

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Sections 293 & 294: Controlled Foreign Companies: Qualifying Loan Relationships

Details of the Sections

Section 294

14. Subsection 1 amends subsection 371IH(10)(c) (exclusions from the definition of qualifying loan relationships), replacing the phrase “wholly or mainly used” with “used to any extent (other than a negligible one)”. This sub-section provides that a loan cannot be a qualifying loan relationship where it is used to repay third party debt of a non-UK resident group company and that debt is effectively replaced with new UK debt, as part of an arrangement where one of the main purposes is to obtain a tax advantage for any person. The rule is directed at arrangements that give rise to an increase in debt in the UK whether provided by a UK third party or by a non-UK resident person.
15. In modifying the wording to say “...the relevant loan is *used to any extent (other than a negligible one)* to repay wholly or partly another loan...” it will apply in circumstances where there is a larger intra-group loan, so that the element that is applied to repay the external debt of the non-UK resident group company is a minority of the total amount of the loan.
16. Subsections 2 to 5 provide for commencement. Subsection 2 states that the amendments to section 371IH(10)(c) will have effect for accounting periods of CFCs beginning on or after 5 December 2013.
17. Subsection 3 stipulates that the modified section 371IH(10)(c) will also apply to accounting periods of the CFC which begin before 5 December 2013, but end on or after that date. Such an accounting period is termed “the straddling period”. Sections 3, 4 and 5 apply the amended section 371IH(10)(c) to such periods, so as to exclude the profits arising after 5 December 2013 from the qualifying loan relationship profits of the CFC.
18. Subsection 4(a) provides that any apportionment for qualifying loan relationship profits of accounting periods which straddle 5 December 2013 should be made in accordance with section 1172 of CTA 2010 (an apportionment on a time basis). Where a time basis apportionment produces a result that is unjust or unreasonable, subsection 4(b) provides for apportionment on a just and reasonable basis.
19. Subsection 5 specifies that the profits from the qualifying loan relationships apportioned to the period falling on or after 5 December 2013 are to be excluded from the CFC’s qualifying loan relationship profits.