



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 4

#### TRANSFER PRICING

### CHAPTER 3

#### EXEMPTIONS FROM BASIC RULE

#### **165 Exemption for dormant companies**

- (1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which meets the condition in subsection (2).
- (2) The condition is that—
  - (a) the company was dormant throughout the pre-qualifying period, and
  - (b) apart from section 147, the company has continued to be dormant at all times since the end of the pre-qualifying period.
- (3) In subsection (2) “the pre-qualifying period” means—
  - (a) if there is an accounting period of the company that ends on 31 March 2004, that accounting period, or
  - (b) if there is no such accounting period, the period of 3 months ending with that date.
- (4) In this section “dormant” has the meaning given by section 1169 of the Companies Act 2006.

**166 Exemption for small and medium-sized enterprises**

- (1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see section 172).
- (2) Exceptions to subsection (1) are provided—
  - (a) in the case of a small enterprise, by section 167, and
  - (b) in the case of a medium-sized enterprise, by sections 167 and 168.

**167 Small and medium-sized enterprises: exceptions from exemption**

- (1) Subsections (2) and (3) set out exceptions to section 166(1).
- (2) The first exception is if the small or medium-sized enterprise elects for section 166(1) not to apply in relation to the chargeable period.  
Any such election is irrevocable.
- (3) The second exception is if—
  - (a) the other affected person, or
  - (b) a party to a relevant transaction,
 is, at the time when the actual provision is or was made or imposed, a resident of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).
- (4) For the purposes of subsection (3)—
  - (a) a “party to a relevant transaction” is a person who, if the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions, and
  - (b) “qualifying territory” and “non-qualifying territory” are defined in section 173.
- (5) In subsection (3) “resident”, in relation to a territory—
  - (a) means a person who, under the law of that territory, is liable to tax there by reason of the person’s domicile, residence or place of management, but
  - (b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

**168 Medium-sized enterprises: exception from exemption: transfer pricing notice**

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—
  - (a) the potentially advantaged person is a medium-sized enterprise for the chargeable period, and
  - (b) the Commissioners for Her Majesty’s Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.

**169 Giving of transfer pricing notices**

- (1) This section applies to a transfer pricing notice given to a person.

- (2) The notice may be given in relation to—
  - (a) any provision specified, or of a description specified, in the notice, or
  - (b) every provision in relation to which one or other of the assumptions in section 147(3) and (5) would, apart from section 166(1), be required to be made when calculating the person's profits and losses for tax purposes.
- (3) The notice may be given only after a notice of enquiry has been given to the person in relation to the person's tax return for the chargeable period concerned.
- (4) The notice must identify the officer of Revenue and Customs to whom any notice of appeal under section 170 is to be given.
- (5) In subsection (3) "notice of enquiry" means a notice under—
  - (a) section 9A or 12AC of TMA 1970, or
  - (b) paragraph 24 of Schedule 18 to FA 1998.

### **170 Appeals against transfer pricing notices**

- (1) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only on the ground that the condition in section 168(1)(a) is not met.
- (2) Any such appeal must be brought by giving written notice of appeal to the officer of Revenue and Customs identified in the notice in accordance with section 169(4).
- (3) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

### **171 Tax returns where transfer pricing notice given**

- (1) If a transfer pricing notice is given to a person ("T"), T may amend T's tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—
  - (a) the day on which the notice is given, or
  - (b) if T appeals under section 170 against the decision to give the notice, the day on which the appeal is finally determined or abandoned.
- (2) If a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—
  - (a) the end of the period of 90 days specified in subsection (1), or
  - (b) the earlier amendment of the tax return for the purpose of complying with the notice.
- (3) So far as relating to any provision made or imposed by or in relation to a person—
  - (a) who is a medium-sized enterprise for a chargeable period,
  - (b) who does not make an election under section 167(2) for that period, and
  - (c) who is not excepted from section 166(1) in relation to that provision for that period because of section 167(3),the tax return required to be made for that period is a return that disregards section 147(3) and (5).

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

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- (4) Subsection (3) does not prevent a tax return for a period becoming incorrect if in the case of any provision made or imposed—
- (a) a transfer pricing notice is given which has effect in relation to that provision for that period,
  - (b) the return is not amended in accordance with subsection (1) for the purpose of complying with the notice, and
  - (c) the return ought to have been so amended.
- (5) In this section—
- “closure notice” means a notice under—
- (a) section 28A or 28B of TMA 1970, or
  - (b) paragraph 32 of Schedule 18 to FA 1998,
- “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule, and
- “tax return” means—
- (a) a return under section 8, 8A or 12AA of TMA 1970, or
  - (b) a company tax return.

## **172 Meaning of “small enterprise” and “medium-sized enterprise”**

- (1) In this Chapter—
- (a) “small enterprise” means a small enterprise as defined in the Annex, and
  - (b) “medium-sized enterprise” means an enterprise which—
    - (i) falls within the category of micro, small and medium-sized enterprises as defined in the Annex, and
    - (ii) is not a small enterprise as defined in the Annex.
- (2) For the purposes of subsection (1), the Annex has effect with the modifications set out in subsections (4) to (7).
- (3) In this section “the Annex” means the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (concerning the definition of micro, small and medium-sized businesses).
- (4) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Part whether—
- (a) that enterprise, or
  - (b) any other enterprise (including that of the liquidator or administrator),
- is a small or medium-sized enterprise.
- (5) Article 3 of the Annex has effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).
- (6) The first sentence of Article 4(1) of the Annex has effect as if the data to apply to—
- (a) the headcount of staff, and
  - (b) the financial amounts,
- were the data relating to the chargeable period referred to in section 166(1) (instead of the period described in that sentence) and calculated on an annual basis.

- (7) Article 4 of the Annex has effect with the omission of the following provisions—
- (a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts),
  - (b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods), and
  - (c) paragraph 3 (genuine estimate in case of newly established enterprise).

### **173 Meaning of “qualifying territory” and “non-qualifying territory”**

- (1) In section 167(3)—
- “non-qualifying territory” means any territory which is not a qualifying territory, and
  - “qualifying territory” means—
    - (a) the United Kingdom, or
    - (b) any territory in relation to which condition A or condition B is met.
- (2) Condition A is that—
- (a) double taxation arrangements have been made in relation to the territory,
  - (b) the arrangements include a non-discrimination provision, and
  - (c) the territory is not designated as a non-qualifying territory for the purposes of this subsection in regulations made by the Treasury.
- (3) Condition B is that—
- (a) double taxation arrangements have been made in relation to the territory, and
  - (b) the territory is designated as a qualifying territory for the purposes of this subsection in regulations made by the Treasury.
- (4) For the purposes of subsection (2)(b) a “non-discrimination provision”, in relation to any double taxation arrangements, is a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—
- (a) any taxation, or
  - (b) any requirement connected with taxation,
- which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.
- (5) In subsection (4) “national”, in relation to a state, includes—
- (a) any individual possessing the nationality or citizenship of the state, and
  - (b) any legal person, partnership or association deriving its status as such from the law in force in that state.
- (6) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).
- (7) Regulations under this section may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.