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SCHEDULES

SCHEDULE 13

PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS ETC

PART 2

AMENDMENTS OF OTHER ACTS

ICTA

- 12 In paragraph 4(1) of Schedule 24 to ICTA (assumptions for calculating chargeable profits etc of foreign companies: election or claim to give maximum relief assumed to be made), insert at the end “, except that the company shall be assumed not to have made an election under section 18A of CTA 2009.”

TCGA 1992

- 13 In TCGA 1992, after section 276 insert—

“276A No gain/no loss: foreign permanent establishment exemption

- (1) On a no gain/no loss disposal by a company in relation to which an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) has effect, the amount of the consideration which would secure that neither a gain nor a loss would accrue to the company on the disposal is to be arrived at after taking account of the operation of the provisions of Chapter 3A of Part 2 of that Act (with the result that that amount includes the amount which for the purposes of that Chapter would in the case of the company be the foreign permanent establishments amount attributable to the disposal for the accounting period in which it was made if the disposal were not a no gain/no loss disposal).
- (2) For the purposes of this section a no gain/no loss disposal is one on which by virtue of section 152 or any of the no gain/no loss provisions neither a gain nor a loss accrues to the company making the disposal.”

CAA 2001

- 14 CAA 2001 is amended as follows.
- 15 In section 15 (plant and machinery allowances: qualifying activities), after subsection (2) insert—
- “(2A) A business carried on through one or more permanent establishments outside the United Kingdom by a company in relation to which an election under section 18A of CTA 2009 has effect—

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- (a) is an activity separate from any other activity of the company, and
 (b) is to be regarded as an activity all the profits and gains from which are not, or (if there were any) would not be, chargeable to tax.”
- 16 In the Table in section 61 (disposal events and disposal values), after item 6 insert—

“6A. Disposal event to which The relevant transition value (see section 62A applies. section 62A).” and in column 1 of item 7, for “6” substitute “ 6A ”.

- 17 After section 62 insert—

“62A Cases in which disposal value is transition value

- (1) Subject as follows, this section applies where an election under section 18A of CTA 2009 has effect in relation to a company and the operation of section 15(2A) brings about a disposal event consisting of plant or machinery beginning to be used for purposes other than those of a qualifying activity.
- (2) Where this section applies to a disposal event, the disposal value is the transition value.
- (3) The transition value is such amount as gives rise to neither a balancing allowance nor a balancing charge.
- (4) This section does not apply if—
 - (a) the qualifying expenditure in respect of the plant or machinery, or of the group of assets of which it forms part at any time during a relevant accounting period, exceeds £5 million, and
 - (b) the company has used the plant or machinery otherwise than for the purposes of a permanent establishment in a territory outside the United Kingdom at any time during a relevant preceding accounting period.
- (5) For the purposes of subsection (4)(a) plant or machinery used together constitutes a group of assets.
- (6) In subsection (4) “relevant preceding accounting period” means the accounting period in which the election under section 18A is made or an earlier accounting period ending less than 6 years before the end of that accounting period.”

ITA 2007

- 18 ITA 2007 is amended as follows.
- 19 In section 879(1) (interest paid on advances from banks), insert at the end “ or is a bank that would be within the charge to corporation tax as respects the interest apart from section 18A of CTA 2009. ”
- 20 (1) Section 918 (manufactured dividends on UK shares: REITs) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) But subsection (3) does not apply if—

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- (a) the manufactured dividend is paid by a UK resident company in the course of a trade carried on through a permanent establishment in a territory outside the United Kingdom, and
 - (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is paid.”
- (3) In subsection (4), for paragraphs (a) and (b) substitute—
 - “(a) is non-UK resident and pays the manufactured dividend otherwise than in the course of a trade carried on through a branch or agency in the United Kingdom, or
 - (b) is a UK resident company and pays the manufactured dividend in the course of a trade carried on through a permanent establishment in a territory outside the United Kingdom and section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is paid.”.
- (4) After subsection (5) insert—
 - “(5A) But a UK resident is not a United Kingdom recipient if—
 - (a) it is a UK resident company which receives the manufactured dividend for the purposes of a trade carried on by the recipient through a permanent establishment in a territory outside the United Kingdom, and
 - (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is received.”
- 21 In section 919 (manufactured interest on UK securities: payments by UK residents etc), after subsection (1) insert—
 - “(1A) But this section does not apply if—
 - (a) the manufactured interest is paid by a UK resident company in the course of a trade carried on through a permanent establishment in a territory outside the United Kingdom, and
 - (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is paid.”
- 22 (1) Section 920 (foreign payers of manufactured interest: the reverse charge) is amended as follows.
 - (2) After subsection (1) insert—
 - “(1A) This section also applies if—
 - (a) a UK resident company pays manufactured interest in the course of a trade carried on through a permanent establishment in a territory outside the United Kingdom, and
 - (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is paid.”
 - (3) After subsection (2) insert—
 - “(2A) But this section does not apply if—
 - (a) the recipient is a UK resident company which receives the manufactured interest for the purposes of a trade carried on by the recipient through a permanent establishment in a territory outside the United Kingdom, and

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- (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is received.”
- (4) In subsection (3), insert at the end “ and section 919(1A) did not apply. ”
- 23 In section 922 (manufactured overseas dividends: payments by UK residents etc), after subsection (1) insert—
- “(1A) But this section does not apply if—
- (a) the manufactured overseas dividend is paid by a UK resident company in the course of a trade carried on through a permanent establishment in a territory outside the United Kingdom, and
- (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is paid.”
- 24 (1) Section 923 (foreign payers of manufactured overseas dividends: the reverse charge) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) This section also applies if—
- (a) a UK resident company pays a manufactured overseas dividend in the course of a trade carried on through a permanent establishment in a territory outside the United Kingdom, and
- (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is paid.”
- (3) After subsection (2) insert—
- “(2A) But this section does not apply if—
- (a) the recipient is a UK resident company which receives the manufactured overseas dividend for the purposes of a trade carried on by the recipient through a permanent establishment in a territory outside the United Kingdom, and
- (b) section 18A of CTA 2009 has effect in relation to the company for the accounting period in which it is received.”
- (4) In subsection (3), insert at the end “ and section 922(1A) did not apply. ”

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—

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“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 (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

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- (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.”

29 In section 263 (tax treatment of financing costs and income: net debt of a company), after subsection (4) insert—

“(4A) For the purposes of subsections (3) and (4), if the company is one in relation to which an election under section 18A of CTA 2009 has effect anything that would otherwise form part of the company's relevant liabilities or relevant assets does not do so if and to the extent that amounts in respect of it are left out of account under that section.”

30 After section 317 insert—

“317A Companies with permanent establishments profits election

- (1) This section applies if, apart from this section, an amount is a financing expense amount or a financing income amount of a company in relation to which an election under section 18A of CTA 2009 has effect.
- (2) It is treated as not being a financing expense amount or a financing income amount of the company if and to the extent that it is left out of account under that section.”

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