



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 4

TRANSFER PRICING

CHAPTER 5

POSITION OF GUARANTOR OF AFFECTED PERSON'S LIABILITIES UNDER A SECURITY ISSUED BY THE PERSON

191 When sections 192 to 194 apply

- (1) Sections 192 to 194 apply if—
 - (a) one of the affected persons (“the issuing company”) is a company that has liabilities under a security issued by it,
 - (b) those liabilities are to any extent the subject of a guarantee provided by a company (“the guarantor company”),
 - (c) in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5), and
 - (d) that reduction is required because of section 153.
- (2) In subsections (1)(a) and (3)(a) “security” includes securities not creating or evidencing a charge on assets.
- (3) For the purposes of subsection (1)(a), any—
 - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
 - (b) other consideration given by a company for the use of money so advanced,

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is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (1)(a) to a security is to be read accordingly.

- (4) In subsection (1)(b) the reference to a guarantee includes—
- (a) a reference to a surety, and
 - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.
- (5) In this Chapter—
- “the guarantor company” has the meaning given by subsection (1)(b),
 - “the issuing company” has the meaning given by subsection (1)(a), and
 - “the security” means the security mentioned in subsection (1)(a).

192 Attribution to guarantor company of things done by issuing company

- (1) On the making of a claim, the guarantor company is, to the extent of the reduction mentioned in section 191(1)(c), to be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—
- (a) had issued the security,
 - (b) owed the liabilities under it, and
 - (c) had paid any interest or other amounts paid under it by the issuing company.
- (2) Subsection (1) is subject to subsection (3).
- (3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person), TD must not exceed TR, where—
- TD is the total of the amounts brought into account by the guarantor companies because of subsection (1), and
 - TR is the total amount of the reductions within section 191(1)(c).
- (4) Provision about claims under subsection (1) is made by—
- section 193 (interaction between claims under subsection (1) and claims under section 174), and
 - section 194 (general provision about claims under subsection (1)).
- (5) In subsection (1) “the Taxes Acts” has the meaning given by section 118(1) of TMA 1970.
- (6) In subsection (3) any reference to a guarantee includes—
- (a) a reference to a surety, and
 - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

193 Interaction between claims under sections 174 and 192(1)

- (1) In this section “the loan provision” means the actual provision made or imposed between—
 - (a) the issuing company, and
 - (b) another company (“the lending company”),which is provision in relation to the security.
- (2) Subsections (3) and (4) apply if—
 - (a) the guarantor company makes a claim under section 192(1), and
 - (b) the lending company makes a claim under section 174 in relation to the loan provision.
- (3) In determining the arm's length provision for the purposes of section 174(2)(a) in relation to the lending company's claim, additional amounts are to be brought into account as credits corresponding to the debits that fall to be brought into account by the guarantor company because of section 192(1).
- (4) If—
 - (a) the lending company makes its claim under section 174 before the guarantor company makes its claim under section 192(1), and
 - (b) the calculation on which the lending company's claim is based does not comply with subsection (3),the guarantor company's claim is to be disallowed.

194 Claims under section 192(1): general provisions

- (1) A claim under section 192(1) may be made—
 - (a) by the guarantor company,
 - (b) if there are two or more guarantor companies, by those companies acting together, or
 - (c) by the issuing company.
- (2) A claim made under section 192(1) by the issuing company is to be taken to be made on behalf of the guarantor company or companies.
- (3) Sections 175 to 177 apply in relation to a claim under section 192(1) made by or on behalf of any person or persons as they apply in relation to a claim under section 174 made by the disadvantaged person, but taking—
 - (a) references in sections 176 and 177 to the advantaged person as references to the issuing company, and
 - (b) the reference in section 177 to the disadvantaged person as a reference to the guarantor company or companies.

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