



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 4

TRANSFER PRICING

CHAPTER 1

BASIC TRANSFER-PRICING RULE

147 Tax calculations to be based on arm's length, not actual, provision

- (1) For the purposes of this section “the basic pre-condition” is that—
 - (a) provision (“the actual provision”) has been made or imposed as between any two persons (“the affected persons”) by means of a transaction or series of transactions,
 - (b) the participation condition is met (see section 148),
 - (c) the actual provision is not within subsection (7) (oil transactions), and
 - (d) the actual provision differs from the provision (“the arm's length provision”) which would have been made as between independent enterprises.
- (2) Subsection (3) applies if—
 - (a) the basic pre-condition is met, and
 - (b) the actual provision confers a potential advantage in relation to United Kingdom taxation on one of the affected persons.
- (3) The profits and losses of the potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.
- (4) Subsection (5) applies if—

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 147. (See end of Document for details)

- (a) the basic pre-condition is met, and
 - (b) the actual provision confers a potential advantage in relation to United Kingdom taxation (whether or not the same advantage) on each of the affected persons.
- (5) The profits and losses of each of the affected persons are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.
- (6) Subsections (3) and (5) have effect subject to—
- (a) section 165 (exemption for dormant companies),
 - (b) section 166 (exemption for small and medium-sized enterprises),
 - [^{F1}(ba) section 206A (modification of basic rule where allowances restricted for certain oil-related expenditure),]
 - (c) section 213 (this Part generally does not affect calculation of capital allowances),
 - (d) section 214 (this Part generally does not affect calculation of chargeable gains),
 - (e) section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), ^{F2}...
 - (f) section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for) [^{F3}, and
 - (g) section 938N of CTA 2010 (this Part treated as of no effect for the purposes of Part 21B of CTA 2010 (group mismatch schemes)).]
- (7) The actual provision is within this subsection if it is made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of sections 225F to 225J of ITTOIA 2005 or any of sections 281 to 285 of CTA 2010 (transactions and deemed transactions involving oil treated as made at market value).

Textual Amendments

- F1** S. 147(6)(ba) inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 32 para. 13](#)
- F2** Word in s. 147(6)(e) omitted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(1\)](#)
- F3** S. 147(6)(g) and word inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 147.