



# Finance Act 2018

## 2018 CHAPTER 3

### PART 1

#### DIRECT TAXES

##### *Double taxation relief*

### **30 Reduction of relief in cases where losses relieved sideways etc**

- (1) Part 2 of TIOPA 2010 (double taxation relief) is amended as follows.
- (2) After section 71 insert—

*“Adjustment of foreign tax on profits of overseas permanent establishment*

#### **71A Circumstances in which section 71B applies**

- (1) Section 71B has effect in relation to an accounting period of a company resident in the United Kingdom which has an overseas permanent establishment (“the PE”) if, in that or any earlier accounting period, condition A or B is met.
- (2) Condition A is met in relation to an accounting period if, for the purposes of any tax chargeable under the law of the PE territory—
  - (a) a loss or other amount attributable to the PE is deducted from or otherwise allowed against amounts of any person other than the company, and
  - (b) as a result, there is a decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period.
- (3) Condition B is met in relation to an accounting period if—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) tax is chargeable under the law of the PE territory in respect of the aggregate profits, or aggregate profits or gains, of the PE and persons other than the company,
  - (b) a loss or other amount attributable to the PE is deducted from or otherwise allowed against, or is brought into account as a deduction or other allowance in calculating, amounts other than amounts of the PE, and
  - (c) as a result, there is a decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period.
- (4) In this section—
- “foreign taxable period” means any period in respect of which the tax in question is chargeable under the law of the PE territory, and
  - “the PE territory” means the territory in which the PE is situated.

### **71B Reduction of foreign tax paid on profits of overseas PE**

- (1) For the purposes of allowing credit relief under this Part, the amount of foreign tax paid in respect of the company’s qualifying income from the PE in the accounting period is reduced (but not below nil) by the relevant amount for that period.
- (2) In calculating any amount chargeable to corporation tax, any deduction for an amount of foreign tax paid in respect of the company’s qualifying income from the PE in the accounting period is reduced (but not below nil) by the relevant amount for that period.
- (3) In this section “the relevant amount” for the accounting period means the total of—
  - (a) the amount of the decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period (if the accounting period is one in relation to which condition A or B in section 71A is met), and
  - (b) any excess tax carried forward to the accounting period.
- (4) For this purpose excess tax is carried forward to the accounting period so far as the relevant amount for the previous accounting period exceeds the amount of foreign tax paid in respect of the company’s qualifying income from the PE in that previous period.
- (5) In determining the relevant amount, a deduction or allowance of the kind referred to in condition A or B in section 71A is to be ignored if it results in a deduction or other allowance that is reduced under section 259JC (counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction).
- (6) If, for any accounting period, it becomes necessary for the relevant amount to be reduced or increased, an adjustment may be made (whether or not by an officer of Revenue and Customs)—
  - (a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and
  - (b) despite any time limit imposed by or under any enactment.

- (7) In this section “the company’s qualifying income from the PE” means the profits of the PE which are profits chargeable under Chapter 2 of Part 3 of CTA 2009 of a trade carried on partly, but not wholly, outside the United Kingdom.”
- (3) In section 78(1) (meaning of “overseas permanent establishment”)—
- (a) for “72” substitute “71A”, and
  - (b) after “means” insert “, in relation to a company,”.
- (4) In section 112(4) (deduction from income for foreign tax instead of credit against UK tax), after paragraph (a) insert—
- “(aa) has effect subject to section 71B(2) (reduction of foreign tax paid on profits of overseas permanent establishment),”.
- (5) Section 71B of TIOPA 2010 has effect in relation to accounting periods beginning on or after 22 November 2017.
- (6) For the purposes of sections 71A and 71B of TIOPA 2010, if a company has an accounting period beginning before, and ending on or after, that date (“the straddling period”)—
- (a) so much of the straddling period as falls before that date, and so much of it as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amounts brought into account for the purposes of calculating the credit relief of the company for the straddling period are apportioned to the two separate accounting periods—
    - (i) in accordance with section 1172 of CTA 2010 (time basis), or
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.
- (7) In determining whether or not section 71B of TIOPA has effect in relation to an accounting period of a company—
- (a) it is to be assumed that the amendments made by this section were in force in relation to all previous accounting periods of the company except those beginning before 22 November 2011, and
  - (b) no account may be taken of any accounting period beginning before that date.

### **31 Countering effect of avoidance arrangements**

- (1) TIOPA 2010 is amended as follows.
- (2) For section 81 (giving a counteraction notice) substitute—

#### **“81 Countering effect of avoidance arrangements**

- (1) This section applies if each of conditions A to D of section 82 is met in relation to a person.
- (2) The effects of a scheme or arrangement that are referable to the purpose referred to in condition B of that section are to be counteracted by the making of such adjustments as are necessary.
- (3) Any adjustments required to be made by this section (whether or not by an officer of Revenue and Customs) may be made by way of—
- (a) an assessment,

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) the modification of an assessment, or
  - (c) amendment or disallowance of a claim,  
or otherwise.”
- (3) In section 87 (section 83(2) and (4): schemes that would reduce a person’s tax liability)
- (a) in subsection (1), after “person” insert “(“P””,
  - (b) in subsection (3), for “the amount of UK tax payable by the person” substitute “the total amount of UK tax payable by P and such persons (if any) as are connected with P”,
  - (c) in subsection (4), for “the amount of UK tax that would be payable by the person” substitute “the total amount of UK tax that would be payable by P and such persons (if any) as are connected with P”, and
  - (d) at the end insert—
    - “(7) For the purposes of this section, whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.”
- (4) Omit sections 89 to 95 (counteraction notices).
- (5) In section 371SR (double taxation relief: counteraction notices)—
- (a) in subsection (1), for “giving of counteraction notice” substitute “countering effect of avoidance arrangements”, and
  - (b) in the heading, for “counteraction notices” substitute “countering effect of avoidance arrangements”.
- (6) The amendments made by subsections (2), (4) and (5) have effect in relation to any return under TMA 1970 or Schedule 18 to FA 1998 where the date by which the return is required to be made is after 31 March 2018.
- (7) The amendments made by subsection (3) have effect in relation to a credit for foreign tax which relates to a payment of foreign tax on or after 22 November 2017.

### **32 Double taxation arrangements specified by Order in Council**

- (1) In section 2 of TIOPA 2010 (giving effect to arrangements made in relation to other territories) after subsection (1) insert—
- “(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) In section 3 of that Act (arrangements may include retrospective or supplementary provision), in subsection (2)—
- (a) in paragraph (b) omit the final “or”;
  - (b) after paragraph (c) insert “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 section 158 of IHTA 1984 (double taxation conventions), after subsection (1) insert—

“(1ZA) 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.

(1ZB) Arrangements to which effect is given under this section may include 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.”

- (4) The amendments made by subsections (1) to (3) are to be regarded as always having had effect.
- (5) The provision made by section 2(1A) and 3(2)(d) of TIOPA 2010 in relation to Orders under section 2 of that Act applies, and is to be regarded as always having applied, in relation to Orders in Council under any provision which that section replaces (directly or indirectly).
- (6) The provision made by section 158(1ZA) and (1ZB) of IHTA 1984 in relation to Orders under section 158 of that Act applies, and is to be regarded as always having applied, in relation to Orders in Council under any provision which that section replaces (directly or indirectly).