
Changes to legislation: Finance Act 2011, Cross Heading: TIOPA 2010 is up to date with all changes known to be in force on or before 27 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 13

PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS ETC

PART 2

AMENDMENTS OF OTHER ACTS

TIOPA 2010

- 25 TIOPA 2010 is amended as follows.
- 26 In section 18 (entitlement to credit for foreign tax reduces UK tax by amount of credit), after subsection (3) insert—
- “(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.”
- 27 For section 43 substitute—

“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).

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- (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 (within the meaning given by section 431(2) of ICTA), 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).”

28 (1) Section 78 (meaning of “overseas permanent establishment”) is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (a), for “and define the expression” substitute “ which contain a relevant non-discrimination provision ”, and
- (b) in paragraph (b)—
 - (i) for “but do not define the expression” substitute “ which do not contain a relevant non-discrimination provision ”, and
 - (ii) for “is to be read in accordance with Chapter 2 of Part 24 of CTA 2010.” substitute “ has 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. ”

(3) After that subsection insert—

“(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.”

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| Textual Amendments | |
| F1 | Sch. 13 para. 30 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 11(2)(b) |

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Textual Amendments

- F1** Sch. 13 para. 30 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 11(2)(b)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 23 para. 45(1)(ia) inserted by [2017 c. 10 Sch. 11 para. 6\(3\)](#)
- Sch. 23 para. 2(1A) inserted by [S.I. 2019/397 reg. 2\(2\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)
- Sch. 23 para. 15A inserted by [S.I. 2019/397 reg. 2\(3\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)