



Corporation Tax Act 2009

2009 CHAPTER 4

PART 2

CHARGE TO CORPORATION TAX: BASIC PROVISIONS

[^{F1}CHAPTER 3A

UK RESIDENT COMPANIES: PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS

Textual Amendments

F1 Pt. 2 Ch. 3A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 4, 31](#)

Modifications etc. (not altering text)

C1 Pt. 2 Ch. 3A applied by [2011 c. 11](#), [Sch. 19 para. 15Z2\(3\)](#) (as inserted (with effect in accordance with Sch. 9 para. 35 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 9 para. 2](#))

Exemption

18A Exemption for profits or losses of foreign permanent establishments

- (1) If a ^{F2}... company makes an election under this section, exemption adjustments are to be made at the appropriate stages in calculating the taxable total profits of the company for each relevant accounting period.
- (2) For that purpose “exemption adjustments” means any such adjustments as are appropriate to secure that there are left out of account any profits and losses taken into account in arriving at the foreign permanent establishments amount in relation to any relevant accounting period.

Status: Point in time view as at 12/02/2019.

Changes to legislation: Corporation Tax Act 2009, CHAPTER 3A is up to date with all changes known to be in force on or before 27 July 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)

- [But profits and losses are not to be left out of account as mentioned in subsection (2)
^{F3}(2A) so far as they are, or would if the company were non-UK resident be, profits of the company's trade of dealing in or developing UK land (as defined in section 5B).]
- [Profits and losses are not to be left out of account as mentioned in subsection (2) so
^{F4}(2B) far as, if the company were non-UK resident, they would be gains or losses accruing on disposals of assets within section 2B(4)(a) or (b) of TCGA 1992 (interests in UK land or other assets deriving at least 75% of their value from UK land).]
- (3) In this Chapter “relevant accounting period”, in relation to a company by which an election is made under this section, means an accounting period of the company to which the election applies (as to which see section 18F).
- (4) For the purposes of this Chapter the “foreign permanent establishments amount”, in relation to an accounting period of a company, is—
- (a) the aggregate of the relevant profits amount in the case of each relevant foreign territory in relation to which there is a relevant profits amount for the accounting period, less
 - (b) the aggregate of the relevant losses amount in the case of each relevant foreign territory in relation to which there is a relevant losses amount for the accounting period.
- (5) In this Chapter “relevant foreign territory”, in relation to a company, means a territory outside the United Kingdom in which the company carries on, or has carried on, business through a permanent establishment.
- (6) For the purposes of this Chapter “relevant profits amount”, in relation to a relevant foreign territory and an accounting period of a company, means—
- (a) in the case of a full treaty territory, profits which would be taken to be attributable to the permanent establishment of the company in the territory for the purpose of ascertaining the amount of any credit to be allowed under TIOPA 2010 (in respect of tax paid under the law of the relevant foreign territory) against corporation tax if the company were to be liable to corporation tax for the accounting period (apart from this Chapter), or
 - (b) in the case of any other territory, profits which would be taken to be so attributable for that purpose if the territory were a full treaty territory and the double taxation arrangements having effect in relation to the territory were in the terms of the OECD model.
- (7) For the purposes of this Chapter “relevant losses amount”, in relation to a relevant foreign territory and an accounting period of a company, means—
- (a) in the case of a full treaty territory, any losses which would be taken to be attributable to the permanent establishment of the company in the territory on the application of the same rules and principles as fall to be applied under subsection (6)(a), and
 - (b) in the case of any other territory, any losses which would be taken to be so attributable on that basis if it were a full treaty territory and the double taxation arrangements having effect in relation to the relevant foreign territory were in the terms of the OECD model.
- (8) Subsection (9) applies if the amount of any credit to be allowed under TIOPA 2010 in relation to a company in the case of a full treaty territory does not depend on the profits taken to be attributable to the permanent establishment of the company in the territory

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because tax under the law of the territory is charged, pursuant to the double taxation arrangements having effect in relation to the territory, otherwise than by reference to such profits (as an alternative to a charge by reference to such profits).

- (9) The reference in subsection (6)(a) to profits which would be taken to be attributable to the permanent establishment of the company in the territory is to the profits that would be so taken if tax under the law of the territory were charged by reference to such profits; and subsection (7)(a) is to be construed accordingly.
- (10) For the purposes of subsections (6) and (7) if double taxation arrangements having effect in relation to a relevant foreign territory do not include provision for the credit to be allowed against tax to be computed by reference to the same profits as those by reference to which the tax was computed under the law of the relevant foreign territory, they are to be assumed to do so.
- (11) This section is subject to the following provisions of this Chapter.

Textual Amendments

- F2** Words in s. 18A(1) omitted (1.1.2013) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 20 paras. 3](#), 55(1)
- F3** S. 18A(2A) inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 76\(7\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F4** S. 18A(2B) inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 111](#)

18B Chargeable gains etc

- (1) The exemption adjustments required to be made by section 18A(1) include, in the case of any gains or losses on the disposal or realisation of assets which are relevant in the calculation of the taxable total profits of a company for a relevant accounting period, adjustments to remove the effect of any gains or losses relating to the assets taken into account in computing the foreign permanent establishments amount in relation to any relevant accounting period (so that, in appropriate cases, a gain may be increased to reflect a loss so taken into account or a loss increased to reflect a gain so taken into account).
- (2) The references in section 18A(6) to profits which would be taken to be attributable to the permanent establishment of a company in a territory include any gains in respect of immovable property which has been used for the purposes of the business carried on by the company through the permanent establishment in the territory (to such extent as is appropriate having regard to the extent to which it has been so used); and the references to losses in section 18A(7) are to be construed accordingly.
- (3) The references in section 18A(6) to profits which would be taken, in the case of a company in relation to which an election under section 18A has effect, to be attributable to the permanent establishment of the company in a territory (including as extended by subsection (2)) do not include any gains which would be taken to be so attributable for the purposes of ascertaining credit to be allowed in respect of tax payable under the law of the territory before the election has effect; and the references to losses in section 18A(7) are to be construed accordingly.

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18C Capital allowances etc

- (1) Any allowance under Part 2 of CAA 2001 which, but for section 18A and for section 15(2A)(b) of CAA 2001, could be claimed under section 3(1) of that Act in respect of assets provided for the purposes of a permanent establishment in a territory outside the United Kingdom through which business is or has been carried on by a company in relation to which an election under section 18A has effect (and any charge in connection with any such allowance) is to be made automatically and reflected in any calculation for any relevant accounting period of the company of the profits or losses attributable to business carried on by the company through such a permanent establishment.
- (2) In the application of section 13 of CAA 2001 by virtue of subsection (1) on the taking effect of the election under section 18A, references to “market value” have effect as references to “transition value” within the meaning of section 62A of that Act in relation to any plant or machinery in the case of which that is the disposal value under section 61 of that Act.
- (3) In determining any relevant profits amount or relevant losses amount under section 18A(6) or (7) in relation to a company there are to be left out of account any profits or losses arising from a plant or machinery lease under which the company is a lessor if an allowance under CAA 2001 has been made to the company or a connected company in respect of expenditure on the provision of any plant or machinery subject to the lease (otherwise than in accordance with this section).
- (4) Section 70K of that Act (meaning of “plant or machinery lease” and “lessor”) applies for the purposes of subsection (3).
- (5) In determining for the purposes of section 18A the amount of any credit to be allowed under TIOPA 2010 in respect of tax under the law of a relevant foreign territory in the case of a company, it is to be assumed that the company made any claim or election (other than a claim for allowances under Part 2 of CAA 2001) which would reduce any relevant profits amount, or increase the relevant losses amount, by any means, and within any time limit, applicable to it.

^{f5}18CA Income arising from immovable property

The references in section 18A(6) to profits which would be taken to be attributable to the permanent establishment of a company in a territory include any income arising from immovable property which has been used for the purposes of the business carried on by the company through the permanent establishment in the territory (to such extent as is appropriate having regard to the extent to which it has been so used); and the references to losses in section 18A(7) are to be construed accordingly.

Textual Amendments

- F5** Ss. 18CA, 18CB inserted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 4](#)

18CB Profits and losses from investment business

- (1) In determining any relevant profits amount or relevant losses amount under section 18A(6) or (7) in relation to a company, there are to be left out of account any

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profits or losses of any part of the company's business which consists of the making of investments.

- (2) Subsection (1) does not apply to profits or losses arising from assets so far as the assets are effectively connected with any part of the permanent establishment through which a trade or overseas property business of the company is carried on in the territory.
- (3) In subsection (2) “effectively connected” is to be given the same meaning as it would be given for the purposes of the OECD model were subsection (2) contained in the OECD model.]

Textual Amendments

- F5** Ss. 18CA, 18CB inserted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 4**

18D Payments subject to deduction

- (1) In determining any relevant profits amount or relevant losses amount under section 18A(6) or (7) in relation to a company there are to be left out of account profits or losses referable to any transaction between a person who is UK resident and a permanent establishment in a territory outside the United Kingdom through which the company carries on, or has carried on, business (“the foreign territory in question”) if the condition in subsection (2) is met.
- (2) That condition is that the UK resident would be obliged under Part 15 of ITA 2007 to deduct income tax that is not repayable from payments in respect of the transaction if the payments were made to a company resident in the foreign territory in question (taking account of any double taxation arrangements having effect in relation to the foreign territory in question).
- (3) But subsection (1) does not apply if the company is a bank unless the transaction forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of an obligation under Part 15 of ITA 2007 to deduct income tax from any payments.
- (4) Section 1120 of CTA 2010 (meaning of “bank”) applies for the purposes of subsection (3).

18E Employee share acquisitions

- (1) Any relief which would be given under Chapter 2 or 3 of Part 12 is to be taken into account in determining any relevant profits amount or relevant losses amount in the case of a company under section 18A(6) or (7) in relation to a relevant foreign territory in so far as it is linked to the business carried on by the company through a permanent establishment in the territory.
- (2) The extent to which any such relief is so linked is to be determined on a just and reasonable basis having regard to the extent to which the work of the employees concerned contributes to the purposes of the business so carried on.

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18F Effect of election

- (1) An election made by a company under section 18A—
 - (a) (subject to [^{F6}subsections (6) to (8)]) is irrevocable, and
 - (b) applies to all accounting periods of the company beginning on or after the relevant day.
- [^{F7}(2) The relevant day”, in relation to an election made by a UK resident company, means—
 - (a) the day on which, at the time of the election, the company's accounting period following that in which the election is made is expected to begin, or
 - (b) if the election is made before the company's first accounting period, the day on which that accounting period begins.
- (2A) “The relevant day”, in relation to an election made by a non-UK resident company, means the day on which the company becomes UK resident.]
- (3) Subsection (4) applies if an accounting period of the company (“the straddling period”) begins before, and ends on or after, the relevant day.
- (4) It is to be assumed, for the purposes of the Corporation Tax Acts, that the straddling period consists of two separate accounting periods—
 - (a) the first beginning with the straddling period and ending immediately before the relevant day, and
 - (b) the second beginning with that day and ending with the straddling period.
- (5) Where for those purposes it is necessary to apportion the profits and losses for the straddling period to different parts of the period, that apportionment is to be made on a just and reasonable basis.
- (6) [^{F8}An election can be revoked by the company which made it] at any time before the relevant day.
- [An election made by a UK resident company is revoked if the company ceases to be
^{F9}(7) UK resident.
- (8) An election made by a non-UK resident company is revoked if, having become UK resident, the company ceases to be UK resident.]

Textual Amendments

- F6** Words in s. 18F(1)(a) substituted (1.1.2013) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 5\(2\)](#), 55(1)
- F7** S. 18F(2)(2A) substituted for s. 18F(2) (with effect in accordance with Sch. 20 para. 55(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 5\(3\)](#), 55(1)
- F8** Words in s. 18F(6) substituted (1.1.2013) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 5\(4\)](#), 55(1)
- F9** S. 18F(7)(8) inserted (1.1.2013) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 5\(5\)](#), 55(1)

Anti-diversion rule

[^{F10}18G Anti-diversion rule

- (1) This section applies for the purposes of this Chapter for any relevant accounting period (“period X”) of a company (“company X”) in relation to a territory outside the United Kingdom (“territory X”) if—

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- (a) there is an adjusted relevant profits amount in relation to territory X for period X,
 - (b) the adjusted relevant profits amount includes diverted profits (see section 18H), and
 - (c) none of the exemptions mentioned in section 18I applies for period X.
- (2) The diverted profits are to be left out of the adjusted relevant profits amount.
- (3) For the purposes of this Chapter “adjusted”, in relation to a relevant profits amount, is what the relevant profits amount would be if it were determined without reference to gains or losses which are chargeable gains or allowable losses for corporation tax purposes.

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18H What are “diverted profits”?

- (1) In section 18G(1)(b) “diverted profits” means so much of company X's total profits of period X as pass through the diverted profits gateway.
- (2) To determine the extent to which company X's total profits of period X pass through the diverted profits gateway, apply—
- (a) section 371BB of TIOPA 2010 (controlled foreign companies: the CFC charge gateway), and
 - (b) except Chapter 8 of Part 9A of that Act, the other provisions referred to in that section,
- as if references to the CFC charge gateway were references to the diverted profits gateway.
- (3) In applying section 371BB of TIOPA 2010 and the other provisions referred to in it assume—
- (a) that company X is a CFC resident in territory X,
 - (b) that period X is the CFC's accounting period, and
 - (c) that company X's total profits of period X are the CFC's assumed total profits for the accounting period.
- (4) Subsection (3)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.
- (5) Section 371BB of TIOPA 2010 and the other provisions referred to in it are also to be applied subject to sections 18HA to 18HE below.
- (6) In this section—
- (a) references to company X's total profits of period X are to those profits ignoring this Chapter and step 2 in section 4(3) of CTA 2010, and
 - (b) references to section 371BB of TIOPA 2010 are to that section omitting subsection (2)(b).

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Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18HA Modification of Chapter 3 of Part 9A of TIOPA 2010

Chapter 3 of Part 9A of TIOPA 2010 (the CFC charge gateway: determining which of Chapters 4 to 8 applies) applies for the purposes of section 18H(2) with the omission of—

- (a) section 371CA(10)(a),
- (b) in section 371CB(2), the words “or Chapter 8 (solo consolidation)”,
- (c) section 371CC(1)(b), (3)(b) and (c), (4) to (7), (9) and (10),
- (d) section 371CD,
- (e) section 371CE(2) to (9), and
- (f) section 371CG.

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18HB Modification of Chapter 4 of Part 9A of TIOPA 2010

- (1) Chapter 4 of Part 9A of TIOPA 2010 (the CFC charge gateway: profits attributable to UK activities) applies for the purposes of section 18H(2) with the following modifications.
- (2) The modifications are—
 - (a) section 371DA(3)(g)(i) is to be omitted, and
 - (b) in section 371DH(4), after “the accounting period”, in the second place it occurs, there is to be inserted “ or the United Kingdom ”.
- (3) Section 371VF(3) of TIOPA 2010 (definition of “related” person) is to be applied as relevant with the omission of paragraphs (b) and (c).

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18HC Modification of Chapter 5 of Part 9A of TIOPA 2010

Chapter 5 of Part 9A of TIOPA 2010 (the CFC charge gateway: non-trading finance profits) applies for the purposes of section 18H(2) with the omission of—

- (a) in section 371EA(1), the words from “so far as” to the end, and
- (b) sections 371EB to 371EE.

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Textual Amendments

- F10** Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18HD Modification of Chapter 7 of Part 9A of TIOPA 2010

Chapter 7 of Part 9A of TIOPA 2010 (the CFC charge gateway: captive insurance business) applies for the purposes of section 18H(2) with the omission of section 371GA(6)(b).

Textual Amendments

- F10** Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18HE Modification of Chapter 9 of Part 9A of TIOPA 2010

- (1) Chapter 9 of Part 9A of TIOPA 2010 (exemptions for profits from qualifying loan relationships) applies for the purposes of section 18H(2) with the following modifications.
- (2) In section 371IA(2) and (11) the reference to a chargeable company is to be read as a reference to company X (as is the reference in section 371CB(8)); and references elsewhere in Chapter 9 to company C are to be read as references to company X.
- (3) For section 371IA(5) there is to be substituted—

“(5) 75% of the profits of each qualifying loan relationship are “exempt” under this Chapter.”
- (4) In section 371IA(9)(a) the words “or Chapter 8 (solo consolidation)” are to be omitted.
- (5) Sections 371IB to 371IE are to be omitted.
- (6) Section 371IH(11)(a) is to be read ignoring the modification in section 18HC(b) above.
- (7) In section 371IJ references to the relevant corporation tax accounting period are to be read as references to period X and subsection (6) is to be omitted.

Textual Amendments

- F10** Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18I Exemptions from anti-diversion rule

- (1) The exemptions referred to in section 18G(1)(c) are the exemptions set out in Chapters 11 to 14 of Part 9A of TIOPA 2010 (controlled foreign companies: exemptions from the CFC charge).
- (2) In applying those Chapters for the purposes of section 18G(1)(c)—

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- (a) references to section 371BA(2)(b) of TIOPA 2010 are to be read as references to section 18G(1)(c),
 - (b) the assumptions set out in subsection (3) are to be made, and
 - (c) section 371VF(3) of TIOPA 2010 (definition of “related” person) is to be read with the omission of paragraphs (b) and (c).
- (3) For the purposes of subsection (2)(b), assume—
- (a) that the permanent establishment which company X has in territory X is a separate company from company X,
 - (b) that the separate company is a CFC resident in territory X,
 - (c) that period X and company X's other accounting periods for corporation tax purposes are accounting periods of the CFC for the purposes of Part 9A of TIOPA 2010,
 - (d) that the CFC's assumed total profits for period X are the adjusted relevant profits amount,
 - (e) that the CFC's assumed taxable total profits for period X are the same as the CFC's assumed total profits for period X,
 - (f) that the CFC is connected with company X and is also connected or associated with any person with whom company X is connected or associated, and
 - (g) that any person who has an interest in company X also has an interest in the CFC.
- (4) Chapters 11 to 14 of Part 9A of TIOPA 2010 are also to be applied subject to sections 18IA to 18ID below.

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18IA The excluded territories exemption

- (1) Chapter 11 of Part 9A of TIOPA 2010 (controlled foreign companies: the excluded territories exemption) applies for the purposes of section 18G(1)(c) with the following modifications.
- (2) Sections 371KB(1)(b)(iii) and 371KH are to be omitted.
- (3) Section 371KC is to be omitted and the assumption set out in section 18I(3)(b) above in relation to the CFC's residence is to be applied instead; and references to “the CFC's territory” are to be read accordingly.
- (4) Section 371KD(3) is to be omitted and references to a CFC's accounting profits for an accounting period are to be read as references to the adjusted relevant profits amount.
- (5) Section 371KE(2)(b) is to be omitted.
- (6) Section 371KF is to be omitted.
- (7) In section 371KG(3) the reference to the CFC's equity or debt is to be read as a reference to company X's equity or debt (ignoring the assumption in section 18I(3)(a) above).

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(8) Section 371KI(2) and (3) is to be omitted.

(9) In section 371KJ—

- (a) in subsection (2)(a), the reference to intellectual property held by the CFC is to be read as a reference to intellectual property held by company X (ignoring the assumption in section 18I(3)(a) above), and
- (b) in subsections (2)(b) and (c) and (4), references to the CFC are to be read as references to company X (ignoring that assumption).

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18IB The low profits exemption

Chapter 12 of Part 9A of TIOPA 2010 (controlled foreign companies: the low profits exemption) applies for the purposes of section 18G(1)(c) with the omission of section 371LB(2) and (4) and section 371LC(5) and (6).

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18IC The low profit margin exemption

- (1) Chapter 13 of Part 9A of TIOPA 2010 (controlled foreign companies: the low profit margin exemption) applies for the purposes of section 18G(1)(c) with the following modifications.
- (2) In section 371MB—
 - (a) subsection (2) is to be omitted, and
 - (b) references to the CFC's accounting profits for an accounting period are to be read as references to the adjusted relevant profits amount determined before any deduction for interest.

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

18ID The tax exemption

- (1) Chapter 14 of Part 9A of TIOPA 2010 (controlled foreign companies: the tax exemption) applies for the purposes of section 18G(1)(c) with the following modifications.
- (2) At step 1 in section 371NB(1)—

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- (a) in the first paragraph, the reference to section 371TB of TIOPA 2010 is to be read as a reference to the assumption in section 18I(3)(b) above relating to the CFC's residence, and
 - (b) the second paragraph is to be omitted.
- (3) References to the CFC's local chargeable profits arising in the accounting period are to be read as references to the adjusted relevant profits amount and, accordingly, sections 371NB(4) and 371NC(2) to (4) are to be omitted.
- (4) For the purposes of step 3 in section 371NB(1) the amount of the corresponding UK tax for the accounting period is to be determined in accordance with subsection (5) below; and section 371NE is to be omitted accordingly.
- (5) “The corresponding UK tax” is the amount of corporation tax which would be payable in respect of the adjusted relevant profits amount if it were subject in full to corporation tax, ignoring any credit which would be allowed against it under section 18(3) of TIOPA 2010 and assuming, where there is more than one rate of corporation tax applicable to period X, that it were chargeable at the average rate over period X.]

Textual Amendments

F10 Ss. 18G-18ID substituted for ss. 18G-18I (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#)

Companies with total opening negative amount

18J Companies with total opening negative amount

- (1) The following sections make provision about a company in relation to which an election under section 18A has effect if there is a total opening negative amount in the case of the company at the beginning of the company's first relevant accounting period.
- (2) To determine for the purposes of this Chapter whether there is a total opening negative amount at the beginning of the company's first relevant accounting period, take the following steps.
- Step 1* Take the adjusted foreign permanent establishments amount in relation to the earliest affected prior accounting period in relation to which that amount is negative.
- Step 2* Add to the amount arrived at under step 1 the adjusted foreign permanent establishments amount in relation to the next affected prior accounting period (but not so as to cause the result to exceed nil).
- Step 3* Add to the amount arrived at under step 2 the adjusted foreign permanent establishments amount in relation to each remaining affected prior accounting period, starting with the earliest (but not so as to cause the result to exceed nil). If after the application of the preceding steps there is a negative amount for the last affected prior accounting period there is a total opening negative amount at the beginning of the company's first relevant accounting period of an amount equal to that negative amount.
- (3) In subsection (2) “affected prior accounting period” means—
- (a) the accounting period of the company in which the election under section 18A is made, and

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- (b) any earlier accounting period of the company ending less than 6 years before the end of that accounting period.
- (4) For the purposes of subsection (2) the “adjusted” foreign permanent establishments amount is what the foreign permanent establishments amount would be if it were determined without reference to gains or losses which are chargeable gains or allowable losses for the purposes of corporation tax.

18K Total opening negative amount: “matching”

- (1) At the end of each relevant accounting period of the company (starting with the first) the total opening negative amount is to be reduced (or further reduced) by the amount of any aggregate relevant profits amount of the company for the accounting period (but not to below nil).
- (2) In any relevant accounting period of the company for which there is a reduction under subsection (1), section 18A(1) does not apply in relation to the aggregate relevant profits amount of the company for the accounting period.
- (3) But in the case of the last relevant accounting period of the company for which there is a reduction under subsection (1), section 18A(1) is disapplied by subsection (2) only in relation to so much of the aggregate relevant profits amount of the company for the accounting period as is equal to the total opening negative amount of the company at the beginning of the accounting period.
- (4) The company may, in its company tax return for that relevant accounting period, specify to which part of the aggregate relevant profits amount of the company for the accounting period section 18A(1) is to apply by virtue of subsection (3).
- (5) In this Chapter “aggregate relevant profits amount”, in relation to an accounting period, means the aggregate of the relevant profits amount in the case of each relevant foreign territory in relation to which there is a relevant profits amount for the accounting period.
- (6) This section is subject to section 18L.

18L Streaming

- (1) If a streaming election has effect in relation to the company sections 18M and 18N apply (instead of section 18K).
- (2) For the purposes of this section “streaming election” means an election, made at the same time as the company's election under section 18A, which—
 - (a) states that sections 18M and 18N are to have effect in relation to the company (instead of section 18K), and
 - (b) specifies which of the territories that are relevant foreign territories in relation to the company are to be streamed territories for the purposes of the operation of sections 18M and 18N in relation to the company.
- (3) Subject to subsection (4), a streaming election is irrevocable.
- (4) A streaming election can be revoked at any time before the first relevant accounting period of the company.

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- (5) A streaming election does not have effect unless the company, in the company tax return for the first relevant accounting period of the company, specifies how much of the amount eligible to be streamed to each streamed territory is to constitute for the purposes of sections 18M and 18N the streamed opening negative amount at the beginning of that relevant accounting period.
- (6) For the purposes of subsection (5) the amount eligible to be streamed to a territory by the company is the amount that would be the total opening negative amount of the company at the beginning of the first relevant accounting period of the company if at all material times the territory were the only relevant foreign territory in relation to the company.

18M Streamed opening negative amounts: “matching”

- (1) At the end of each relevant accounting period of the company (starting with the first) the streamed opening negative amount in relation to a territory is to be reduced (or further reduced) by the amount of any relevant profits amount of the company for the territory for the accounting period (but not to below nil).
- (2) In any relevant accounting period of the company for which there is a reduction under subsection (1) in relation to a territory, section 18A(1) does not apply in relation to the relevant profits amount of the company for the territory for the accounting period.
- (3) But in the case of the last relevant accounting period of the company for which there is a reduction under subsection (1) in relation to a territory, section 18A(1) is disapplied by subsection (2) only in relation to so much of the relevant profits amount of the company for the territory for the accounting period as is equal to the streamed opening negative amount in relation to the territory at the beginning of the accounting period.
- (4) The company may, in its company tax return for that relevant accounting period, specify to which part of the relevant profits amount of the company for the territory for the accounting period section 18A(1) is to apply by virtue of subsection (3).

18N Residual opening negative amount: “matching”

- (1) At the end of each relevant accounting period of the company (starting with the first) the residual opening negative amount is to be reduced (or further reduced) by the amount of any residual aggregate relevant profits amount of the company for the accounting period (but not to below nil).
- (2) For the purposes of this section the “residual opening negative amount”, at the beginning of the company's first relevant accounting period, is—
 - (a) the total opening negative amount of the company at that time, less
 - (b) the aggregate of the streamed opening negative amounts of the company at that time.
- (3) For the purposes of this section the “residual aggregate relevant profits amount”, in relation to an accounting period, means the amount (if any) by which—
 - (a) the aggregate relevant profits amount of the company for the accounting period, exceeds
 - (b) the aggregate of so much of any relevant profits amounts of the company for the accounting period as has effect to bring about a reduction under section 18M(1) for the accounting period.

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- (4) In any relevant accounting period of the company for which there is a reduction under subsection (1), section 18A(1) does not apply in relation to the residual aggregate relevant profits amount of the company for the accounting period.
- (5) But in the case of the last relevant accounting period of the company for which there is a reduction under subsection (1), section 18A(1) is disapplied by subsection (4) only in relation to so much of the residual aggregate relevant profits amount of the company for the accounting period as is equal to the residual opening negative amount of the company at the beginning of the accounting period.
- (6) The company may, in its company tax return for that relevant accounting period, specify to which of the amounts forming part of the residual aggregate relevant profits amount of the company for the accounting period section 18A(1) is to apply by virtue of subsection (4).

180 Transfers of foreign permanent establishment business

- (1) This section applies if—
 - (a) business carried on by a company (“the transferor”) through a permanent establishment in a territory outside the United Kingdom is transferred to a connected company that is (or later becomes) a UK resident company (“the transferee”), and
 - (b) there is a transferred total opening negative amount in relation to the business transferred.
- (2) In a case where the transferor had not made an election under section 18A before the transfer took place, or such an election had not had effect before that time, the “transferred total opening negative amount” is the amount that would have been the total opening negative amount in the case of the transferor at the beginning of the transferor's first relevant accounting period if—
 - (a) the only business carried on by the transferor was the business transferred,
 - (b) the transfer had not taken place,
 - (c) the transferor's first relevant accounting period had begun on the day after the transfer day, and
 - (d) any reference in section 18J(3) to the accounting period in which the election is made were a reference to the period beginning with the accounting period in which the transfer took place and ending with the transfer day.
- (3) In a case where an election made by the transferor under section 18A had effect before the transfer took place, the “transferred total opening negative amount” is—
 - (a) the amount that would have been the total opening negative amount in the case of the transferor on the transfer day if the accounting period in which the transfer took place had ended on that day (the “remaining total opening negative amount”), less
 - (b) the amount that would have been the remaining total opening negative amount if the transferor had never carried on the business transferred.

But the transferred total opening negative amount cannot be below nil.
- (4) In a case where—
 - (a) an election made by the transferee under section 18A first has effect after the transfer takes place, and

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- (b) the accounting period of the transferee in which the transfer took place is an affected prior accounting period for the purposes of section 18J(2), there is to be added to the adjusted foreign permanent establishments amount in relation to that accounting period a negative amount equal to so much (if any) of the transferred total opening negative amount as is attributable to profits or losses arising after the beginning of the earliest affected prior accounting period of the transferee.
- (5) In a case where an election made by the transferee under section 18A had effect before the transfer took place, sections 18K to 18N have effect in relation to the transferee and the transferred total opening negative amount as if—
- (a) any reference to the total opening negative amount were a reference to the transferred total opening negative amount,
 - (b) any reference to the first relevant accounting period were a reference to the period beginning with the day after the transfer day and ending immediately before the start of the next accounting period of the transferee, and
 - (c) the requirement in section 18L(2) that a streaming election be made at the same time as the company's election under section 18A did not apply.
- (6) Where for the purposes of this section it is necessary to apportion the profits and losses for any accounting period to different parts of that period, that apportionment is to be made on a just and reasonable basis.
- (7) Any amount included in a transferred total opening negative amount is to be disregarded in the application of sections 18J to 18N in the case of the transferor after the transfer day.
- (8) In this section “the transfer day” means the day on which the transfer of the business takes place.

Special cases

18P Exclusions

- (1) If a company is a small company at any time during a relevant accounting period, there is for that relevant accounting period no relevant profits amount or relevant losses amount for the purposes of this Chapter in relation to any relevant foreign territory that is not a full treaty territory.
 - (2) If a company is a close company at any time during a relevant accounting period, so much of the profits of the company for the relevant accounting period as derives from gains which are chargeable gains for the purposes of corporation tax is not to be regarded as forming part of a relevant profits amount or relevant losses amount of the company for the purposes of this Chapter.
- [Subsection (2) does not apply in relation to—
- ^{F11}(3) (a) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of a trade so far as carried on by the company in the relevant foreign territory through the company's permanent establishment there, or
- (b) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1) of TCGA 1992 where the currency or debt is or represents money in use for the purposes of a trade so far as carried on by the company in the relevant foreign territory through the company's permanent establishment there.]

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Textual Amendments

- F11** S. 18P(3) inserted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 7](#)

18Q Insurance companies

- (1) So much of the profits or losses of a company as consists of profits or losses arising from basic life assurance and general annuity business^{F12}... is not to be regarded as forming part of a relevant profits amount or relevant losses amount of the company for the purposes of this Chapter.

^{F13}(2)

^{F13}(3)

- (4) Any election under section 107(4) of FA 2000 (general insurance: adjustment for technical provision) is to be ignored for the purposes of this Chapter.

Textual Amendments

F12 Words in s. 18Q(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 137\(2\)](#)

F13 S. 18Q(2)(3) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 137\(3\)](#)

Interpretation

18R Meaning of “full treaty territory”

- (1) For the purposes of this Chapter a territory is a “full treaty territory” if—
- double taxation arrangements have been made in relation to the territory, and
 - the arrangements contain a relevant non-discrimination provision.
- (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.

18S Other interpretation

In this Chapter—

“company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1));

“double taxation arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“the OECD model” means 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;

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“small company” means a micro or small enterprise, as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.]

Status:

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