Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 3

MISCELLANEOUS PROVISIONS

Application of Part for capital gains tax purposes

105 Meaning of "chargeable gain"

In this Part so far as it relates to capital gains tax "chargeable gain" has the same meaning as in TCGA 1992 (see, in particular, section 15(2) of that Act).

106 Chapters 1 and 2 apply to capital gains tax separately from other taxes

(1) Subsection (2) applies if foreign gains tax may be brought into account under Chapters 1 and 2 so far as they apply for capital gains tax purposes.

(2) The foreign gains tax is not to be taken into account under those Chapters so far as they apply otherwise than for capital gains tax purposes.

(3) Subsection (2) applies whether or not relief in respect of the foreign gains tax is given under those Chapters so far as they apply for capital gains tax purposes.

(4) Foreign non-gains tax is not be taken into account under those Chapters so far as they apply for capital gains tax purposes.

(5) In this section—

"foreign gains tax" means any tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is of a similar character to capital gains tax, and

"foreign non-gains tax" means tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is not foreign gains tax.

When foreign tax disregarded in applying Part for corporation tax purposes

107 Disregard of foreign tax referable to derivative contract

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to so much of a notional interest payment as, on such an apportionment, is attributable to a time when the company is not a party to the derivative contract concerned.

(3) For the purposes of this section, a payment is a "notional interest payment" if—

(a) a derivative contract specifies—

(i) a notional principal amount,

(ii) a period, and

(iii) a rate of interest,

(b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and

(c) the value of the rate is the same at all times as that of the specified rate of interest.

108 Disregard of foreign tax attributable to interest under a loan relationship

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

(3) Tax within subsection (2) is not to be disregarded under subsection (1) if the tax is also within section 109 or 110.

109 Repo cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial sale under or in accordance with any debtor repo relating to the relationship, and

(b) that time is in the period for which the repo has effect.

(2) In this section—

"debtor repo" has the meaning given by the repo-definition section,

"the initial sale", in relation to a debtor repo, means the sale mentioned in condition C in the repo-definition section, and

"the repo-definition section" means section 548 of CTA 2009.

(3) In this section, a reference to the period for which a debtor repo has effect is to the period from the making of the initial sale until the earlier of—

(a) the time when the subsequent purchase mentioned in condition D in the repo-definition section takes place, and

(b) the time when it becomes apparent that that subsequent purchase will not take place.

110 Stock-lending cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial transfer under or in accordance with any stock lending arrangement relating to that relationship, and

(b) that time is in the period for which the arrangement has effect.

(2) In this section—

"the initial transfer", in relation to a stock lending arrangement, means the transfer mentioned in section 263B(1)(a) of TCGA 1992, and

"stock lending arrangement" has the meaning given by section 263B of TCGA 1992.

(3) In this section, a reference to the period for which a stock lending arrangement has effect is to the period from the making of the initial transfer until the earlier of—

(a) the time when the transfer mentioned in section 263B(1)(b) of TCGA 1992 takes place, and

(b) the time when it becomes apparent that that transfer will not take place.

Special rules for discretionary trusts

111 When payment to beneficiary treated as arising from foreign source

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that a payment is made by trustees of a settlement.

(3) Condition B is that income tax is treated under section 494 of ITA 2007 (treatment of discretionary payments by trustees) as having been paid in relation to the payment.

(4) Condition C is that the income arising under the settlement includes taxed overseas income.

(5) Condition D is that the trustees certify—

(a) that the payment is one made out of income consisting of, or including, taxed overseas income of an amount, and from a source, stated in the certificate, and

(b) that that amount of taxed overseas income arose to the trustees not earlier than 6 years before the end of the tax year in which the payment is made.

(6) The person to whom the payment is made may claim that the payment, up to the certified amount, is to be treated for the purposes of this Part as income received by the person—

(a) from the certified source, and

(b) in the tax year in which the payment is made.

(7) In this section "taxed overseas income", in relation to a settlement, means income in respect of which the trustees are entitled to credit under this Part for tax under the law of a territory outside the United Kingdom.

Deduction for foreign tax where no credit allowed

112 Deduction from income for foreign tax (instead of credit against UK tax)

(1) The amount of any income arising in any place outside the United Kingdom is reduced for the purposes of the Tax Acts—

(a) by any amount which has been paid in respect of non-UK tax on that income in the place where the income arose, or

(b) if subsection (2) applies, by the lesser amount mentioned in that subsection.

(2) This subsection applies if credit would, were it allowable in respect of the income, be reduced under section 39 (reduction by reference to accrued income losses) to the lesser amount given by section 39(5).

(3) If—

(a) income of any person ("P") is reduced under subsection (1) by an amount paid in respect of tax on that income in the place where the income arose, and

(b) a payment is made by a tax authority to P, or any person connected with P, by reference to that tax,

the amount of P's income is increased by the amount of the payment.

(4) Subsection (1)—

(a) has effect subject to section 31(2)(a) (no deduction for foreign tax if credit allowed and UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

(b) has effect subject to section 143(5) and (6) (no deduction for special withholding tax if UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

(c) does not apply to income the tax on which is to be calculated by reference to the amount of income received in the United Kingdom, and

(d) does not require any income to be reduced by an amount of underlying tax which, under section 60(3), is to be left out of account for the purposes of section 57.

(5) Subsection (1) has effect for corporation tax purposes despite—

(a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and

(b) section 906(1) of that Act (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In subsection (1) "non-UK tax" means tax under the law of a territory outside the United Kingdom.

(7) For the purposes of subsection (3), whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

113 Deduction from capital gain for foreign tax (instead of credit against UK tax)

(1) Subsection (2) applies to tax if it is—

(a) chargeable under the law of any territory outside the United Kingdom on the disposal of an asset, and

(b) borne by the person making the disposal.

(2) The tax is allowable as a deduction in the calculation of the gain.

(3) Subsection (2) is subject to—

(a) Chapters 1 and 2 so far as they apply for corporation tax purposes (see, in particular, section 31),

(b) Chapters 1 and 2 so far as they apply for capital gains tax purposes (see, in particular, section 31), and

(c) section 143 (which includes provision about taking account of special withholding tax when calculating a gain for capital gains tax purposes).

(4) In subsection (1) "asset" and "disposal" have the same meaning as in TCGA 1992 (see, in particular, section 21 and the following provisions of TCGA 1992).

114 Time limits for action if tax adjustment makes reduction too large or too small

(1) Subsection (2) applies to a claim or assessment if—

(a) the amount of any reduction under section 112(1) or 113(2) becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any territory outside the United Kingdom, or a person's income is increased under section 112(3),

(b) the adjustment or increase gives rise to the claim or assessment, and

(c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.

(2) No time-limit rule applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means (as the case may be)—

(a) an assessment, adjustment, increase or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 112(1) or increase is to be made under section 112(3), or

(b) an assessment, adjustment or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 113(2).

(4) In subsection (2) "time-limit rule" means anything—

(a) in TMA 1970,

(b) in ICTA,

(c) in TCGA 1992, or

(d) in any other provision of the Tax Acts,

limiting the time for the making of assessments or limiting the time for the making of claims for relief.

115 Duty to give notice that adjustment has rendered reduction too large

(1) This section applies if—

(a) the amount of any of a person's income is reduced under section 112(1),

(b) that reduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom or an increase under section 112(3), and

(c) the adjustment or increase is not a Lloyd's adjustment.

(2) This section also applies if—

(a) a deduction is allowed under section 113(2) in the case of a person making a disposal, and

(b) that deduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom.

(3) The person must give notice that the original reduction has become excessive as a result of the making of an adjustment or increase.

(4) Notice under subsection (3) is to be given—

(a) to an officer of Revenue and Customs, and

(b) within one year from when the adjustment or increase was made.

(5) If the person fails to comply with the requirements imposed by subsections (3) and (4), the person is liable to a penalty not greater than the amount given by—

$$A - B$$

where—

A is the amount of tax payable by the person for the reduction period after giving effect to the reduction that ought to be made under section 112(1) or (as the case may be) under section 113(2), and

B is the amount that would have been the tax payable by the person for that period after giving effect instead to the original reduction.

(6) In subsection (5) "the reduction period" means the tax year, or accounting period of a company for corporation tax purposes, for which the original reduction was made.

(7) For the purposes of subsection (1)(c), the adjustment or increase is a "Lloyd's adjustment" if the consequences of the adjustment or increase in relation to the reduction are to be given effect in accordance with regulations under—

(a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or

(b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).

(8) In subsection (2) "disposal" has the same meaning as in TCGA 1992 (see, in particular, section 21(2) and the following provisions of TCGA 1992).

(9) In this section so far as it relates to capital gains tax "notice" means notice in writing.

European cross-border transfers of business

116 Introduction to section 117

(1) Subject to subsections (4) to (6), section 117 applies if condition A or B is met.

(2) Condition A is that—

(a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and

(b) the transfer includes—

(i) the transfer of an asset or liability representing a loan relationship,

(ii) the transfer of rights and liabilities under a derivative contract, or

(iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.

(3) Condition B is that—

(a) a company resident in the United Kingdom transfers part of its business to one or more companies,

(b) the part of the transferor's business which is transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,

(c) at least one transferee is resident in a member State other than the United Kingdom,

(d) the transferor continues to carry on a business after the transfer,

(e) the condition in subsection (2)(b) is met, and

(f) the transfer—

(i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or

(ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company

acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

(4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one.

(5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one, and

(c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.

(6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—

(i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a member State, and

(ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—

(i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and

(ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and

(c) only applies as respects the transfer so mentioned if—

(i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and

(ii) the transferor makes a claim under this section in respect of the transfer so mentioned.

(7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).

(8) For the purposes of this section, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

117 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State, losses arising on the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and

(b) that any relief due to the transferor under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the transfer of business mentioned in section 116(2)(a) or (3)(a) is not effected for genuine commercial reasons, or

(b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—

(a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.

(5) In subsection (4) "the appropriate applicant" means—

(a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(i) or (ii) is concerned, the companies mentioned in section 116(2)(a) or (3)(a), and

(b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(iii) is concerned, the transferor.

(6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

European cross-border mergers

118 Introduction to section 119

(1) Section 119 applies if each of conditions A to E is met and—

(a) in the case of a merger within subsection (2)(a) or (b), condition F is met,

(b) in the case of a merger within subsection (2)(c), conditions F and G are met, and

(c) in the case of a merger within subsection (2)(d), condition G is met.

(2) Condition A is that—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),

(b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),

(c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

(d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(3) Condition B is that each merging company is resident in a member State.

(4) Condition C is that the merging companies are not all resident in the same State.

(5) Condition D is that in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment (but see subsection (9)).

(6) Condition E is that the transfer mentioned in subsection (5) includes—

(a) the transfer of an asset or liability representing a loan relationship,

(b) the transfer of rights and liabilities under a derivative contract, or

(c) the transfer of intangible fixed assets—

(i) that are chargeable intangible assets in relation to company A immediately before the transfer, and

(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.

(7) Condition F is that—

(a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or

(b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

(8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).

(9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 119 applies in respect of such a transfer as is mentioned in subsection (6)(c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).

(10) For the purposes of this section, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(11) In this section—

"co-operative society" means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,

"SE" and "SCE" have the same meaning as in CTA 2009 (see section 1319 of that Act),

"the transferee" means—

(a) in relation to a merger within subsection (2)(a), the SE,

(b) in relation to a merger within subsection (2)(b), the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and

"transferor" means—

(a) in relation to a merger within subsection (2)(a), a company merging to form the SE,

(b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.

119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State, losses arising on that transfer are set against gains arising on that transfer, and

(b) that any relief due to company A under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the merger is not effected for genuine commercial reasons, or

(b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the merger—

(a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.

(5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

(6) In this section "company A", "the merger" and "the merging companies" have the same meaning as in section 118.

Transparent entities involved in cross-border transfers and mergers

120 Introduction to section 121

(1) Section 121 applies if, as a result of—

(a) a relevant loan relationship transaction,

(b) a relevant derivative contracts transaction, or

(c) a relevant intangible fixed assets transaction,

tax would have been chargeable under the law of a member State other than the United Kingdom in respect of a relevant profit but for the Mergers Directive.

(2) In this section "relevant loan relationship transaction" means—

(a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 421(3)(c) or (4)(f) of that Act were met,

and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger of a kind mentioned in section 431(2) of that Act which meets—

(i) conditions B to D in section 431,

(ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and

(iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,

and in relation to which one or more of the merging companies is a transparent entity.

(3) In this section "relevant derivative contracts transaction" means—

(a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 674(2)(c) or (3)(f) of that Act were met,

and in relation to which the transferor is a transparent entity, or

(b) a merger of a kind mentioned in section 682(2) of that Act which meets—

(i) conditions B to D in section 682,

(ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and

(iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,

and in relation to which one or more of the merging companies is a transparent entity.

(4) In this section "relevant intangible fixed assets transaction" means—

(a) a transfer—

(i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger—

(i) which is of a kind mentioned in section 821(2) of that Act,

(ii) which meets conditions B and C in section 821,

(iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,

(iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,

(v) in the course of which no qualifying assets are transferred to which section 818 of that Act (company reconstruction involving transfer of business) applies, and

(vi) in relation to which one or more of the merging companies is a transparent entity.

(5) In this section "relevant profit" means—

(a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,

(b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,

(c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,

(d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and

liabilities under the derivative contract by the transparent entity to another company in the course of the merger,

(e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent, and

(f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.

(6) In this section "transparent entity" means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

121 Tax treated as chargeable in respect of relevant transactions

(1) This Part applies, and any double taxation arrangements apply, as if the tax that would have been chargeable as mentioned in section 120(1) had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State mentioned in section 120(1), losses arising on the relevant transfer are set against profits arising on it, and

(b) that any relief available under that law is claimed.

(3) In this section "the relevant transfer" means—

(a) the transfer of assets or liabilities mentioned in section 120(5)(a) or (b),

(b) the transfer of rights and liabilities mentioned in section 120(5)(c) or (d), or

(c) the transfer of intangible fixed assets mentioned in section 120(5)(e) or (f).

Cross-border transfers and mergers: chargeable gains

122 Tax treated as chargeable in respect of gains on transfer of non-UK business

(1) Subsection (3) applies if—

(a) section 140C or 140F of TCGA 1992 applies, and

(b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.

(2) In this section—

"company A"—

(a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and

(b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,

"the host State" means the member State (other than the United Kingdom) mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,

"the transfer" means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and

"the transfer subsections" means—

(a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident "company" to one resident in another member State),

(b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident "company" to transferees including a "company" resident in another member State), and

(c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident "company" or co-operative society to one resident in another member State, as part of genuine merger of two or more "companies" or societies).

(3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.

(4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.

(5) For the purposes of subsection (4) "the required basis" is that—

(a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and

(b) any relief available to company A under the law of the host State has been duly claimed.

Interpretation of sections related to the Mergers Directive

123 Interpretation of sections 116 to 122

In sections 116 to 122 and this section—

"company" means any entity listed as a company in the Annex to the Mergers Directive,

"derivative contract" has the same meaning as in Part 7 of CTA 2009,

"intangible fixed assets" and "chargeable intangible assets", in relation to any person, have the same meaning as in Part 8 of CTA 2009,

"loan relationship" has the same meaning as in Part 5 of CTA 2009,

"the Mergers Directive" means Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different member States and to the transfer of the registered office, of an SE or SCE, between member States,

"proceeds of realisation", in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and

"recognised for tax purposes" has the same meaning as in Part 8 of CTA 2009.

Cases about being taxed otherwise than in accordance with double taxation arrangements

124 Giving effect to solutions to cases and mutual agreements resolving cases

(1) Subsections (2) and (4) apply if under, and for the purposes of, double taxation arrangements made in relation to a territory outside the United Kingdom—

(a) a person presents, to the Commissioners for Her Majesty's Revenue and Customs or to an authority in the territory, a case concerning the person's being taxed (whether in the United Kingdom or the territory) otherwise than in accordance with the arrangements, and

(b) the Commissioners arrive at a solution to the case or make a mutual agreement with an authority in the territory for the resolution of the case.

(2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(4) A claim for relief under any provision of—

(a) the Tax Acts,

(b) the enactments relating to capital gains tax, or

(c) the enactments relating to petroleum revenue tax,

may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the person affected, even if that involves making the claim after a deadline imposed by another enactment.

125 Effect of, and deadline for, presenting a case

(1) This section applies if double taxation arrangements include provision for a person to present a case—

(a) to the Commissioners for Her Majesty's Revenue and Customs, or

(b) to an officer of Revenue and Customs,

concerning the person's being taxed otherwise than in accordance with the arrangements.

(2) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and

(b) is accordingly not subject to section 42 of TMA 1970 or any other enactment relating to the making of such claims.

(3) Any such case must be presented before the end of—

(a) the period of 6 years following the end of the chargeable period to which the case relates, or

(b) such longer period as may be specified in the arrangements.

The Arbitration Convention

126 Meaning of "the Arbitration Convention"

In sections 127 and 128 "the Arbitration Convention" means the Convention, on the elimination of double taxation in connection with the adjustment of profits

of associated enterprises, concluded on 23 July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).

127 Giving effect to agreements, decisions and opinions under the Convention

(1) In this section "Convention determination" means—

(a) an agreement or decision, made under the Arbitration Convention by the Commissioners for Her Majesty's Revenue and Customs (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Arbitration Convention, on the elimination of double taxation.

(2) Subsection (3) applies if the Arbitration Convention requires the Commissioners to give effect to a Convention determination.

(3) The Commissioners are to give effect to the Convention determination despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(4) An adjustment under subsection (3) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(5) An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

128 Disclosure under the Convention

(1) The obligation as to secrecy imposed by any enactment does not prevent—

(a) the Commissioners for Her Majesty's Revenue and Customs, or

(b) any authorised Revenue and Customs official,

from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under the Convention.

(2) In this section "Revenue and Customs official" means any person who is or was—

(a) a Commissioner for Her Majesty's Revenue and Customs,

(b) an officer of Revenue and Customs,

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,

(d) a person acting on behalf of an officer of Revenue and Customs, or

(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

Disclosure of information

129 Disclosure where relief given overseas for tax paid in the United Kingdom

(1) Subsection (2) applies if the law of a territory outside the United Kingdom makes provision allowing, in respect of the payment of—

(a) income tax,
(b) corporation tax,
(c) capital gains tax, or
(d) petroleum revenue tax,

relief from tax payable under that law.

(2) The obligation as to secrecy imposed upon Revenue and Customs officials by—
(a) the Tax Acts,
(b) the enactments relating to capital gains tax, and
(c) the enactments relating to petroleum revenue tax,

does not prevent disclosure, to the authorised officer of the authorities of the territory, of such facts as may be necessary to enable the proper relief to be given under the law of the territory.

(3) The reference in subsection (1) to tax payable under the law of the territory includes only—
(a) taxes which are charged on income and which correspond to income tax,
(b) taxes which are charged on income or chargeable gains and which correspond to corporation tax,
(c) taxes which are charged on capital gains and which correspond to capital gains tax, and
(d) taxes which—
(i) are charged on amounts corresponding to amounts on which petroleum revenue tax is charged, and
(ii) correspond to petroleum revenue tax.

(4) For the purposes of subsection (3), tax may correspond to income tax, corporation tax, capital gains tax or petroleum revenue tax even though it—
(a) is payable under the law of a province, state or other part of a country, or
(b) is levied by or on behalf of a municipality or other local body.

(5) In this section "Revenue and Customs official" means any person who is or was—
(a) a Commissioner for Her Majesty's Revenue and Customs,
(b) an officer of Revenue and Customs,
(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
(d) a person acting on behalf of an officer of Revenue and Customs, or
(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

Interpretation of double taxation arrangements

130 Interpreting provision about UK taxation of profits of foreign enterprises

(1) Subsection (4) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).

(2) The provision is that the profits of an enterprise within subsection (3) are not to be subject to United Kingdom tax except so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.

(3) An enterprise is within this subsection if the enterprise—

(a) is resident outside the United Kingdom, or

(b) carries on a trade, or profession or business, the control or management of which is situated outside the United Kingdom.

(4) The provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(5) Subsection (4)—

(a) does not apply in relation to income of a person resident in the United Kingdom if section 858 of ITTOIA 2005 (UK resident partner is taxable on share of firm's income despite any double taxation arrangements) applies to the income, and

(b) does not apply in relation to income of a company resident in the United Kingdom if section 1266(2) of CTA 2009 (UK resident company that is partner in a firm is taxable on share of firm's income despite any double taxation arrangements) applies to the income.

(6) A person is resident in the United Kingdom for the purposes of this section if the person is resident in the United Kingdom for the purposes of the double taxation arrangements.

131 Interpreting provision about interest influenced by special relationship

(1) Subsections (3) and (6) apply if double taxation arrangements—

(a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

(b) contain a special relationship rule.

(2) A "special relationship rule" is provision that—

(a) applies if the amount of the interest paid is, because of a special relationship, greater than the amount ("the ordinary amount") that would have been paid in the absence of the relationship, and

(b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.

(3) The special relationship rule is to be read as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship,

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest, and the other terms, which would have been agreed in the absence of the special relationship.

(4) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the debt on which interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).

(5) If—

(a) a company ("L") makes a loan to another company with which it has a special relationship, and

(b) it is not part of L's business to make loans generally,

the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (3).

(6) The special relationship rule is to be read as requiring the taxpayer—

(a) to show that there is no special relationship, or

(b) if there is a special relationship, to show the amount of interest that would have been paid in the absence of the relationship.

132 Interpreting provision about royalties influenced by special relationship

(1) Subsection (3) and section 133 apply if double taxation arrangements—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) contain a special relationship rule.

(2) A "special relationship rule" is provision that—

(a) applies if the amount of the royalties paid is, because of a special relationship, greater than the amount ("the ordinary amount") that would have been paid in the absence of the relationship, and

(b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.

(3) The special relationship rule is to be read as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the special relationship,

(b) the rate or amounts of royalties, and the other terms, which would have been agreed in the absence of the special relationship, and

(c) if subsection (4) applies, the factors specified in subsection (5).

(4) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person ("PR") who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of PR,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by PR, or

(d) a person who is, or has at any time been, an associate of a person within paragraph (c).

(5) The factors mentioned in subsection (3)(c) are—

(a) the amounts which were paid under the transaction, or under each of the transactions in a series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been paid under that transaction, or under each of those transactions, in the absence of a special relationship, and

(c) the question whether the transaction, or series of transactions, would have taken place in the absence of a special relationship.

(6) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(7) For the purposes of this section, a person ("A") is an associate of another person ("B") at a given time if—

(a) A was directly or indirectly participating in the management, control or capital of B at that time, or

(b) the same person was, or the same persons were, directly or indirectly participating in the management, control or capital of A and B at that time.

(8) For the interpretation of subsection (7), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (7) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

133 Special relationship rule for royalties: matters to be shown by taxpayer

(1) If this section applies (as to which, see section 132(1)), the special relationship rule is to be read as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) as the case may be, the rate or amounts of royalties that would have been payable in the absence of the special relationship.

(2) The requirement under subsection (1)(a) includes whichever is applicable of the following requirements.

(3) The first of those requirements is—

(a) to show that no person of any of the descriptions in section 132(4)(a) to (d) has previously been the beneficial owner of the asset in respect of which the royalties are paid, and

(b) to show that no person of any of those descriptions has previously been the beneficial owner of any asset which that asset represents or from which it is derived.

(4) The second of those requirements is—

(a) to show that the transaction, or series of transactions, mentioned in section 132(5)(a) would have taken place in the absence of a special relationship, and

(b) to show the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of a special relationship.

Assessments

134 Correcting assessments where relief is available

(1) Subsections (5) and (6) apply if—

(a) under double taxation arrangements, relief may be given in the United Kingdom, or in the territory in relation to which the arrangements are made, in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(2) Subsections (5) and (6) also apply if—

(a) under unilateral relief arrangements for a territory outside the United Kingdom, relief may be given in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(3) Condition A is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is not made in respect of the full amount of the income or gain.

(4) Condition B is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is incorrect having regard to the credit, if any, to be given under the arrangements.

(5) Assessments may be made that are necessary to ensure—

(a) that the full amount of the income or gain is assessed, and

(b) that the proper credit, if any, is given.

(6) If the income is entrusted to any person in the United Kingdom for payment, an assessment under subsection (5) may be made on the recipient of the income.

(7) An officer of Revenue and Customs may make amendments—

(a) of assessments or determinations, or

(b) of decisions on claims,

that are necessary in consequence of Chapter 1 so far as it applies for petroleum revenue tax purposes.