



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 4

TRANSFER PRICING

CHAPTER 2

KEY INTERPRETATIVE PROVISIONS

“Indirect participation” in management, control or capital of a person

159 Indirect participation: potential direct participant

- (1) Subsection (2) applies for the purposes of—
 - (a) sections 148(2) and (3), 154(5), 175(2) and 204(4),
 - (b) in Part 2, section 132(7), and
 - (c) in Part 5, section 219(2).
- (2) A person (“P”) is indirectly participating in the management, control or capital of another person (“A”) at a particular time if P would be directly participating in the management, control or capital of A at that time if the rights and powers attributed to P included all the rights and powers mentioned in subsection (3) that are not already attributed to P for the purpose of deciding under section 157 whether P is directly participating in the management, control or capital of A.
- (3) The rights and powers referred to in subsection (2) are—
 - (a) rights and powers which P is entitled to acquire at a future date,
 - (b) rights and powers which P will, at a future date, become entitled to acquire,
 - (c) rights and powers of persons other than P so far as they are rights or powers falling within subsection (4),

Status: This is the original version (as it was originally enacted).

- (d) rights and powers of any person with whom P is connected (see section 163), and
 - (e) rights and powers which would be attributed by subsection (2) to a person with whom P is connected were it being decided under that subsection whether that connected person is indirectly participating in the management, control or capital of A.
- (4) Rights and powers fall within this subsection so far as they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways—
 - (i) on behalf of P,
 - (ii) under the direction of P, or
 - (iii) for the benefit of P, and
 - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (5) In subsections (3)(c) to (e) and (4), the references to a person's rights and powers include references to any rights or powers which the person either—
- (a) is entitled to acquire at a future date, or
 - (b) will, at a future date, become entitled to acquire.
- (6) In paragraph (e) of subsection (3), the reference to rights and powers which would be attributed to a connected person includes a reference to rights and powers which, by applying that paragraph wherever one person is connected with another, would be so attributed to the connected person through a number of persons each of whom is connected with at least one of the others.
- (7) References in this section—
- (a) to rights and powers of a person, or
 - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.