

SCHEDULES

SCHEDULE 8

CORPORATE INTEREST RESTRICTION

PART 1

AMENDMENTS OF PART 10 OF TIOPA 2010

Introductory

- 1 Part 10 of TIOPA 2010 (corporate interest restriction) is amended as follows.

Hedging of tax-interest expense amounts or tax-interest income amounts etc

- 2 (1) Section 384 (relevant derivative contract debits) is amended as follows.
- (2) In subsection (3), for paragraph (c) substitute—
- “*(c)* it is in respect of a risk arising in the ordinary course of a trade (other than a risk arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group).”
- (3) After subsection (3) insert—
- “*(3A)* For the purposes of subsection (3)(c) a debit is in respect of a risk arising in the ordinary course of “a financial trade” only so far as the risk relates to an amount which is or is likely to be—
- (a) a tax-interest expense amount, or
- (b) a tax-interest income amount,
- of the company in any relevant accounting period.”
- 3 (1) Section 387 (relevant derivative contract credits) is amended as follows.
- (2) In subsection (3), for paragraph (c) substitute—
- “*(c)* it is in respect of a risk arising in the ordinary course of a trade (other than a risk arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group).”
- (3) After subsection (3) insert—
- “*(3A)* For the purposes of subsection (3)(c) a credit is in respect of a risk arising in the ordinary course of “a financial trade” only so far as the risk relates to an amount which is or is likely to be—

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- (a) a tax-interest expense amount, or
 - (b) a tax-interest income amount,
 - of the company in any relevant accounting period.”
- 4 (1) Section 411 (“relevant expense amount” and “relevant income amount”) is amended as follows.
- (2) In subsection (1)(e), for sub-paragraph (iii) substitute—
- “(iii) losses in respect of risks arising in the ordinary course of a trade (other than risks arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group);”.
- (3) In subsection (2)(d), for sub-paragraph (iii) substitute—
- “(iii) gains in respect of risks arising in the ordinary course of a trade (other than risks arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group);”.
- 5 In section 412 (section 411: interpretation), after subsection (3) insert—
- “(3A) For the purposes of section 411(1)(e)(iii) and (2)(d)(iii) losses or gains are in respect of risks arising in the ordinary course of “a financial trade” only so far as the risks relate to amounts which are or are likely to be—
- (a) relevant expense amounts, or
 - (b) relevant income amounts,
- of the worldwide group for any period of account.”

Group ratio: leaving R&D expenditure credits out of account

- 6 In section 416 (meaning of “the group-EBITDA”), after subsection (2) insert—
- “(2A) An amount is not to be taken into account in calculating a worldwide group’s profit before tax for the purposes of subsection (2) if it is, or relates to, an R&D expenditure credit within the meaning of section 104A of CTA 2009.”

Public infrastructure

- 7 (1) Section 433 (meaning of “qualifying infrastructure company”) is amended as follows.
- (2) In subsection (1)(c), for “(see subsection (11))” substitute “(see subsections (11) and (12))”.
- (3) In subsection (11)(a), for “activity that the company carries on” substitute “source of income that the company has”.
- (4) After subsection (11) insert—
- “(12) In determining whether the condition in subsection (11)(a) is met in the case of a company not resident in the United Kingdom in an accounting

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period, a source of income of the company is ignored if, having regard to all the circumstances, it is reasonable to regard as insignificant the amount of income arising in the accounting period from the source.”

- 8 (1) Section 434 (elections under section 433) is amended as follows.
- (2) In subsection (1)(a), for “the beginning” substitute “the end”.
- (3) In subsection (5), after paragraph (a) (but before the “and” at the end of it) insert—
- “(ab) the time of the transfer falls in a period of account of a worldwide group of which both the transferor and transferee are members,”.
- 9 (1) Section 436 (meaning of “qualifying infrastructure activity”) is amended as follows.
- (2) In subsection (2)(d), for “(see subsection (10))” substitute “(see subsections (10) and (10A))”.
- (3) After subsection (10) insert—
- “(10A) In determining whether the condition in subsection (10)(b) is met in relation to a company not resident in the United Kingdom at any time, a source of income of the company is ignored if, having regard to all the circumstances, it is reasonable to regard as insignificant the amount of income arising from the source for the accounting period including that time.”
- 10 In section 443 (interest capacity for group with qualifying infrastructure company etc), for subsection (2) substitute—
- “(2) There is an exception to the general rule (see subsections (4) and (5)) which—
- (a) applies if no tax-interest income amounts of any qualifying infrastructure company (“Q”) which is a member of the group for the period are receivable from another qualifying infrastructure company which is not a member of the group for the period but is a related party of Q at any time in that period, and
- (b) depends on the comparison set out in subsection (3),
- and, for the purposes of paragraph (a), tax-interest income amounts are to be ignored if, having regard to all the circumstances, it is reasonable to regard the amounts as insignificant.”
- 11 In section 444 (joint venture companies), in subsection (1), after “a qualifying infrastructure company (“the joint venture company”)” insert “which is the ultimate parent of a worldwide group at all times in that period”.

Identifying members of a worldwide group

- 12 After section 454 insert—

“Investment managers

454A Investments held by investment managers

- (1) This section applies where—

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- (a) an entity (“S”) is a member of a worldwide group as a result of one or more other members of the group managing S and holding rights or interests in relation to S,
 - (b) the entity managing S does so in the ordinary course of carrying on a business of providing investment management services, and
 - (c) the management of S is not coordinated to any extent with the management by any person of any other entity.
 - (2) For the purposes of this Part—
 - (a) the group does not include entities that are subsidiaries of S, and
 - (b) accordingly, none of those entities is regarded as a consolidated subsidiary of any member of the group.
 - (3) In this section “subsidiary” has the meaning given by international accounting standards.”
- 13 (1) Section 475 (meaning of “non-consolidated subsidiary” and “consolidated subsidiary”) is amended as follows.
- (2) In subsection (1)(b), at the end insert “or on the basis that X were an asset held for sale or held for distribution to owners”.
- (3) For subsection (3) substitute—
- “(3) In this section each of the following expressions has the meaning given by international accounting standards—
- “held for distribution to owners”
- “held for sale”
- “subsidiary”.”

Interest restriction returns

- 14 (1) Paragraph 9 of Schedule 7A (extended period for submission of full return in place of abbreviated return) is amended as follows.
- (2) In sub-paragraph (1)(a), omit “abbreviated”.
- (3) In sub-paragraph (2)—
- (a) for “a full interest restriction return” substitute “an interest restriction return”, and
 - (b) after “paragraph 8” insert “which is a full interest restriction return”.
- (4) In the italic heading before that paragraph, for “in place of abbreviated return” substitute “for period where no restriction”.
- 15 (1) Paragraph 70 of Schedule 7A (cases where company treated as amending return) is amended as follows.
- (2) In sub-paragraph (1), for “is treated as having amended” substitute “must amend”.
- (3) After that sub-paragraph insert—
- “(1A) The amendment must be made before whichever is the later of—
- (a) the end of the period of 3 months beginning with the day on which the interest restriction return was submitted, or

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(b) the time limit given by paragraph 15(4) of Schedule 18 to FA 1998.”

(4) For the italic heading before that paragraph substitute “Other cases where company must amend its return etc”.

16 After paragraph 70 of Schedule 7A insert—

“Failure to comply with a requirement to amend company tax return

70A (1) This paragraph applies if a company—

- (a) is required, as a result of paragraph 69(2), (3) or (6) or 70(1), to make an amendment of its company tax return for an accounting period, and
- (b) has failed to make the required amendment by the amendment deadline.

(2) The company is liable to a penalty of £500.

(3) At any time before the end of the period of 12 months beginning with the amendment deadline, an officer of Revenue and Customs may, to the best of the officer’s information and belief, make the required amendments of the company tax return.

(4) If an officer of Revenue and Customs amends the company tax return under sub-paragraph (3), the company may amend the return so as to correct the amendments made by the officer.

(5) An amendment under sub-paragraph (4) must be made before the end of the period of 3 months beginning with the day on which the officer amends the return under sub-paragraph (3) (and the time limit for amending a company tax return given by paragraph 15(4) of Schedule 18 to FA 1998 is subject to this sub-paragraph).

(6) Paragraph 29(3) to (7) apply in relation to a penalty under this paragraph as they apply in relation to a penalty under paragraph 29 but as if the reference in paragraph 29(4) to the filing date were to the amendment deadline.

(7) In this paragraph “the amendment deadline” means the end of the period for the making of the amendment given by paragraph 69(2), (4) or (6) or 70(1A).”

17 (1) Paragraph 71 of Schedule 7A (regulations for purposes of paragraph 70 etc) is amended as follows.

(2) In sub-paragraph (1)(a), for “paragraph 70” substitute “paragraph 70(2)”.

(3) In the italic heading before that paragraph, for “paragraph 70” substitute “paragraph 70(2)”.

Other amendments

18 In section 378 (disallowed tax-interest expense amounts carried forward), in subsections (3) and (6), omit “the later accounting period or”.

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- 19 In section 393(5)(a) (amount of interest allowance for a period that is “available” in a later period), for “is made” substitute “has effect”.
- 20 (1) Section 411 (meaning of “relevant expense amount” and “relevant income amount”) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), after “loan relationship” insert “or related transaction”, and
 - (b) in paragraph (h), after “debt factoring” insert “or any similar transaction”.
- (3) In subsection (2)(f), after “debt factoring” insert “or any similar transaction”.
- 21 (1) Section 412 (section 411: interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words, after “a loan relationship” insert “or related transaction”,
 - (b) after paragraph (a) insert—
 - “(ab) in entering into or giving effect to, or attempting to enter into or give effect to, the related transaction,”,
 - (c) in paragraph (b), after “the loan relationship” insert “or as a result of the related transaction”, and
 - (d) in paragraph (c), after “the loan relationship” insert “or in accordance with the related transaction”.
- (3) In subsection (6)—
- (a) in paragraph (a), for “(1)(c)” substitute “(1)(b) and (c)”, and
 - (b) in paragraph (b), for “(1)(e)” substitute “(1)(e) and (f)”.

Commencement

- 22 (1) The amendments made by paragraphs 2 to 5, 10 and 13 have effect in relation to periods of account of worldwide groups that begin on or after 1 January 2018.
- (2) The following provisions apply if—
- (a) financial statements of a worldwide group are drawn up by or on behalf of the ultimate parent in respect of a period that begins before, and ends on or after, 1 January 2018,
 - (b) the period in respect of which the financial statements are drawn up is 18 months or less, and
 - (c) the financial statements are drawn up before the end of the period of 30 months beginning with the period in respect of which they are drawn up.
- (3) In this paragraph—
- (a) “the group’s actual financial statements” means the financial statements mentioned in sub-paragraph (2), and
 - (b) “the straddling period of account” means the period in respect of which those financial statements are drawn up.
- (4) For the purposes of Part 10 of TIOPA 2010, the group’s actual financial statements are treated as not having been drawn up.
- (5) Instead, financial statements of the worldwide group are treated for those purposes as having been drawn up in respect of each of the following periods—

- (a) the period beginning at the time the straddling period of account begins and ending with 31 December 2017, and
 - (b) the period beginning with 1 January 2018 and ending at the time the straddling period of account ends.
 - (6) If condition C or D in section 481 of TIOPA 2010 is met in relation to the group's actual financial statements, the financial statements treated as drawn up by sub-paragraph (5) are treated as drawn up in accordance with the generally accepted accounting principles and practice with which the group's actual financial statements were drawn up.
 - (7) If neither of those conditions is met in relation to the group's actual financial statements, the financial statements treated as drawn up by sub-paragraph (5) are IAS financial statements.
 - (8) If, for the purpose of determining amounts recognised in the financial statements treated as drawn up by sub-paragraph (5), it is expedient to apportion any amount that is recognised in the group's actual financial statements, the apportionment is to be made in accordance with section 1172 of CTA 2010 (apportionment on a time basis).
 - (9) But if it appears that apportionment in accordance with that section would work unjustly or unreasonably, the apportionment is to be made on a just and reasonable basis.
 - (10) Expressions used in this paragraph and in Part 10 of TIOPA 2010 have the same meaning in this paragraph as they have in that Part.
- 23 (1) Part 10 of TIOPA 2010 has effect, and is to be deemed always to have had effect, with the amendments set out in paragraphs 6 to 9, 12 and 18 to 21.
- (2) But, in the case of the amendment set out in paragraph 6 or 12, the reporting company of the worldwide group for any period of account beginning before 1 January 2018 may make an election for the amendment to have no effect in relation to the period of account.
- (3) Paragraph 12 of Schedule 7A to TIOPA 2010 applies to an election under sub-paragraph (2).
- (4) Expressions used in this paragraph and in Part 10 of TIOPA 2010 have the same meaning in this paragraph as they have in that Part.
- 24 The amendment made by paragraph 11 has effect in relation to accounting periods beginning on or after 1 January 2018.
- 25 The amendments made by paragraph 15 have effect in relation to interest restriction returns whenever submitted.
- 26 The amendment made by paragraph 16 does not have effect in relation to any case where a company tax return is amended before the day on which this Act is passed.