



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

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DOUBLE TAXATION RELIEF BY WAY OF CREDIT

Limit on credit against corporation tax

42 Amount of limit

(1) Subsection (2) is about the amount of credit allowed under section 18(2) against corporation tax to which a company is liable in respect of any income or chargeable gain.

(2) The credit must not exceed—

$$R \times IG$$

where—

R is the rate of corporation tax payable by the company, before any credit under this Part, on the company's income or chargeable gains for the accounting period in which the income arises or the gain accrues, and

IG is the amount of the income or gain (but see subsection (3)).

(3) For the purposes of applying subsection (2), IG is reduced (or extinguished) by any amount allocated to it under—

section 52(2) (general deductions),

section 53(2) (earlier years' deficits on loan relationships),

Status: This is the original version (as it was originally enacted).

section 54(2) or (4) (debits on loan relationships),
 section 55(5) (current year's deficits on loan relationships), or
 section 56(2) (debits on intangible fixed assets).

(4) Subsection (2) is to be read with—

section 43, which, if the company has a permanent establishment outside the United Kingdom, is about attributing profits to the establishment for the purposes of applying subsection (2),

sections 44 to 49, which modify how subsection (2) applies in connection with allowing credit against tax on trade income (as defined in section 44), and

sections 50 and 51, which require subsection (2) to be applied as if corporation tax were charged in a modified way on profits of the company for the period from loan relationships and intangible fixed assets.

43 Profits attributable to permanent establishment for purposes of section 42(2)

(1) The permanent-establishment provisions apply with the necessary modifications in determining for the purposes of section 42(2) how much of a UK resident company's chargeable profits is attributable to a permanent establishment of the company outside the United Kingdom.

(2) In subsection (1)—

“chargeable profits” means profits on which corporation tax is chargeable,
 and

“the permanent-establishment provisions” means—

- (a) Chapter 4 of Part 2 of CTA 2009 (profits attributable to permanent establishment), and
- (b) any regulations made under section 24 of CTA 2009 (application to insurance companies).

44 Credit against tax on trade income

(1) Apply section 42(2) in accordance with subsections (2) and (3) if the tax against which the credit is to be allowed is corporation tax on income that is trade income.

(2) The amount of the credit must not exceed the corporation tax attributable to the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(3) In calculating the amount of corporation tax attributable to any income, take into account—

- (a) deductions which would be allowed in calculating the company's liability, and
- (b) expenses of a company connected with the company, so far as reasonably attributable to the income,

but see section 49 (restriction if company is a bank or is connected with a bank).

(4) In subsection (3)(a) “deductions” includes a just and reasonable apportionment of deductions that relate—

- (a) partly to the transaction, arrangement or asset from which the income arises,
 and
- (b) partly to other matters.

- (5) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of subsection (3)(b).
- (6) In this section “trade income” means—
- (a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),
 - (b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),
 - (c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and
 - (d) any other income or profits which by a provision of ICTA is or are—
 - (i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or
 - (ii) calculated in the same way as the profits of a trade,
- but does not include income to which section 99 of this Act (insurance companies) applies.
- (7) In subsection (6) the references—
- (a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and
 - (b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,
- do not include income that would, but for the repeal by CTA 2009 of section 103 of ICTA (post-cessation receipts where pre-cessation profits calculated on an earnings basis and other post-cessation receipts that become due or are ascertained after cessation), have been chargeable to corporation tax under that section.

45 Credit against tax on trade income: anti-avoidance rules

- (1) If a company (“A”) carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person (“B”) a main purpose of which is to alter the effect of section 44(2) and (3) in relation to A, income received in pursuance of the scheme or arrangement is to be treated for the purposes of section 44(2) and (3) as trade income of B (and not as income of A).
- (2) Income of a person (“D”) is to be treated for the purposes of section 44 as trade income (if it is not otherwise trade income) of D if—
- (a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person (“C”),
 - (b) had C received the income, it would be reasonable to assume that it would be trade income of C, and
 - (c) a main purpose of the scheme or arrangement is to produce the result that section 44(2) and (3) will not have effect in relation to the income because it is received by D.
- (3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to the transaction.
- (4) In subsection (3)—
- “relevant person” means—
 - (a) D, or
 - (b) any other connected person who is a party to the scheme or arrangement mentioned in subsection (2), and

“relevant transaction” means any of the transactions giving rise to the income mentioned in subsection (2)(b).

- (5) In subsections (2) to (4) “connected person” means a person with whom D is connected.
- (6) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of subsection (5).
- (7) In this section “trade income” has the same meaning as in section 44.

46 Applying section 44(2): asset in hedging relationship with derivative contract

- (1) If an asset is in a hedging relationship with a derivative contract, section 44(2) applies in relation to the asset as if the income arising from the asset is the income arising from the asset and the contract taken together, subject to subsection (2).
- (2) Take account of the income or loss from the derivative contract only so far as reasonably attributable to the hedging relationship.
- (3) For the purposes of subsection (1), an asset is in a hedging relationship with a derivative contract if—
 - (a) the asset is acquired as a hedge of risk in connection with the contract, or
 - (b) the contract is entered into as a hedge of risk in connection with the asset.
- (4) If an asset or a contract is wholly or partly designated as a hedge for the purposes of a person’s accounts, that is conclusive for the purposes of subsection (3).

47 Applying section 44(2): royalty income

- (1) Subsection (2) applies if—
 - (a) the arrangements are double taxation arrangements, and
 - (b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.
- (2) For the purposes of section 44(2)—
 - (a) royalty income arising in more than one foreign jurisdiction in an accounting period in respect of the asset is to be treated as income arising from a single asset, and
 - (b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.
- (3) In this section “foreign jurisdiction” means a jurisdiction outside the United Kingdom.

48 Applying section 44(2): “portfolio” of transactions, arrangements or assets

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that transactions, arrangements or assets are treated by a taxpayer as a series or group (“the portfolio”).
- (3) Condition B is that credits for foreign tax arise in respect of the portfolio.
- (4) Condition C is that—

- (a) it is not reasonably practicable to prepare a separate calculation of income for the purposes of section 44(2) in respect of each transaction, arrangement or asset, or
 - (b) a separate calculation of income in respect of each transaction, arrangement or asset for the purposes of section 44(2) would not, compared with an aggregated calculation, make a material difference to the amount of credit for foreign tax which is allowable.
- (5) The income arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 44(2) in a just and reasonable manner.

49 Restricting section 44(3) if company is a bank or connected with a bank

- (1) Section 44(3) is subject to subsection (2) of this section if—
- (a) the company is a bank or is connected with a bank, and
 - (b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.
- (2) The amount of the notional funding costs is to be included in the amount to be taken into account under section 44(3), but only so far as it exceeds the amount of the included funding costs.
- (3) In this section—
- “the company” means the company mentioned in section 44(3)(a),
 - “included funding costs” means the total of the funding costs that are—
 - (a) incurred by the company, or any company connected with the company, in respect of capital used to fund the relevant transaction, and
 - (b) included in the amount to be taken into account under section 44(3) before the application of subsection (2) of this section,
 - “notional funding costs” means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way,
 - “the relevant bank” means the bank that is the company, or with which the company is connected, and
 - “the relevant transaction” means the transaction, arrangement or asset from which the income mentioned in section 44(1) arises.
- (4) The following provisions apply for the purposes of this section—
- section 1120 of CTA 2010 (meaning of “bank”), and
 - section 1122 of CTA 2010 (meaning of “connected”).