



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 2

#### DOUBLE TAXATION RELIEF

#### 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.

[<sup>F1</sup>(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,

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- (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, <sup>F2</sup>...
- (c) provision as to foreign-field consideration that is not subject to double taxation <sup>F3</sup>or
- (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

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(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, <sup>F4</sup>or ]
- (f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, <sup>F5</sup>...

<sup>F5</sup>(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).

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- (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\(2\)\(b\)](#)

#### Modifications etc. (not altering text)

- C1** [S. 6\(1\)](#) excluded by 2005 c. 5, s. 608W(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 3 para. 4](#))
- C2** [S. 6\(1\)](#) excluded by 1992 c. 12, Sch. 1A para. 11 (as inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 14](#))

## 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—

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- (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.

**Changes to legislation:**

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