



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 4

TRANSFER PRICING

CHAPTER 4

POSITION, IF ONLY ONE AFFECTED PERSON POTENTIALLY ADVANTAGED, OF OTHER AFFECTED PERSON

Adjustment of double taxation relief where claim made

188 Double taxation relief by way of credit for foreign tax

- (1) Subsection (2) applies if—
 - (a) a claim is made under section 174, and
 - (b) the disadvantaged person (“DP”) is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm’s length provision was made or imposed instead of the actual provision.
- (2) Assumptions A and B are to be made in DP’s case in relation to any credit for foreign tax which DP has been, or may be, given—
 - (a) under any double taxation arrangements, or
 - (b) under section 18(1)(b) and (2) (relief under unilateral relief arrangements).
- (3) Subsection (2) has effect subject to section 189(2).
- (4) Assumption A is that the foreign tax paid or payable by DP does not include any amount of foreign tax which would not be or have become payable were it to be

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 188. (See end of Document for details)

assumed for the purposes of that tax that the arm's length provision had been made or imposed instead of the actual provision.

- (5) Assumption B is that the amount of DP's relevant profits in respect of which DP is given credit for foreign tax does not include the amount (if any) by which DP's relevant profits are treated as reduced in accordance with section 174.
- (6) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—
- (a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and
 - (b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.
- (7) In subsection (5) “DP's relevant profits” means the profits arising to DP from the carrying on of the relevant activities (see section 216).
- (8) In this section—
- “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom), and
- “foreign tax” means—
- (a) any tax under the law of a territory outside the United Kingdom, or
 - (b) any amount that, for the purposes of any double taxation arrangements, is to be treated as if it were tax under the law of a territory outside the United Kingdom.
- (9) In determining for the purposes of this section whether a person is—
- (a) under any double taxation arrangements, or
 - (b) under section 18(1)(b) and (2),
- to be given credit for foreign tax, ignore any requirement that a claim is made before such a credit is given.

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