



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 7

#### TAX TREATMENT OF FINANCING COSTS AND INCOME

### CHAPTER 10

#### OTHER INTERPRETATIVE [F1] AND SUPPLEMENTARY PROVISIONS]

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#### Textual Amendments

- F1** Words in Pt. 7 Ch. 10 heading substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 29, 36\(1\)](#)

#### **337 The worldwide group**

In this Part “the worldwide group” means any group of entities that—

- (a) is large, and
- (b) contains one or more relevant group companies.

#### **338 Meaning of “group”**

- (1) Subject to subsections (2) and (3), in this Part “group” has the meaning for the time being given by international accounting standards.
- (2) If a group would (apart from this subsection) contain more than one ultimate parent, each of those ultimate parents, together with its subsidiaries, is to be treated as a separate group.

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- (3) An entity that is a parent of the ultimate parent of a group is to be treated as not being a member of the group.
- (4) Subsections (2) and (3) do not apply for the purposes of section 339.

### **339 Meaning of “ultimate parent”**

- (1) For the purposes of this Part, “ultimate parent”, in relation to a group, means an entity that—
- (a) is a member of the group,
  - [<sup>F2</sup>(b) is either—
    - (i) a corporate entity that is not a limited liability partnership in relation to which section 1273(1) of CTA 2009 (limited liability partnerships) applies, or
    - (ii) a relevant non-corporate entity,
  - (c) is not a collective investment scheme or an entity that would be a collective investment scheme but for the fact that it is a body corporate, and
  - (d) is not a subsidiary (whether direct or indirect) of an entity that meets each of the conditions in paragraphs (a) to (c).]
- (2) In this section “collective investment scheme” has the meaning given by section 235 of FISMA 2000.

#### **Textual Amendments**

- F2** S. 339(1)(b)-(d) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 30, 36\(1\)](#)

### **340 Meaning of “corporate entity”**

- (1) In this Part “corporate entity” means (subject to subsection (4))—
- (a) a body corporate incorporated under the laws of any part of the United Kingdom or any other country or territory, or
  - (b) any other entity that meets conditions A and B.
- (2) Condition A is that the person or persons who have an interest in the entity hold shares in the entity, or interests corresponding to shares.
- (3) Condition B is that the amount of profits to which each person who has an interest in the entity is entitled depends upon a decision that—
- (a) is taken by the entity or members of the entity, and
  - (b) is taken after the period in which the profits arise.
- (4) The following are not corporate entities for the purposes of this Part—
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department, or
  - (e) a foreign sovereign power.

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### **341 Meaning of “relevant non-corporate entity”**

- (1) In this Part “relevant non-corporate entity” means an entity—
  - (a) that is not a corporate entity, and
  - (b) in relation to which conditions A and B are met.
- (2) Condition A is that shares or other interests in the entity are listed on a recognised stock exchange.
- (3) Condition B is that the shares or other interests in the entity are sufficiently widely held.
- (4) For this purpose shares or other interests in an entity are “sufficiently widely held” if no participator in the entity holds more than 10% by value of all the shares or other interests in the entity.
- (5) Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this section.
- (6) In the application of that provision for those purposes, references to a company are to be treated as references to an entity.

### **342 Treatment of entities stapled to corporate, or relevant non-corporate, entities**

- (1) If a corporate entity is stapled to another entity, the two entities are treated for the purposes of this Part as if—
  - (a) they were one entity, and
  - (b) that one entity were a corporate entity.
- (2) If a relevant non-corporate entity is stapled to another entity, the two entities are treated as if—
  - (a) they were one entity, and
  - (b) that one entity were a relevant non-corporate entity.
- (3) For the purposes of this section, an entity (“entity A”) is “stapled” to another (“entity B”) if, in consequence of the nature of the rights attaching to the shares or other interests in entity A (including any terms or conditions attaching to the right to transfer the interests), it is necessary or advantageous for a person who has, disposes of or acquires shares or other interests in entity A also to have, to dispose of or to acquire shares or other interests in entity B.

### **343 Treatment of business combinations**

- (1) This section applies if two corporate entities—
  - (a) are not subsidiaries of the same entity, but
  - (b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.
- (2) The two entities are treated for the purposes of this Part as if—
  - (a) they were one entity, and
  - (b) that one entity were a corporate entity.

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### **344 Meaning of “large” in relation to a group**

- (1) For the purposes of this Part, a group is “large” at any time if (and only if) any member of the group is not at that time within the category of micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).
- (2) In its application as a result of subsection (1), the Annex has effect subject to the following qualifications.
- (3) If a member of the group 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).
- (4) Article 3 has effect with the omission of paragraph (5) (declaration in good faith where control cannot be determined etc).
- (5) The first sentence of Article 4(1) has effect as if the reference to the latest approved accounting period of a member of the group were to the current accounting period of that member.
- (6) Article 4 has effect with the omission of—
  - (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) (estimate in case of newly established enterprise).

### **345 Meaning of “UK group company” and “relevant group company”**

- (1) This section applies for the purposes of this Part.
- [<sup>F3</sup>(2) A company is a “UK group company” if—
  - (a) it is a member of the worldwide group, and
  - (b) it meets conditions A and B.
- (3) A company is a “relevant group company” if—
  - (a) it is a member of the worldwide group, and
  - (b) it meets conditions A, B and C.]
  - (4) Condition A is that the company—
    - (a) is resident in the United Kingdom, or
    - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
  - [<sup>F4</sup>(4A) Condition B is that the company is not a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010.]
  - (5) Condition [<sup>F5</sup>C] is that the company is either—
    - (a) the ultimate parent of the worldwide group, or
    - (b) a relevant subsidiary of the ultimate parent of the worldwide group.
  - (6) A company is a “relevant subsidiary” of the ultimate parent of the worldwide group if the company is a member of the worldwide group and—
    - (a) the company is a 75% subsidiary of the ultimate parent,

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- (b) the ultimate parent is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the company, or
  - (c) the ultimate parent would be beneficially entitled to at least 75% of any assets of the company available for distribution to its equity holders on a winding-up.
- (7) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (6)(b) and (c) as it applies for the purposes of section 151(4) of that Act.

#### Textual Amendments

- F3** S. 345(2)(3) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(2\), 36\(1\)](#)
- F4** S. 345(4A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(3\), 36\(1\)](#)
- F5** Word in s. 345(5) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(4\), 36\(1\)](#)

### 346 Financial statements of the worldwide group

- (1) This section applies for the purposes of this Part.
- (2) References to financial statements of the worldwide group are to consolidated financial statements of the ultimate parent and its subsidiaries; and references to a balance sheet of the worldwide group are to be read accordingly.
- (3) References to a period of account of the worldwide group are to a period in respect of which financial statements of the worldwide group are drawn up.

### 347 Non-compliant financial statements of the worldwide group

- (1) This section applies if—
  - (a) financial statements of the worldwide group are drawn up in respect of a period,
  - (b) those financial statements are not acceptable, and
  - (c) the amounts disclosed in those financial statements are materially different from those that would be disclosed in IAS financial statements for the period.
- (2) This Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the period.
- (3) For the purposes of this section, financial statements are “acceptable” if—
  - (a) they are drawn up in accordance with international accounting standards,
  - (b) they meet such conditions relating to accounting standards, or accounting principles or practice, as may be specified in regulations made by the Commissioners, or
  - (c) conditions A, B and C are met.
- (4) Condition A is that—
  - (a) the companies whose results are included in the financial statements, and
  - (b) the companies whose results would be included in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.

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- (5) Condition B is that—
- (a) the transactions whose results are reflected in the amounts mentioned in section 332(1)(a) to (g) in the financial statements, and
  - (b) the transactions whose results would be reflected in those amounts in IAS financial statements of the worldwide group for the same period, were such statements drawn up,
- are the same.
- (6) Condition C is that the amounts mentioned in section 332(1)(a) to (d) in the financial statements are calculated using the effective interest method.
- (7) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

### **348 Non-existent financial statements of the worldwide group**

- (1) This section applies if financial statements of the worldwide group are not drawn up in respect of a period (“the relevant period”).
- (2) If the relevant period is 12 months or less, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the relevant period.
- (3) If the relevant period is more than 12 months, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of each period to which subsection (4) applies.
- (4) This subsection applies to a period if—
- (a) it is the first period of 12 months falling within the relevant period,
  - (b) it is a period of 12 months falling within the relevant period that begins immediately after the end of the period mentioned in paragraph (a), or immediately after the end of a period determined under this paragraph, or
  - (c) it is a period of less than 12 months that—
    - (i) begins immediately after the end of the period mentioned in paragraph (a) or after the end of a period determined under paragraph (b), and
    - (ii) ends at the end of the relevant period.
- (5) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

### **349 References to amounts disclosed in financial statements**

- (1) References in this Part to amounts disclosed in financial statements include an amount comprised in an amount so disclosed.
- (2) References in this Part to amounts disclosed in financial statements do not include, in the case of an amount that—
- (a) is an amount mentioned in section 332(1)(a) to (g), and
  - (b) has been capitalised and is accordingly included in the balance sheet comprised in the financial statements,

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any part of that amount that was included in a balance sheet comprised in financial statements for an earlier period.

- (3) References in this Part to amounts disclosed in financial statements do not include—
- (a) any amount disclosed in respect of a group pension scheme, or
  - (b) any amount disclosed in respect of any entity that is not a member of the group.

### **350 Translation of amounts disclosed in financial statements**

- (1) References in this Part (except in Chapter 2) to an amount disclosed in financial statements for a period are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent.
- (2) The exchange rate by reference to which the amount is to be translated is the average rate of exchange for the period calculated from daily spot rates.

### **351 Expressions taking their meaning from international accounting standards**

- (1) For the purposes of this Part, the following expressions have the meaning for the time being given by international accounting standards—
- “effective interest method”,
  - “entity”,
  - “parent”, and
  - “subsidiary”.

[<sup>F6</sup>(1A) The definition of “subsidiary” in subsection (1) does not affect the meaning of the expression “75% subsidiary” (which is defined in section 1154 of CTA 2010).]

- (2) The Commissioners may by order amend this section.

#### **Textual Amendments**

**F6** S. 351(1A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 32, 36\(1\)](#)

### **352 Meaning of “relevant accounting period”**

For the purposes of this Part, a “relevant accounting period” of a company, in relation to a period of account of the worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

### **353 Other expressions**

In this Part—

- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,
- “FISMA 2000” means the Financial Services and Markets Act 2000,
- “FSA Handbook” means the Handbook made by the Financial Services Authority under FISMA 2000, and
- “HMRC” means Her Majesty's Revenue and Customs.

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### [<sup>F7</sup>353A Effect of Part on parties to capital market arrangements

- (1) This section applies in relation to cases in which a company (“company A”)—
  - (a) is a party to a capital market arrangement at any time during a period of account of the worldwide group, and
  - (b) is subject to a liability to corporation tax for a relevant accounting period as a result of the operation of this Part.
- (2) The Commissioners may by regulations make provision under which company A and a company that is a relevant group company at any time in the same period of account (“company B”) may jointly elect that company B is to take sole responsibility for discharging the liability.
- (3) Where an election has effect, the liability is treated for all purposes as if it were a liability of company B and not of company A.
- (4) The regulations may include provision about—
  - (a) when an election may be made (which may, in particular, be before the accounting period for which the liability arises);
  - (b) circumstances in which HMRC may or must—
    - (i) accept or reject an election, or
    - (ii) terminate the effect of an election that has already been accepted;
  - (c) the effect of termination by virtue of paragraph (b)(ii);
  - (d) the transfer from company A to company B of liabilities to penalties.
- (5) The provision that may be made by virtue of subsection (4)(b)(i) or (ii) includes provision conferring a discretion on HMRC.
- (6) In this section “ capital market arrangement ” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act).

#### Textual Amendments

**F7** Ss. 353A, 353B inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 33, 36\(1\)](#) (with [Sch. 5 para. 36\(3\)](#))

### 353B Regulations and orders

Regulations or orders under this Part may—

- (a) make different provision for different cases or circumstances,
- (b) include supplementary, incidental and consequential provision, or
- (c) make transitional provision and savings.]

#### Textual Amendments

**F7** Ss. 353A, 353B inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 33, 36\(1\)](#) (with [Sch. 5 para. 36\(3\)](#))



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