



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 4

TRANSFER PRICING

CHAPTER 8

SUPPLEMENTARY PROVISIONS AND INTERPRETATION OF PART

Unit trusts

207 Application of Part to unit trusts

- (1) This Part has effect as follows.
- (2) As if a unit trust scheme were a company that is a body corporate.
- (3) As if the rights of the unit holders under a unit trust scheme were shares in the company that the scheme is deemed to be.
- (4) As if rights and powers of a person in the capacity of a person entitled to act for the purposes of a unit trust scheme were rights and powers of the scheme.
- (5) As if provision made or imposed as between—
 - (a) a person in the capacity of a person entitled to act for the purposes of a unit trust scheme, and
 - (b) another person,were made or imposed as between the scheme and that other person.

Status: This is the original version (as it was originally enacted).

Determinations requiring Commissioners' sanction

208 The determinations which require the Commissioners' sanction

- (1) A determination requires the Commissioners' sanction if it—
 - (a) is a transfer-pricing determination made for any of the specified purposes, and
 - (b) is not excepted by section 209 from the requirement for the Commissioners' sanction.
- (2) In subsection (1) “transfer-pricing determination” means a determination of an amount to be brought into account for tax purposes in respect of any assumption made under section 147(3) or (5).
- (3) For the purposes of subsection (1), each of the following is a specified purpose—
 - (a) the giving of a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,
 - (b) the giving of a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,
 - (c) the giving of a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,
 - (d) the giving of a notice under section 30B(1) of TMA 1970 amending a partnership return,
 - (e) the making of an assessment under section 29 of TMA 1970,
 - (f) the making of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), and
 - (g) the making of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

209 Determinations exempt from requirement for Commissioners' sanction

- (1) A transfer-pricing determination made for a purpose specified in section 208(3) (“the specified purpose”) does not require the Commissioners' sanction if—
 - (a) an agreement about the matters to which the determination relates has been made between an officer and the person in whose case the determination is made,
 - (b) the agreement is in force at the relevant time, and
 - (c) the matters to which the agreement relates include the amount determined by the transfer-pricing determination.
- (2) For the purposes of subsection (1)(b)—
 - (a) if the specified purpose is within section 208(3)(a) to (d), “the relevant time” is when the notice is given,
 - (b) if the specified purpose is within section 208(3)(e) or (f), “the relevant time” is when any notice of the assessment is given, and
 - (c) if the specified purpose is within section 208(3)(g), “the relevant time” is when any notice of the discovery determination is given.

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- (3) For the purposes of subsection (1)(b), an agreement made between an officer and any person in relation to any matter is “in force” at any time if (and only if)—
- (a) the agreement is one that has been made or confirmed in writing,
 - (b) that time is after the end of the cooling-off period, and
 - (c) the person has not, before the end of the cooling-off period, served a notice on an officer stating that the person is repudiating or resiling from the agreement.
- (4) In subsection (3) “the cooling-off period” means—
- (a) if the agreement is made in writing, the 30 days beginning with the day when the agreement is made, and
 - (b) in any other case, the 30 days beginning with the day when the agreement is confirmed in writing.
- (5) For the purposes of subsections (3) and (4), an agreement made between an officer and any person is “confirmed in writing” if an officer serves on the person a notice in writing—
- (a) stating that the agreement has been made, and
 - (b) setting out the terms of the agreement.
- (6) In this section—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
 - “officer” means officer of Revenue and Customs, and
 - “transfer-pricing determination” has the meaning given by section 208(2).

210 The requirement for the Commissioners’ sanction

- (1) Subsection (2) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(a) to (d) if, under section 208(1), the determination requires the Commissioners’ sanction.
- (2) If the closure notice, or notice under section 30B(1) of TMA 1970, is given to a person—
- (a) without the determination, so far as it is taken into account in the notice, having been approved by the Commissioners, or
 - (b) without a copy of the Commissioners’ approval having been served on the person at or before the time when the notice is given to the person,
- the notice has effect as if given in the terms (if any) in which it would have been given had the determination not been taken into account.
- (3) Subsection (4) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(e) to (g) if, under section 208(1), the transfer-pricing determination requires the Commissioners’ sanction.
- (4) If notice of the assessment, or notice of the discovery determination, is given to a person—
- (a) without the transfer-pricing determination, so far as it is taken into account in the assessment or discovery determination, having been approved by the Commissioners, or
 - (b) without a copy of the Commissioners’ approval having been served on the person at or before the time when the notice is given to the person,

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the assessment or discovery determination has effect as if made (and notified) in the terms (if any) in which it would have been made had the transfer-pricing determination not been taken into account.

- (5) For the purposes of subsections (2) and (4), the Commissioners' approval of a transfer-pricing determination requiring their sanction—
- (a) must be given specifically in relation to the case concerned and must apply to the amount determined, but
 - (b) subject to that, may be given by the Commissioners (either before or after the determination is made) in any such form or manner as the Commissioners may determine.
- (6) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

211 Restriction of right to appeal against Commissioners' approval

- (1) In subsection (2)—
- “appeal” means an appeal by virtue of any provision of—
 - (a) TMA 1970, or
 - (b) Schedule 18 to FA 1998 (company tax returns and related matters), and
 “approved determination” means a determination that, for the purposes of section 210(2) or (4), has been approved by the Commissioners.
- (2) The matters that may be questioned on so much of an appeal as relates to an approved determination do not include the Commissioners' approval.
- (3) Subsection (2) does not apply so far as the grounds for questioning the approval are the same as the grounds for questioning the determination.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

Appeals

212 Appeals

- (1) The appeals within this subsection are—
- (a) an appeal under section 31 of, or Schedule 1A to, TMA 1970,
 - (b) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company's return, and
 - (c) an appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.
- (2) Subsection (3) applies so far as the question in dispute on an appeal within subsection (1)—
- (a) is or involves a determination of whether this Part has effect, and
 - (b) relates to any provision made or imposed as between two persons each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (3) If this subsection applies—

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- (a) each of the persons as between whom the actual provision was made or imposed is entitled to be a party in any proceedings,
- (b) the tribunal is to determine the question separately from any other question in the proceedings, and
- (c) the tribunal's determination on the question has effect as if made in an appeal to which each of those persons was a party.

(4) In subsection (1)(c)—

“discovery assessment” means a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), and

“discovery determination” means a discovery determination under paragraph 41 of that Schedule.

Effect of Part on capital allowances and chargeable gains

213 Capital allowances

- (1) Nothing in this Part is to be read as affecting the calculation of the amount of any capital allowance or balancing charge made under CAA 2001.
- (2) Subsection (1) does not apply in relation to claims under section 174.

214 Chargeable gains

- (1) Nothing in this Part is to be read as affecting the calculation in accordance with TCGA 1992 of the amount of any chargeable gain or allowable loss.
- (2) Nothing in this Part requires the profits and losses of any person to be calculated for tax purposes as if, in the person's case, instead of income or losses to be brought into account in connection with the taxation of income, there were gains or losses to be brought into account in accordance with TCGA 1992.
- (3) Subsections (1) and (2) do not apply in relation to claims under section 174.

Adjustments

215 Manner of making adjustments to give effect to Part

Any adjustments required to be made under this Part may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

Definitions

216 Meaning of “the relevant activities”

- (1) In this Part “the relevant activities”, in relation to a person (“A”) who is one of the persons as between whom any provision is made or imposed, means activities that—
 - (a) are within subsection (2), and
 - (b) are not within subsection (3).

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- (2) The activities within this subsection are those of A’s activities that comprise the activities in the course of which, or with respect to which, that provision is made or imposed.
- (3) The activities within this subsection are any of A’s activities carried on—
 - (a) separately from the activities mentioned in subsection (2), or
 - (b) for the purposes of a different part of A’s business.

217 Meaning of “control” and “firm”

- (1) References in this Part to a person controlling a body corporate or firm are to be read in accordance with section 1124 of CTA 2010.
- (2) Subsection (1) has effect subject to subsection (4) and section 205(2).
- (3) Subsection (4) applies if—
 - (a) the actual provision is made or imposed by or in relation to a sale of oil,
 - (b) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company (“the producer”) which, although it may be the seller, is not the buyer, and
 - (c) at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier, at least 20% of the producer’s ordinary share capital is owned directly or indirectly by one or more of the buyer and the companies (if any) that are linked to the buyer.
- (4) If this subsection applies, this Part has effect in relation to the actual provision as if—
 - (a) the buyer and the seller, and
 - (b) the producer, if it is not the seller,
 were all controlled by the same person at the time of the making or imposition of the actual provision.
- (5) For the purposes of subsection (3)(c), two companies are “linked” if—
 - (a) one is under the control of the other, or
 - (b) both are under the control of the same person or persons.
- (6) For the purposes of subsection (3)—
 - (a) any question whether ordinary share capital is owned directly or indirectly by a company is to be decided as for Chapter 3 of Part 24 of CTA 2010, and
 - (b) rights to extract oil are to be taken to be exercisable by a company even if they are exercisable by that company only jointly with another company or two or more other companies.
- (7) In this section “oil” includes any mineral oil or relative hydrocarbon oil, as well as natural gas.
- (8) In this Part persons carrying on a trade, profession or other business in partnership are referred to collectively as a “firm”.