



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 10] **U.K.**

[^{F1}CORPORATE INTEREST RESTRICTION]

[^{F1}CHAPTER 8] **U.K.**

PUBLIC INFRASTRUCTURE

Textual Amendments

- F1** Pt. 10: the existing Pt. 10 renumbered as Pt. 11 (except for ss. 375, 376 which are repealed), the existing ss. 372-374, 377-382 renumbered as ss. 499-507 and a new Pt. 10 (ss. 372-498) inserted (with effect in accordance with [Sch. 5 para. 25\(1\)-\(3\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 1](#), [10\(1\)\(2\)\(a\)\(3\)](#) (with [Sch. 5 paras. 27, 32-34](#))

Overview

432 Overview of Chapter **U.K.**

- (1) This Chapter —
 - (a) alters the way in which this Part has effect in relation to companies (referred to as “qualifying infrastructure companies”) that are fully taxed in the United Kingdom, and
 - (b) operates by reference to the provision of public infrastructure assets or the carrying on of certain other related activities.
- (2) In addition to the requirement for the company to be fully taxed in the United Kingdom, the qualifying requirements are—

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- (a) a requirement designed to ensure that the company's income and assets are referable to activities in relation to public infrastructure assets, and
 - (b) a requirement for the company to make an election (which may be revoked, subject to a 5-year rule in relation to the revocation and the ability to make a fresh election).
- (3) Two different types of asset meet the definition of a “public infrastructure asset”, namely—
- (a) tangible assets forming part of the infrastructure of the United Kingdom (or the UK sector of the continental shelf) that meet a public benefit test, and
 - (b) buildings (or parts of buildings) that are part of a UK property business and are let (or sub-let) on a short-term basis to unrelated parties.
- (4) In either case an asset counts as a public infrastructure asset only if—
- (a) it has had, has or is likely to have an expected economic life of at least 10 years, and
 - (b) it is shown in a balance sheet of a member of the group that is fully taxed in the United Kingdom.
- (5) The detail of the above tests is set out in sections 433 to 437.
- (6) The substantive rules provide that an amount does not count as a tax-interest expense amount if—
- (a) the creditor in relation to the amount is an unrelated party or another qualifying infrastructure company or the amount is in respect of a loan relationship entered into on or before 12 May 2016 (see sections 438 and 439), and
 - (b) the recourse of the creditor in relation to the amount is limited to the income or assets of, or shares in or debt issued by, a qualifying infrastructure company (ignoring certain financial assistance and certain non-financial guarantees).
- (7) In addition—
- (a) provision is made for adjusting the operation of this Part to take into account the effect of the above rules (for example, the tax-EBITDA of a qualifying infrastructure company is treated as nil (see section 441)),
 - (b) provision is made modifying the operation of this Chapter in the case of joint venture companies or partnerships or other transparent entities (see sections 444 to 447), and
 - (c) provision is made in relation to the decommissioning of a public infrastructure asset (see section 448).

Key concepts

433 Meaning of “qualifying infrastructure company” U.K.

- (1) For the purposes of this Chapter a company is a “qualifying infrastructure company” throughout an accounting period if—
- (a) it meets the public infrastructure income test for the accounting period (see subsections (2) to (4)),
 - (b) it meets the public infrastructure assets test for the accounting period (see subsections (5) to (10)),

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- (c) it is fully taxed in the United Kingdom in the accounting period [^{F2}(see subsections (11) and (12))], and
 - (d) it has made an election for the purposes of this section that has effect for the accounting period (see section 434).
- (2) A company meets the public infrastructure income test for an accounting period if all, or all but an insignificant proportion, of its income for the accounting period derives from—
- (a) qualifying infrastructure activities carried on by the company (see sections 436 and 437),
 - (b) shares in a qualifying infrastructure company, or
 - (c) loan relationships or other financing arrangements to which the only other party is a qualifying infrastructure company.
- (3) A company also meets the public infrastructure income test for an accounting period if it has no income for the period.
- (4) In determining whether the public infrastructure income test for an accounting period is met, income which does not derive from any of the matters mentioned in subsection (2)(a) to (c) is ignored if, having regard to all the circumstances, it is reasonable to regard the amount of the income as insignificant.
- (5) A company meets the public infrastructure assets test for an accounting period if all, or all but an insignificant proportion, of the total value of the company's assets recognised in an appropriate balance sheet on each day in that period derives from—
- (a) tangible assets that are related to qualifying infrastructure activities,
 - (b) service concession arrangements in respect of assets that are related to qualifying infrastructure activities,
 - (c) financial assets to which the company is a party for the purpose of the carrying on of qualifying infrastructure activities by the company or another associated qualifying infrastructure company,
- ^{F3} [(ca) assets held for the purposes of a pension scheme under which benefits are provided to, or in respect of, persons employed for the purpose of the carrying on of qualifying infrastructure activities by the company or another associated qualifying infrastructure company,
- (cb) assets in respect of deferred tax so far as attributable to qualifying infrastructure activities carried on by the company or another associated qualifying infrastructure company,]
 - (d) shares in a qualifying infrastructure company, or
 - (e) loan relationships or other financing arrangements to which the only other party is a qualifying infrastructure company.
- (6) If a company has no assets recognised in an appropriate balance sheet on any day in an accounting period, the company is to be taken as meeting the public infrastructure assets test in respect of that day.
- (7) In determining whether the public infrastructure assets test for an accounting period is met in respect of any day, the value of an asset which does not derive from any of the matters mentioned in subsection (5)(a) to (e) is ignored if, having regard to all the circumstances, it is reasonable to regard the value of the asset as insignificant.
- (8) For the purposes of subsection (5)(a) and (b) assets are “related to qualifying infrastructure activities” in the case of a company if the assets are—

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- (a) public infrastructure assets (see section 436(2) and (5)) in relation to the company that are provided by the company, or
 - (b) other assets used in the course of a qualifying infrastructure activity carried on by the company or by an associated qualifying infrastructure company.
- (9) For the purposes of this section the reference to the value of an asset recognised in an appropriate balance sheet of a company on a day is to the value which is, or would be, recognised in a balance sheet of the company drawn up on that day.
- (10) A company is not to be taken as failing to meet the public infrastructure assets test for an accounting period if, ignoring this subsection, that test would have been failed on a particular day or days merely as a result of particular circumstances—
- (a) which existed, and
 - (b) which were always intended to exist,
- for a temporary period of an insignificant duration.
- (11) A company is fully taxed in the United Kingdom in an accounting period if—
- (a) every [^{F4}source of income that the company has] at any time in the accounting period is within the charge to corporation tax,
 - (b) the company has not made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) that has effect for the accounting period, and
 - (c) the company has not made a claim for relief under Chapter 2 of Part 2 (double taxation relief) for the accounting period.
- [In determining whether the condition in subsection (11)(a) is met in the case of a ^{F5}(12) company not resident in the United Kingdom in an accounting 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.]

Textual Amendments

- F2** Words in s. 433(1)(c) substituted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 8 paras. 7\(2\), 23\(1\)](#)
- F3** S. 433(5)(ca)(cb) inserted (retrospectively) by [Finance Act 2019 \(c. 1\), Sch. 11 paras. 12, 24](#)
- F4** Words in s. 433(11)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 8 paras. 7\(3\), 23\(1\)](#)
- F5** S. 433(12) inserted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 8 paras. 7\(4\), 23\(1\)](#)

434 Elections under section 433 **U.K.**

- (1) An election under section 433—
- (a) must be made before [^{F6}the end] of the accounting period in relation to which it is to have effect, and
 - (b) has effect in relation to that accounting period and all subsequent accounting periods (subject to subsections (2) to (4)).
- (2) An election under section 433 may be revoked.
- (3) A revocation of an election under section 433—

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- (a) must be made before the beginning of the accounting period from which the revocation is to have effect, but
 - (b) cannot have effect in relation to any accounting period that begins before the end of the period of 5 years beginning with the first day of the first accounting period in relation to which the election had effect.
- (4) Once revoked, a fresh election may be made under section 433 but cannot have effect in relation to any accounting period that begins before the end of the period of 5 years beginning with the first day of the accounting period from which the revocation had effect.
- (5) If—
- (a) a qualifying infrastructure company transfers to another company a business, or a part of a business, that consists of the carrying on of qualifying infrastructure activities,
 - [the time of the transfer falls in a period of account of a worldwide group of
 - ^{F7}(ab) which both the transferor and transferee are members,] and
 - (b) the transferee has not made an election under section 433 that has effect for the accounting period in which the transfer takes place,
 the transferee is to be treated as if it had made the election under that section that the transferor had made.
- (6) If a company has made an election under section 433 that has effect in relation to an accounting period, the company—
- (a) may not make an election under section 18A of CTA 2009 that has effect for the accounting period, and
 - (b) may not make a claim for relief under Chapter 2 of Part 2 for the accounting period.

Textual Amendments

- F6** Words in s. 434(1)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 8\(2\), 23\(1\)](#)
- F7** S. 434(5)(ab) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 8\(3\), 23\(1\)](#)

435 Group elections modifying the operation of sections 433 and 434 **U.K.**

- (1) Two or more companies which are members of the same worldwide group [^{F8}, and have each made an election under section 433,] may jointly make an election under this section modifying the operation of sections 433 and 434 in relation to them for the times during which they remain members of that group.
- (2) An election under this section—
- [must be made before the end of the earliest elected accounting period (see
 - ^{F9}(aa) subsection (11));]
 - (a) has effect from a date specified in the election [^{F10}, which may not be before the first day of the earliest elected accounting period];
 - (b) may be revoked jointly by the members of the group in relation to which the election has effect from a date specified in the revocation;
 - (c) ceases to have effect in relation to a company which gives a notice to an officer of Revenue and Customs, and to the companies in relation to which the

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election has effect, notifying them of its withdrawal from the election from a date specified in the notice.

- (3) A date specified in [F11a revocation] or notice may not be before the date on which it is made or given.
- (4) An election under this section which has effect at particular times (“relevant times”) in relation to particular companies (“elected companies”) modifies the operation of sections 433 and 434 as follows.
- (5) If an elected company (“C”) has made an election under section 433 which has effect for an accounting period that includes relevant times, that section has effect as if, in determining whether anything is insignificant for the purposes of section 433(2), (4), (5) or (7), C also had the income and assets that the other elected companies had at those times.
- (6) If—
 - (a) an elected company (“C”) has made an election under section 433 which has effect for an accounting period including relevant times, and
 - (b) C fails to meet one or more of the tests in subsection (1)(a) to (c) of that section in relation to that accounting period otherwise than as a result of this subsection,
 all the other elected companies are also treated as failing to meeting those tests for so much of their accounting periods as consists of the relevant times in the accounting period of C.
- (7) If, in a case where subsection (6) applies, the deemed failed period does not coincide with an accounting period of another elected company (“E”), the accounting period of E is treated for the purposes of this Part as if it consisted of separate accounting periods beginning and ending at such times as secure that none of the separate accounting periods fall partly within the deemed failed period.
- (8) For this purpose “the deemed failed period” means the period consisting of the relevant times in the accounting period of C mentioned in subsection (6).
- (9) All such apportionments as are necessary for the purposes of, or in consequence of, subsections (5) to (7) are to be made on a just and reasonable basis.
- (10) If—
 - (a) elected companies have made elections under section 433 which have effect for accounting periods including relevant times, and
 - (b) more than half of those elected companies have each made an election under that section that has had effect for a period of at least 5 years,
 section 434(3)(b) does not apply in relation to any of the elected companies.
- [F12](11) The “earliest elected accounting period” is the accounting period which—
 - (a) is the first elected accounting period of an elected company, and
 - (b) begins no later than the first elected accounting period of each other elected company.
- (12) For the purposes of subsection (11), the “first elected accounting period” of an elected company is the first of the company’s accounting periods in relation to which the election is to have effect.

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- (13) If there is more than one earliest elected accounting period under subsection (11) and those periods (the “relevant periods”) do not all end on the same date, the “earliest elected accounting period” is the relevant period that ends no later than each of the other relevant periods.]

Textual Amendments

- F8** Words in s. 435(1) inserted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 14(2)**
- F9** S. 435(2)(aa) inserted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 14(3)(a)**
- F10** Words in s. 435(2)(a) inserted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 14(3)(b)**
- F11** Words in s. 435(3) substituted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 14(4)**
- F12** S. 435(11)-(13) inserted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 14(5)**

436 Meaning of “qualifying infrastructure activity” **U.K.**

- (1) For the purposes of this Chapter a company carries on a “qualifying infrastructure activity” if the company—
- (a) provides an asset that is a public infrastructure asset in relation to it (see subsections (2) and (5)), or
 - (b) carries on any other activity that is ancillary to, or facilitates, the provision of an asset that is a public infrastructure asset in relation to it.
- (2) For the purposes of this Chapter an asset is a “public infrastructure asset” in relation to a company at any time if—
- (a) the asset is, or is to be, a tangible asset forming part of the infrastructure of the United Kingdom or the UK sector of the continental shelf,
 - (b) the asset meets the public benefit test (see subsections (3) and (4)),
 - (c) the asset has had, has or is likely to have an expected economic life of at least 10 years, and
 - (d) the asset meets the group balance sheet test [^{F13}(see subsections (10) and (10A))] in relation to the company.
- (3) An asset meets the “public benefit test” if—
- (a) the asset is, or is to be, procured by a relevant public body, or
 - (b) the asset is, or is to be, used in the course of a regulated activity.
- (4) An asset is used in the course of a “regulated activity” if its use—
- (a) is regulated by an infrastructure authority (see section 437(2)), or
 - (b) could be regulated by an infrastructure authority if the authority exercised any of its powers.
- (5) For the purposes of this Chapter a building, or part of a building, is also a “public infrastructure asset” in relation to a company at any time if—
- ^{F14}(a) the building or part is, or is to be, let on a short-term basis —

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- (i) within a UK property business carried on by the company, or another member of the worldwide group of which it is a member at that time, and
 - (ii) to persons who, at that time, are not related parties of the company or member.]
 - (c) the building or part has had, has or is likely to have an expected economic life of at least 10 years, and
 - (d) the building or part meets the group balance sheet test in relation to the company.
- [But a building, or part of a building, is not a public infrastructure asset in relation to
- ^{F15}(5A) a company at a particular time if, were the building or part to be disposed of at that time, profits arising from the disposal would be charged to corporation tax as profits of a trade.]
- (6) A building, or part of a building, is “let” to a person if the person is entitled to the use of the building or part under a lease or other arrangement.
 - (7) A building, or part of a building, is let on a “short-term basis” if the lease or other arrangement in question—
 - (a) has an effective duration which is 50 years or less, and
 - (b) is not an arrangement to which any provision of Chapter 2 of Part 16 of CTA 2010 applies (finance arrangements).
 - (8) Whether or not a lease or other arrangement has an effective duration which is 50 years or less is determined in accordance with Chapter 4 of Part 4 of CTA 2009 (reading any reference to a lease as a reference to a lease or other arrangement within subsection (6)).
 - (9) For the purposes of this section references to a building or part of a building being let include the building or part being sub-let, and, accordingly, references to a lease include a sub-lease.
 - (10) An asset meets the “group balance sheet test” in relation to a company at any time if—
 - (a) an entry in respect of the asset is, or would be, recognised (whether as a tangible asset or otherwise) in a balance sheet of the company, or an associated company, that is drawn up at that time, and
 - (b) the company or associated company is within the charge to corporation tax at that time in respect of all of its sources of income and no election or claim mentioned in section 433(11)(b) or (c) has effect for a period including that time.
- [In determining whether the condition in subsection (10)(b) is met in relation to a
- ^{F16}(10A) 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.]
- (11) For the purposes of this Chapter references to provision, in relation to a public infrastructure asset, include its acquisition, design, construction, conversion, improvement, operation or repair.

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Textual Amendments

- F13** Words in s. 436(2)(d) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 9\(2\), 23\(1\)](#)
- F14** [S. 436\(5\)\(a\)](#) substituted for s. 436(5)(a)(b) (with effect in accordance with [Sch. 3 para. 30-36](#) of the amending Act) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), [Sch. 3 para. 15\(2\)](#)
- F15** [S. 436\(5A\)](#) inserted (with effect in accordance with [Sch. 3 para. 30-36](#) of the amending Act) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), [Sch. 3 para. 15\(3\)](#)
- F16** [S. 436\(10A\)](#) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 9\(3\), 23\(1\)](#)

437 Section 436: supplementary **U.K.**

- (1) In section 436 “infrastructure” includes—
- (a) water, electricity, gas, telecommunications or sewerage facilities,
 - (b) oil pipelines, oil terminals or oil refineries,
 - (c) railway facilities (including rolling stock), roads or other transport facilities,
 - (d) health or educational facilities,
 - (e) facilities or housing accommodation provided for use by members of any of the armed forces or of any police force,
 - (f) court or prison facilities,
 - (g) waste processing facilities, and
 - (h) buildings (or parts of buildings) occupied by any relevant public body.
- (2) Each of the following is an “infrastructure authority” for the purposes of section 436(4)
- (a) the Civil Aviation Authority so far as exercising functions in relation to the provision of airports (within the meaning of the Airports Act 1986),
 - (b) each of the following so far as exercising functions in relation to waste processing—
 - (i) the Environment Agency,
 - (ii) the Scottish Environmental Protection Agency,
 - (iii) the Northern Ireland Environment Agency, or
 - (iv) Natural Resources Wales,
 - (c) the Gas and Electricity Markets Authority,
 - (d) each of the following so far as exercising functions in relation to the management of ports or harbours—
 - (i) a harbour authority within the meaning of the Harbours Act 1964, or
 - (ii) a harbour authority within the meaning of the Harbours Act (Northern Ireland) 1970,
 - (e) the Northern Ireland Authority for Utility Regulation,
 - (f) the Office of Communications so far as exercising functions in relation to the provision of electronic communication services (within the meaning of the Communications Act 2003) or the management of the radio spectrum,
 - (g) the Office of Nuclear Regulation,
 - (h) the Office of Rail and Road,
 - (i) the Oil and Gas Authority,
 - (j) the Water Services Regulation Authority or the Water Industry Commission for Scotland, or

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- (k) any other public authority which has functions of a regulatory nature exercisable in relation to the use of tangible assets forming part of the infrastructure of the United Kingdom or the UK sector of the continental shelf.
- (3) The Commissioners may by regulations amend the definition of “infrastructure authority”.

Exemption and related provision

438 Exemption for interest payable to third parties etc U.K.

- (1) Amounts that arise to a qualifying infrastructure company in a relevant accounting period are not to be regarded for the purposes of this Part as tax-interest expense amounts of the company so far as they qualify as exempt amounts in that period (see subsections (2) and (3)).
 - (2) An amount qualifies as an exempt amount so far as it is attributable, on a just and reasonable apportionment, to the times in the relevant accounting period when—
 - (a) each creditor in relation to the amount is within subsection (3) or the amount is in respect of a qualifying old loan relationship (see section 439), and
 - (b) the recourse of each creditor in relation to the amount is limited to relevant infrastructure matters (see subsections (4) to (6)).
 - (3) A creditor is within this subsection if—
 - (a) the creditor is not a related party of the company, or
 - (b) the creditor is a company which is a qualifying infrastructure company, but section 466(2) does not apply for the purposes of paragraph (a).
 - (4) The recourse of a creditor is limited to relevant infrastructure matters if, in the event that the company fails to perform its obligations in question, the recourse of the creditor is limited to—
 - (a) income of a qualifying infrastructure company,
 - (b) assets of a qualifying infrastructure company, or
 - (c) shares in or debt issued by a qualifying infrastructure company,
 whether the income, assets, shares or debt relate to the company concerned or another qualifying infrastructure company.
 - (5) For the purposes of subsection (4) a guarantee, indemnity or other financial assistance in favour of the creditor is ignored if—
 - (a) it is provided before 1 April 2017, or
 - (b) it is provided at any later time by a person who, at that time, is not a related party of the company or is a relevant public body.
- [For the purposes of subsection (4) a guarantee, indemnity or other financial assistance^{F17}(5A) in favour of the creditor is also ignored if—
- (a) it is provided before 29 October 2018,
 - (b) the company concerned has not been UK resident at any time before that date, and
 - (c) the amount concerned is in respect of a loan relationship, derivative contract or relevant arrangement or transaction (within the meaning of section 382(4))

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to which the member in question is a party for the purposes of its UK property business.]

- (6) For the purposes of subsection (4) a non-financial guarantee in favour of the creditor is ignored if—
- (a) it guarantees the performance by any person of contractual obligations to provide goods or services to a qualifying infrastructure company,
 - (b) it is given by the person providing the goods or services or by a person who is a related party of that person, and
 - (c) the maximum amount for which the guarantor is liable does not exceed the consideration given under the contract for the provision of the goods or services.
- (7) In this section “creditor” means—
- (a) if the amount meets condition A in section 382, the person who is party to the loan relationship as creditor,
 - (b) if the amount meets condition B in that section, the person other than the company who is party to the derivative contract, and
 - (c) if the amount meets condition C in that section, the person other than the company who is party to the relevant arrangement or transaction.

Textual Amendments

F17 S. 438(5A) inserted (6.4.2020) by [Finance Act 2019 \(c. 1\)](#), [Sch. 5 paras. 34, 35](#) (with [Sch. 5 para. 36](#))

F18 **Application of section 438: certain creditors treated as qualifying infrastructure 438A companies U.K.**

- (1) This section applies where—
- (a) a company (“C”), at a time in the period mentioned in subsection (1) of section 438—
 - (i) is a member of the worldwide group of which the qualifying infrastructure company mentioned in that subsection is a member, but
 - (ii) is not a UK group company; and
 - (b) C is a creditor in relation to an amount which—
 - (i) is a relevant loan relationship debit (as defined in section 383) for the debtor company, or
 - (ii) would be a relevant loan relationship debit if the debtor company were UK resident.
- (2) For the purposes of section 438, C is treated in relation to the amount mentioned in subsection (1)(b) (the “relevant loan amount”) as a qualifying infrastructure company if—
- (a) throughout the period mentioned in section 438(1), C—
 - (i) meets the public infrastructure income test for the accounting period (see subsections (2) to (4) of section 433) and subsection (3) of this section), and
 - (ii) meets the public infrastructure assets test for the accounting period (see subsections (5) to (10) of that section and subsection (4) of this section),

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- (but does not satisfy the conditions in subsection (1)(c) and (d) of section 433);
- (b) the loan to which the relevant loan amount relates (the “relevant loan”) is fully funded by another loan (the “corresponding loan”) made to C for that purpose and on substantially the same terms as the relevant loan; and
- (c) amounts arising to C in respect of the corresponding loan would, if section 438(2) applied to C, qualify as “exempt amounts” within the meaning of that subsection.
- (3) For the purposes of subsection (2)(a)(i), C is also treated as meeting the public infrastructure income test for an accounting period if all, or all but an insignificant proportion, of its income for the period derives from—
- (a) anything listed in any of paragraphs (a) to (c) of section 433(2),
- (b) shares in, or debt issued by, a company that meets the test in section 433(2) for that period,
- (c) shares in or debt issued by a company that is treated as meeting the public infrastructure income test for that period by reason of this subsection.
- (4) For the purposes of subsection (2)(a)(ii), C is also treated as meeting the public infrastructure assets test for an accounting period if all, or all but an insignificant proportion, of the total value of the company's assets recognised in an appropriate balance sheet on each day in that period derives from—
- (a) anything listed in any of paragraphs (a) to (e) of section 433(5),
- (b) shares in, or debt issued by, a company that meets the test in section 433(5) for that period,
- (c) shares in or debt issued by a company that is treated as meeting the public infrastructure assets test for that period by reason of this subsection.
- (5) For the purposes of determining whether amounts arising to C would qualify as exempt amounts under section 438(2) (for the purposes of subsection (2)(c) of this section), the recourse of a creditor is treated as being limited to relevant infrastructure matters if, in the event that C fails to perform its obligations in question, the recourse of the creditor is limited to—
- (a) anything listed in paragraphs (a) to (c) of section 438(4),
- (b) shares in or debt issued by a company whose income and assets consist wholly of income and assets within those paragraphs,
- (c) shares in or debt issued by a company whose income and assets consist wholly of income and assets within paragraphs (a) or (b) of this subsection, or
- (d) shares in or debt issued by a company whose income and assets consists wholly of income and assets within paragraphs (a) to (c) of this subsection, and so on.
- (6) For the purposes of subsection (5), in determining whether a company's income and assets consists wholly of income and assets of a particular description, any source of income or any asset is ignored if, having regard to all the circumstances, it is reasonable to regard as insignificant the amount of income arising from the source, or (as the case may be) the value of the asset recognised, in the accounting period.]

Textual Amendments

F18 S. 438A inserted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by [Finance \(No. 2\) Act 2023 \(c. 30\)](#), [Sch. 3 para. 16](#)

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

439 Exemption in respect of certain pre-13 May 2016 loan relationships **U.K.**

- (1) A loan relationship is a “qualifying old loan relationship” of a qualifying infrastructure company if—
- (a) the company entered into the loan relationship on or before 12 May 2016, and
 - (b) as at that date, at least 80% of the total value of the company's future qualifying infrastructure receipts for the qualifying period was highly predictable by reference to qualifying public contracts,
- but see subsection (8) for cases where a loan relationship is not a qualifying old loan relationship of the company.
- (2) For the purposes of this section “the qualifying period” means—
- (a) in a case where the loan relationship would cease to subsist at any time before 12 May 2026 (if any amendments of the loan relationship made on or after 12 May 2016 are ignored), the period beginning with 12 May 2016 and ending with that time, and
 - (b) in any other case, the period of 10 years beginning with 12 May 2016.
- (3) For the purposes of this section “qualifying infrastructure receipts”, in relation to a company (“C”), means—
- (a) receipts arising from qualifying infrastructure activities carried on by C, and
 - (b) such proportion of the receipts arising from qualifying infrastructure activities carried on by another company as, on a just and reasonable basis, is attributable to C's interests in the other company (whether direct or indirect) arising as a result of shares or loans ^{F19},
- but ignoring amounts that represent the reimbursement of expenses incurred by C or the other company.]
- (4) For the purposes of this section receipts are highly predictable by reference to qualifying public contracts so far as their value can be predicted with a high degree of certainty because—
- (a) the amounts of the receipts are fixed by a qualifying public contract, and
 - (b) the factors affecting the volume of receipts are fixed by a qualifying public contract or are otherwise capable of being predicted with a high degree of certainty.
- (5) For this purpose any provision of a qualifying public contract (however expressed) that adjusts the amount of a receipt for changes in the general level of prices or earnings is to be ignored.
- (6) For the purposes of this section a contract is a “qualifying public contract” if—
- (a) it was entered into at any time on or before 12 May 2016 and, as at that time, it was expected to have effect for at least 10 years, and
 - (b) it was entered into either with a relevant public body or following bids made in an auction conducted by a relevant public body.
- (7) If a qualifying old loan relationship is amended after 12 May 2016 so as to increase the amount lent or extend the period for which the relationship is to subsist—
- (a) section 438 is to have effect as if none of those amendments were made (and, accordingly, the exemption under that section has no effect in relation to the increase in the amount or the period of the extension), and
 - (b) such apportionments of amounts in respect of the relationship are to be made as are just and reasonable.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

- (8) A loan relationship to which a qualifying infrastructure company is a party at any time is not a qualifying old loan relationship of the company at that or any subsequent time if, on the relevant assumptions, the condition in subsection (1)(b) would not have been met.
- (9) The relevant assumptions are that—
- (a) the assets held by the company at that time were the only assets that the company held on 12 May 2016,
 - (b) the assets held at that time by any other company in which it has interests (whether direct or indirect) arising as a result of shares or loans were the only assets that the other company held on 12 May 2016, and
 - (c) a qualifying infrastructure receipt could not be regarded as highly predictable if, on 12 May 2016, the public infrastructure asset in question did not exist or was not in the course of being constructed or converted.
- (10) For the purposes of this section the value of a receipt on 12 May 2016 is taken to be its present value on that date, discounted using a rate that can reasonably be regarded as one that, in accordance with normal commercial criteria, is appropriate for the purpose.
- (11) In this section “receipts” means receipts of a revenue nature.

Textual Amendments

F19 Words in s. 439(3) inserted (retrospectively) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 paras. 13, 24](#)

440 Loans etc made by qualifying infrastructure companies to be ignored **U.K.**

- (1) This section applies where—
- (a) a company is a qualifying infrastructure company throughout an accounting period, and
 - (b) the company would (but for this section) have had tax-interest income amounts in the accounting period.
- (2) For the purposes of this Part, the company is treated as if it did not have any tax-interest income amounts in the accounting period.

441 Tax-EBITDA of qualifying infrastructure company to be nil **U.K.**

- (1) This section applies where a company is a qualifying infrastructure company throughout an accounting period.
- (2) For the purposes of this Part, the tax-EBITDA of the company for the accounting period is nil.

442 Amounts of qualifying infrastructure company left out of account for other purposes **U.K.**

- (1) This section applies where a company is a qualifying infrastructure company throughout a relevant accounting period.
- (2) In calculating—

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

- (a) the adjusted net group-interest expense of the worldwide group for the period of account concerned, or
- (b) the qualifying net group-interest expense of the worldwide group for the period of account concerned,

amounts that are exempt amounts of the company under section 438, or are treated as mentioned in section 440, are to be left out of account.

- (3) For the purposes of this Part the group EBITDA of the worldwide group for the period of account concerned is to be calculated as if the group did not include the company in respect of the relevant accounting period.

443 Interest capacity for group with qualifying infrastructure company etc **U.K.**

- (1) If a worldwide group for a period of account includes a qualifying infrastructure company at any time, the general rule is that the interest capacity of the group for the period is calculated as if section 392 did not contain the de minimis provisions.

[^{F20}(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.]

- (3) The following amounts must be compared with each other—
 - (a) the total disallowed amount of the group in the period calculated as if this Chapter (including subsection (1) of this section but ignoring the remainder of it) were contained in this Part (“the Chapter 8 amount”), and
 - (b) the total disallowed amount of the group in the period calculated as if this Chapter were not contained in this Part and as if section 392 contained only the de minimis provisions (“the ordinary amount”).
- (4) If the Chapter 8 amount exceeds the ordinary amount, the interest capacity of the worldwide group for the period is taken to be the de minimis amount (as defined by 392(3)).
- (5) If the interest capacity of the worldwide group for the period is given by subsection (4), nothing else in this Chapter has effect in relation to the worldwide group for the period.
- (6) For the purposes of this section the reference to section 392 not containing the de minimis provisions is a reference to that section not containing subsections (2) and (3) of that section.
- (7) For the purposes of this section the reference to section 392 containing only the de minimis provisions is a reference to that section having effect as if for subsections (1) and (2) of that section there were substituted—

“(1) For the purposes of this Part the “interest capacity” of a worldwide group for a period of account of the group is the de minimis amount.”

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

Textual Amendments

F20 S. 443(2) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 10](#)

Supplementary

444 Joint venture companies **U.K.**

- (1) This section makes modifications of this Part in relation to an accounting period of a qualifying infrastructure company (“the joint venture company”) [^{F21}which is the ultimate parent of a worldwide group at all times in that period] where—
 - (a) one or more qualifying infrastructure companies (“the qualifying investor or investors”) have shares in the joint venture company,
 - (b) other persons (“the other investors”) who are not qualifying infrastructure companies have all the other shares in the joint venture company,
 - (c) each of the investors (that is to say, the qualifying investor or investors and the other investors) has lent money to the joint venture company,
 - (d) the amounts each of the investors has lent stand in the same, or substantially the same, proportion as the shares in the joint venture company that each of them has,
 - (e) at all times in the accounting period the investors have the same rights in relation to the shares in or assets of the joint venture company and the same rights in relation to the money debt or debts in question, and
 - (f) the joint venture company makes an election for the purposes of this section that has effect for the accounting period (but see section 445 for further provision about elections).
- (2) Section 401 has effect as if the qualifying investor or investors were not investors in the group for times in the accounting period falling in the relevant period of account.
- (3) Section 427 has effect as if, in determining the appropriate proportion in relation to an associated worldwide group, it is assumed that the qualifying investor or investors were not investors in the group for times in the accounting period falling in the relevant period of account.
- (4) In consequence of subsection (2) or (3), the shares of the qualifying investor or investors in the group are treated as distributed for times in the accounting period falling in the relevant period of account among the other investors in proportion to the actual shares of the other investors in the group.
- (5) For the purposes of section 438 there is a reduction in any amount that would otherwise qualify as an exempt amount in the accounting period where—
 - (a) the exemption operates by reference to creditors being within subsection (3) of that section, and
 - (b) the creditor in relation to the amount is not an investor.
- (6) The amount qualifying as an exempt amount is to be reduced so that only the qualifying proportion of it qualifies.
- (7) For the purposes of this section—

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

“the qualifying proportion” means the proportion of the shares that the qualifying investor or investors have in the joint venture company in the accounting period, and

“the non-qualifying proportion” means the proportion of the shares that the other investors have in the joint venture company in the accounting period.

- (8) The treatment mentioned in section 440(2) is to extend only to the qualifying proportion of the tax-interest income amounts in the accounting period.
- (9) Section 441(2) has effect as if the tax-EBITDA of the company for the accounting period were the amount determined as follows.
- Step 1* Find the tax-EBITDA of the company for the accounting period if section 441 were ignored.
- Step 2* The tax-EBITDA of the company for the accounting period is equal to the non-qualifying proportion of that amount.
- (10) Section 442(3) has effect as if for the words “the group did not include the company” there were substituted “ amounts of the company were limited to the non-qualifying proportion of those amounts ”.

Textual Amendments

- F21** Words in s. 444(1) inserted (with effect in accordance with Sch. 8 para. 24 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 11](#)

445 Joint venture groups **U.K.**

- (1) This section applies if the joint venture company is the ultimate parent of a multi-company worldwide group at any time in the accounting period.
- (2) An election made by the joint venture company under section 444 in relation to the accounting period is of no effect unless all the other members of the group—
- are qualifying infrastructure companies for the accounting period,
 - are wholly-owned subsidiaries of the joint venture company throughout the accounting period, and
 - have the same accounting periods as the joint venture company.
- (3) In determining whether the conditions in section 444(1)(c) to (e) are met in relation to the accounting period of the joint venture company, any loans made to any of the other members of the group are treated as if they were made to the joint venture company.
- (4) If the joint venture company makes an election under section 444 for the accounting period, the modifications made by subsections (5) to (10) of that section are also to apply in relation to each of the other members of the group.

446 Joint ventures: supplementary **U.K.**

- (1) If—
- the joint venture company makes an election under section 444 in relation to an accounting period,
 - that company, or any member of the worldwide group of which it is a member, is the creditor for the purposes of section 438 in any case, and

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

- (c) the company mentioned in that section in that case is not a member of that group at any time in the accounting period,
- section 438 has effect in that case as if subsection (3)(b) were of no effect in relation to that time.
- (2) Section 434(1) to (5) apply to an election under section 444 as they apply to an election under section 433.
- (3) For the purposes of section 444 the investors are not to be regarded as having the same rights in relation to the shares in or assets of the joint venture company, or in relation to the money debt or debts in question, at any time if—
- (a) provision is in force at that time in respect of any of the relevant matters that differs in relation to different persons or has, or is capable of having, a different effect in relation to different persons (whether at that or any subsequent time),
 - (b) arrangements are in place at that time the effect of which is that, at that or any subsequent time, the rights of some persons in relation to any of the relevant matters differ, or will or may differ, from the rights of others in relation to the matters in question, or
 - (c) any other circumstances exist at that time as a result of which the rights of some persons in relation to any of the relevant matters cannot reasonably be regarded as being, in substance, the same rights as others in relation to the matters in question at that or any subsequent time.
- (4) In this section—
- (a) “the relevant matters” means the shares in or assets of the joint venture company or the money debt or debts in question,
 - (b) “rights” includes powers,
 - (c) “different persons” includes persons of a different class or description, and
 - (d) “arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

447 Partnerships and other transparent entities **U.K.**

- (1) Subsections (2) to (4) apply where a company is a member of a partnership.
- (2) For the purposes of section 433 the cases in which assets recognised in a balance sheet of the company are regarded as deriving their value from the matters mentioned in subsection (5)(a) to (e) of that section include any case where—
- (a) the company's interest in the partnership is recognised in the balance sheet of the company, and
 - (b) that partnership interest derives its value from those matters.
- (3) For the purposes of section 436 the cases in which an entry in respect of an asset is (or would be) recognised in a balance sheet of the company include any case where—
- (a) the asset is (or would be) recognised in a balance sheet of the partnership, and
 - (b) the company has a significant interest in the partnership.
- (4) For the purposes of section 438(4)—
- (a) the obligations mentioned there include any case where the obligations are those of the partnership, and
 - (b) references to a qualifying infrastructure company in that case include the partnership.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

(5) Subsections (2) to (4) apply (with any necessary modifications) in relation to transparent entities that are not partnerships as they apply in relation to partnerships.

[^{F22}(6) For the purposes of this section an entity is “transparent” if—

- (a) it is not chargeable to corporation tax or income tax as a person (ignoring any exemptions), or
- (b) it is a collective investment vehicle which is “transparent for income tax purposes” for the purposes of paragraph 8 of Schedule 5AAA to TCGA 1992 (see paragraph 8(7) of that Schedule).]

Textual Amendments

F22 S. 447(6) substituted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 17**

448 Decommissioning **U.K.**

- (1) This Chapter applies in relation to an activity consisting of the decommissioning of a public infrastructure asset as it applies in relation to its provision.
- (2) In determining whether a company is a qualifying infrastructure company the following assets of the company are ignored (and the income arising from them is, accordingly, also ignored)—
 - (a) any shares in a decommissioning fund, and
 - (b) any loan relationships or other financing arrangements to which a decommissioning fund is party.
- (3) A decommissioning fund is to be regarded as a qualifying infrastructure company.
- (4) For the purposes of this section “a decommissioning fund” means a fund which—
 - (a) holds particular investments for the sole purpose of funding activities for, or in connection with, the decommissioning or other provision of public infrastructure assets, and
 - (b) is prevented from using the proceeds of the investments, or the income arising from them, for any purpose other than the purpose mentioned in paragraph (a) or returning surplus funds.
- (5) In this section “decommissioning” includes demolishing and putting out of use.

449 Minor definitions for purposes of this Chapter **U.K.**

- (1) For the purposes of this Chapter—
 - “balance sheet” means a balance sheet that is drawn up in accordance with generally accepted accounting practice,
 - “financial asset” has the same meaning as it has for accounting purposes,
 - “loan relationships or other financing arrangements” means—
 - (a) loan relationships,
 - (b) derivative contracts in relation to which the condition in section 387(4) is met (underlying subject matter to be interest rates etc),
 - (c) finance leases, or

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8. (See end of Document for details)

- (d) debt factoring or similar transactions, and
“the UK sector of the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.
- (2) For the purposes of this Chapter references to a company which is “associated” with another company at any time are references to companies that are members of the same worldwide group at that time.]

Changes to legislation:

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, CHAPTER 8.