

*These notes refer to the Taxation (International and Other Provisions)
Act 2010 (c.8) which received Royal Assent on 18 March 2010*

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Transfer pricing

Chapter 8: Supplementary provisions and interpretation of Part

Overview

413. This Chapter contains provisions on various matters relating to the Part: application to unit trusts, transfer-pricing determinations requiring the sanction of the Commissioners for HMRC, determination of appeals, effects on capital allowances and chargeable gains, the manner of making adjustments and some definitions.

Section 207: Application of Part to unit trusts

414. This section explains how the transfer pricing rules in this Part are applied to unit trusts. It is based on paragraph 14(5) of Schedule 28AA to ICTA.

Section 208: The determinations which require the Commissioners' sanction

415. This section provides that certain determinations in transfer pricing cases require the sanction of the Commissioners for HMRC. It is based on section 110(1), (4) and (9) of FA 1998.

Section 209: Determinations exempt from requirement for Commissioners' sanction

416. This section sets out the circumstances in which a Commissioners' sanction under section 208 is not required. It is based on section 110(5) to (7) of FA 1998.

Section 210: The requirement for the Commissioners' sanction

417. This section applies certain rules where a transfer-pricing determination requires the Commissioners' sanction. It is based on section 110(1) to (3) of FA 1998.

418. If a transfer-pricing determination requires the Commissioners' sanction, the determination will be one made for the purposes of a notice or matter mentioned in section 208(3). This section applies when the notice, or notice of the matter, is given. If the determination (so far as relating to the notice or matter) has not been approved by the Commissioners or if the determination has been approved but the taxpayer is not informed that approval has been given, the notice or matter has the effect it would have if it had been prepared without taking account of the determination.

Section 211: Restriction of right to appeal against Commissioners' approval

419. This section provides that the Commissioners' approval of a determination for the purposes of section 210(2) or (4) may not be questioned on an appeal. It is based on section 110(8) of FA 1998.

Section 212: Appeals

420. This section provides rules relating to proceedings on appeals against matters relevant to this Part. It is based on paragraph 12 of Schedule 28AA to ICTA.

Section 213: Capital allowances

421. This section prevents the transfer pricing provisions from applying for the purposes of capital allowances and balancing charges. It is based on paragraph 13(1) and (2) of Schedule 28AA to ICTA.

Section 214: Chargeable gains

422. This section prevents the transfer pricing provisions from applying for the purposes of chargeable gains. TCGA has its own arm's length rule. It is based on paragraph 13(1) and (2) of Schedule 28AA to ICTA.

Section 215: Manner of making adjustments to give effect to Part

423. This section explains how adjustments under this Part are to be made. It is based on paragraphs 6C(8) and 14(4) of Schedule 28AA to ICTA.

Section 216: Meaning of "the relevant activities"

424. This section gives the meaning of "the relevant activities". It is based on paragraph 14(1) of Schedule 28AA to ICTA.

Section 217: Meaning of "control" and "firm"

425. This section gives the meaning of "control" and "firm" for the purposes of this Part and also applies a special meaning of "control" for applying the transfer pricing rules in relation to company oil sales. It is based on paragraphs 9 and 14(2) of Schedule 28AA to ICTA.
426. The definition of "control" is by reference to section 1124 of CTA 2010 which has rewritten section 840 of ICTA.
427. Under the definition of control for company oil sales, the oil producer, seller and buyer are connected persons for the purposes of the Part where the control threshold would not otherwise be met because the shareholding is insufficient. This allows the transfer pricing rules to apply where the oil-producing company is owned by a consortium.