



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 3

MISCELLANEOUS PROVISIONS

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 ^{F1}... 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—

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- (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

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- 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 ^{F2}... and does not have an ordinary share capital.

Textual Amendments

- F1** Words in s. 120(1) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **18(6)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in s. 120(6) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **18(6)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

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 ^{F3}... 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).

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Textual Amendments

- F3** Word in s. 121(2)(a) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **18(7)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

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