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## SCHEDULES

### SCHEDULE 13

Section 48

#### PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS ETC

#### PART 1

##### AMENDMENTS OF CTA 2009

- 1 CTA 2009 is amended as follows.
- 2 In section 1(1)(c) (overview of Act), for “Chapter 4” substitute “ Chapters 3A and 4 ”.
- 3 In section 5(1) (territorial scope), insert at the end “ (but see Chapter 3A for an exemption from charge in respect of profits of foreign permanent establishments) ”.
- 4 After section 18 insert—

#### “CHAPTER 3A

##### UK RESIDENT COMPANIES: PROFITS OF FOREIGN PERMANENT ESTABLISHMENTS

##### *Exemption*

#### **18A Exemption for profits or losses of foreign permanent establishments**

- (1) If a UK resident 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.
- (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

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- (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 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.

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## **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 immoveable 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.

## **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

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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.

### **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.

### **18F Effect of election**

- (1) An election made by a company under section 18A—
  - (a) (subject to subsection (6)) is irrevocable, and

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- (b) applies to all accounting periods of the company beginning on or after the relevant day.
- (2) “The relevant day” is the day on which, at the time of the election, the accounting period following that in which the election is made is expected to begin.
- (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) The election can be revoked at any time before the relevant day.

#### *Anti-diversion rule*

### **18G Anti-diversion rule**

- (1) This section applies for the purposes of this Chapter if the lower level of tax test is met for any relevant accounting period of a company in relation to any permanent establishment through which the company carries on, or has carried on, business in a territory outside the United Kingdom.
- (2) If there is an adjusted relevant profits amount in relation to the territory for the relevant accounting period, that amount is to be taken to be nil (but this is subject to section 18I).
- (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 and losses which are chargeable gains or allowable losses for the purposes of corporation tax.
- (4) The lower level of tax test is met for a relevant accounting period in relation to a permanent establishment in a territory if—
  - (a) the amount of tax paid under the law of that territory in respect of the adjusted relevant profits amount in accordance with a relevant treaty provision, is less than
  - (b) 75% of the amount of corporation tax that would be payable in respect of that 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 the relevant accounting period, that it were chargeable at the average rate over the accounting period.

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- (5) In subsection (4)(a) “a relevant treaty provision” means—
- (a) provision in double taxation arrangements having effect in relation to the territory, or
  - (b) if no double taxation arrangements have effect in relation to the territory, provision in the terms of the OECD model.
- (6) This section does not apply if—
- (a) the adjusted relevant profits amount in relation to the territory for the relevant accounting period would (apart from subsection (2)) be less than the entry limit (as to which see subsection (7)), or
  - (b) the motive test is met (as to which see section 18H).
- (7) “The entry limit” is—
- (a) £200,000, or
  - (b) if the relevant accounting period is less than 12 months, a proportionately reduced amount.

### **18H The motive test**

- (1) The motive test is met if conditions A and B are met.
- (2) Condition A is that in so far as any relevant transaction, or two or more transactions at least one of which was a relevant transaction (taken together), achieved a reduction in United Kingdom tax either—
  - (a) the reduction was minimal, or
  - (b) it was not the main purpose, or one of the main purposes, of the transaction, or of those transactions taken together, to achieve the reduction.
- (3) In subsection (2) “relevant transaction” means a transaction the results of which are reflected in such of the company's profits in the accounting period as are attributable to the permanent establishment.
- (4) For the purposes of subsection (2) a transaction achieves (or transactions achieve) a reduction in United Kingdom tax if, had the transaction (or transactions) not been effected, any person—
  - (a) would (disregarding section 18G(2)) have been liable for United Kingdom tax or for a greater amount of United Kingdom tax, or
  - (b) would (disregarding that provision) not have been entitled to a relief from, or repayment of, United Kingdom tax or would have been entitled to a smaller relief from, or repayment of, United Kingdom tax.
- (5) For the purposes of subsection (2) it is the main purpose, or one of the main purposes, of a transaction (or of transactions taken together) to achieve a reduction in United Kingdom tax if that is the main purpose, or one of the main purposes, of—
  - (a) the company, or
  - (b) a person who has an interest in the company at any time during the relevant accounting period;

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and section 749B of ICTA (persons who have an interest in a company) applies for the purposes of paragraph (b) as for the purposes of Chapter 4 of Part 17 of that Act.

- (6) Condition B is that it was not the main reason, or one of the main reasons, for the company carrying on business through the permanent establishment to achieve a reduction in United Kingdom tax by a diversion of profits from the United Kingdom.
- (7) For the purposes of subsection (6) the fact that the company carries on the business through the permanent establishment achieves a reduction in United Kingdom tax by a diversion of profits from the United Kingdom if it is reasonable to make the supposition in subsection (8).
- (8) That supposition is that, if the company did not carry on business through any permanent establishment and there were no related companies—
  - (a) the whole or a substantial part of the receipts which are reflected in the profits attributable to the permanent establishment would have been received by the company otherwise than through the permanent establishment or by another UK resident company which is a non-electing company or an individual resident in the United Kingdom, and
  - (b) the company, that other UK resident company, that individual resident in the United Kingdom or any other person resident in the United Kingdom either—
    - (i) would (disregarding section 18G(2)) have been liable for United Kingdom tax or for a greater amount of United Kingdom tax, or
    - (ii) would (disregarding that provision) not have been entitled to a relief from, or repayment of, United Kingdom tax or would have been entitled to a smaller relief from, or repayment of, United Kingdom tax.
- (9) For the purposes of subsection (8) a company is “related” to the company if—
  - (a) either it is a UK resident company in relation to which an election under section 18A has effect or it is not a UK resident company,
  - (b) it is connected with, or is an associate of, the company, and
  - (c) it fulfils or could fulfil, directly or indirectly, the same functions as those of the permanent establishment.
- (10) Companies are associates for the purposes of subsection (9) if they are associated for the purposes of Chapter 4 of Part 19 of CTA 2010 (see section 882).
- (11) References in subsection (8) to a UK resident company include a company which it is reasonable to assume would have been established if the permanent establishment did not exist.
- (12) For the purposes of subsection (8) a UK resident company is a non-electing company if no election under section 18A has effect in relation to the company.

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- (13) In this section “United Kingdom tax” means corporation tax, income tax or capital gains tax.

### **18I Proportionate reduction in certain cases**

- (1) This section applies if—
- (a) condition A in section 18H is not met, but
  - (b) condition B in that section is met.
- (2) If there is an adjusted relevant profits amount in relation to the territory for the relevant accounting period, section 18G(2) has effect to cause it to be reduced by only any such amount as it is just and reasonable to regard as referable to tainted relevant transactions.
- (3) In subsection (2) “tainted relevant transactions” means relevant transactions which achieve a reduction in United Kingdom tax, other than any in relation to which the condition in section 18H(2)(b) is met.

*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
  - (b) any earlier accounting period of the company ending less than 6 years before the end of that accounting period.



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- (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—

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- (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.
- (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—

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- (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
  - (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

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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.

### **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 (as defined in section 431(2) of ICTA) 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.
- (2) In determining what part of any items brought into account as mentioned in section 83(2)(a), (b), (c) or (d) of FA 1989 (receipts to be taken into account) as profits attributable to a permanent establishment in a territory outside the United Kingdom through which the company carries on business are referable to life assurance business or gross roll-up business, section 432E of ICTA (apportionment: participating funds) has effect as if—
  - (a) references in that section to the surplus of the relevant business were to the surplus of the business carried on through the permanent establishment, and
  - (b) subsections (3) to (4A) of that section and section 432F of that Act were omitted.
- (3) No amount which, by virtue of any enactment, is to be regarded as being brought into account by a company as an increase in the value of non-linked assets is to be regarded for the purposes of this Chapter as being attributable to a permanent establishment in a territory outside the United Kingdom through which the company carries on business.
- (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.

### *Interpretation*

### **18R Meaning of “full treaty territory”**

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

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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;

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

5 In section 775(4) (intangible fixed assets: cases where transfers within group provisions do not apply), omit the “or” at the end of paragraph (a) and insert at the end “, or

(c) an election under section 18A has effect in relation to the transferor and the asset has at any time been held by the transferor wholly or partly for the purposes of a permanent establishment in a territory outside the United Kingdom through which the transferor carries on business.”

6 In section 803(b) (assets held for non-taxable activities excluded from Part 10), insert at the end “, otherwise than as a result of Chapter 3A of Part 2. ”

7 In section 845(4) (exceptions to rule that transfer between company and related party treated as being at market value)—

(a) omit the “and” at the end of paragraph (c), and

(b) after that paragraph insert—

“(ca) section 848A (assets held for purposes of exempt foreign permanent establishments), and”.

8 After section 848 insert—

### “848A Assets held for purposes of exempt foreign permanent establishments

(1) This section applies if—

(a) subsection (1) of section 775 (transfers within a group) would apply in relation to the transfer but for paragraph (c) of subsection (4) of that section, and

(b) the asset has not at all times when the election under section 18A had effect been held by the transferor wholly for the purposes of a permanent establishment such as is mentioned in that paragraph.

(2) The transfer is treated for the purposes of this Part as being at the following value—

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## WDV + FPEA

where—

WDV is the tax written-down value of the asset, and

FPEA is the amount which, for the purposes of Chapter 3A of Part 2, would in the case of the transferor be the foreign permanent establishments amount attributable to the transfer for the accounting period in which it took place if the transfer were at market value.”

- 9 In section 1007(2)(b) (relief if employee etc acquires shares), insert at the end “ or would be but for section 18A. ”
- 10 In section 1015(2)(b) (relief if employee etc obtains share option), insert at the end “ or would be but for section 18A. ”
- 11 In Schedule 4 to that Act (index of defined expressions), insert at the appropriate places—

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“adjusted (in relation to a relevant profits amount) (in section 18G(3))  
Chapter 3A of Part 2)

“aggregate relevant profits amount (in Chapter 3A of Part 2) section 18K(5)”

“company tax return (in Chapter 3A of Part 2) section 18S”

“double taxation arrangements (in Chapter 3A of Part 2) section 18S”

“foreign permanent establishments amount (in Chapter 3A of Part 2) section 18A(4)”

“full treaty territory (in Chapter 3A of Part 2) section 18R”

“the OECD model (in Chapter 3A of Part 2) section 18S”

“relevant accounting period (in Chapter 3A of Part 2) section 18A(3)”

“relevant foreign territory (in Chapter 3A of Part 2) section 18A(5)”

“relevant losses amount (in Chapter 3A of Part 2) section 18A(7)”

“relevant profits amount (in Chapter 3A of Part 2) section 18A(6)”

“small company (in Chapter 3A of Part 2) section 18S”

“total opening negative amount” (in Chapter 3A of Part 2) section 18J(2)”

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### 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

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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—
- (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—

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“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 ”.

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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.



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- (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—

    - (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—

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- (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
- (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—

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“(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—

#### **“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

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- (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
- (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

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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.”

**PART 3**

COMMENCEMENT AND TRANSITIONAL PROVISION

*Commencement*

31 The amendments made by this Schedule come into force on the day on which this Act is passed.

*Condition B of motive test*

- 32 (1) This paragraph applies in relation to a company carrying on business through a permanent establishment in an accounting period which is the first relevant accounting period or an accounting period beginning less than 12 months after the beginning of the first relevant accounting period (an “affected relevant accounting period”) if the company carried on the business through the permanent establishment throughout the period of 12 months ending with the day before that on which this Act is passed (“the pre-commencement year”).
- (2) Condition B in section 18H of CTA 2009 (as inserted by this Schedule) is assumed to be met in relation to an affected relevant accounting period if—
- (a) the gross income attributable to the permanent establishment for the affected relevant accounting period does not exceed by more than 10% the gross income attributable to the permanent establishment for the period of 12 months ending immediately before the beginning of the first relevant accounting period (or, if the affected relevant accounting period is less than 12 months, such proportion of that gross income as the length of the affected relevant accounting period bears to 12 months),
  - (b) there has been no major change in the nature or conduct of the business carried on through the permanent establishment in the period (“the relevant period”) beginning with the pre-commencement year and ending with the end of the affected relevant accounting period, and
  - (c) no asset attributable to the permanent establishment was previously owned, and no part of the business carried on through the permanent establishment in the affected relevant accounting period was previously carried on, by a company whose chargeable profits and creditable tax (if any) for any accounting period ending within the relevant period were (or, but for an

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agreement made or undertaking given, would have been) apportioned under section 747(3) of ICTA.

- (3) For the purposes of sub-paragraph (2) “major change in the nature or conduct of the business” includes—
- (a) a major change in the type of property dealt in, or services or facilities provided, in the business, and
  - (b) a major change in customers, outlets or markets of the business.
- (4) A reference in sub-paragraph (3) to a change includes a change which is achieved gradually as a result of a series of transfers.
- 33 (1) This paragraph applies in relation to a company (“company A”) carrying on business through a permanent establishment in an accounting period which is the first relevant accounting period or an accounting period beginning less than 12 months after the beginning of the first relevant accounting period (an “affected relevant accounting period”) if a company which—
- (a) was a non-UK resident company, and
  - (b) was controlled by company A,
- (“company B”) carried on the business throughout the period of 12 months ending with the day before that on which this Act is passed (“the pre-commencement year”).
- (2) Condition B in section 18H of CTA 2009 (as inserted by this Schedule) is assumed to be met in relation to an affected relevant accounting period if—
- (a) the gross income attributable to the permanent establishment for the affected relevant accounting period does not exceed by more than 10% the gross income of the business for the period of 12 months ending immediately before the beginning of the first relevant accounting period of the company (or, if the affected relevant accounting period is less than 12 months, such proportion of that gross income as the length of the affected relevant accounting period bears to 12 months),
  - (b) there has been no major change in the nature or conduct of the business carried on through the permanent establishment in the period (“the relevant period”) beginning with the pre-commencement year and ending with the end of the affected relevant accounting period,
  - (c) company B was not a company whose chargeable profits and creditable tax (if any) for any accounting period ending within the relevant period were (or, but for an agreement made or undertaking given, would have been) apportioned under section 747(3) of ICTA, and
  - (d) no asset attributable to the permanent establishment was previously owned, and no part of the business carried on through the permanent establishment in the affected relevant accounting period was previously carried on, by such a company.
- (3) Sub-paragraphs (3) and (4) of paragraph 32 apply for the purposes of sub-paragraph (2).
- (4) Section 1124 of CTA 2010 (meaning of “control”) applies for the purposes of this paragraph.

*Large pre-commencement losses*

- 34 (1) This paragraph applies if—

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- (a) there is a relevant losses amount exceeding £50 million in the case of a company in relation to any relevant foreign territory for any accounting period beginning within the period of 6 years ending with the day before that on which this Act is passed, and
    - (b) (apart from this paragraph) the accounting period would not be an affected prior accounting period for the purposes of section 18J(2) of CTA 2009 (as inserted by this Schedule).
  - (2) The accounting period, and every later accounting period of the company before the first relevant accounting period of the company which would not otherwise be an affected prior accounting period for those purposes, is an affected prior accounting period for those purposes.
- 35 (1) This paragraph applies if—
- (a) section 18O of CTA 2009 (as inserted by this Schedule) applies in relation to a transfer of business, and
  - (b) (apart from this paragraph) the effect of subsection (4) of that section would be that a relevant losses amount falling within paragraph 34(1)(a) would be ignored for the purposes of section 18J(2) of that Act.
- (2) There is to be added to the adjusted foreign permanent establishments amount in relation to the accounting period of the transferee in which the transfer took place a negative amount equal to that relevant losses amount.

*Section 62A of CAA 2001*

- 36 For the purposes of section 62A of CAA 2001 (as inserted by this Schedule)—
- (a) where the qualifying expenditure in respect of the plant or machinery, or of the group of assets of which it forms part, in question does not exceed £50 million, an accounting period ending more than 12 months before the day on which this Act is passed is not a relevant preceding accounting period, and
  - (b) where it does, any accounting period beginning within the period of 6 years ending with the day before that on which this Act is passed which (apart from this paragraph) would not be a relevant preceding accounting period is such a period.

*Section 43(8) of TIOPA 2010: free assets*

- 37 Until provision made under subsection (8) of section 43 of TIOPA 2010 (as substituted by this Schedule) has effect, “free assets” in subsection (7) of that section has the meaning given by regulation 3 of the Non-resident Insurance Companies Regulations 2003 (S.I. 2003/2714).

**Status:**

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**Changes to legislation:**

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