

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1998, PART 8A. (See end of Document for details)

SCHEDULES

SCHEDULE 18 **U.K.**

COMPANY TAX RETURNS, ASSESSMENTS AND RELATED MATTERS

Modifications etc. (not altering text)

- C1** Sch. 18 restricted (31.7.1998) by 1988 c. 1, s. 754B(10) (as inserted (31.7.1998 with effect as mentioned in Sch. 17 para. 37 of 1998 c. 36) by 1998 c. 36, s. 113, **Sch. 17 para. 11**)
- C1** Sch. 18 modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 68(c)**; S.I. 2005/1126, art. 2(2)(h)
- C1** Sch. 18 applied (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 61
- C1** Sch. 18 applied (with modifications) (6.4.2006) by The Registered Pension Schemes (Accounting and Assessment) Regulations 2005 (S.I. 2005/3454), regs. 1, **13**
- C1** Sch. 18 excluded (17.7.2013) by Finance Act 2013 (c. 29), s. 210(6)(b)
- C1** Sch. 18: power to amend conferred (12.2.2019) by Finance Act 2019 (c. 1), s. 87(5)(a)(6)
- C1** Sch. 18 applied (with modifications) (22.7.2020) by Finance Act 2020 (c. 14), **Sch. 16 para. 11(4)** (with Sch. 16 para. 11(5))
- C1** Sch. 18 applied (with modifications) (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), s. 303(7)(8) (with s. 303(6))

^{F1}PART 8A **U.K.**

CLAIMS FOR ALLOCATION OF SURPLUS DUAL INCLUSION INCOME

Textual Amendments

- F1** Sch. 18 Pt. 8A inserted (with effect in accordance with Sch. 7 para. 40 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 16**

Introduction

- 77B (1) This Part of this Schedule applies to allocation claims under Chapter 12A of Part 6A of TIOPA 2010 (hybrid and other mismatches: allocation of dual inclusion income within group).
- (2) Expressions used in this Part of this Schedule and in that Chapter have the same meaning in this Part of this Schedule as they have in that Chapter.

Claims to be included in company tax return

- 77C (1) An allocation claim must be made by being included in the company tax return of the claimant company (“company B”) for the shortfall period.
- (2) It may be included in the return originally made or by amendment.

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Consent to allocation claim

- 77D (1) In accordance with Requirement 1 in section 259ZMB of TIOPA 2010, an allocation claim in respect of all or part of the DII surplus of a company (“company A”) requires the company's consent.
- (2) The necessary consent must be given—
- (a) by notice in writing,
 - (b) to an officer of Revenue and Customs,
 - (c) at or before the time the allocation claim is made.
- Otherwise the allocation claim is ineffective.
- (3) An allocation claim by company B is ineffective unless it is accompanied by a copy of the notice of consent to the allocation claim given by company A.

Notice of consent

- 77E (1) Notice of consent to an allocation claim given by company A must contain all the following details—
- (a) the name of company A;
 - (b) the name of company B;
 - (c) the amount of the DII surplus to be allocated to company B;
 - (d) the accounting period of company A which is the surplus period.
- (2) Notice of consent may not be amended, but it may be withdrawn and replaced by another notice of consent.
- (3) Notice of consent may be withdrawn by notice to an officer of Revenue and Customs.
- (4) Except where the consent is withdrawn under paragraph 77I (withdrawal in consequence of reduction of DII surplus), the notice of withdrawal must be accompanied by a notice signifying the consent of company B to the withdrawal.
- Otherwise the notice of withdrawal is ineffective.
- (5) Company B must, so far as it may do so, amend its company tax return for the accounting period for which the allocation claim was made so as to reflect the withdrawal of consent.

Notice of consent requiring amendment of return

- 77F (1) Where company A gives notice of consent to an allocation claim in respect of all or part of an accounting period after filing its company tax return for the accounting period, company A must amend its company tax return for the accounting period so as to reflect the notice of consent.
- (2) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made under sub-paragraph (1).
- (3) If company A fails to comply with sub-paragraph (1), the notice of consent is ineffective.

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Withdrawal or amendment of allocation claim

- 77G (1) An allocation claim may be withdrawn by company B only by amending its company tax return.
- (2) An allocation claim may not be amended, but must be withdrawn and replaced by another allocation claim.

Time limit for allocation claims

- 77H (1) An allocation claim may be made or withdrawn at any time up to whichever is the last of the following dates—
- (a) the first anniversary of the filing date for the company tax return of company B for the accounting period for which the claim is made;
 - (b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;
 - (c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2), 30 days after notice of the amendment is issued;
 - (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.
- (2) An allocation claim may be made or withdrawn at a later time if an officer of Revenue and Customs allows it.
- (3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes or withdraws an allocation claim within the time allowed by or under this paragraph,
- (4) The references in sub-paragraph (1) to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making or withdrawing a claim.
- (5) An enquiry is so restricted if—
- (a) the scope of the enquiry is limited as mentioned in paragraph 25(2), and
 - (b) the amendment giving rise to the enquiry consisted of the making or withdrawing of an allocation claim.

Reduction in DII surplus

- 77I (1) This paragraph applies if, after company A has given one or more notices of consent to an allocation claim or claims, the unused part of the DII surplus of company A is reduced to less than the amount stated in the notice of consent, or the total of the amounts stated in the notices of consent.
- (2) Company A must within 30 days withdraw the notice of consent, or as many of the notices of consent as is necessary to bring the total amount of the DII surplus to which the claim or claims relate within the new unused part of the DII surplus of company A.
- (3) Company A may give one or more new notices of consent.
- (4) Company A must give notice in writing of the withdrawal of consent, and send a copy of any new notice of consent—
- (a) to each of the companies affected, and
 - (b) to an officer of Revenue and Customs.

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- (5) If company A fails to act in accordance with sub-paragraph (2), an officer of Revenue and Customs may by notice to company A give such directions as the officer thinks fit as to which notice or notices are to be ineffective or are to have effect in a lesser amount.
- (6) The power in sub-paragraph (5) must not be exercised to any greater extent than is necessary to secure that the total amount stated in the notice or notices is consistent with the unused part of the DII surplus of company A.
- (7) An officer of Revenue and Customs must at the same time send a copy of the notice to each company affected by the exercise of the power.
- (8) A company which receives—
 - (a) notice of the withdrawal of consent, or a copy of a new notice of consent, under sub-paragraph (4), or
 - (b) a copy of a notice containing directions by an officer of Revenue and Customs under sub-paragraph (7),
must, so far as it may do so, amend its company tax return for the accounting period for which the claim is made so that it is consistent with the new position with regard to consent to an allocation claim.
- (9) An appeal may be brought by company A against any directions given by an officer of Revenue and Customs under sub-paragraph (5).
- (10) Notice of appeal must be given—
 - (a) in writing,
 - (b) within 30 days after the notice containing the directions was issued, and
 - (c) to the officer of Revenue and Customs by whom the notice was given.

Assessments on other companies

- 77J (1) This paragraph applies where, after company A has given notice of consent to an allocation claim, company B has become liable to tax in consequence of receiving—
- (a) notice of the withdrawal of consent, or a copy of a new notice of consent, under paragraph 77I(4), or
 - (b) a copy of a notice containing directions by an officer of Revenue and Customs under paragraph 77I(7).
- (2) If any of the tax is unpaid 6 months after company B's time limit for allocation claims, an officer of Revenue and Customs may make an assessment to tax in the name of company B on any other company that has benefited as a result of the consent given by company A.
 - (3) The assessment may not be made more than two years after that time limit.
 - (4) The amount of the assessment must not exceed—
 - (a) the amount of the unpaid tax, or
 - (b) if less, the amount of tax which the other company saves by virtue of the consent.
 - (5) A company assessed to an amount of tax under sub-paragraph (2) is entitled to recover from company B—
 - (a) a sum equal to that amount, and

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- (b) any interest on that amount which it has paid under section 87A of the Taxes Management Act 1970 (interest on unpaid corporation tax).
- (6) For the purposes of this paragraph, company B's time limit for allocation claims is the last of the dates mentioned in paragraph 77H(1) on which company B could make or withdraw an allocation claim for the accounting period for which the claim in question is made.

Assessment to recover excessive amount claimed

- 77K (1) If an officer of Revenue and Customs discovers that any amount which is the subject of an allocation claim is or has become excessive, the officer may make an assessment to tax in the amount which in the officer's opinion ought to be charged.
- (2) This power is without prejudice to—
- (a) the power to make a discovery assessment under paragraph 41(1);
 - (b) the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where an amount claimed by company B on an allocation claim is excessive or company A has given consent to an allocation claim in respect of a corresponding amount.
- (3) If an assessment under this paragraph is made because company B fails, or is unable, to amend its company tax return under paragraph 77I(8), the assessment is not out of time if it is made within one year from—
- (a) the date on which company A gives notice of the withdrawal of consent, or (if later) sends a copy of a new notice of consent, to company B under paragraph 77I(4), or
 - (b) the date on which an officer of Revenue and Customs sends company B a copy of a notice containing the officer's direction under paragraph 77I(7).

Joint amended returns

- 77L (1) The Treasury may by regulations make provision for arrangements under which—
- (a) an allocation claim may be made without being accompanied by a copy of the notice of consent to the claim given by company A, provided authority for the claim being so made is given by a company which is authorised in relation to company B as mentioned in paragraph (b), and
 - (b) one company may be authorised to act on behalf of two or more companies in the same group in amending their company tax returns for the purpose of making an allocation claim or giving consent to an allocation claim or revising the amount to which an allocation claim or consent relates.
- (2) Regulations under this paragraph may add to, exclude or modify the operation of any provisions of this Part of this Schedule to such extent as the Treasury think necessary or expedient for the purpose of, or in connection with, such arrangements.
- (3) Provision may in particular be made—
- (a) altering the conditions for making and withdrawing allocation claims, and
 - (b) giving an officer of revenue and Customs power to recover from the authorised company or another company in the group any amount which might be recovered from company B by an assessment under paragraph 77K.]

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