Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 2

DOUBLE TAXATION RELIEF BY WAY OF CREDIT

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, [F1]...

[F1](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

F1 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 **[**F2 71A**]** to 76 "overseas permanent establishment" means **[**F3, in relation to a company,**]** 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 **[**F4which contain a relevant non-discrimination provision**]**, has the meaning given by the arrangements, and

(b) if the arrangements are double taxation arrangements **[**F5which do not contain a relevant non-discrimination provision**]**, or if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom, **[**F6has 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.**]**

[F7(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

F2 Word in s. 78(1) substituted (15.3.2018) by Finance Act 2018 (c. 3), **s. 30(3)(a)**

F3 Words in s. 78(1) inserted (15.3.2018) by Finance Act 2018 (c. 3), **s. 30(3)(b)**

F4 Words in s. 78(2)(a) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(a)**, 31

F5 Words in s. 78(2)(b) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(b)(i)**, 31

F6 Words in s. 78(2)(b) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(b)(ii)**, 31

F7 S. 78(3) inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(3)**, 31

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Unrelieved foreign tax on profits of overseas permanent establishment.