HMRC - INTM286450 - Anti-Diversion Rule: Diverted Profits Gateway Approach: Example 3.

This applies for relevant accounting periods beginning on or after 1 January 2013.

Example 3

UK Parent Company is the head of a retail group with operations in the UK and overseas. It has a PE in Jersey which provides insurance services to the rest of the group. The insurance services are fully provided by the PE which has senior people with the expertise and experience to manage and carry out the underwriting and actuarial activities living and working in Jersey.

Therefore the business profits correctly attributable to Jersey PE under OECD model treaty principles consist of £50m in premiums arising from contracts of insurance with UK connected companies and £30m in premiums arising from contracts of insurance with non-UK connected companies.

UK Parent Company makes an election under CTA09/Part 2/CH3A/S18A to exempt the relevant profits amount of Jersey PE from UK CT.

Based on the assumption in S18A (6) (i.e. that the profits attributable to the Jersey PE should be calculated as if the OECD Model Treaty applied in calculating double taxation relief for UK CT purposes) the relevant profits amount is calculated as follows:-

However, S18A is subject to the remaining provisions of CTA09/Part 2/CH3A/, in particular the anti-diversion rule at S18H.

Section 18G excludes from the adjusted relevant profits amount any diverted profits as defined by S18H. S18H applies a modified version of the UK’s CFC Charge Gateway rules to PEs to determine whether any of the profits of the PE pass through the Diverted Profits Gateway and so are diverted profits.

Modified Chapter 4 of the CFC rules will not apply to the profits of Jersey PE as there are no UK significant people functions.

Modified Chapter 5 of the CFC rules will not apply to the profits of Jersey PE as there are no non-trading finance profits. Any profits arising from investments attributed to the Jersey PE will be trading finance profits because they rise from the insurance business undertaken by Jersey PE.

Chapter 6 of the CFC rules will not apply to the profits of Jersey PE as it has been found as a matter of fact that Jersey PE does not have excess free capital.

Modified Chapter 7 of the CFC Charge Gateway will apply to the £50m of premiums from UK connected companies (and any investment income that may arise from the investment of those premiums). This means £50m of profits are diverted profits under S18H and so are excluded from the adjusted relevant profits amount by virtue of S18G.

The adjusted relevant profits amount for Jersey PE is therefore £30m.

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