneration which—
(a) arise outside the United Kingdom, and
(b) are paid to persons who are resident in the United Kingdom,
are not to be subject to United Kingdom tax.

(3) That provision does not prevent a pension or other similar remuneration of a person resident in the United Kingdom being chargeable to income tax if—

(a) the pension or other similar remuneration is paid out of sums or assets that were the subject of a relevant transfer or related sums or assets, and

(b) the relevant transfer or any transaction forming part of that transfer was, or formed part of, a tax avoidance scheme.

(4) But nothing in subsection (3) prevents credit being allowed under Chapter 2 of this Part (double taxation relief by way of credit) against any tax so charged.

(5) In determining whether a pension or other similar remuneration is paid out of sums or assets within subsection (3)(a), it is to be assumed that it is paid out of such sums or assets in priority to any other sums or assets.

(6) A "relevant transfer", in respect of any sums or assets, is a transaction or series of transactions as a result of which—

(a) the sums or assets are transferred out of a pension scheme, and

(b) the sums or assets or related sums or assets (or both) are transferred into the pension scheme under which the pension or other similar remuneration is paid.

(7) A scheme is a "tax avoidance scheme" if the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure an income tax advantage for any person under this Part by virtue of provision mentioned in subsection (2) made by double taxation arrangements.

(8) For the purposes of subsection (7)—

(a) "scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions,

(b) it does not matter whether or not the double taxation arrangements were in existence at the time the tax avoidance scheme was entered into or given effect to, and

(c) "income tax advantage" is to be construed in accordance with section 572A(3) to (5) of ITA 2007.

(9) In this section—

"pension" and "other similar remuneration" have the same meaning as in the Model Tax Convention on Income and on Capital published (from time to time) by the Organisation for Economic Co-operation and Development;

"pension scheme" has the same meaning as in Part 4 of FA 2004 (see section 150 of that Act);

"related sums or assets", in relation to other sums or assets ("the original sums or assets"), means sums or assets which arise, or (directly or indirectly) derive, from the original sums or assets or from sums or assets which so arise or derive.**]**

Textual Amendments

F67 S. 130A inserted (with effect in accordance with s. 72(2) of the amending Act) by Finance Act 2011 (c. 11), **s. 72(1)**

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.

(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.

Assessments

134 Correcting assessments where relief is available

(1) Subsections (5) and (6) apply if—

(a) under double taxation arrangements, relief may be given in the United Kingdom, or in the territory in relation to which the arrangements are made, in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(2) Subsections (5) and (6) also apply if—

(a) under unilateral relief arrangements for a territory outside the United Kingdom, relief may be given in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(3) Condition A is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is not made in respect of the full amount of the income or gain.

(4) Condition B is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is incorrect having regard to the credit, if any, to be given under the arrangements.

(5) Assessments may be made that are necessary to ensure—

(a) that the full amount of the income or gain is assessed, and

(b) that the proper credit, if any, is given.

(6) If the income is entrusted to any person in the United Kingdom for payment, an assessment under subsection (5) may be made on the recipient of the income.

(7) An officer of Revenue and Customs may make amendments—

(a) of assessments or determinations, or

(b) of decisions on claims,

that are necessary in consequence of Chapter 1 so far as it applies for petroleum revenue tax purposes.

Status:
Point in time view as at 16/11/2017.

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 2.