Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

An Act to restate, with minor changes, certain enactments relating to tax; to make provision for purposes connected with the restatement of enactments by other tax law rewrite Acts; and for connected purposes. [18th March 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act applied (with modifications) (8.2.2011) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), reg. 1, **Sch. 6 Pt. 1** (with reg. 27(a))

C2 Act modified (17.12.2020) by Taxation (Post-transition Period) Act 2020 (c. 26), **Sch. 4** (with Sch. 2 para. 7(7)-(9))

C3 Act applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), reg. 2, Sch. 3 paras. 2, **3** (with reg. 5) (as amended (4.1.2024) by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), 4, 21(4))

PART 1

OVERVIEW

1 Overview of Act

(1) The following Parts contain provisions relating to international aspects of taxation—

(a) Parts 2 and 3 (double taxation relief),

(b) Parts 4 and 5 (transfer pricing and advance pricing agreements),

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F1(c) . . . . . .
[F2(ca) Part 6A (hybrid and other mismatches),]
F3(d) . . . . . .
(e) Part 8 (offshore funds [F4etc]),
[F5(f) Part 9A (controlled foreign companies), and
(g) Part 10 (corporate interest restriction).]

(2) Part 9 contains amendments of tax legislation to relocate enactments to appropriate places.

(3) In particular, Part 9 contains amendments of TCGA 1992, ITTOIA 2005 and ITA 2007 that insert provisions relating to—

(a) oil activities (see section 364 and Schedule 1),
(b) alternative finance arrangements (see section 365 and Schedule 2),
(c) leasing arrangements involving finance leases or loans (see section 367 and Schedule 3),
(d) sale and lease-back etc (see section 368 and Schedule 4),
(e) factoring of income etc (see section 369 and Schedule 5), and
(f) UK representatives of non-UK residents (see section 370 and Schedule 6).

(4) Part [F611] contains provisions of general application (including definitions for the purposes of the Act).

(5) For abbreviations used in this Act see section [F7500], and for defined expressions used in Parts 2 to 8 see Schedule 11.

Textual Amendments

F1 S. 1(1)(c) omitted (with effect in accordance with Sch. 10 para. 22(b) of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 10(a)**

F2 S. 1(1)(ca) inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 10 para. 10(b)**

F3 S. 1(1)(d) repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 11(1)(a)**

F4 Word in s. 1(1)(e) inserted (retrospective to 5.12.2013) by Finance Act 2014 (c. 26), **s. 289(5)(a)**(6)

F5 S. 1(1)(f)(g) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 13(b)**

F6 Word in s. 1(4) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(d)(i)**

F7 Word in s. 1(5) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(d)(ii)**

PART 2

DOUBLE TAXATION RELIEF

Modifications etc. (not altering text)

C4 Pt. 2 modified by 1988 c. 1, Sch. 19ABA paras. 26-28 (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 34(3)** (with Sch. 9 paras. 1-9, 22))

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C5 Pt. 2 applied by 2010 c. 4, s. 269DL(6) (as inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 1**)

CHAPTER 1

DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

Double taxation arrangements

2 Giving effect to arrangements made in relation to other territories

(1) If Her Majesty by Order in Council declares—

(a) that arrangements specified in the Order have been made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to taxes within subsection (3), and

(b) that it is expedient that those arrangements should have effect,

those arrangements have effect.

[[F8](1A) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.**]**

(2) If arrangements have effect under subsection (1), they have effect in accordance with section 6.

(3) The taxes are—

(a) income tax,

(b) corporation tax,

(c) capital gains tax,

(d) petroleum revenue tax, and

(e) any taxes imposed by the law of the territory that are of a similar character to taxes within paragraphs (a) to (d).

(4) In this Part "double taxation arrangements" means arrangements that have effect under subsection (1).

Textual Amendments

F8 S. 2(1A) inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by Finance Act 2018 (c. 3), **s. 32(1)(4)**

3 Arrangements may include retrospective or supplementary provision

(1) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision for relief from tax for periods before the passing of this Act, or

(b) provision for relief from tax for periods before the making of the arrangements.

(2) Section 2(1) gives effect to arrangements even if the arrangements include—

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(a) provision as to income that is not subject to double taxation,

(b) provision as to chargeable gains that are not subject to double taxation, [F9]...

(c) provision as to foreign-field consideration that is not subject to double taxation **[**[F10]or

(d) provision conferring (with or without other functions) functions relating to the determination of matters arising under the arrangements on a public authority in the United Kingdom or in a territory outside the United Kingdom.**]**

(3) In subsection (2)(c) "foreign-field consideration" means consideration brought into charge to tax under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

Textual Amendments

F9 Word in s. 3(2)(b) omitted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 32(2)(a)(4)**

F10 S. 3(2)(d) and word inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by Finance Act 2018 (c. 3), **s. 32(2)(b)(4)**

4 Meaning of "double taxation" in sections 2 and 3

(1) For the purposes of sections 2 and 3, any amount within subsection (2) is to be treated as having been payable.

(2) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of the territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in double taxation arrangements.

(3) References in sections 2 and 3 to double taxation are to be read in accordance with subsection (1).

5 Orders under section 2: contents and procedure

(1) If an Order under section 2 ("the later Order") revokes an earlier Order under that section, the later Order may contain transitional provisions that appear to Her Majesty to be necessary or expedient.

(2) An Order under section 2 is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

6 The effect given by section 2 to double taxation arrangements

(1) Subject to this Part and Part 18 of ICTA, double taxation arrangements have effect in accordance with subsections (2) to (4) despite anything in any enactment.

(2) Double taxation arrangements have effect in relation to income tax and corporation tax so far as the arrangements provide—

(a) for relief from income tax or corporation tax,

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(b) for taxing income of non-UK resident persons that arises from sources in the United Kingdom,

(c) for taxing chargeable gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(d) for determining the income or chargeable gains to be attributed to non-UK resident persons,

(e) for determining the income or chargeable gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, **[**F11or **]**

(f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, F12...

F12(g) . . . . . .

(3) Double taxation arrangements have effect in relation to capital gains tax so far as the arrangements provide—

(a) for relief from capital gains tax,

(b) for taxing capital gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(c) for determining the capital gains to be attributed to non-UK resident persons,

(d) for determining the capital gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, or

(e) for determining the capital gains to be attributed to UK resident persons who have special relationships with non-UK resident persons.

(4) Double taxation arrangements have effect in relation to petroleum revenue tax so far as the arrangements provide for relief from petroleum revenue tax charged under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

(5) In the case of relief under this Chapter that is not also relief under Chapter 2, the relief is not available in respect of special withholding tax (a corresponding rule applies in relation to relief under Chapter 2 as a result of the definition of foreign tax given by section 21).

(6) Relief under subsection (2)(a), (3)(a) or (4) requires a claim.

(7) In subsection (3) "UK resident person" and "non-UK resident person" have the meaning given by section 989 of ITA 2007.

(8) In subsection (5) "special withholding tax" has the same meaning as in Part 3 (see section 136).

Textual Amendments

F11 Word in s. 6(2) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by Finance Act 2016 (c. 24), **Sch. 1 para. 68(2)(a)**

F12 S. 6(2)(g) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(2)(b)**

Modifications etc. (not altering text)

C6 S. 6(1) excluded by 2005 c. 5, s. 608W(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 4**)

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C7 S. 6(1) excluded by 1992 c. 12, Sch. 1A para. 11 (as inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 14**)

7 General regulations

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations generally for carrying out the provisions of the treaty sections or any double taxation arrangements.

(2) Regulations under subsection (1) may in particular provide for securing that relief from taxation imposed by the law of the territory to which any double taxation arrangements relate does not enure for the benefit of persons not entitled to that relief.

(3) Subsection (4) applies to tax if—

(a) the tax is deductible from a payment but, in order to comply with double taxation arrangements, has not been deducted, and

(b) it is discovered that the arrangements did not apply to that payment.

(4) Regulations under subsection (1) may in particular provide for authorising recovery of tax to which this subsection applies—

(a) by assessment on the person entitled to the payment from which the tax is not deducted, or

(b) by deduction from subsequent payments.

(5) In subsection (1) "the treaty sections" means—

sections 2 to 6,

section 134(1), and

section 134(3) to (6) so far as relating to section 134(1).

(6) This section does not apply in relation to—

(a) petroleum revenue tax, or

(b) taxes imposed by the law of a territory outside the United Kingdom that—

(i) are of a similar character to petroleum revenue tax, and

(ii) are not of a similar character to income tax, corporation tax or capital gains tax.

Unilateral relief arrangements

8 Interpretation: "unilateral relief arrangements" means rules 1 to 9, etc

(1) In this Part "unilateral relief arrangements", in relation to a territory outside the United Kingdom, means the rules set out in sections 9 to 17.

(2) In sections 11 to 17, and in Chapter 2 (except section 29) in its application to relief under unilateral relief arrangements, references to tax payable or paid under the law of a territory outside the United Kingdom include only—

(a) taxes which are charged on income and which correspond to income tax,

(b) taxes which are charged on income or chargeable gains and which correspond to corporation tax, and

(c) taxes which are charged on capital gains and which correspond to capital gains tax.

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(3) For the purposes of subsection (2), tax may correspond to income tax, corporation tax or capital gains tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

9 Rule 1: the unilateral entitlement to credit for non-UK tax

(1) Credit for tax—

(a) paid under the law of the territory,

(b) calculated by reference to income arising, or any chargeable gain accruing, in the territory, and

(c) corresponding to UK tax,

is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.

(2) Credit for tax—

(a) paid under the law of the territory,

(b) calculated by reference to any capital gain accruing in the territory, and

(c) corresponding to UK tax,

is to be allowed against any capital gains tax calculated by reference to that gain.

(3) For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.

(4) For the purposes of subsection (1)(c), tax corresponds to UK tax if—

(a) it is charged on income and corresponds to income tax, or

(b) it is charged on income or chargeable gains and corresponds to corporation tax.

(5) For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.

(6) For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

(7) If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of "in the territory".

(8) Subsections (1) and (2) are subject to sections 11 and 12.

10 Rule 2: accrued income profits

(1) Subsection (2) applies if—

(a) a person is treated under section 628(5) of ITA 2007 as making accrued income profits in an interest period,

(b) the person would, were the person to become entitled in the relevant tax year to any interest on the securities concerned, be liable in respect of the interest to tax chargeable under ITTOIA 2005 on relevant foreign income, and

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(c) the person is liable under the law of the territory to tax in respect of interest payable on the securities at the end of the interest period or the person would be so liable if the person were entitled to that interest.

(2) Credit is to be allowed against income tax calculated by reference to the accrued income profits.

(3) The amount of the credit allowed under subsection (2) is given by—

$$AIP \times FTR$$

where—
AIP is the amount of the accrued income profits, and
FTR is the rate of tax to which the person is or would be liable as mentioned in subsection (1)(c).

(4) Subsection (2) is subject to section 11.

(5) In subsection (1)(b) "the relevant tax year" means the tax year in which, under section 617(2) of ITA 2007, the accrued income profits are treated as made.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.

11 Rule 3: interaction between double taxation arrangements and rules 1 and 2

(1) Credit for tax paid under the law of the territory is not allowed under section 9 or 10 in the case of any income or gains if any credit for that tax is allowable in respect of that income or those gains under double taxation arrangements made in relation to the territory.

(2) If credit in respect of an amount of tax may be allowed under double taxation arrangements made in relation to the territory, credit is not allowed under section 9 or 10 in respect of that tax.

(3) If double taxation arrangements made in relation to the territory contain express provision to the effect that relief by way of credit is not to be given under the arrangements in cases or circumstances specified or described in the arrangements, credit is not allowed under section 9 or 10 in those cases or circumstances.

12 Rule 4: cases in which, and calculation of, credit allowed for tax on dividends

(1) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed only if section 13, 14, 15 or 16 so provides.

(2) If credit is allowed in principle as a result of at least one of sections 14, 15 and 16, any tax in respect of P's profits that is paid by P under the law of the territory is to be taken into account in considering whether any, and (if so) what, credit is in fact to be allowed under section 9 in respect of the dividend.

(3) If credit is allowed in principle as a result of at least one of sections 15 and 16, there is to be taken into account, as if it were tax payable under the law of the territory, any tax that would be so taken into account under section 63(5) if the recipient of the dividend—

(a) directly or indirectly controlled, or

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(b) were a subsidiary of a company that directly or indirectly controlled,

at least 10% of the voting power in P.

(4) For the purposes of subsection (3), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

13 Rule 5: credit for tax charged directly on dividend

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if—

(a) the overseas tax is charged directly on the dividend (whether by charge to tax, deduction of tax at source or otherwise), and

(b) neither P nor the recipient of the dividend would have borne any of that tax if the dividend had not been paid.

14 Rule 6: credit for underlying tax on dividend paid to 10% associate of payer

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if conditions A and B are met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

at least 10% of the voting power in P.

(5) For the purposes of subsection (4), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

15 Rule 7: credit for underlying tax on dividend paid to sub-10% associate

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if each of conditions A to C is met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

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(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

less than 10% of the voting power in P.

(5) If condition B is met, in subsection (6) "the held percentage" means the voting power in P which is directly or indirectly controlled by—

(a) the recipient, or

(b) a company of which the recipient is a subsidiary.

(6) Condition C is that—

(a) the held percentage has been reduced below 10%,

(b) the recipient shows that the reduction below the 10% limit (and any further reduction)—

(i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

(ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and

(c) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.

(7) For the purposes of subsection (6) a company is an "associate" if—

(a) the company is neither the recipient nor a parent,

(b) before the reduction, the voting power in P that is in question was controlled otherwise than directly by the recipient, and

(c) the company is relevant for determining whether, before the reduction, the recipient—

(i) indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in P.

(8) In subsections (6) and (7) "parent" means a company of which the recipient is a subsidiary.

(9) In subsection (6) "the relevant voting power" means—

(a) the voting power in P as a result of which relief was due under section 14 before the reduction, or

(b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

16 Rule 8: credit for underlying tax on dividend paid by exchanged associate

(1) This section applies for the purposes of section 12(1).

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(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if each of conditions A to C is met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

less than 10% of the voting power in P.

(5) If condition B is met, in subsection (6) "the held percentage" means the voting power in P which is directly or indirectly controlled by—

(a) the recipient, or

(b) a company of which the recipient is a subsidiary.

(6) Condition C is that—

(a) the held percentage has been acquired in exchange for voting power in another company ("X"),

(b) before the exchange, the recipient—

(i) directly or indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in X,

(c) the recipient shows that the exchange (and any reduction after the exchange) —

(i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

(ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and

(d) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.

(7) For the purposes of subsection (6) a company is an "associate" if—

(a) the company is neither the recipient nor a parent,

(b) before the exchange, the voting power in X that is in question was controlled otherwise than directly by the recipient, and

(c) the company is relevant for determining whether, before the exchange, the recipient—

(i) indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in X.

(8) In subsections (6) and (7) "parent" means a company of which the recipient is a subsidiary.

(9) In subsection (6) "the relevant voting power" means—

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(a) the voting power in X as a result of which relief was due under section 14 before the exchange, or

(b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

17 Rule 9: credit in relation to dividends for spared tax

(1) Subsection (2) applies if—

(a) under the law of the territory, an amount of tax ("the spared tax") would, but for a relief, have been payable by a company resident in the territory ("company A") in respect of any of its profits,

(b) company A pays a dividend out of those profits to another company resident in the territory ("company B"),

(c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom ("company C"), and

(d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, as a result of the operation of section 20(2) in relation to double taxation arrangements made in relation to the territory, to treat the spared tax for the purposes of Chapter 2 as having been payable.

(2) The spared tax is to be taken into account—

(a) for the purposes of sections 9 to 16, and

(b) subject to section 31(4), for the purposes of Chapter 2 in its application to relief under these rules in relation to the dividend paid to company C,

as if it had been payable and paid.

(3) References in these rules and that Chapter—

(a) to tax payable or chargeable, or

(b) to tax not chargeable directly or by deduction,

are to be read in accordance with subsection (2).

(4) Except as provided by subsection (2), in relation to any dividend paid—

(a) by a company resident in the territory,

(b) to a company resident in the United Kingdom,

credit as a result of these rules is not to be given under section 63(5) in respect of tax which would have been payable under the law of the territory, or under the law of any other territory outside the United Kingdom, but for a relief.

(5) Subsection (4) has effect despite any double taxation arrangements—

(a) made in relation to the territory, or

(b) made in relation to any other territory outside the United Kingdom,

which make provision about a relief given, under the law of the territory in relation to which the arrangements are made, with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom.

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(6) In this section "these rules" means sections 9 to 16 and this section.

CHAPTER 2

DOUBLE TAXATION RELIEF BY WAY OF CREDIT

Effect to be given to credit for foreign tax allowed against UK tax

18 Entitlement to credit for foreign tax reduces UK tax by amount of the credit

(1) Subsection (2) applies if—

(a) under double taxation arrangements, or

(b) under unilateral relief arrangements for a territory outside the United Kingdom,

credit is to be allowed against any income tax, corporation tax or capital gains tax chargeable in respect of any income or chargeable gain.

(2) The amount of those taxes chargeable in respect of the income or gain is to be reduced by the amount of the credit.

(3) In subsection (1) "credit"—

(a) in relation to double taxation arrangements, means credit for tax payable under the law of the territory in relation to which the arrangements are made, and

(b) in relation to unilateral relief arrangements for a territory outside the United Kingdom, means credit for tax payable under the law of that territory,

but see sections 12(3) and 63(5) (dividends: certain tax payable otherwise than under the law of a territory treated as payable under that law).

[[F13](3A) References in subsection (3) to tax payable under the law of a territory outside the United Kingdom do not include tax paid by a company in relation to which an election under section 18A of CTA 2009 (exemption for profits or losses of overseas permanent establishments) has effect in respect of a relevant profits amount or relevant losses amount within the meaning of that section.**]**

(4) Subsection (2) applies subject to—

(a) the following provisions of this Chapter,

(b) section 106 (Chapter 1 and this Chapter operate for capital gains tax purposes separately from their operation for the purposes of other United Kingdom taxes), and

(c) Chapter 2 of Part 18 of ICTA (double taxation relief: pooling of foreign dividends paid before 1 July 2009).

(5) Credit is allowed under subsection (2) against any tax only if, under the arrangements concerned, credit is allowable against that tax.

(6) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.

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Textual Amendments

F13 S. 18(3A) inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 26**, 31

19 Time limits for claims for relief under section 18(2)

(1) Subsections (2) and (3) apply to a claim for relief under section 18(2).

(2) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to income tax or capital gains tax for a tax year, the claim must be made on or before—

(a) the fourth anniversary of the end of that tax year, or

(b) if later, the 31 January following the tax year in which the foreign tax is paid.

(3) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to corporation tax for an accounting period, the claim must be made not more than—

(a) four years after the end of that accounting period, or

(b) if later, one year after the end of the accounting period in which the foreign tax is paid.

20 Foreign tax includes tax spared because of international development relief

(1) Subsections (2) and (4) apply if the arrangements are double taxation arrangements.

(2) For the purposes of this Chapter, any amount within subsection (3) is to be treated as having been payable.

(3) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of that territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in double taxation arrangements.

(4) References in this Chapter—

(a) to tax payable or chargeable, or

(b) to tax not chargeable directly or by deduction,

are to be read in accordance with subsection (2).

(5) Subsections (2) and (4) have effect subject to—

(a) subsection (6), and

(b) sections 31(4) and 32(5) (income and gains not to be increased in calculations under section 31 or 32 by amounts treated by this section as having been payable).

(6) If section 63(5) applies because conditions A and B in section 63 are met, relief is not given in accordance with section 63(5) (relief for certain tax underlying dividends paid between related companies) because of this section unless double taxation arrangements make express provision for the relief.

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(7) Subsection (6) does not affect the operation of section 17(2) (treatment, for purposes of unilateral relief, of dividend paid by foreign company that has received dividends from a company benefiting from tax-sparing relief).

Interpretation of Chapter

21 Meaning of "the arrangements", "the non-UK territory", "foreign tax" etc

(1) In this Chapter (except section 18)—

"the arrangements" means the arrangements mentioned in section 18(1),

"the non-UK territory" means the territory mentioned in section 18(3),

"foreign tax" means tax chargeable under the law of the non-UK territory—

(a) for which credit may be allowed under the arrangements, and

(b) which is not special withholding tax, and

"underlying tax" means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction.

(2) In subsection (1) "special withholding tax" has the same meaning as in Part 3 (see section 136).

(3) The definitions in subsection (1) are to be read with sections 17(3) and 20(4) (meaning of references to tax payable or chargeable, and of references to tax not chargeable directly or by deduction).

(4) See also section 8(2) (meaning of references to tax payable or paid under the law of a territory outside the United Kingdom).

Credits where same income charged to income tax in more than one tax year

[F14]22 Credit for foreign tax on overlap profit if credit for that tax already allowed

. . . . . .

Textual Amendments

F14 Ss. 22-24 omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2022 (c. 3), Sch. 1 paras. 60, **61(1)**

[F14]23 Time limits for claims for relief under section 22(2)

. . . . . .

Textual Amendments

F14 Ss. 22-24 omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2022 (c. 3), Sch. 1 paras. 60, **61(1)**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F14]24 Claw-back of relief under section 22(2)

. . . . . .

Textual Amendments

F14 Ss. 22-24 omitted (for the tax year 2024-25 and subsequent tax years) by virtue of Finance Act 2022 (c. 3), Sch. 1 paras. 60, **61(1)**

Cases in which credit not allowed

25 Credit not allowed if relief allowed against overseas tax

(1) Subsection (2) applies if relief may be allowed—

(a) under the arrangements, or

(b) under the law of the non-UK territory in consequence of the arrangements,

in respect of an amount of tax that would, but for the relief, be payable under the law of that territory.

(2) Credit under section 18(2) is not allowed in respect of that tax, whether or not the relief has been used.

26 Credit not allowed under arrangements unless taxpayer is UK resident

(1) Credit under section 18(2) against income tax, corporation tax or capital gains tax for a chargeable period is not allowed unless the person in respect of whose income or chargeable gains the tax is chargeable is UK resident for that period.

(2) Sections 28 to 30 (credit under unilateral relief arrangements allowed to some non-UK resident persons) contain exceptions to subsection (1).

(3) In subsection (1) so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

(4) In subsection (1) so far as it relates to capital gains tax "UK resident" has the meaning given by section 989 of ITA 2007.

27 Credit not allowed if person elects against credit

Credit under section 18(2) against income tax, corporation tax or capital gains tax charged on any income or chargeable gains of a person is not allowed if the person elects for credit not to be allowed in respect of that income or those gains.

Exceptions to requirement to be UK resident

28 Unilateral relief for Isle of Man or Channel Islands tax

(1) Subsection (2) applies if the arrangements—

(a) are unilateral relief arrangements for a territory outside the United Kingdom, and

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(b) provide for credit to be allowed for tax paid under the law of the Isle of Man ("the Isle of Man tax").

(2) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Isle of Man tax if the person in respect of whose income or chargeable gains the UK tax is payable is—

(a) resident for that period in the United Kingdom, or

(b) resident for that period in the Isle of Man.

(3) Subsection (4) applies if the arrangements—

(a) are unilateral relief arrangements for a territory outside the United Kingdom, and

(b) provide for credit to be allowed for tax paid under the law of any of the Channel Islands ("the Channel Islands tax").

(4) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Channel Islands tax if the person in respect of whose income or chargeable gains the UK tax is payable is—

(a) resident for that period in the United Kingdom, or

(b) resident for that period in any of the Channel Islands.

(5) Each of the following is a UK tax for the purposes of this section—

(a) income tax,

(b) corporation tax, and

(c) capital gains tax.

(6) In subsections (2) and (4) so far as they relate to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

29 Unilateral relief for tax on income from employment or office

(1) Subsection (3) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.

(2) In subsection (3) "overseas tax" means tax—

(a) paid under the law of the territory,

(b) charged on income and corresponding to income tax or to corporation tax, and

(c) calculated by reference to income from an office or employment the duties of which are performed wholly or mainly in the territory.

(3) Credit for overseas tax may be allowed under section 18(2) against income tax for a tax year—

(a) calculated by reference to that income, and

(b) charged on employment income,

if the person performing the duties is resident in the United Kingdom, or resident in the territory, for that year.

(4) For the purposes of subsection (2)(b) tax may correspond to income tax or corporation tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

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30 Unilateral relief for non-UK tax on non-resident's UK branch or agency etc

(1) Subsection (2) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.

(2) Credit for tax within subsection (3) or (4) may be allowed under section 18(2) against any of the UK taxes if the territory is not one in which the person or company concerned is liable to tax by reason of domicile, residence or place of management.

(3) Tax is within this subsection if the arrangements provide for credit for it to be allowed against income tax or corporation tax, and it is paid under the law of the territory in respect of the income or chargeable gains—

(a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or

(b) of a permanent establishment in the United Kingdom of a non-UK resident company.

(4) Tax is within this subsection if the arrangements provide for credit for it to be allowed against capital gains tax, and it is paid under the law of the territory in respect of the capital gains—

(a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or

(b) of a permanent establishment in the United Kingdom of a non-UK resident company.

(5) Relief under subsection (2) may not exceed the relief which would have been available if—

(a) the branch or agency, or permanent establishment, had been a UK resident person, and

(b) the income or gains had been income or gains of that person.

(6) Each of the following is a UK tax for the purposes of subsection (2)—

(a) income tax,

(b) corporation tax, and

(c) capital gains tax.

(7) In this section so far as it relates to capital gains tax—

"branch or agency" has the meaning given by section 10(6) of TCGA 1992,

"company" has the same meaning as in TCGA 1992 (see section 288 of that Act),

"permanent establishment", in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010, and

"UK resident" or "non-UK resident", in relation to a company or other person, has the meaning given by section 989 of ITA 2007.

Calculating income or gains in respect of which credit is allowed

31 Calculation of income or gain where remittance basis does not apply

(1) Subsection (2) applies if—

(a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or gain, and

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(b) section 32(2) (cases where UK tax payable by reference to amount received in UK) does not apply.

(2) In calculating the amount of the income or gain for the purposes of income tax, corporation tax or capital gains tax—

(a) no deduction is to be made for foreign tax or special withholding tax, whether in respect of the same or any other income or gain, and

(b) if the credit is for foreign tax in respect of a dividend, the amount of the dividend is to be treated as increased by any underlying tax within subsection (3).

(3) In relation to a dividend, underlying tax is within this subsection if—

(a) under the arrangements it is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend,

(b) because the amount given by Step 2 of the calculation under section 58 is more than the amount given by Step 3 of that calculation, it is not to be taken into account in considering the questions mentioned in paragraph (a), or

(c) under section 60(3) it is not to be taken into account in considering those questions.

(4) The amount of any income or gain is not to be increased under subsection (2)(b) by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.

(5) Subsections (1) to (4) have effect for the purposes of corporation tax despite—

(a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and

(b) section 906(1) of CTA 2009 (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In this section "special withholding tax" means special withholding tax—

(a) within the meaning of Part 3 (see section 136), and

(b) in respect of which a claim has been made under that Part.

32 Calculation of amount received where UK tax charged on remittance basis

(1) Subsection (2) applies if—

(a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or capital gain, and

(b) income tax or capital gains tax is payable by reference to the amount received in the United Kingdom.

(2) For the purposes of whichever of income tax and capital gains tax is payable as mentioned in subsection (1)(b), the amount received is to be treated as increased—

(a) by the amount of the foreign tax in respect of the income or gain,

(b) by the amount of any special withholding tax levied in respect of the income or gain, but see subsection (4), and

(c) if the credit is for foreign tax in respect of a dividend, by any underlying tax that under the arrangements is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend.

(3) For the purposes of subsection (4), a gain is a "special gain" if—

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(a) it is a chargeable gain that accrues to a person on a disposal by the person of assets,
(b) the consideration for the disposal consists of or includes an amount of savings income, and
(c) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.

(4) If the credit is for foreign tax in respect of a gain that is a special gain, the amount of the increase under subsection (2)(b) is given by—

$$AWT \times \frac{GUK}{SG - AWT}$$

where—
AWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal concerned,
GUK is the amount of the gain received in the United Kingdom, and
SG is the amount of the gain.

(5) The amount of any income or gain is not to be increased under this section by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.

(6) In this section—

"savings income" has the same meaning as in Part 3 (see section 136), and

"special withholding tax" means special withholding tax—

(a) within the meaning of Part 3 (see section 136), and
(b) in respect of which a claim has been made under that Part.

Limits on credit: general rules

33 Limit on credit: minimisation of the foreign tax

(1) The credit under section 18(2) must not exceed the credit which would be allowed had all reasonable steps been taken—
(a) under the law of the non-UK territory, and
(b) under double taxation arrangements made in relation to that territory,
to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) include—
(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
(b) making elections for tax purposes.

(3) For the purposes of subsection (1), any question as to the steps which it would have been reasonable for a person to take is to be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part.

34 Reduction in credit: payment by reference to foreign tax

(1) Subsection (2) applies if—

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(a) credit for foreign tax is to be allowed to a person ("P") under the arrangements, and

[F15(b) a tax authority makes a payment by reference to that tax, and that payment—

(i) is made to P or a person connected with P, or

(ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into.**]**

(2) The amount of that credit is to be reduced by an amount equal to that payment.

(3) Whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

[F16(4) In subsection (1)(b)(ii) "scheme" includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.**]**

Textual Amendments

F15 S. 34(1)(b) substituted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(2)**

F16 S. 34(4) inserted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(3)**

35 Disallowed credit: use as a deduction

(1) Subsection (2) applies if the application of section 36(2) or 42(2) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

(2) The taxpayer's income is to be treated as reduced by the amount of the disallowed credit.

(3) Subsection (4) applies if the application of section 40(2) prevents an amount of credit for foreign tax from being allowable against capital gains tax.

(4) The taxpayer's chargeable gains are to be treated as reduced by the amount of the disallowed credit.

(5) Subsection (2) or (4) applies only so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.

(6) For the purposes of subsection (5), payment of the foreign tax is to be taken into account despite section 31(2).

Limit on, and reduction of, credit against income tax

36 Amount of limit

(1) This section is about the amount of credit allowed under section 18(2) against a person's income tax for any tax year.

(2) The amount of credit in respect of income from any particular source must not exceed the difference between—

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(a) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - X$$

and

(b) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - (X + C)$$

(3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of income from more than one source, apply subsection (2) successively to the income from each source, taking the sources in the order which will result in the greatest reduction in the person's income tax liability for the tax year.

(4) In subsection (2)—

TI is the person's total income for the tax year,

X is the income (if any) to which subsection (2) has already been applied, and

C is the income in respect of which the credit is to be allowed.

(5) The rules for calculating an amount of income tax under subsection (2) are—

(a) the calculation is to be made in accordance with sections 31 and 32, and

(b) no credit is to be allowed for foreign tax, and

(c) no reduction is to be made under section 26 of FA 2005 (trusts for the benefit of a vulnerable beneficiary), but

(d) any other income tax reduction under the Income Tax Acts is to be made.

(6) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.

(7) For the purposes of subsection (3) the following are "tax-relief arrangements"—

(a) double taxation arrangements, and

(b) unilateral relief arrangements for a territory outside the United Kingdom.

37 Credit against tax on trade income: further rules

(1) Apply section 36(2) in accordance with subsections (2) to (5) if the tax against which the credit is to be allowed is income tax on trade income.

(2) Treat the reference to income from any particular source as a reference to trade income arising out of a transaction, arrangement or asset.

(3) C is the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(4) In calculating an amount of income tax under section 36(2) deduct, from the income arising out of the transaction, arrangement or asset in connection with which the credit arises, deductions which would be allowed in a calculation of the taxpayer's liability in respect of that income.

(5) Treat section 36(3) as referring—

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(a) to trade income instead of income, and
(b) to a transaction, arrangement or asset instead of a source.

(6) In subsection (4) "deductions" includes a just and reasonable apportionment of deductions that relate—
(a) partly to the income arising out of the transaction, arrangement or asset in connection with which the credit arises, and
(b) partly to other matters.

(7) In this section "trade income" means income chargeable to tax under—
(a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts), or
(b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts).

38 Credit against tax on royalties: further rules

(1) Subsection (2) applies if—
(a) the arrangements are double taxation arrangements, and
(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.

(2) For the purposes of section 36(2)—
(a) royalty income arising in more than one foreign jurisdiction in a tax year in respect of the asset is to be treated as a single item of income, and
(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.

(3) In this section "foreign jurisdiction" means a jurisdiction outside the United Kingdom.

39 Credit reduced by reference to accrued income losses

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that a person is entitled under section 18(2) to credit against income tax.

(3) Condition B is that the income tax is calculated by reference to income consisting of interest in respect of which the person is entitled under section 679 of ITA 2007 (no income tax on interest so far as matched by accrued income losses) to an exemption from liability to income tax.

(4) Condition C is that—
(a) the arrangements are unilateral relief arrangements for a territory outside the United Kingdom and the credit is allowed as a result of section 9, or
(b) the arrangements are double taxation arrangements and the credit is allowed as a result of the inclusion in the arrangements of any provision corresponding to that section.

(5) The amount of the credit is to be reduced to the amount given by—

$$\frac{I - E}{I} \times C$$

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where—
I is the amount of the interest,
E is the amount of the exemption, and
C is the amount the credit would be apart from this subsection.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning in this section as in that Chapter.

Limit on credit against capital gains tax

40 Amount of limit

(1) This section is about the amount of credit allowed under section 18(2) against a person's capital gains tax for any tax year.

(2) The amount of credit in respect of any particular capital gain must not exceed the difference between—

(a) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - X$$

and

(b) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - (X + C)$$

(3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of more than one capital gain, apply subsection (2) successively to each capital gain, taking the gains in the order which will result in the greatest reduction in the person's capital gains tax liability for the tax year.

(4) In subsection (2)—

TG is the total amount of the chargeable gains accruing to the person in the tax year,
X is the total amount of the gains (if any) to which subsection (2) has already been applied, and
C is the amount of the gain in respect of which the credit is to be allowed.

(5) The rules for calculating an amount of capital gains tax under subsection (2) are—

(a) the calculation is to be made in accordance with sections 31 and 32, and
(b) no credit is to be allowed for foreign tax.

(6) For the purposes of subsection (3) the following are "tax-relief arrangements"—

(a) double taxation arrangements, and
(b) unilateral relief arrangements for a territory outside the United Kingdom.

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Limit on total credit against income tax and capital gains tax

41 Amount of limit

(1) In subsection (2) "the total credit" means—

$$F + G$$

where—
F is the total credit, under all tax-relief arrangements, allowed under section 18(2) against a person's income tax for any tax year, and
G is the total credit, under all tax-relief arrangements, allowed under section 18(2) against the person's capital gains tax for that tax year.

(2) The total credit is not to be more than—

$$I + C - A$$

where—
I is the total income tax payable by the person for the tax year,
C is the total capital gains tax payable by the person for the tax year, and
A is the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by the person in the tax year.

(3) In calculating I and C for the purposes of subsection (2), no reduction is to be made for credit under section 18(2).

(4) Subsection (2) applies in addition to sections 36 and 40.

(5) For the purposes of subsection (1) the following are "tax-relief arrangements"—
(a) double taxation arrangements, and
(b) unilateral relief arrangements for a territory outside the United Kingdom.

Limit on credit against corporation tax

42 Amount of limit

(1) Subsection (2) is about the amount of credit allowed under section 18(2) against corporation tax to which a company is liable in respect of any income or chargeable gain.

(2) The credit must not exceed—

$$R \times IG$$

where—
R is the rate of corporation tax payable by the company, before any credit under this Part, on the company's income or chargeable gains for the accounting period in which the income arises or the gain accrues, and
IG is the amount of the income or gain (but see subsection (3)).

(3) For the purposes of applying subsection (2), IG is reduced (or extinguished) by any amount allocated to it under—

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section 52(2) (general deductions),
section 53(2) (earlier years' deficits on loan relationships),
section 54(2) or (4) (debits on loan relationships),
section 55(5) (current year's deficits on loan relationships), or
section 56(2) (debits on intangible fixed assets).

(4) Subsection (2) is to be read with—

section 43, which, if the company has a permanent establishment outside the United Kingdom, is about attributing profits to the establishment for the purposes of applying subsection (2),

sections 44 to 49, which modify how subsection (2) applies in connection with allowing credit against tax on trade income (as defined in section 44), **[**F17section 49B, which requires subsection (2) to be applied separately to certain non-trading credits, and**]**

sections 50 and 51, which require subsection (2) to be applied as if corporation tax were charged in a modified way on profits of the company for the period from loan relationships and intangible fixed assets.

[F18(5) See also section 49A which contains an additional limit on credit allowed in certain cases involving CFCs.**]**

Textual Amendments

F17 Words in s. 42(4) substituted (with effect in accordance with s. 292(9)(10) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(6)**

F18 S. 42(5) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 12**, 21

Modifications etc. (not altering text)

C8 S. 42 excluded by 2010 c. 4, s. 269DL(8)(a) (as inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 1**)

[F19**43 Profits attributable to permanent establishments for purposes of section 42(2)**

(1) This section applies in determining for the purposes of section 42(2) the amount of the profits of a UK resident company on which corporation tax is or would be chargeable that is attributable to a permanent establishment of the company in a territory outside the United Kingdom.

(2) The amount of the profits of the company that is attributable to the permanent establishment is the amount that the permanent establishment would have made if it were a distinct and separate enterprise which—

(a) engaged in the same or similar activities under the same or similar conditions, and

(b) dealt wholly independently with the company.

(3) In applying subsection (2) assume that—

(a) the permanent establishment has the same credit rating as the company, and

(b) (subject to subsection (5)) the permanent establishment has such equity and loan capital as it could reasonably be expected to have if the equity and loan capital of the company were allocated in accordance with subsection (4).

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(4) The allocation is one made on a just and equitable basis between the permanent establishments in territories outside the United Kingdom through which the company carries on business and the entity that the company would consist of if each such permanent establishment were an entity distinct and separate from the company.

(5) If the permanent establishment is in a full treaty territory (within the meaning of Chapter 3A of Part 2 of CTA 2009) subsection (3)(b) has effect subject to the double taxation arrangements having effect in relation to the territory.

(6) Subsections (3)(b) to (5) prevail over any allotment of equity or loan capital to the permanent establishment made by the company.

(7) If the company is an insurance company [F20]... , in applying subsection (2) assume that the permanent establishment has such free assets as it would have in the circumstances described in that subsection.

(8) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision as to the meaning of "free assets" in subsection (7).**]**

Textual Amendments

F19 S. 43 substituted (19.7.2011) by Finance Act 2011 (c. 11), Sch. 13 paras. 27, 31, **37**

F20 Words in s. 43(7) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 233**

44 Credit against tax on trade income

(1) Apply section 42(2) in accordance with subsections (2) and (3) if the tax against which the credit is to be allowed is corporation tax on income that is trade income.

(2) The amount of the credit must not exceed the corporation tax attributable to the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(3) In calculating the amount of corporation tax attributable to any income, take into account—

(a) deductions which would be allowed in calculating the company's liability, and

(b) expenses of a company connected with the company, so far as reasonably attributable to the income,

but see section 49 (restriction if company is a bank or is connected with a bank).

(4) In subsection (3)(a) "deductions" includes a just and reasonable apportionment of deductions that relate—

(a) partly to the transaction, arrangement or asset from which the income arises, and

(b) partly to other matters.

(5) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of subsection (3)(b).

(6) In this section "trade income" means—

(a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),

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(b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),

(c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and

(d) any other income or profits which by a provision of ICTA is or are—

(i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or

(ii) calculated in the same way as the profits of a trade,

but does not include income to which section 99 of this Act (insurance companies) applies.

(7) In subsection (6) the references—

(a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and

(b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,

do not include income that would, but for the repeal by CTA 2009 of section 103 of ICTA (post-cessation receipts where pre-cessation profits calculated on an earnings basis and other post-cessation receipts that become due or are ascertained after cessation), have been chargeable to corporation tax under that section.

45 Credit against tax on trade income: anti-avoidance rules

(1) If a company ("A") carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person ("B") a main purpose of which is to alter the effect of section 44(2) and (3) in relation to A, income received in pursuance of the scheme or arrangement is to be treated for the purposes of section 44(2) and (3) as trade income of B (and not as income of A).

(2) Income of a person ("D") is to be treated for the purposes of section 44 as trade income (if it is not otherwise trade income) of D if—

(a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person ("C"),

(b) had C received the income, it would be reasonable to assume that it would be trade income of C, and

(c) a main purpose of the scheme or arrangement is to produce the result that section 44(2) and (3) will not have effect in relation to the income because it is received by D.

(3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to the transaction.

(4) In subsection (3)—

"relevant person" means—

(a) D, or

(b) any other connected person who is a party to the scheme or arrangement mentioned in subsection (2), and

"relevant transaction" means any of the transactions giving rise to the income mentioned in subsection (2)(b).

(5) In subsections (2) to (4) "connected person" means a person with whom D is connected.

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(6) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of subsection (5).

(7) In this section "trade income" has the same meaning as in section 44.

46 Applying section 44(2): asset in hedging relationship with derivative contract

(1) If an asset is in a hedging relationship with a derivative contract, section 44(2) applies in relation to the asset as if the income arising from the asset is the income arising from the asset and the contract taken together, subject to subsection (2).

(2) Take account of the income or loss from the derivative contract only so far as reasonably attributable to the hedging relationship.

(3) For the purposes of subsection (1), an asset is in a hedging relationship with a derivative contract if—

(a) the asset is acquired as a hedge of risk in connection with the contract, or

(b) the contract is entered into as a hedge of risk in connection with the asset.

(4) If an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that is conclusive for the purposes of subsection (3).

47 Applying section 44(2): royalty income

(1) Subsection (2) applies if—

(a) the arrangements are double taxation arrangements, and

(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.

(2) For the purposes of section 44(2)—

(a) royalty income arising in more than one foreign jurisdiction in an accounting period in respect of the asset is to be treated as income arising from a single asset, and

(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.

(3) In this section "foreign jurisdiction" means a jurisdiction outside the United Kingdom.

48 Applying section 44(2): "portfolio" of transactions, arrangements or assets

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that transactions, arrangements or assets are treated by a taxpayer as a series or group ("the portfolio").

(3) Condition B is that credits for foreign tax arise in respect of the portfolio.

(4) Condition C is that—

(a) it is not reasonably practicable to prepare a separate calculation of income for the purposes of section 44(2) in respect of each transaction, arrangement or asset, or

(b) a separate calculation of income in respect of each transaction, arrangement or asset for the purposes of section 44(2) would not, compared with an

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aggregated calculation, make a material difference to the amount of credit for foreign tax which is allowable.

(5) The income arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 44(2) in a just and reasonable manner.

49 Restricting section 44(3) if company is a bank or connected with a bank

(1) Section 44(3) is subject to subsection (2) of this section if—

(a) the company is a bank or is connected with a bank, and

(b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.

(2) The amount of the notional funding costs is to be included in the amount to be taken into account under section 44(3), but only so far as it exceeds the amount of the included funding costs.

(3) In this section—

"the company" means the company mentioned in section 44(3)(a),

"included funding costs" means the total of the funding costs that are—

(a) incurred by the company, or any company connected with the company, in respect of capital used to fund the relevant transaction, and

(b) included in the amount to be taken into account under section 44(3) before the application of subsection (2) of this section,

"notional funding costs" means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way,

"the relevant bank" means the bank that is the company, or with which the company is connected, and

"the relevant transaction" means the transaction, arrangement or asset from which the income mentioned in section 44(1) arises.

(4) The following provisions apply for the purposes of this section—

section 1120 of CTA 2010 (meaning of "bank"), and

section 1122 of CTA 2010 (meaning of "connected").

[F21 49A Limit on credit in cases involving qualifying loan relationships of CFCs

(1) This section applies if—

(a) a claim is made under Chapter 9 of Part 9A (controlled foreign companies: exemptions for profits from qualifying loan relationships) in relation to an accounting period ("the relevant period") of a CFC ("the creditor CFC"),

(b) in the relevant period, the creditor CFC has a qualifying loan relationship in relation to which another CFC is the ultimate debtor by virtue of section 371IG(4) or (5), and

(c) a UK resident company ("the relevant UK company") has loan relationship credits which arise in the relevant period from—

(i) loan B (see section 371IG(3)(b)), or

(ii) loans out of which loan B is wholly or partly funded (directly or indirectly).

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(2) So far as any credit allowed under section 18(2) to the relevant UK company is referable to loan relationship credits falling within subsection (1)(c) which arise in an accounting period of the relevant UK company, the credit must not exceed—

$$R \times S$$

where—

R has the same meaning as in section 42(2), and

S is—

(a) the relevant UK company's share of the relevant profit amount (see subsection (4)), or

(b) if only X% of the total amount of the loan relationship credits falling within subsection (1)(c) arises in the accounting period, X% of the relevant UK company's share of the relevant profit amount.

(If the amount given by the formula above is nil, no credit is allowed.)

(3) The limit on credit contained in subsection (2) is in addition to the limit given by section 42(2).

(4) Take the following steps to determine the relevant profit amount and the relevant UK company's share of that amount.

Step 1 Determine the total amount of the loan relationship credits which arise in the relevant period from loan B to the person who made loan B.

Step 2 Deduct from the amount determined at step 1 above the credits from the creditor CFC's qualifying loan relationship determined at step 1 in section 371IF for the relevant period. The result is the relevant profit amount.

Step 3 On a just and reasonable basis, apportion the relevant profit amount amongst all the persons falling within subsection (5) (although the amount apportioned to a person may be nil). The relevant UK company's share of the relevant profit amount is the amount apportioned to it (and is nil if no amount is apportioned to it).

(5) The following persons (apart from the creditor CFC) fall within this subsection—

(a) the person who made loan B, and

(b) any person who has made or received a loan out of which loan B is wholly or partly funded (directly or indirectly).

(6) In this section—

(a) references to loan B do not include any part of loan B—

(i) which loan A (see section 371IG(3)(a)) is not made and used to fund, or

(ii) in relation to which the requirement of section 371IG(3)(c) is not met,

(b) "loan relationship credit" means, in relation to a person, a credit which the person has under Part 5 of CTA 2009 or would have were the person a UK resident company within the charge to corporation tax, and

(c) "loan" has the same meaning as it has in Chapter 9 of Part 9A.**]**

Textual Amendments

F21 S. 49A inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 13**, 21

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F22 49B Applying section 42(2) to non-trading credits from loan relationships etc

(1) Subsection (2) applies for the purposes of section 42(2) if—

(a) the company has a non-trading credit relating to an item, and

(b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax.

(2) Credit for the foreign tax in respect of that item must not exceed—

$$R \times (NTC - D)$$

where—

R has the same meaning as in section 42(2),

NTC is the amount of the non-trading credit, and

D is the amount given by subsection (3).

(3) D in the formula in subsection (2) is calculated as follows—

Step 1 Calculate the total amount ("TNTD") of the non-trading debits which are to be brought into account by the company—

(a) in the same accounting period, and

(b) in respect of the same loan relationship, derivative contract or intangible fixed asset,

as the non-trading credit.

Step 2 Calculate the total ("A") of the amounts which, as amount D, have already been deducted under subsection (2) from other non-trading credits which are to be brought into account in the same period and in respect of the same relationship, contract or asset.

Step 3 Calculate the amount given by—

$$TNTD - A$$

Step 4 If the amount calculated at step 3 is greater than or equal to NTC, then D equals NTC. Otherwise, D is the amount calculated at step 3.

(4) In this section—

"intangible fixed asset" has the same meaning as in Part 8 of CTA 2009,

"non-trading credit" means—

(a) a non-trading credit for the purposes of Part 5 of CTA 2009 (which is about loan relationships but also has application in relation to deemed loan relationships and derivative contracts), or

(b) a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"non-trading debit" means—

(a) a non-trading debit for the purposes of Part 5 of CTA 2009, or

(b) a non-trading debit for the purposes of Part 8 of CTA 2009.]

Textual Amendments

F22 S. 49B inserted (with effect in accordance with s. 292(9)(10) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(7)**

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Calculating tax for purposes of section 42(2)

50 Tax for period on loan relationships

(1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) Assume that the charge to corporation tax on income, as applied by section 299 of CTA 2009, is charged on TNTC, not on the non-trading profits that the company has for the period in respect of its loan relationships.

(3) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships), and

"TNTC" is the total amount of the company's non-trading credits for the period.

51 Tax for period on intangible fixed assets

(1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) Assume that the charge to corporation tax on income, as applied by section 752 of CTA 2009, is charged on TNTC, not on the non-trading gains arising to the company in the period on intangible fixed assets.

(3) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"TNTC" is the total amount of the company's non-trading credits for the period.

Allocation of deductions etc to profits for purposes of section 42

52 General deductions

(1) Subsection (2) applies for the purposes of section 42 if in the accounting period there is any amount ("the deduction") that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description.

(2) The company may allocate the deduction in such amounts, and to such of its profits for the period, as it thinks fit.

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53 Earlier years' non-trading deficits on loan relationships

(1) Subsection (2) applies for the purposes of section 42 if an amount ("the deficit") is carried forward to the period under section 457(1) of CTA 2009 (non-trading deficits on loan relationships set against profits of subsequent years).

(2) The deficit can be allocated only to the company's non-trading profits for the period, but the company may allocate the deficit to such of those profits, and in such amounts, as the company thinks fit.

(3) In this section "non-trading profits" has the meaning given by section 457(5) of CTA 2009.

54 Non-trading debits on loan relationships

(1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - (CB + CF + GR)$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit, but this is subject to subsection (4).

(3) Subsection (4) applies for the purposes of section 42 if—

(a) the company has at least one non-trading credit for the period that is eligible for double taxation relief, and

(b) the company sets the whole or part of XS against profits of the period in pursuance of a current-year provision or claim.

(4) So much of the company's non-trading debits as is equal to that amount of XS must be allocated to the profits against which that amount of XS is set in pursuance of the current-year provision or claim.

(5) In this section, if the company has a non-trading deficit ("D") on its loan relationships for the period—

CB is so much of D as is the subject of a carry-back claim,

CF is so much of D as is carried forward to a subsequent accounting period in accordance with a carry-forward provision,

GR is so much of D as is surrendered as group relief under section 99 of CTA 2010, and

if

$$D—(CB + CF + GR)$$

(6) For the purposes of subsections (1) and (3), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(7) In this section—

"carry-back claim" means a claim—

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(a) under section 389(1) of CTA 2009 (insurance companies: carry-back, to earlier accounting periods, of non-trading deficit on loan relationships), or

(b) under section 459(1)(b) **[**F23or 463B(1)(b)**]** of CTA 2009 (carry-back: other companies),

"carry-forward provision" means—

(a) section 391 of CTA 2009 (insurance companies), or

(b) section 457(1) **[**F24, 463G(5) or 463H(4)**]** of CTA 2009 (other companies),

"current-year provision or claim" means—

(a) section 388(1) of CTA 2009 (insurance companies: non-trading deficit on loan relationships set against current year's profits), or

(b) a claim under section 459(1)(a) **[**F25or 463B(1)(a)**]** of CTA 2009 (other companies: setting of deficit against current year's profits),

"non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships),

"non-trading debit" means a non-trading debit for the purposes of that Part, and

"TNTD" is the total amount of the company's non-trading debits for the period.

Textual Amendments

F23 Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 176(a)**

F24 Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 176(b)**

F25 Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 176(c)**

55 Current year's non-trading deficits on loan relationships

(1) Subsection (5) applies for the purposes of section 42 if conditions A and B are met.

(2) Condition A is that the company—

(a) has no non-trading credits for the period, or

(b) has non-trading credits for the period but none of those credits is eligible for double taxation relief.

(3) For the purposes of subsection (2)(b), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) Condition B is that an amount ("the deficit") is set against any of the company's profits for the period—

(a) under section 388(1) of CTA 2009 (insurance company's non-trading deficit on loan relationships set against current year's profits), or

(b) under section 459(1)(a) **[**F26or 463B(1)(a)**]** of CTA 2009 (other company's non-trading deficit on loan relationships set against current year's profits).

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(5) The deficit can be allocated only to profits against which the deficit is set under section 388(1) **[**[F27], 459(1)(a) or 463B(1)(a)**]** of CTA 2009.

(6) In this section "non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships).

Textual Amendments

F26 Words in s. 55(4)(b) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 177(a)**

F27 Words in s. 55(5) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 177(b)**

56 Non-trading debits on intangible fixed assets

(1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - CF$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit.

(3) In subsection (2)—

TNTD is the total amount of the company's non-trading debits for the period, and

CF is the amount (if any) carried forward to the next accounting period under section 753(3) of CTA 2009 (carry forward of non-trading loss so far as neither subject to a claim to set it against profits of current period nor surrendered by way of group relief).

(4) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(5) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"non-trading debit" means a non-trading debit for the purposes of that Part.

Taking account of foreign tax underlying dividends

57 Credit in respect of dividend: taking account of underlying tax

(1) Subsections (2) and (3) apply if, as a result of provision made by the arrangements, underlying tax is to be taken into account in considering whether any and (if so) what credit is to be allowed against corporation tax, income tax or capital gains tax in respect of a dividend.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The amount of underlying tax to be taken into account as a result of the provision is to be calculated—

(a) under section 58 if the dividend is one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, and

(b) under section 61 if the dividend is not one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom.

(3) No underlying tax is to be taken into account as a result of the provision if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of the territory in respect of an amount determined by reference to the dividend.

(4) See also—

(a) section 63 (underlying tax paid in the United Kingdom, or otherwise outside the non-UK territory, treated in some cases as underlying tax paid in the non-UK territory), and

(b) section 65 (underlying tax paid in respect of profits of a company which pays a dividend treated in some cases as underlying tax paid in respect of profits of company to which dividend is paid).

58 Calculation if dividend paid by non-resident company to resident company

(1) A calculation under this section (see section 57(2)(a)) is as follows—

Step 1 Calculate the amount of the foreign tax borne on the relevant profits by the company paying the dividend.

Step 2 Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

Step 3 Calculate the amount given by—

$$(D + PA) \times M$$

where—
D is the amount of the dividend,
PA is the amount given by the calculation at Step 2, and
M is the rate of corporation tax applicable to profits of the recipient for the accounting period in which the dividend is received or, if there is more than one such rate, the average rate over the whole of that accounting period.

Step 4 If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

(a) set off against the recipient's own tax under that law, or

(b) paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

Step 5 If the amount given by the calculation at Step 2 is less than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 4.

Step 6 If the amount given by the calculation at Step 2 is equal to or more than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 3 but reduced by any amount calculated at Step 4.

(2) In this section "UT" means the amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1).

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59 Meaning of "relevant profits" in section 58

(1) This section applies for the purposes of section 58.

(2) "Relevant profits", if the dividend is within subsection (3), means the profits in respect of which the dividend is treated as paid for the purposes of section 931H of CTA 2009 (dividends derived from transactions not designed to reduce tax).

(3) A dividend is within this subsection if—

(a) it is received in an accounting period of the recipient in which the recipient is not a small company for the purposes of Part 9A of CTA 2009 (company distributions: see section 931S of that Act), and

(b) for the purposes of section 931H of that Act, it is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section).

(4) "Relevant profits", if the dividend is not within subsection (3) but is paid for a specified period, means—

(a) the distributable profits of that period, plus

(b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

(5) "Relevant profits", if the dividend is not within subsection (3) and is not paid for a specified period, means—

(a) the distributable profits of the last period for which accounts of the company were made up which ended before the dividend became payable, plus

(b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

(6) In subsection (4)(b) or (5)(b), the reference to distributable profits of preceding periods does not include—

(a) profits previously distributed, or

(b) profits previously treated as relevant profits for the purposes of **[**[F28]section 58 or 61 of this Act**]**, section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.

(7) For the purposes of subsection (4)(b) or (5)(b), the profits of the most recent preceding period are to be taken into account first, then the profits of the next most recent preceding period, and so on.

(8) In this section "distributable profits", in relation to a company, means the profits available for distribution as shown in accounts relating to the company—

(a) drawn up in accordance with the law of the country or territory under whose law the company is incorporated or formed, and

(b) making no provision for reserves, bad debts, impairment losses or contingencies other than such as is required to be made under the law of that country or territory.

(9) The reference in subsection (6)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

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Textual Amendments

F28 Words in s. 59(6)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by Taxation (International and Other Provisions) Act 2010 (Amendment) Order 2010 (S.I. 2010/2901), arts. 1(1), **4(2)**

60 Underlying tax to be left out of account on claim to that effect

(1) Subsection (2) applies if—

(a) under the arrangements a company resident in the United Kingdom makes a claim for an allowance by way of credit in accordance with this Chapter, and

(b) the claim relates to a dividend paid to the company by a company resident outside the United Kingdom.

(2) The claim may be framed so as to exclude amounts of underlying tax specified for the purpose in the claim.

(3) Any amounts of underlying tax so excluded are to be left out of account for the purposes of section 57.

61 Calculation if section 58 does not apply

A calculation under this section (see section 57(2)(b)) is as follows—

Step 1 Calculate the amount of the foreign tax borne on the relevant profits by the body corporate paying the dividend.

Step 2 Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

Step 3 If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

set off against the recipient's own tax under that law, or

paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

Step 4 The amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1) is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 3.

62 Meaning of "relevant profits" in section 61

(1) This section applies for the purposes of section 61.

(2) "Relevant profits", if the dividend is paid for a specified period, means—

(a) the profits of that period, plus

(b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.

(3) "Relevant profits", if the dividend is not paid for a specified period but is paid out of specified profits, means those profits.

(4) "Relevant profits", if the dividend is paid neither for a specified period nor out of specified profits, means—

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(a) the profits of the last period for which accounts of the body corporate paying the dividend were made up which ended before the dividend became payable, plus

(b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.

(5) In subsection (2)(b) or (4)(b), the reference to distributable profits of preceding periods does not include—

(a) profits previously distributed, or

(b) profits previously treated as relevant profits for the purposes of **[**F29section 58 or 61 of this Act**]**, section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.

(6) For the purposes of subsection (2)(b) or (4)(b), the profits of the most recent preceding period are first to be taken into account, then the profits of the next most recent preceding period, and so on.

(7) In this section "distributable profits", in relation to a period, means profits available for distribution of the period.

(8) The reference in subsection (5)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

Textual Amendments

F29 Words in s. 62(5)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by Taxation (International and Other Provisions) Act 2010 (Amendment) Order 2010 (S.I. 2010/2901), arts. 1(1), **4(3)**

Taking account of tax underlying dividends that is not foreign tax

63 Non-UK company dividend paid to 10% investor: relief for UK and other tax

(1) If condition A is met, and one of conditions B and C is met, subsection (5) applies for the purpose of allowing, under the arrangements, credit against corporation tax in respect of a dividend paid by a company resident outside the United Kingdom ("the overseas company") to another company ("the recipient company").

(2) Condition A is that the recipient company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the overseas company.

(3) Condition B is that the recipient company is resident in the United Kingdom.

(4) Condition C is that—

(a) the recipient company is resident outside the United Kingdom, but

(b) the dividend forms part of the profits of a permanent establishment of the recipient company in the United Kingdom.

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(5) There is to be taken into account, as if it were tax payable under the law of the territory ("territory R") in which the overseas company is resident—

(a) any income tax or corporation tax payable by the overseas company in respect of its profits, and

(b) any tax which, under the law of any territory outside the United Kingdom other than territory R, is payable by the overseas company in respect of its profits.

(6) For the purposes of subsection (2), one company ("S") is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in S.

Tax underlying dividend treated as underlying tax paid by dividend's recipient

64 Meaning of "dividend-paying chain" of companies

(1) For the purposes of sections 65, 67 and 70 there is a dividend-paying chain if—

(a) condition A is met, and

(b) one of conditions B to D is met.

(2) Condition A is that a company ("the second company") pays a dividend to another company ("the first company").

(3) Condition B is that there is a third company which is a 10% associate of, and pays a dividend to, the second company.

(4) Condition C is that there is a succession of companies consisting of—

(a) a third company which is a 10% associate of, and pays a dividend to, the second company, and

(b) a fourth company which is a 10% associate of, and pays a dividend to, the third company.

(5) Condition D is that there is a succession of companies consisting of—

(a) a third company which is a 10% associate of, and pays a dividend to, the second company, and

(b) two or more companies (the fourth and fifth companies, and so on) each of which is a 10% associate of, and pays a dividend to, the company above it in the succession.

(6) For the purposes of this section, a company ("X") is a 10% associate of another company ("H") if H—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in X or at least 10% of the ordinary share capital of X.

(7) For the purposes of subsection (6), a company ("S") is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in S.

65 Relief for underlying tax paid by company lower in dividend-paying chain

(1) Subsection (4) applies if conditions E and F are met.

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(2) Condition E is that there is a dividend-paying chain (see section 64) in which—

(a) the first company is the recipient company mentioned in section 63, and

(b) the second company is the overseas company mentioned in that section.

(3) Condition F is that there is underlying tax, payable by a company ("L") lower in the chain than the second company, that would be taken into account under this Part if—

(a) the dividend paid by L to the company ("K") above L in the chain had been paid—

(i) by a company resident outside the United Kingdom to a company resident in the United Kingdom, and

(ii) at the time when the dividend paid by the second company is received by the first company, and

(b) double taxation arrangements had provided for the underlying tax to be taken into account.

(4) The underlying tax is to be treated—

(a) for the purposes of section 63(5), and

(b) for the purposes of subsection (3),

as tax paid by K in respect of its profits, but see section 66 (limitations).

(5) In applying section 63 for the purpose of deciding whether condition F is met, read section 63(2) as if " , or at least 10% of the ordinary share capital of, " were inserted after "at least 10% of the voting power in".

(6) Section 58 (first method of calculating amount of underlying tax to be taken into account) does not apply for the purposes of subsections (3) and (4) unless the company referred to in subsection (2)(a) is resident in the United Kingdom and, even if that company is resident in the United Kingdom, section 58 applies for those purposes only—

(a) if K and L are not resident in the same territory, or

(b) in such other cases as may be prescribed by regulations made by the Treasury.

(7) Section 61 (second method of calculation) applies for the purposes of subsections (3) and (4) if section 58 does not apply for those purposes.

66 Limitations on section 65(4)

(1) Section 65(4) is subject to the limitations set out in subsections (2) and (3).

(2) No tax is to be taken into account in respect of a dividend paid by a company resident in the United Kingdom except—

(a) corporation tax, and

(b) any tax for which the company is entitled to credit under this Part.

(3) No tax is to be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account, under the provisions of this Part other than section 65(4), had the other company been resident in the United Kingdom.

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Tax underlying dividends: restriction of relief, and particular cases

67 Restriction of relief if underlying tax at rate higher than rate of corporation tax

(1) Subsection (6) applies if—

(a) conditions A and B are met, and

(b) one of conditions C and D is met.

(2) Condition A is that a company ("the claimant company") makes a claim for an allowance by way of credit in accordance with this Part.

(3) Condition B is that the claim relates to underlying tax on a dividend paid to the claimant company by a company resident outside the United Kingdom ("the overseas company").

(4) Condition C is that the underlying tax is, or includes, an amount in respect of tax payable at a high rate by the overseas company and—

(a) that amount would not be, or would not be included in, the underlying tax, or

(b) any part of that amount would not be included in the underlying tax,

but for the existence of, or but for there having been, an avoidance scheme (see section 68).

(5) Condition D is that—

(a) there is a dividend-paying chain (see section 64) in which—

(i) the first company is the claimant company, and

(ii) the second company is the overseas company, and

(b) the underlying tax is, or includes, an amount in respect of tax payable at a high rate by a company lower in the chain than the overseas company and—

(i) that amount would not be, or would not be included in, the underlying tax, or

(ii) any part of that amount would not be included in the underlying tax,

but for the existence of, or but for there having been, an avoidance scheme (see section 68).

(6) The amount of credit to which the claimant company is entitled on the claim is to be determined as if the tax payable at a high rate had instead been tax at the relievable rate.

(7) For the purposes of this section, tax payable by a company is "tax payable at a high rate" so far as the amount payable exceeds the amount that would represent tax at the relievable rate on the profits of the company which, for the purposes of this Part, are taken to bear the payable tax.

(8) In this section "the relievable rate" means the rate of corporation tax in force when the dividend mentioned in subsection (3) was paid.

68 Meaning of "avoidance scheme" in section 67

(1) In section 67 "avoidance scheme" means any scheme or arrangement in respect of which each of conditions A to C is met.

(2) Condition A is that the purpose, or one of the main purposes, of the scheme or arrangement is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.

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(3) Condition B is that the parties to the scheme or arrangement include—

(a) the company which is the claimant company for the purposes of section 67,

(b) a company related to the claimant company, or

(c) a person connected with the claimant company.

(4) Condition C is that the parties to the scheme or arrangement include a person who was not under the control of the claimant company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

(5) For the purposes of subsection (3)(b), a company ("R") is related to the claimant company if the claimant company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in R.

(6) For the purposes of subsection (3)(c), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

(7) For the purposes of subsection (4), a person who is a party to a scheme or arrangement is to be taken to have been under the control of the claimant company at all the following times—

(a) any time when the claimant company would have been taken (in accordance with sections 450 and 451 of CTA 2010) to have had control of the person for the purposes of Part 10 of CTA 2010 (close companies),

(b) any time when the claimant company would have been so taken if sections 450 and 451 of CTA 2010 applied (with the necessary modifications) in the case of partnerships and unincorporated associations as they apply in the case of companies, and

(c) any time when the person acted in relation to the scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of the claimant company.

(8) For the purposes of subsection (5), the claimant company is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in the claimant company.

(9) In this section "arrangement" means an arrangement of any kind, whether in writing or not.

69 Dividends paid out of transferred profits

(1) This section applies if—

(a) a company resident outside the United Kingdom ("company A") has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits,

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than as a result of the payment of a dividend to company B, and

(c) company B pays a dividend out of those profits to another company, wherever resident.

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(2) If this section applies, this Part has effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b).

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom is not to exceed the amount which would have been allowable to that company had those profits become profits of company B as a result of the payment of a dividend by company A to company B.

70 Underlying tax reflecting interest on loans

(1) Subsection (2) applies if—

(a) a bank, or a company connected with a bank, makes a claim for an allowance by way of credit in accordance with this Chapter,

(b) there is a dividend-paying chain (see section 64) in which—

(i) the first company is the claimant, and

(ii) the second company is a company resident outside the United Kingdom,

(c) the claimant—

(i) controls directly or indirectly, or

(ii) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the second company,

(d) the claim relates to underlying tax on a dividend paid by the second company,

(e) that underlying tax is, or includes, tax payable under the law of a territory outside the United Kingdom on, or by reference to, interest or dividends earned or received in the course of its business by a company ("the receiving company") which is—

(i) the second company, or

(ii) a company lower in the chain than the second company, and

(f) section 44 would have applied to the receiving company had it been resident in the United Kingdom.

(2) The amount of the credit for the tax mentioned in subsection (1)(e) ("the non-UK tax") is not to exceed the sum equal to corporation tax, at the rate in force at the time the non-UK tax was chargeable, on—

$$ID - E$$

where—
ID is the amount of the interest or dividends mentioned in subsection (1)(e), and
E is the amount of the receiving company's expenditure which is properly attributable to the earning of that interest or those dividends.

(3) For the purposes of subsection (1)(a)—

(a) "bank" means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and

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(b) whether a company is connected with a bank is determined in accordance with section 1122 of CTA 2010.

(4) For the purposes of subsection (1)(c), the claimant is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in the claimant.

71 Foreign taxation of group as single entity

(1) Subsections (2) and (3) apply in relation to a claim for credit in respect of underlying tax in relation to a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom if, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in the territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of—

(a) that company and another company resident in the territory, or

(b) that company and two or more other companies resident in the territory,

taken together as a single taxable entity.

(2) This Part, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1)(a) or (b) (the "non-resident companies") to another company ("the payee company"), has effect as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the payee company if the company which actually pays the dividend is related to the payee company.

(3) In particular, this Part has effect as if—

(a) the relevant profits for the purposes of section 58 is a single aggregate figure in respect of that single company, and

(b) the tax paid in the territory by the responsible company is tax paid in the territory by that single company.

(4) For the purposes of this section, a company ("X") is related to another company ("H") if H—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in X.

(5) For the purposes of subsection (4), H is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in H.

[F30 Adjustment of foreign tax on profits of overseas permanent establishment

Textual Amendments

F30 Ss. 71A, 71B and cross-heading inserted (with effect in accordance with s. 30(5)(7) of the amending Act) by Finance Act 2018 (c. 3), **s. 30(2)**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

71A Circumstances in which section 71B applies

(1) Section 71B has effect in relation to an accounting period of a company resident in the United Kingdom which has an overseas permanent establishment ("the PE") if, in that or any earlier accounting period, condition A or B is met.

(2) Condition A is met in relation to an accounting period if, for the purposes of any tax chargeable under the law of the PE territory—

(a) a loss or other amount attributable to the PE is deducted from or otherwise allowed against amounts of any person other than the company, and

(b) as a result, there is a decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period.

(3) Condition B is met in relation to an accounting period if—

(a) tax is chargeable under the law of the PE territory in respect of the aggregate profits, or aggregate profits or gains, of the PE and persons other than the company,

(b) a loss or other amount attributable to the PE is deducted from or otherwise allowed against, or is brought into account as a deduction or other allowance in calculating, amounts other than amounts of the PE, and

(c) as a result, there is a decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period.

(4) In this section—

"foreign taxable period" means any period in respect of which the tax in question is chargeable under the law of the PE territory, and

"the PE territory" means the territory in which the PE is situated.

71B Reduction of foreign tax paid on profits of overseas PE

(1) For the purposes of allowing credit relief under this Part, the amount of foreign tax paid in respect of the company's qualifying income from the PE in the accounting period is reduced (but not below nil) by the relevant amount for that period.

(2) In calculating any amount chargeable to corporation tax, any deduction for an amount of foreign tax paid in respect of the company's qualifying income from the PE in the accounting period is reduced (but not below nil) by the relevant amount for that period.

(3) In this section "the relevant amount" for the accounting period means the total of—

(a) the amount of the decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period (if the accounting period is one in relation to which condition A or B in section 71A is met), and

(b) any excess tax carried forward to the accounting period.

(4) For this purpose excess tax is carried forward to the accounting period so far as the relevant amount for the previous accounting period exceeds the amount of foreign tax paid in respect of the company's qualifying income from the PE in that previous period.

(5) In determining the relevant amount, a deduction or allowance of the kind referred to in condition A or B in section 71A is to be ignored if it results in a deduction or other allowance that is reduced under section 259JC (counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction).

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(6) If, for any accounting period, it becomes necessary for the relevant amount to be reduced or increased, an adjustment may be made (whether or not by an officer of Revenue and Customs)—

(a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and

(b) despite any time limit imposed by or under any enactment.

(7) In this section "the company's qualifying income from the PE" means the profits of the PE which are profits chargeable under Chapter 2 of Part 3 of CTA 2009 of a trade carried on partly, but not wholly, outside the United Kingdom.**]**

Unrelieved foreign tax on profits of overseas permanent establishment

72 Application of section 73(1)

(1) Section 73(1) applies if, in an accounting period of a company resident in the United Kingdom—

(a) the amount of the credit for foreign tax which under the arrangements would, if section 42 were ignored, be allowable against corporation tax in respect of the company's qualifying income from an overseas permanent establishment, exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the company's qualifying income from that overseas permanent establishment.

(2) For the purposes of subsection (1) and section 73(1), the company's qualifying income from an overseas permanent establishment is the profits of the overseas permanent establishment which are—

(a) profits, chargeable under Chapter 2 of Part 3 of CTA 2009, of a trade carried on partly, but not wholly, outside the United Kingdom, [F31]...

[F31](b) . . . . . .

(3) In sections 73 to 78—

"the company" means the company mentioned in subsection (1),

"the excess" means the excess referred to in that subsection,

"the PE" means the overseas permanent establishment mentioned in that subsection, and

"period A" means the accounting period mentioned in that subsection.

Textual Amendments

F31 S. 72(2)(b) and word omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 234**

73 Carry-forward and carry-back of unrelieved foreign tax

(1) For the purposes of allowing credit relief under this Part, the excess is to be treated—

(a) as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in the accounting period after period A (whether or not the company in fact has any qualifying income from that source in the accounting period after period A), or

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(b) in accordance with the rules in section 74, as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in one or more of the recent periods, or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(2) If in period A the company ceases to have the PE, the excess, so far as it is not treated as mentioned in subsection (1)(b), is to be reduced to nil (so that none of the excess is to be treated as mentioned in subsection (1)(a)).

(3) If an amount is treated as mentioned in subsection (1)(b) it is not to be so treated for the purpose of any further application of subsection (1).

(4) In subsection (1)(b) "recent period" means an accounting period which is earlier than period A but begins not more than 3 years before period A.

74 Rules for carrying back unrelieved foreign tax

(1) This section sets out the rules mentioned in section 73(1)(b).

(2) The first rule is that—

(a) credit for the excess, or for any remaining balance of the excess, is allowed against corporation tax in respect of a later recent period, before

(b) credit for any of the excess is allowed against corporation tax in respect of any earlier recent period.

(3) The second rule is that, before allowing credit for any of the excess against corporation tax in respect of income of any particular accounting period ("period P"), credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of period P, other than amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period other than period P, and

(b) then for amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period before period P.

(4) In subsection (2) "recent period" means an accounting period which is earlier than period A but begins not more than 3 years before period A.

75 Two or more establishments treated as a single establishment

(1) Subsection (2) applies if, under the law of a territory outside the United Kingdom, tax is charged in respect of the profits of two or more overseas permanent establishments in that territory, taken together.

(2) For the purposes of the provisions of sections 72 to 78 other than the excepted provisions, those overseas permanent establishments are to be treated as if they together constituted a single overseas permanent establishment.

(3) In subsection (2) "the excepted provisions" means section 73(2), this section and section 77.

76 Former and subsequent establishments regarded as distinct establishments

(1) If the company—

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(a) at any time ceases to have a particular overseas permanent establishment in a particular territory ("the old establishment"), but

(b) subsequently again has an overseas permanent establishment in that territory ("the new establishment"),

the old establishment and the new establishment are, for the purposes of the provisions of sections 72 to 78 other than the excepted provisions, to be regarded as different overseas permanent establishments.

(2) In subsection (1) "the excepted provisions" means sections 73(2), 75 and 77.

77 Claims for relief under section 73(1)

(1) The excess is to be treated as mentioned in section 73(1) only on a claim.

(2) A claim under subsection (1) must specify—

(a) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(a), and

(b) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(b).

(3) A claim under subsection (1) must be made not more than—

(a) 4 years after the end of period A, or

(b) if later, 1 year after the end of the accounting period in which the foreign tax concerned is paid.

78 Meaning of "overseas permanent establishment"

(1) For the purposes of sections **[**F32 71A**]** to 76 "overseas permanent establishment" means **[**F33, in relation to a company,**]** a permanent establishment through which the company carries on a trade in a territory outside the United Kingdom.

(2) In subsection (1) "permanent establishment"—

(a) if the arrangements are double taxation arrangements **[**F34which contain a relevant non-discrimination provision**]**, has the meaning given by the arrangements, and

(b) if the arrangements are double taxation arrangements **[**F35which do not contain a relevant non-discrimination provision**]**, or if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom, **[**F36has the meaning given by the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development in July 2010 ("the OECD") or such other document published by the OECD in place of it as is designated from time to time by order made by the Treasury.**]**

[F37(3) In subsection (2) "relevant non-discrimination provision" means a provision to the effect that the taxation on a permanent establishment of an enterprise of a state which is party to the arrangements (a "contracting state") is not to be less favourably levied in any other contracting state than the taxation levied on enterprises of that other contracting state carrying on the same activities.**]**

Textual Amendments

F32 Word in s. 78(1) substituted (15.3.2018) by Finance Act 2018 (c. 3), **s. 30(3)(a)**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F33 Words in s. 78(1) inserted (15.3.2018) by Finance Act 2018 (c. 3), **s. 30(3)(b)**
F34 Words in s. 78(2)(a) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(a)**, 31
F35 Words in s. 78(2)(b) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(b)(i)**, 31
F36 Words in s. 78(2)(b) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(2)(b)(ii)**, 31
F37 S. 78(3) inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 28(3)**, 31

Action after adjustment of amount payable by way of UK or foreign tax

79 Time limits for action if tax adjustment makes credit excessive or insufficient

(1) Subsection (2) applies to a claim or assessment if—

(a) the amount of any credit given under the arrangements is reduced under section 34, or becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any other territory,

(b) the reduction or adjustment gives rise to the claim or assessment, and

(c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.

(2) Nothing in—

(a) the Tax Acts, and

(b) the enactments relating to capital gains tax,

limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

80 Duty to give notice that adjustment has rendered credit excessive

(1) This section applies if—

(a) any credit for foreign tax has been allowed to a person under the arrangements,

(b) later, the amount of that credit is reduced under section 34, or becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom, and

(c) the reduction or adjustment is not a Lloyd's adjustment (see subsection (5)).

(2) The person must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.

(3) Notice under subsection (2) is to be given—

(a) to an officer of Revenue and Customs, and

(b) within one year from when the reduction or adjustment is made.

(4) If the person fails to comply with the requirements imposed by subsections (2) and (3), the person is liable to a penalty not greater than the amount by which the credit has been reduced or has become excessive as a result of the adjustment.

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(5) For the purposes of subsection (1)(c), the reduction or adjustment is a "Lloyd's adjustment" if the consequences of the reduction or adjustment in relation to the credit are to be given effect in accordance with regulations under—

(a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or

(b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).

(6) In this section so far as it relates to capital gains tax "notice" means notice in writing.

Schemes and arrangements designed to increase relief: anti-avoidance

[F38 81 Countering effect of avoidance arrangements

(1) This section applies if each of conditions A to D of section 82 is met in relation to a person.

(2) The effects of a scheme or arrangement that are referable to the purpose referred to in condition B of that section are to be counteracted by the making of such adjustments as are necessary.

(3) Any adjustments required to be made by this section (whether or not by an officer of Revenue and Customs) may be made by way of—

(a) an assessment,

(b) the modification of an assessment, or

(c) amendment or disallowance of a claim,

or otherwise.]

Textual Amendments

F38 S. 81 substituted (with effect in accordance with s. 31(6) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(2)**

82 Conditions for the purposes of section 81(1)

(1) Conditions A to D are the conditions mentioned in section 81(1).

(2) Condition A is that, in respect of any income or chargeable gain—

(a) taken into account for the purposes of determining a person's liability to UK tax in a chargeable period, or

(b) to be taken into account for the purposes of determining a person's liability to UK tax in a chargeable period,

there is an amount of foreign tax for which, under the arrangements, credit is allowable against UK tax for the period.

(3) Condition B is that there is a scheme or arrangement the main purpose of which, or one of the main purposes of which, is to cause an amount of foreign tax to be taken into account in the person's case for the period.

(4) Condition C is that the scheme or arrangement is within section 83.

(5) Condition D is that T is more than a minimal amount, where T is the sum of—

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(a) the total amount of the claims for credit that the person has made, or is in a position to make, for the period ("the counteraction period"), and

(b) the total amount of all connected-person claims.

(6) In subsection (5) "connected-person claim" means a claim that any person connected to the person has made, or is in a position to make, for any chargeable period that overlaps the counteraction period by at least one day.

(7) In this section—

"chargeable period", in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992),

"foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory, and

"UK tax" means income tax, corporation tax or capital gains tax.

(8) Section 286 of TCGA 1992 (meaning of "connected") applies for the purposes of subsection (6) so far as applying in relation to capital gains tax.

83 Schemes and arrangements referred to in section 82(4)

(1) For the purposes of section 82(4), a scheme or arrangement is within this section if it is within subsection (2) or (4).

(2) A scheme or arrangement is within this subsection if—

(a) it is not an underlying-tax scheme or arrangement, and

(b) one or more of sections 84 to 88 apply to it.

(3) For the purposes of this section, a scheme or arrangement is an "underlying-tax" scheme or arrangement if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by an overseas-resident body corporate to be taken into account in a person's case.

(4) A scheme or arrangement is within this subsection if—

(a) it is an underlying-tax scheme or arrangement, and

(b) one or more of sections 84 to 88 would, on the assumption in subsection (5), apply to it.

(5) The assumption is that the body corporate is resident in the United Kingdom.

(6) Nothing in subsection (5) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.

(7) In subsection (3) "overseas-resident" means resident in a territory outside the United Kingdom.

84 Section 83(2) and (4): schemes enabling attribution of foreign tax

(1) This section applies to a scheme or arrangement if—

(a) the scheme or arrangement enables a participant to pay, in respect of a source of income or chargeable gain, an amount of foreign tax, and

(b) all or part of that amount of foreign tax is properly attributable to another source of income or chargeable gain.

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(2) In subsection (1) "participant" means a person who is party to, or concerned in, the scheme or arrangement.

85 Section 83(2) and (4): schemes about effect of paying foreign tax

(1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person ("C") who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for **[**F39in respect of the payment of an amount of foreign tax ("the FT amount")**]**.

[F40(2) The condition is that, when C entered into the scheme or arrangement, it could reasonably be expected that the effect on the foreign-tax total of the FT amount being paid or payable would be to increase that total by less than amount X.**]**

(3) In **[**F41subsection (2)**]**—

"the foreign-tax total" means the amount found by—

(a) totalling the amounts of foreign tax paid or payable by the participants in respect of the transaction or transactions forming part of the scheme or arrangement, and

(b) taking into account any reliefs that arise to the participants, including any reliefs arising to any one or more of the participants as a consequence of **[**F42the FT amount being paid or payable F43...**]**, and

"amount X" means the amount allowable to C as a credit in respect of the payment of the FT amount.

(4) In subsection (3)—

"participant" means a person who is party to, or concerned in, the scheme or arrangement, and

"reliefs" means reliefs, deductions, reductions or allowances against or in respect of any tax.

(5) In subsection (1) so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

Textual Amendments

F39 Words in s. 85(1) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(a)**

F40 S. 85(2) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(b)**

F41 Words in s. 85(3) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(c)(i)**

F42 Words in s. 85(3) substituted (with effect in relation to amounts of foreign tax payable on or after 21.10.2009 in accordance with Sch. 11 para. 3 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 2(3)**

F43 Words in s. 85(3) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 5(1)(c)(ii)**

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[F44 85A Section 83(2) and (4): schemes involving deemed foreign tax

(1) This section applies to a scheme or arrangement if in relation to a claimant—

(a) an amount ("amount X") is treated by virtue of a provision of the Tax Acts as if it were an amount of foreign tax paid or payable **[**F45by the claimant**]** in respect of a source of income, and

(b) condition A or B is met.

(2) Condition A is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement, no real foreign tax would be paid or payable by a participant.

(3) Condition B is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement—

(a) an amount of real foreign tax ("the RFT amount") would be paid or payable by a participant, but

(b) the effect on the foreign-tax total of the RFT amount being so paid or payable would be to increase the foreign-tax total by less than the amount allowable to the claimant as a credit in respect of amount X.

(4) In this section—

" claimant " means a person who for a chargeable period has claimed, or is in a position to claim, for any credit that under the arrangements is to be allowed for foreign tax;

" the foreign-tax total " has the meaning given by section 85(3), except that the reference to "the FT amount being paid or payable **[**F46by C**]**" must be read as a reference to "the RFT amount being paid or payable by any of them";

" income " includes a chargeable gain;

" participant " means a person who is party to, or concerned in, the scheme or arrangement;

" real foreign tax " means—

(a) in a case involving section 10 (accrued income profits), the foreign tax chargeable in respect of the interest on the securities, as mentioned in subsection (1)(c) of that section,

(b) F47...

(c) in any other case, the foreign tax chargeable in respect of the source of income of which the source mentioned in subsection (1)(a) is representative.**]**

Textual Amendments

F44 S. 85A inserted (with effect in accordance with Sch. 11 para. 4(2)(3) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 4(1)**

F45 Words in s. 85A(1)(a) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 5(2)(a)**

F46 Words in s. 85A(4) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 5(2)(b)**

F47 Words in s. 85A(4) omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, **Sch. 29 para. 48(2)**

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86 Section 83(2) and (4): schemes about claims or elections etc

(1) This section applies to a scheme or arrangement if F48...—

(a) a step is taken by a participant, or

(b) a step that could have been taken by a participant is not taken,

and that action or failure to act has the effect of increasing, or giving rise to, a claim by a participant for an allowance by way of credit under this Part.

(2) The steps mentioned in subsection (1) are steps that may be taken—

(a) under the law of any territory, or

(b) under double taxation arrangements made in relation to any territory.

(3) The steps mentioned in subsection (1) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and

(b) making elections for tax purposes.

[F49(3A) Reference in subsection (1) to a step that is taken or not taken by a participant includes one that was taken or not taken by a participant before the scheme or arrangement was made.

(3B) The reason for taking or not taking a step does not matter so long as it has the effect mentioned in subsection (1).**]**

(4) In subsection (1) "participant" means a person who is party to, or concerned in, the scheme or arrangement.

Textual Amendments

F48 Words in s. 86(1) omitted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 11 para. 6(1)(a)**

F49 S. 86(3A)(3B) inserted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 6(1)(b)**

87 Section 83(2) and (4): schemes that would reduce a person's tax liability

(1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person **[**F50("P")**]** who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for foreign tax.

(2) The condition is that amount A is less than amount B.

(3) Amount A is **[**F51the total amount of UK tax payable by P and such persons (if any) as are connected with P**]** in respect of income and chargeable gains arising in the chargeable period.

(4) Amount B is **[**F52the total amount of UK tax that would be payable by P and such persons (if any) as are connected with P**]** in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.

(5) In this section "UK tax" means income tax, corporation tax and capital gains tax.

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(6) In this section so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

[F53(7) For the purposes of this section, whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.**]**

Textual Amendments

F50 Letter in s. 87(1) inserted (with effect in accordance with s. 31(7) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(3)(a)**

F51 Words in s. 87(3) substituted (with effect in accordance with s. 31(7) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(3)(b)**

F52 Words in s. 87(4) substituted (with effect in accordance with s. 31(7) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(3)(c)**

F53 S. 87(7) inserted (with effect in accordance with s. 31(7) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(3)(d)**

88 Section 83(2) and (4): schemes involving tax-deductible payments

(1) This section applies to a scheme or arrangement if the scheme or arrangement includes—

(a) the making by a person ("P") of a relevant payment or payments, and

(b) the giving, in respect of the payment or payments, of qualifying consideration.

(2) For the purposes of subsection (1), a payment is a "relevant payment" if all or part of it may be brought into account—

(a) in calculating P's income for the purposes of income tax or corporation tax, or

(b) in calculating P's chargeable gains for the purposes of capital gains tax.

(3) For the purposes of subsection (1), consideration is "qualifying consideration" if—

(a) all or part of it consists of a payment made to P or a person connected with P, and

(b) tax is chargeable in respect of the payment under the law of a territory outside the United Kingdom.

(4) In this section "payment" includes a transfer of money's worth.

(5) For the purposes of this section, whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

F54 89 Contents of counteraction notice

. . . . . .

Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F54 90 Consequences of counteraction notices

. . . . . .

Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

F54 91 Counteraction notices given before tax return made

. . . . . .

Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

F54 92 Counteraction notices given after tax return made

. . . . . .

Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

F54 93 Amendment, closure notices and discovery assessments in section 92 cases

. . . . . .

Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

F54 94 Information made available for the purposes of section 92(4)

. . . . . .

Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

F54 95 Interpretation of sections 89 to 94

. . . . . .

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Textual Amendments

F54 Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 31(4)**

Insurance companies

96 Companies with overseas branches: restriction of credit

(1) Subsection (4) applies if credit for foreign tax—

(a) which is payable in respect of insurance business carried on by a company through a permanent establishment in the non-UK territory, and

(b) which is calculated otherwise than wholly by reference to profits arising in the non-UK territory,

is to be allowed (in accordance with this Part) against corporation tax charged under section 35 of CTA 2009 [F55]... in respect of the profits [F56]... of **[**[F57]non-BLAGAB long-term business**]** carried on by the company in an accounting period (in this section called "the relevant UK-taxable profits").

(2) For the purposes of subsection (1)(b), the cases in which foreign tax is "calculated otherwise than wholly by reference to profits arising in the non-UK territory" are those cases in which the charge to tax in the non-UK territory is within subsection (3).

(3) A charge to tax is within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in calculating the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.

(4) If this subsection applies, the amount of the credit is not to exceed the greater of—

(a) any such part of the foreign tax as is charged by reference to profits arising in the non-UK territory, and

(b) the shareholders' share of the foreign tax.

(5) For the purposes of subsection (4), the shareholders' share of the foreign tax is so much of that tax as is represented by the fraction—

$$\frac{A}{B}$$

where—
A is an amount equal to the amount of the relevant UK-taxable profits before making any deduction authorised by subsection (7), and
B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in calculating those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over

(b) the amount taken into account as expenses in calculating those profits.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) If there is no such excess, or if the profits are greater than any excess, the whole of the foreign tax is the shareholders' share; and, subject to that, if there are no profits, none of the foreign tax is the shareholders' share.

(7) If, by virtue of this section, the credit for any foreign tax is less than it otherwise would be, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the relevant UK-taxable profits.

Textual Amendments

F55 Words in s. 96(1) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 235(a)**

F56 Words in s. 96(1) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 235(b)**

F57 Words in s. 96(1) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 235(c)**

[F58 97 Companies with more than one category of business: restriction of credit

(1) This section applies if—

(a) an insurance company carries on more than one category of long-term business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax is to be allowed under the arrangements.

(2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable, in accordance with Part 2 of FA 2012, to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with subsection (3), is attributable to that category of business.

(3) The fraction of the foreign tax that is attributable to the category of business in question is the fraction given by—

RPRI TRI

where—

RPRI is the amount of the relevant income referable to the category of business in question in accordance with section 97A, and

TRI is the total amount of the relevant income.

Textual Amendments

F58 Ss. 97, 97A substituted (17.7.2012) for s. 97 by Finance Act 2012 (c. 14), **Sch. 16 para. 236**

97A Commercial allocation of relevant income to different categories of long-term business

(1) The amount of the relevant income that, for the purposes of section 97, is to be regarded as referable to a category of business is to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the relevant income arises.

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(2) A method is an "acceptable commercial method" if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of section 97 for determining for a period of account the amount of any income or gain arising in the period that is referable to a particular category of long-term business carried on by the company.

(3) The Treasury may make regulations for the purposes of this section—

(a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and

(b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

(4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account must be consistent with the method adopted for the purposes of section 98 or 115 of FA 2012 for that period.**]**

Textual Amendments

F58 Ss. 97, 97A substituted (17.7.2012) for s. 97 by Finance Act 2012 (c. 14), **Sch. 16 para. 236**

[F59]98 Attribution for section 97 purposes if category is gross roll-up business

. . . . . .

Textual Amendments

F59 S. 98 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 237**

99 Allocation of expenses etc in calculations under section 35 of CTA 2009

(1) Subsection (2) has effect if—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a calculation in accordance with the provisions applicable for the purposes of section 35 of CTA 2009 (charge on trade profits) falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax is to be allowed under the arrangements.

(2) The amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned ("the relevant income") is to be limited by treating the amount of the relevant income as reduced in accordance with sections 100 and 101.

(3) In determining the amount of credit for foreign tax which is to be allowed as mentioned in subsection (2), the relevant income is not to be reduced except in accordance with that subsection.

(4) If a 75% subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

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(a) the purpose, or one of the main purposes, of the scheme or arrangement is to prevent or restrict the application of subsection (2) to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary is to be found by setting off against that item the amount of expenses that would be attributable to it under section 100(1) if that item had arisen directly to the insurance company.

(5) If the credit allowed for any foreign tax is, by virtue of subsection (2), less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the profits of the category of business concerned.

(6) If, by virtue of subsection (4), the credit allowed for any foreign tax is less than it would be apart from that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the income of the 75% subsidiary.

(7) For the purposes of the operation of this section in relation to any income or gain in respect of which credit is to be allowed under the arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction of the foreign tax that is attributable to that category of business in accordance with sections 97 and **[**[F60]97A**]**.

Textual Amendments

F60 Word in s. 99(7) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 238**

100 First limitation for purposes of section 99(2)

(1) The first limitation for the purposes of section 99(2) is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(2) For the purposes of subsection (1), the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(3) In subsection (2) "the appropriate fraction" means the fraction given by—

$$\frac{RI}{TI}$$

where—

RI is the amount of the relevant income before any reduction in accordance with section 99(2), and

TI is the total income of the category of business concerned for the period of account in question, but if that would result in TI being nil, TI is instead the amount described in subsection (4).

(4) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

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(b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

(5) Subsection (4) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).

(6) In this section "the relevant income" has the meaning given by section 99(2).

101 Second limitation for purposes of section 99(2)

(1) If—

(a) the amount of the relevant income after any reduction under section 100(1),

exceeds—

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the relevant income as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

(2) In subsection (1) "the relevant fraction" means the fraction given by—

$$\frac{RI}{\text{The referable share of total relievable income and gains}}$$

where—
"RI" is the amount of the relevant income before any reduction in accordance with section 99(2), and
"the referable share of total relievable income and gains" is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

(3) In subsection (1), any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(4) Subsection (2) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).

(5) In this section "the relevant income" has the meaning given by section 99(2).

[F61]102 Interpreting sections 99 to 101 for life assurance or gross roll-up business

. . . . . .

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Textual Amendments

F61 S. 102 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 239**

103 Interpreting sections 99 to 101 [F62]...

(1) This section has effect for the interpretation of sections 99 to 101 [F63]...

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3),

exceeds—

(b) the sum of the amounts specified in subsection (4).

(3) The amounts mentioned in subsection (2)(a) are—

(a) earned premiums, net of reinsurance,

(b) investment income and gains, and

(c) other technical income, net of reinsurance.

(4) The amounts mentioned in subsection (2)(b) are—

(a) acquisition costs,

(b) the change in deferred acquisition costs, and

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

unless that sum is a negative amount, in which case the total relevant expenses is to be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5), and

(b) in the provisions of section B of Part 1 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) which relate to the profit and loss account format (within the meaning of paragraph 1(1) and (2) of that Schedule),

have the same meaning in those paragraphs as they have in those provisions.

Textual Amendments

F62 Words in s. 103 heading omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 240(3)**

F63 Words in s. 103(1) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 240(2)**

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104 Interpreting sections 100 and 101: amounts referable to category of business

(1) This section applies for the purposes of the operation of sections 100 and 101 in relation to any income or gain in respect of which credit is to be allowed under any double taxation arrangements or under unilateral relief arrangements for a territory outside the United Kingdom.

(2) The amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction found under subsection (3).

(3) Apply sections 97 and **[**[F64]97A**]** in relation to—

(a) that category of business,

(b) the income or gain, and

(c) the double taxation arrangements, or unilateral relief arrangements, mentioned in subsection (1),

in order to find the fraction of the foreign tax that is attributable to that category of business.

Textual Amendments

F64 Word in s. 104(3) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 241**

CHAPTER 3

MISCELLANEOUS PROVISIONS

Application of Part for capital gains tax purposes

105 Meaning of "chargeable gain"

In this Part so far as it relates to capital gains tax "chargeable gain" has the same meaning as in TCGA 1992 (see, in particular, section 15(2) of that Act).

106 Chapters 1 and 2 apply to capital gains tax separately from other taxes

(1) Subsection (2) applies if foreign gains tax may be brought into account under Chapters 1 and 2 so far as they apply for capital gains tax purposes.

(2) The foreign gains tax is not to be taken into account under those Chapters so far as they apply otherwise than for capital gains tax purposes.

(3) Subsection (2) applies whether or not relief in respect of the foreign gains tax is given under those Chapters so far as they apply for capital gains tax purposes.

(4) Foreign non-gains tax is not be taken into account under those Chapters so far as they apply for capital gains tax purposes.

(5) In this section—

"foreign gains tax" means any tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is of a similar character to capital gains tax, and

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"foreign non-gains tax" means tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is not foreign gains tax.

When foreign tax disregarded in applying Part for corporation tax purposes

107 Disregard of foreign tax referable to derivative contract

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to so much of a notional interest payment as, on such an apportionment, is attributable to a time when the company is not a party to the derivative contract concerned.

(3) For the purposes of this section, a payment is a "notional interest payment" if—

(a) a derivative contract specifies—

(i) a notional principal amount,

(ii) a period, and

(iii) a rate of interest,

(b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and

(c) the value of the rate is the same at all times as that of the specified rate of interest.

108 Disregard of foreign tax attributable to interest under a loan relationship

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

(3) Tax within subsection (2) is not to be disregarded under subsection (1) if the tax is also within section 109 or 110.

109 Repo cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial sale under or in accordance with any debtor repo relating to the relationship, and

(b) that time is in the period for which the repo has effect.

(2) In this section—

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"debtor repo" has the meaning given by the repo-definition section,

"the initial sale", in relation to a debtor repo, means the sale mentioned in condition C in the repo-definition section, and

"the repo-definition section" means section 548 of CTA 2009.

(3) In this section, a reference to the period for which a debtor repo has effect is to the period from the making of the initial sale until the earlier of—

(a) the time when the subsequent purchase mentioned in condition D in the repo-definition section takes place, and

(b) the time when it becomes apparent that that subsequent purchase will not take place.

110 Stock-lending cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial transfer under or in accordance with any stock lending arrangement relating to that relationship, and

(b) that time is in the period for which the arrangement has effect.

(2) In this section—

"the initial transfer", in relation to a stock lending arrangement, means the transfer mentioned in section 263B(1)(a) of TCGA 1992, and

"stock lending arrangement" has the meaning given by section 263B of TCGA 1992.

(3) In this section, a reference to the period for which a stock lending arrangement has effect is to the period from the making of the initial transfer until the earlier of—

(a) the time when the transfer mentioned in section 263B(1)(b) of TCGA 1992 takes place, and

(b) the time when it becomes apparent that that transfer will not take place.

Special rules for discretionary trusts

111 When payment to beneficiary treated as arising from foreign source

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that a payment is made by trustees of a settlement.

(3) Condition B is that income tax is treated under section 494 of ITA 2007 (treatment of discretionary payments by trustees) as having been paid in relation to the payment.

(4) Condition C is that the income arising under the settlement includes taxed overseas income.

(5) Condition D is that the trustees certify—

(a) that the payment is one made out of income consisting of, or including, taxed overseas income of an amount, and from a source, stated in the certificate, and

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(b) that that amount of taxed overseas income arose to the trustees not earlier than 6 years before the end of the tax year in which the payment is made.

(6) The person to whom the payment is made may claim that the payment, up to the certified amount, is to be treated for the purposes of this Part as income received by the person—

(a) from the certified source, and

(b) in the tax year in which the payment is made.

(7) In this section "taxed overseas income", in relation to a settlement, means income in respect of which the trustees are entitled to credit under this Part for tax under the law of a territory outside the United Kingdom.

Deduction for foreign tax where no credit allowed

112 Deduction from income for foreign tax (instead of credit against UK tax)

(1) The amount of any income arising in any place outside the United Kingdom is reduced for the purposes of the Tax Acts—

(a) by any amount which has been paid in respect of non-UK tax on that income in the place where the income arose, or

(b) if subsection (2) applies, by the lesser amount mentioned in that subsection.

(2) This subsection applies if credit would, were it allowable in respect of the income, be reduced under section 39 (reduction by reference to accrued income losses) to the lesser amount given by section 39(5).

[F65(2A) But if X is less than Y, an amount equal to the difference between X and Y must be subtracted from the amount by which any income of a person ("the relevant income") is reduced under subsection (1)(a).

(2B) In subsection (2A)—

X is the amount of the relevant income that the person would (disregarding this section) be required to bring into account for income tax or corporation tax purposes, less any deduction that the person would be allowed to make for the amount paid in respect of non-UK tax, and

Y is the amount of the relevant income (that is to say, the amount on which the amount in respect of non-UK tax is paid).**]**

(3) If—

(a) income of any person ("P") is reduced under subsection (1) by an amount paid in respect of tax on that income in the place where the income arose, and

[F66(b) a tax authority makes a payment by reference to that tax, and that payment—

(i) is made to P or a person connected with P, or

(ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into,**]**

the amount of P's income is increased by the amount of the payment.

[F67(3A) Subsection (3B) applies if—

(a) the requirements of section 49A(1)(a) to (c) are met,

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(b) amounts have been paid in respect of non-UK tax on loan relationship credits falling within section 49A(1)(c) which arise in an accounting period of the relevant UK company, and

(c) apart from subsection (3B), Z would exceed

$$R \times S$$

where—

Z is—

i the total amount of any reductions under subsection (1) for amounts paid in respect of that non-UK tax, less

ii the total amount of any increases under subsection (3) for payments made by reference to that non-UK tax, and

c R and S have the same meaning as in section 49A(2).

R and S have the same meaning as in section 49A(2).

(3B) The total amount of the reductions under subsection (1) is to be reduced so that Z equals**]**

$$R \times S$$

(4) Subsection (1)—

(a) has effect subject to section 31(2)(a) (no deduction for foreign tax if credit allowed and UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

[F68(aa) has effect subject to section 71B(2) (reduction of foreign tax paid on profits of overseas permanent establishment),**]**

(b) has effect subject to section 143(5) and (6) (no deduction for special withholding tax if UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

(c) does not apply to income the tax on which is to be calculated by reference to the amount of income received in the United Kingdom, and

(d) does not require any income to be reduced by an amount of underlying tax which, under section 60(3), is to be left out of account for the purposes of section 57.

(5) Subsection (1) has effect for corporation tax purposes despite—

(a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and

(b) section 906(1) of that Act (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In **[**F69this section**]** "non-UK tax" means tax under the law of a territory outside the United Kingdom.

(7) For the purposes of subsection (3), whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

[F70(8) In subsection (3)(b)(ii) "scheme" includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.**]**

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Textual Amendments

F65 S. 112(2A)(2B) inserted (with effect in accordance with Sch. 11 para. 7(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 7(1)**

F66 S. 112(3)(b) substituted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(4)**

F67 S. 112(3A)(3B) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 14(2)**, 21

F68 S. 112(4)(aa) inserted (15.3.2018) by Finance Act 2018 (c. 3), **s. 30(4)**

F69 Words in s. 112(6) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 14(3)**, 21

F70 S. 112(8) inserted (with effect in accordance with s. 292(8) of the amending Act) by Finance Act 2014 (c. 26), **s. 292(5)**

113 Deduction from capital gain for foreign tax (instead of credit against UK tax)

(1) Subsection (2) applies to tax if it is—

(a) chargeable under the law of any territory outside the United Kingdom on the disposal of an asset, and

(b) borne by the person making the disposal.

(2) The tax is allowable as a deduction in the calculation of the gain.

(3) Subsection (2) is subject to—

(a) Chapters 1 and 2 so far as they apply for corporation tax purposes (see, in particular, section 31),

(b) Chapters 1 and 2 so far as they apply for capital gains tax purposes (see, in particular, section 31), and

(c) section 143 (which includes provision about taking account of special withholding tax when calculating a gain for capital gains tax purposes).

(4) In subsection (1) "asset" and "disposal" have the same meaning as in TCGA 1992 (see, in particular, section 21 and the following provisions of TCGA 1992).

114 Time limits for action if tax adjustment makes reduction too large or too small

(1) Subsection (2) applies to a claim or assessment if—

(a) the amount of any reduction under section 112(1) or 113(2) becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any territory outside the United Kingdom, or a person's income is increased under section 112(3),

(b) the adjustment or increase gives rise to the claim or assessment, and

(c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.

(2) No time-limit rule applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means (as the case may be)—

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(a) an assessment, adjustment, increase or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 112(1) or increase is to be made under section 112(3), or

(b) an assessment, adjustment or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 113(2).

(4) In subsection (2) "time-limit rule" means anything—

(a) in TMA 1970,

(b) in ICTA,

(c) in TCGA 1992, or

(d) in any other provision of the Tax Acts,

limiting the time for the making of assessments or limiting the time for the making of claims for relief.

115 Duty to give notice that adjustment has rendered reduction too large

(1) This section applies if—

(a) the amount of any of a person's income is reduced under section 112(1),

(b) that reduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom or an increase under section 112(3), and

(c) the adjustment or increase is not a Lloyd's adjustment.

(2) This section also applies if—

(a) a deduction is allowed under section 113(2) in the case of a person making a disposal, and

(b) that deduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom.

(3) The person must give notice that the original reduction has become excessive as a result of the making of an adjustment or increase.

(4) Notice under subsection (3) is to be given—

(a) to an officer of Revenue and Customs, and

(b) within one year from when the adjustment or increase was made.

(5) If the person fails to comply with the requirements imposed by subsections (3) and (4), the person is liable to a penalty not greater than the amount given by—

$$A - B$$

where—

A is the amount of tax payable by the person for the reduction period after giving effect to the reduction that ought to be made under section 112(1) or (as the case may be) under section 113(2), and

B is the amount that would have been the tax payable by the person for that period after giving effect instead to the original reduction.

(6) In subsection (5) "the reduction period" means the tax year, or accounting period of a company for corporation tax purposes, for which the original reduction was made.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) For the purposes of subsection (1)(c), the adjustment or increase is a "Lloyd's adjustment" if the consequences of the adjustment or increase in relation to the reduction are to be given effect in accordance with regulations under—

(a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or

(b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).

(8) In subsection (2) "disposal" has the same meaning as in TCGA 1992 (see, in particular, section 21(2) and the following provisions of TCGA 1992).

(9) In this section so far as it relates to capital gains tax "notice" means notice in writing.

European cross-border transfers of business

116 Introduction to section 117

(1) Subject to subsections (4) to (6), section 117 applies if condition A or B is met.

(2) Condition A is that—

(a) a company resident in the United Kingdom transfers to a company resident in **[**F71a**]** member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State F72... through a permanent establishment, and

(b) the transfer includes—

(i) the transfer of an asset or liability representing a loan relationship,

(ii) the transfer of rights and liabilities under a derivative contract, or

(iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.

(3) Condition B is that—

(a) a company resident in the United Kingdom transfers part of its business to one or more companies,

(b) the part of the transferor's business which is transferred was carried on immediately before the transfer in a member State F73... through a permanent establishment,

(c) at least one transferee is resident in a member State F74...

(d) the transferor continues to carry on a business after the transfer,

(e) the condition in subsection (2)(b) is met, and

(f) the transfer—

(i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or

(ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of **[**F75a**]** member State preventing such an issue.

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(4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a **[**F76relevant state**]**, but not necessarily the same one.

(5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a **[**F77relevant state**]**, but not necessarily the same one, and

(c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.

(6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—

(i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a **[**F78relevant state**]**, and

(ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—

(i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and

(ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and

(c) only applies as respects the transfer so mentioned if—

(i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and

(ii) the transferor makes a claim under this section in respect of the transfer so mentioned.

(7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).

[F79(7A) In this section "relevant state" means the United Kingdom or a member State.**]**

(8) For the purposes of this section, a company is resident in a **[**F80relevant state**]** if—

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(a) it is within a charge to tax under the law of the **[**F81relevant state**]** as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the **[**F81relevant state**]** is a party, as resident in a territory not within a **[**F80relevant state**]**.

Textual Amendments

F71 Word in s. 116(2)(a) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(a)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F72 Words in s. 116(2)(a) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(a)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F73 Words in s. 116(3)(b) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(b)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F74 Words in s. 116(3)(c) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(b)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F75 Word in s. 116(3)(f)(ii) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(b)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F76 Words in s. 116(4)(b) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(c)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F77 Words in s. 116(5)(b) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(c)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F78 Words in s. 116(6)(a)(i) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(c)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F79 S. 116(7A) inserted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(d)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F80 Words in s. 116(8) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(e)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F81 Words in s. 116(8) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(2)(e)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

117 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more F82... member States in respect of the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the F83... member State, losses arising on the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and

(b) that any relief due to the transferor under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the transfer of business mentioned in section 116(2)(a) or (3)(a) is not effected for genuine commercial reasons, or

(b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

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(4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—

(a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.

(5) In subsection (4) "the appropriate applicant" means—

(a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(i) or (ii) is concerned, the companies mentioned in section 116(2)(a) or (3)(a), and

(b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(iii) is concerned, the transferor.

(6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

Textual Amendments

F82 Word in s. 117(1) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(3)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F83 Word in s. 117(2)(a) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(3)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

European cross-border mergers

F84 118 Introduction to section 119

(1) Section 119 applies if each of conditions A to E is met and—

(a) in the case of a merger within subsection (2)(a) or (b), condition F is met,

(b) in the case of a merger within subsection (2)(c), conditions F and G are met, and

(c) in the case of a merger within subsection (2)(d), condition G is met.

(2) Condition A is that—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),

F85(b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a **[**F86registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969**]**, in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),

(c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

(d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE)

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in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(3) Condition B is that each merging company is resident in a **[**F87relevant state**]**.

(4) Condition C is that the merging companies are not all resident in the same **[**F88relevant state**]**.

(5) Condition D is that in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in **[**F89a**]** member State all assets and liabilities relating to a business which company A carried on in a member State F90... through a permanent establishment (but see subsection (9)).

(6) Condition E is that the transfer mentioned in subsection (5) includes—

(a) the transfer of an asset or liability representing a loan relationship,

(b) the transfer of rights and liabilities under a derivative contract, or

(c) the transfer of intangible fixed assets—

(i) that are chargeable intangible assets in relation to company A immediately before the transfer, and

(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.

(7) Condition F is that—

(a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or

(b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of **[**F91a**]** member State preventing such an issue.

(8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).

(9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 119 applies in respect of such a transfer as is mentioned in subsection (6)(c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).

(10) For the purposes of this section, a company is resident in a **[**F92relevant state**]** if—

(a) it is within a charge to tax under the law of the **[**F93relevant state**]** as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the **[**F93relevant state**]** is a party, as resident in a territory not within a **[**F92relevant state**]**.

(11) In this section—

"co-operative society" means a **[**F94registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969**]** or a similar society governed by the law of a member State, F95...

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[[F96]"relevant state" means the United Kingdom or a member State,**]**

"SE" and "SCE" have the same meaning as in CTA 2009 (see section 1319 of that Act),

"the transferee" means—

(a) in relation to a merger within subsection (2)(a), the SE,

(b) in relation to a merger within subsection (2)(b), the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and

"transferor" means—

(a) in relation to a merger within subsection (2)(a), a company merging to form the SE,

(b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.

Textual Amendments

F84 S. 118(11) amendment to earlier affecting provision 2014 c. 14 Sch. 4 para. 171(3) (1.8.2014) by Finance Act 2014 (c. 26), **Sch. 39 paras. 14(b)**, 15

F85 S. 118(2)(b) amendment to earlier affecting provision 2014 c. 14 Sch. 4 para. 171(2) (1.8.2014) by Finance Act 2014 (c. 26), **Sch. 39 paras. 14(a)**, 15

F86 Words in s. 118(2)(b) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 171(2)** (with Sch. 5) (as amended by 2014 c. 26, Sch. 39 paras. 14(a), 15)

F87 Words in s. 118(3) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(a)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F88 Words in s. 118(4) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(b)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F89 Word in s. 118(5) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(c)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F90 Words in s. 118(5) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(c)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F91 Word in s. 118(7)(b) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(d)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F92 Words in s. 118(10) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(e)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F93 Words in s. 118(10) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(e)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F94 Words in s. 118(11) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 171(3)** (with Sch. 5) (as amended by 2014 c. 26, Sch. 39 paras. 14(b), 15)

F95 Words in s. 118(11) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(f)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F96 Words in s. 118(11) inserted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(4)(f)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

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119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more [F97]... member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—

(a) that, to the extent permitted by the law of the [F98]... member State, losses arising on that transfer are set against gains arising on that transfer, and

(b) that any relief due to company A under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the merger is not effected for genuine commercial reasons, or

(b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the merger—

(a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.

(5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

(6) In this section "company A", "the merger" and "the merging companies" have the same meaning as in section 118.

Textual Amendments

F97 Word in s. 119(1) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(5)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F98 Word in s. 119(2)(a) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(5)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

Transparent entities involved in cross-border transfers and mergers

120 Introduction to section 121

(1) Section 121 applies if, as a result of—

(a) a relevant loan relationship transaction,

(b) a relevant derivative contracts transaction, or

(c) a relevant intangible fixed assets transaction,

tax would have been chargeable under the law of a member State [F99]... in respect of a relevant profit but for the Mergers Directive.

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(2) In this section "relevant loan relationship transaction" means—

(a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 421(3)(c) or (4)(f) of that Act were met,

and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger of a kind mentioned in section 431(2) of that Act which meets—

(i) conditions B to D in section 431,

(ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and

(iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,

and in relation to which one or more of the merging companies is a transparent entity.

(3) In this section "relevant derivative contracts transaction" means—

(a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 674(2)(c) or (3)(f) of that Act were met,

and in relation to which the transferor is a transparent entity, or

(b) a merger of a kind mentioned in section 682(2) of that Act which meets—

(i) conditions B to D in section 682,

(ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and

(iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,

and in relation to which one or more of the merging companies is a transparent entity.

(4) In this section "relevant intangible fixed assets transaction" means—

(a) a transfer—

(i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger—

(i) which is of a kind mentioned in section 821(2) of that Act,

(ii) which meets conditions B and C in section 821,

(iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,

(iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,

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(v) in the course of which no qualifying assets are transferred to which section 818 of that Act (company reconstruction involving transfer of business) applies, and

(vi) in relation to which one or more of the merging companies is a transparent entity.

(5) In this section "relevant profit" means—

(a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,

(b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,

(c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,

(d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to another company in the course of the merger,

(e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent, and

(f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.

(6) In this section "transparent entity" means a company which is resident in a member State [F100]... and does not have an ordinary share capital.

Textual Amendments

F99 Words in s. 120(1) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(6)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

F100 Words in s. 120(6) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(6)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

121 Tax treated as chargeable in respect of relevant transactions

(1) This Part applies, and any double taxation arrangements apply, as if the tax that would have been chargeable as mentioned in section 120(1) had been chargeable.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the [F101]... member State mentioned in section 120(1), losses arising on the relevant transfer are set against profits arising on it, and

(b) that any relief available under that law is claimed.

(3) In this section "the relevant transfer" means—

(a) the transfer of assets or liabilities mentioned in section 120(5)(a) or (b),

(b) the transfer of rights and liabilities mentioned in section 120(5)(c) or (d), or

(c) the transfer of intangible fixed assets mentioned in section 120(5)(e) or (f).

Textual Amendments

F101 Word in s. 121(2)(a) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(7)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

Cross-border transfers and mergers: chargeable gains

122 Tax treated as chargeable in respect of gains on transfer of non-UK business

(1) Subsection (3) applies if—

(a) section 140C or 140F of TCGA 1992 applies, and

(b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.

(2) In this section—

"company A"—

(a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and

(b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,

"the host State" means the member State [F102]... mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,

"the transfer" means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and

"the transfer subsections" means—

(a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident "company" to one resident in another member State),

(b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident "company" to transferees including a "company" resident in another member State), and

(c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident "company" or co-operative society to one resident in another member State, as part of genuine merger of two or more "companies" or societies).

(3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.

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(4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.

(5) For the purposes of subsection (4) "the required basis" is that—

(a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and

(b) any relief available to company A under the law of the host State has been duly claimed.

Textual Amendments

F102 Words in s. 122(2) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **18(8)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

Interpretation of sections related to the Mergers Directive

123 Interpretation of sections 116 to 122

In sections 116 to 122 and this section—

"company" means any entity listed as a company in **[**F103Part A of Annex I**]** to the Mergers Directive,

"derivative contract" has the same meaning as in Part 7 of CTA 2009,

"intangible fixed assets" and "chargeable intangible assets", in relation to any person, have the same meaning as in Part 8 of CTA 2009,

"loan relationship" has the same meaning as in Part 5 of CTA 2009,

"the Mergers Directive" means Council Directive **[**F104**2009/133/EC,]**

"proceeds of realisation", in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and

"recognised for tax purposes" has the same meaning as in Part 8 of CTA 2009.

Textual Amendments

F103 Words in s. 123 substituted (1.7.2011) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2011 (S.I. 2011/1431), regs. 1(2), **5(a)**

F104 Words in s. 123 substituted (1.7.2011) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2011 (S.I. 2011/1431), regs. 1(2), **5(b)**

Cases about being taxed otherwise than in accordance with double taxation arrangements

124 Giving effect to solutions to cases and mutual agreements resolving cases

(1) Subsections (2) and (4) apply if under, and for the purposes of, double taxation arrangements made in relation to a territory outside the United Kingdom—

(a) a person presents, to the Commissioners for Her Majesty's Revenue and Customs or to an authority in the territory, a case concerning the person's being taxed (whether in the United Kingdom or the territory) otherwise than in accordance with the arrangements, and

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(b) the Commissioners arrive at a solution to the case or make a mutual agreement with an authority in the territory for the resolution of the case.

(2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(4) A claim for relief under any provision of—

(a) the Tax Acts,

(b) the enactments relating to capital gains tax, or

(c) the enactments relating to petroleum revenue tax,

may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the person affected, even if that involves making the claim after a deadline imposed by another enactment.

[F105(5) See section 114A of FA 2015 for provision applying this section in relation to diverted profits tax.**]**

Textual Amendments

F105 S. 124(5) inserted (with application in accordance with s. 27(3) of the amending Act) by Finance Act 2022 (c. 3), **s. 27(2)**

125 Effect of, and deadline for, presenting a case

(1) This section applies if double taxation arrangements include provision for a person to present a case—

(a) to the Commissioners for Her Majesty's Revenue and Customs, or

(b) to an officer of Revenue and Customs,

concerning the person's being taxed otherwise than in accordance with the arrangements.

(2) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and

(b) is accordingly not subject to section 42 of TMA 1970 or any other enactment relating to the making of such claims.

(3) Any such case must be presented before the end of—

(a) the period of 6 years following the end of the chargeable period to which the case relates, or

(b) such longer period as may be specified in the arrangements.

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The Arbitration Convention

126 Meaning of "the Arbitration Convention"

In sections 127 and 128 "the Arbitration Convention" means the Convention, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23 July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).

127 Giving effect to agreements, decisions and opinions under the Convention

(1) In this section "Convention determination" means—

(a) an agreement or decision, made under the Arbitration Convention by the Commissioners for Her Majesty's Revenue and Customs (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Arbitration Convention, on the elimination of double taxation.

(2) Subsection (3) applies if the Arbitration Convention requires the Commissioners to give effect to a Convention determination.

(3) The Commissioners are to give effect to the Convention determination despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(4) An adjustment under subsection (3) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(5) An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

128 Disclosure under the Convention

(1) The obligation as to secrecy imposed by any enactment does not prevent—

(a) the Commissioners for Her Majesty's Revenue and Customs, or

(b) any authorised Revenue and Customs official,

from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under the Convention.

(2) In this section "Revenue and Customs official" means any person who is or was—

(a) a Commissioner for Her Majesty's Revenue and Customs,

(b) an officer of Revenue and Customs,

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,

(d) a person acting on behalf of an officer of Revenue and Customs, or

(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

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[F106 International dispute-resolution instruments and agreements

Textual Amendments

F106 Ss. 128A-128C and cross-heading inserted (12.2.2019) by Finance Act 2019 (c. 1), **s. 83**

128A Power by regulations to give effect to international obligations etc

(1) The Treasury may make regulations for, or in connection with, giving effect to or enabling effect to be given to—

(a) Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union ("the Directive");

(b) any instrument modifying or supplementing the Directive;

(c) any international agreements or arrangements that deal with—

(i) matters dealt with by the Directive,

(ii) matters that are similar to any of those dealt with by the Directive, or

(iii) any other matters that relate to or are connected with the resolution of disputes in relation to double taxation arrangements.

(2) The provision that may be made by regulations under this section includes (in particular)—

(a) provision as to the effect of any arrangements that the Commissioners for Her Majesty's Revenue and Customs may make with authorities of territories outside the United Kingdom;

(b) provision conferring or imposing functions, rights or obligations, or authorising the conferral or imposition of functions, rights or obligations, on a person (including a commission, tribunal or court);

(c) provision under which the Commissioners or other persons may exercise discretions;

(d) provision about procedure in relation to the resolution of disputes;

(e) provision about costs, expenses and fees;

(f) provision imposing penalties or creating criminal offences;

(g) provision about appeals;

(h) provision about the form and manner in which, or time within which, things are to be done;

(i) provision supplementing section 128B.

(3) The regulations may—

(a) make provision having effect in relation to periods before the regulations come into force;

(b) make provision by reference to an instrument or document as it has effect from time to time;

(c) make provision about things done, or to be done, in territories outside the United Kingdom;

(d) make different provision for different purposes;

(e) make consequential, incidental, supplemental, transitional, transitory or saving provision;

(f) make provision amending, repealing, revoking or disapplying, or modifying the effect of, any enactment (whenever passed or made).

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(4) The regulations may not create a criminal offence punishable on indictment with imprisonment for more than two years.

(5) Regulations under this section containing anything that amends or repeals a provision of primary legislation may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the House of Commons.

In this subsection "primary legislation" means—

(a) an Act,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation.

(6) In subsections (2) and (3) and sections 128B and 128C, a reference to a commission, tribunal, court or other person includes a reference to a commission, tribunal, court or other person in a territory outside the United Kingdom.

128B Giving effect to requirements under section 128A regulations

(1) Subsection (2) applies if anything in regulations under section 128A requires the Commissioners for Her Majesty's Revenue and Customs to give effect to an agreement, decision or opinion made or given by—

(a) the Commissioners (or their authorised representative),

(b) the competent authority of a territory outside the United Kingdom, or

(c) any commission, tribunal, court or other person.

(2) The Commissioners are to give effect to the agreement, decision or opinion despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

128C Disclosure under international obligations etc

(1) The obligation as to secrecy imposed by any enactment does not prevent—

(a) the Commissioners for Her Majesty's Revenue and Customs,

(b) a person who is or was an authorised Revenue and Customs official,

(c) a person who is or was a member of a committee or other body established by the Commissioners for Her Majesty's Revenue and Customs (or jointly by the Commissioners and an authority of a territory outside the United Kingdom), or

(d) a person specified, or of a description specified, in regulations made by the Treasury,

from disclosing information required to be disclosed under a relevant instrument or agreement in pursuance of a request made by any person.

(2) In this section—

"relevant instrument or agreement" means an instrument, agreement or arrangement referred to, or of a kind referred to, in section 128A(1);

"Revenue and Customs official" means—

(a) a Commissioner for Her Majesty's Revenue and Customs;

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(b) an officer of Revenue and Customs;

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs;

(d) a person acting on behalf of an officer of Revenue and Customs.**]**

Disclosure of information

129 Disclosure where relief given overseas for tax paid in the United Kingdom

(1) Subsection (2) applies if the law of a territory outside the United Kingdom makes provision allowing, in respect of the payment of—

(a) income tax,

(b) corporation tax,

(c) capital gains tax, or

(d) petroleum revenue tax,

relief from tax payable under that law.

(2) The obligation as to secrecy imposed upon Revenue and Customs officials by—

(a) the Tax Acts,

(b) the enactments relating to capital gains tax, and

(c) the enactments relating to petroleum revenue tax,

does not prevent disclosure, to the authorised officer of the authorities of the territory, of such facts as may be necessary to enable the proper relief to be given under the law of the territory.

(3) The reference in subsection (1) to tax payable under the law of the territory includes only—

(a) taxes which are charged on income and which correspond to income tax,

(b) taxes which are charged on income or chargeable gains and which correspond to corporation tax,

(c) taxes which are charged on capital gains and which correspond to capital gains tax, and

(d) taxes which—

(i) are charged on amounts corresponding to amounts on which petroleum revenue tax is charged, and

(ii) correspond to petroleum revenue tax.

(4) For the purposes of subsection (3), tax may correspond to income tax, corporation tax, capital gains tax or petroleum revenue tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

(5) In this section "Revenue and Customs official" means any person who is or was—

(a) a Commissioner for Her Majesty's Revenue and Customs,

(b) an officer of Revenue and Customs,

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,

(d) a person acting on behalf of an officer of Revenue and Customs, or

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(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

Interpretation of double taxation arrangements

130 Interpreting provision about UK taxation of profits of foreign enterprises

(1) Subsection (4) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).

(2) The provision is that the profits of an enterprise within subsection (3) are not to be subject to United Kingdom tax except so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.

(3) An enterprise is within this subsection if the enterprise—

(a) is resident outside the United Kingdom, or

(b) carries on a trade, or profession or business, the control or management of which is situated outside the United Kingdom.

(4) The provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(5) Subsection (4)—

(a) does not apply in relation to income of a person resident in the United Kingdom if section 858 of ITTOIA 2005 (UK resident partner is taxable on share of firm's income despite any double taxation arrangements) applies to the income, and

(b) does not apply in relation to income of a company resident in the United Kingdom if section 1266(2) of CTA 2009 (UK resident company that is partner in a firm is taxable on share of firm's income despite any double taxation arrangements) applies to the income.

(6) A person is resident in the United Kingdom for the purposes of this section if the person is resident in the United Kingdom for the purposes of the double taxation arrangements.

[F107 130A Interpreting provision about UK taxation of pensions etc

(1) Subsection (3) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).

(2) The provision is that pensions and other similar remuneration which—

(a) arise outside the United Kingdom, and

(b) are paid to persons who are resident in the United Kingdom,

are not to be subject to United Kingdom tax.

(3) That provision does not prevent a pension or other similar remuneration of a person resident in the United Kingdom being chargeable to income tax if—

(a) the pension or other similar remuneration is paid out of sums or assets that were the subject of a relevant transfer or related sums or assets, and

(b) the relevant transfer or any transaction forming part of that transfer was, or formed part of, a tax avoidance scheme.

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(4) But nothing in subsection (3) prevents credit being allowed under Chapter 2 of this Part (double taxation relief by way of credit) against any tax so charged.

(5) In determining whether a pension or other similar remuneration is paid out of sums or assets within subsection (3)(a), it is to be assumed that it is paid out of such sums or assets in priority to any other sums or assets.

(6) A "relevant transfer", in respect of any sums or assets, is a transaction or series of transactions as a result of which—

(a) the sums or assets are transferred out of a pension scheme, and

(b) the sums or assets or related sums or assets (or both) are transferred into the pension scheme under which the pension or other similar remuneration is paid.

(7) A scheme is a "tax avoidance scheme" if the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure an income tax advantage for any person under this Part by virtue of provision mentioned in subsection (2) made by double taxation arrangements.

(8) For the purposes of subsection (7)—

(a) "scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions,

(b) it does not matter whether or not the double taxation arrangements were in existence at the time the tax avoidance scheme was entered into or given effect to, and

(c) "income tax advantage" is to be construed in accordance with section 572A(3) to (5) of ITA 2007.

(9) In this section—

"pension" and "other similar remuneration" have the same meaning as in the Model Tax Convention on Income and on Capital published (from time to time) by the Organisation for Economic Co-operation and Development;

"pension scheme" has the same meaning as in Part 4 of FA 2004 (see section 150 of that Act);

"related sums or assets", in relation to other sums or assets ("the original sums or assets"), means sums or assets which arise, or (directly or indirectly) derive, from the original sums or assets or from sums or assets which so arise or derive.**]**

Textual Amendments

F107 S. 130A inserted (with effect in accordance with s. 72(2) of the amending Act) by Finance Act 2011 (c. 11), **s. 72(1)**

131 Interpreting provision about interest influenced by special relationship

(1) Subsections (3) and (6) apply if double taxation arrangements—

(a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

(b) contain a special relationship rule.

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(2) A "special relationship rule" is provision that—

(a) applies if the amount of the interest paid is, because of a special relationship, greater than the amount ("the ordinary amount") that would have been paid in the absence of the relationship, and

(b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.

(3) The special relationship rule is to be read as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship,

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest, and the other terms, which would have been agreed in the absence of the special relationship.

(4) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the debt on which interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).

(5) If—

(a) a company ("L") makes a loan to another company with which it has a special relationship, and

(b) it is not part of L's business to make loans generally,

the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (3).

(6) The special relationship rule is to be read as requiring the taxpayer—

(a) to show that there is no special relationship, or

(b) if there is a special relationship, to show the amount of interest that would have been paid in the absence of the relationship.

132 Interpreting provision about royalties influenced by special relationship

(1) Subsection (3) and section 133 apply if double taxation arrangements—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) contain a special relationship rule.

(2) A "special relationship rule" is provision that—

(a) applies if the amount of the royalties paid is, because of a special relationship, greater than the amount ("the ordinary amount") that would have been paid in the absence of the relationship, and

(b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.

(3) The special relationship rule is to be read as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the special relationship,

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(b) the rate or amounts of royalties, and the other terms, which would have been agreed in the absence of the special relationship, and

(c) if subsection (4) applies, the factors specified in subsection (5).

(4) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person ("PR") who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of PR,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by PR, or

(d) a person who is, or has at any time been, an associate of a person within paragraph (c).

(5) The factors mentioned in subsection (3)(c) are—

(a) the amounts which were paid under the transaction, or under each of the transactions in a series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been paid under that transaction, or under each of those transactions, in the absence of a special relationship, and

(c) the question whether the transaction, or series of transactions, would have taken place in the absence of a special relationship.

(6) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(7) For the purposes of this section, a person ("A") is an associate of another person ("B") at a given time if—

(a) A was directly or indirectly participating in the management, control or capital of B at that time, or

(b) the same person was, or the same persons were, directly or indirectly participating in the management, control or capital of A and B at that time.

(8) For the interpretation of subsection (7), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (7) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

133 Special relationship rule for royalties: matters to be shown by taxpayer

(1) If this section applies (as to which, see section 132(1)), the special relationship rule is to be read as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) as the case may be, the rate or amounts of royalties that would have been payable in the absence of the special relationship.

(2) The requirement under subsection (1)(a) includes whichever is applicable of the following requirements.

(3) The first of those requirements is—

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(a) to show that no person of any of the descriptions in section 132(4)(a) to (d) has previously been the beneficial owner of the asset in respect of which the royalties are paid, and

(b) to show that no person of any of those descriptions has previously been the beneficial owner of any asset which that asset represents or from which it is derived.

(4) The second of those requirements is—

(a) to show that the transaction, or series of transactions, mentioned in section 132(5)(a) would have taken place in the absence of a special relationship, and

(b) to show the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of a special relationship.

Assessments

134 Correcting assessments where relief is available

(1) Subsections (5) and (6) apply if—

(a) under double taxation arrangements, relief may be given in the United Kingdom, or in the territory in relation to which the arrangements are made, in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(2) Subsections (5) and (6) also apply if—

(a) under unilateral relief arrangements for a territory outside the United Kingdom, relief may be given in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(3) Condition A is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is not made in respect of the full amount of the income or gain.

(4) Condition B is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is incorrect having regard to the credit, if any, to be given under the arrangements.

(5) Assessments may be made that are necessary to ensure—

(a) that the full amount of the income or gain is assessed, and

(b) that the proper credit, if any, is given.

(6) If the income is entrusted to any person in the United Kingdom for payment, an assessment under subsection (5) may be made on the recipient of the income.

(7) An officer of Revenue and Customs may make amendments—

(a) of assessments or determinations, or

(b) of decisions on claims,

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that are necessary in consequence of Chapter 1 so far as it applies for petroleum revenue tax purposes.

PART 3

DOUBLE TAXATION RELIEF FOR SPECIAL WITHHOLDING TAX

Introductory

135 Relief under this Part: introductory

(1) This Part (except sections 144 and 145) applies for the purpose of giving relief from double taxation in respect of special withholding tax.

(2) Relief under this Part—

(a) is given by set-off against income tax or capital gains tax, and

(b) so far as it cannot be given by set-off against income tax or capital gains tax, is given by repayment.

136 Interpretation of Part

(1) Subsections (2) to (7) have effect for the purposes of this Part.

(2) "Double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

(3) "International arrangements", in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income—

(a) under the law of the United Kingdom, or

(b) under that law and the law of the territory.

(4) "The Savings Directive" means Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

(5) "Savings income"—

(a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression "interest payment" has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and

(b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned.

(6) "Special withholding tax" means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 11 of the Savings Directive (withholding tax to be levied in Belgium, Luxembourg and Austria for the period described in the Directive), or

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(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(7) In the application of this Part in relation to capital gains tax, expressions used in this Part and in TCGA 1992 have the same meaning in this Part as in TCGA 1992.

Credit etc for special withholding tax

137 Income tax credit etc for special withholding tax

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that a person—

(a) is liable to income tax for a tax year in respect of a payment of savings income, or

(b) would be liable to income tax for a tax year in respect of a payment of savings income but for any exemption or relief.

(3) Condition B is that special withholding tax is levied in respect of the payment.

(4) Condition C is that the person is UK resident for the tax year.

(5) On the making of a claim, income tax ("the deemed tax") is to be treated as having been—

(a) paid by or on behalf of the person for the tax year, and

(b) deducted at source for the tax year for the purposes of the provisions listed in subsection (7).

(6) The amount of the deemed tax is given by section 138.

(7) The provisions mentioned in subsection (5)(b) are—

section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
section 8 of TMA 1970 (personal return),
section 8A of TMA 1970 (trustee's return),
section 9 of TMA 1970 (returns to include self-assessment),
section 59A of TMA 1970 (payments on account of income tax),
section 59B of TMA 1970 (payments of income tax and capital gains tax), and
section 824(3) of ICTA (repayment supplements: determination of relevant time).

138 Amount and application of the deemed tax under section 137

(1) For the purposes of section 137, the amount of the deemed tax is—

(a) the amount of the special withholding tax levied (see section 137(3)), less

(b) any amounts of that tax that are within subsection (2).

(2) An amount of special withholding tax levied is within this subsection if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

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(b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 137(2).

(3) Subsection (4) applies if the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for that tax year (before any set-off for the deemed tax).

(4) So far as it would not otherwise be the case—

(a) the excess is to be set against any capital gains tax for which the person is liable for that tax year, and

(b) the person is entitled to a repayment of income tax in respect of any remaining balance of the excess.

139 Capital gains tax credit etc for special withholding tax

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that a person makes a disposal of assets in a tax year.

(3) Condition B is that if a chargeable gain were to accrue on the disposal—

(a) the gain would accrue to the person, and

(b) the person would be chargeable to capital gains tax in respect of the gain.

(4) Condition C is that—

(a) the consideration for the disposal consists of, or includes, an amount of savings income, and

(b) special withholding tax is levied in respect of the whole, or any part, of the consideration.

(5) Condition D is that the person is resident in the United Kingdom for the tax year.

(6) On the making of a claim, capital gains tax ("the deemed tax") is to be—

(a) treated as having been paid by or on behalf of the person for the tax year, and

(b) treated for the purposes of section 283(2) of TCGA 1992 (repayment supplements: determination of relevant time) as having been paid on the 31 January following the tax year.

(7) The amount of the deemed tax is given by section 140.

(8) For the purposes of subsection (3)(b), disregard—

(a) any deductions that are to be made from the total amount referred to in section 2(2) of TCGA 1992 (deductions for allowable losses), and

(b) section 3 of TCGA 1992 (annual exempt amount).

140 Provisions about the deemed tax under section 139

(1) For the purposes of section 139, the amount of the deemed tax is—

(a) the amount of the special withholding tax levied (see section 139(4)(b)), less

(b) any amounts of that tax that are within subsection (2) or (3).

(2) An amount of special withholding tax levied is within this subsection if—

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(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 139(2).

(3) An amount of special withholding tax levied is within this subsection if by reference to that amount of that tax—

(a) there is that amount of deemed tax under section 137(5), or

(b) there would be that amount of deemed tax under section 137(5) on the making of a claim.

(4) Subsection (5) applies if the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for that tax year (before any set-off for the deemed tax).

(5) So far as it would not otherwise be the case—

(a) the excess is to be set against any income tax for which the person is liable for that tax year, and

(b) the person is entitled to a repayment of capital gains tax in respect of any remaining balance of the excess.

(6) For the purposes of the provisions listed in subsection (7) in relation to the person for that tax year, references in those provisions to income tax deducted at source for that tax year include the deemed tax.

(7) Those provisions are—

section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),

section 8 of TMA 1970 (personal return),

section 8A of TMA 1970 (trustee's return),

section 9 of TMA 1970 (returns to include self-assessment), and

section 59B of TMA 1970 (payments of income tax and capital gains tax).

141 Credit under Chapter 2 of Part 2 to be allowed first

(1) Any credit for foreign tax allowed under Chapter 2 of Part 2 against income tax or capital gains tax is to be allowed before effect is given to sections 137 to 140.

(2) In this section "foreign tax" has the same meaning as in that Chapter (see section 21).

Calculation of income or gain on remittance basis where special withholding tax levied

142 Conditions for purposes of section 143

(1) This section applies for the purposes of section 143.

(2) Condition A is that—

(a) a person is liable to income tax in respect of a payment of savings income, or

(b) a chargeable gain accrues to a person on a disposal by the person of assets in circumstances where the consideration for the disposal consists of, or includes, an amount of savings income.

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(3) Condition B is that special withholding tax is levied in respect of—

(a) the payment of savings income, or

(b) the whole or any part of the consideration for the disposal.

(4) Condition C is that a claim under this Part has been made in respect of the special withholding tax.

(5) Condition D is that no credit for foreign tax in respect of the savings income or chargeable gain concerned is allowed under Chapter 2 of Part 2 (so that sections 31(2) and 32(2), which make provision similar to section 143, do not apply).

143 Taking account of special withholding tax in calculating income or gains

(1) Subsection (2) applies if—

(a) each of conditions A to D of section 142 is met, and

(b) income tax is payable by reference to the amount of the savings income received in the United Kingdom.

(2) For income tax purposes, the amount received is increased by the amount of special withholding tax—

(a) levied in respect of it, and

(b) in respect of which a claim under this Part has been made.

(3) Subsection (4) applies if—

(a) each of conditions A to D of section 142 is met, and

(b) capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom.

(4) For capital gains tax purposes, the amount received is increased by the amount given by—

$$SWT \times \frac{GUK}{G - SWT}$$

where—

SWT is the amount of special withholding tax—

(a) levied in respect of the whole or the part of the consideration for the disposal, and

(b) in respect of which a claim has been made under this Part,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

(5) Subsection (6) applies if—

(a) each of conditions A to D of section 142 is met, and

(b) neither subsection (2) nor subsection (4) applies.

(6) In calculating—

(a) the amount of the income for income tax purposes, or

(b) the amount of any chargeable gain for capital gains tax purposes,

no deduction is to be made for special withholding tax in respect of which a claim has been made under this Part (whether special withholding tax in respect of the same, or any other, income or in respect of the same, or any other, chargeable gains).

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Modifications etc. (not altering text)

C9 S. 143 applied (with modifications) (coming into force in accordance with s. 218(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 36 para. 16(6)**

Certificates to avoid levy of special withholding tax

144 Issue of certificate

(1) This section enables officers of Revenue and Customs to issue certificates to be used under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to the paying agent a certificate drawn up by a competent authority in the beneficial owner's member State of residence for tax purposes), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(2) If, on the written application of a person, an officer is satisfied that the applicant has provided an officer with—

(a) the required information, and

(b) the documents (if any) required by an officer to verify that information,

an officer must issue a certificate to the applicant.

(3) In subsection (2) "the required information" means—

(a) the applicant's name and address,

(b) the applicant's National Insurance number or, if the applicant does not have one, the applicant's date, town and country of birth,

(c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to payments of savings income,

(d) the name and address of the paying agent who is to make the payments of savings income to, or to secure the payments of savings income for, the applicant, and

(e) the period, not exceeding 3 years, for which the applicant would like the certificate to be valid.

(4) A certificate under this section must be in writing and must state—

(a) the information mentioned in subsection (3)(a) to (d), and

(b) the period of validity of the certificate (which must not exceed 3 years).

(5) A certificate under this section must be issued no later than the end of the period of 2 months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).

(6) If the requirements of—

(a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and

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(b) any corresponding provision of any international arrangements,

differ to any extent, subsections (3) to (5) have effect, in their application in relation to the international arrangements, with such modifications as may be required because of those arrangements.

145 Refusal to issue certificate and appeal against refusal

(1) This section applies if, on an application for a certificate under section 144, an officer of Revenue and Customs ("the decision officer") is not satisfied that the applicant has provided an officer with the information and documents required by or under section 144(2).

(2) An officer must give written notice ("the refusal notice") to the applicant of the decision officer's refusal to issue a certificate.

(3) The refusal notice must specify the reasons for the refusal.

(4) The applicant may by written notice ("the appeal notice") appeal against the refusal.

(5) The appeal notice must be given to an officer within 30 days of the date of the refusal notice.

(6) Part 5 of TMA 1970 (appeals and other proceedings) is to apply in relation to an appeal under this section.

(7) On an appeal that is notified to the tribunal, the tribunal may—

(a) confirm the refusal notice, or

(b) quash it and require an officer to issue a certificate.

(8) In this section "the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

PART 4

TRANSFER PRICING

Modifications etc. (not altering text)

C10 Pt. 4 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 5 para. 2**)

C11 Pt. 4 excluded (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 2 para. 6(2)**; S.I. 2011/2329, art. 3

C12 Pt. 4 excluded (1.4.2012) by Budget Responsibility and National Audit Act 2011 (c. 4), s. 29, **Sch. 4 para. 3(2)**; S.I. 2011/2576, art. 5

C13 Pt. 4 excluded (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), **s. 129(11)** (with s. 147, Sch. 17)

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CHAPTER 1

BASIC TRANSFER-PRICING RULE

Modifications etc. (not altering text)

C14 Pt. 4 Chs. 1 and 3-6 applied (1.4.2022 in relation to accounting periods beginning on or after that date) by Finance Act 2022 (c. 3), s. 51(1), Sch. 9 paras. 3, **4**

146 Application of this Part

This Part applies for—

(a) corporation tax purposes, and

(b) income tax purposes.

147 Tax calculations to be based on arm's length, not actual, provision

(1) For the purposes of this section "the basic pre-condition" is that—

(a) provision ("the actual provision") has been made or imposed as between any two persons ("the affected persons") by means of a transaction or series of transactions,

(b) the participation condition is met (see section 148),

(c) the actual provision is not within subsection (7) (oil transactions), and

(d) the actual provision differs from the provision ("the arm's length provision") which would have been made as between independent enterprises.

(2) Subsection (3) applies if—

(a) the basic pre-condition is met, and

(b) the actual provision confers a potential advantage in relation to United Kingdom taxation on one of the affected persons.

(3) The profits and losses of the potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.

(4) Subsection (5) applies if—

(a) the basic pre-condition is met, and

(b) the actual provision confers a potential advantage in relation to United Kingdom taxation (whether or not the same advantage) on each of the affected persons.

(5) The profits and losses of each of the affected persons are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.

(6) Subsections (3) and (5) have effect subject to—

(a) section 165 (exemption for dormant companies),

(b) section 166 (exemption for small and medium-sized enterprises),

[F108(ba) section 206A (modification of basic rule where allowances restricted for certain oil-related expenditure),**]**

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(c) section 213 (this Part generally does not affect calculation of capital allowances),

(d) section 214 (this Part generally does not affect calculation of chargeable gains),

(e) section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), [F109]...

(f) section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for) **[**[F110], and

(g) section 938N of CTA 2010 (this Part treated as of no effect for the purposes of Part 21B of CTA 2010 (group mismatch schemes)).**]**

(7) The actual provision is within this subsection if it is made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of sections 225F to 225J of ITTOIA 2005 or any of sections 281 to 285 of CTA 2010 (transactions and deemed transactions involving oil treated as made at market value).

Textual Amendments

F108 S. 147(6)(ba) inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 32 para. 13**

F109 Word in s. 147(6)(e) omitted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 5 para. 5(1)**

F110 S. 147(6)(g) and word inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 5 para. 5(1)**

148 The "participation condition"

(1) For the purposes of section 147(1)(b), the participation condition is met if—

(a) condition A is met in relation to the actual provision so far as the actual provision is provision relating to financing arrangements, and

(b) condition B is met in relation to the actual provision so far as the actual provision is not provision relating to financing arrangements.

(2) Condition A is that, at the time of the making or imposition of the actual provision or within the period of six months beginning with the day on which the actual provision was made or imposed—

(a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.

(3) Condition B is that, at the time of the making or imposition of the actual provision—

(a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.

(4) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

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(5) For the interpretation of subsections (2) and (3) see sections 157 to 163.

Modifications etc. (not altering text)

C15 S. 148 applied by 2009 c. 4, s. 161(3A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 124(6)** (with Sch. 9 paras. 1-9, 22))

C16 S. 148 applied by 2005 c. 5, s. 172F(2B) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 121(6)** (with Sch. 9 paras. 1-9, 22))

C17 S. 148 applied by 2009 c. 4, s. 445(3A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 133(8)** (with Sch. 9 paras. 1-9, 22))

C18 S. 148 applied by 2009 c. 4, s. 846(2A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 147(6)** (with Sch. 9 paras. 1-9, 22))

C19 S. 148 applied (with modifications) by 2007 c. 3, s. 917A(6) (as inserted (with effect in accordance with s. 41(2) of the amending Act) by Finance Act 2016 (c. 24), **s. 41(1)**)

C20 S. 148 applied by 2010 c. 8, s. 882(5D) (as inserted (with effect in accordance with s. 52(5) of the amending Act) by Finance Act 2016 (c. 24), **s. 52(2)**)

C21 S. 148 applied by 2009 c. 4, s. 845(4C) (as inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 2016 (c. 24), **s. 53(1)**)

C22 S. 148 applied by 2009 c. 4, s. 849AB(9) (as inserted (with application in accordance with s. 21(3) of the amending Act) by Finance Act 2018 (c. 3), **s. 21(2)**)

C23 S. 148 applied by 2009 c. 4, s. 879E(7) (as inserted (with effect in accordance with Sch. 9 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 9 para. 6**)

C24 S. 148 applied by 2009 c. 4, s. 90H(4) (as inserted (with effect in accordance with s. 31(14)(15) of the amending Act) by Finance Act 2020 (c. 14), **s. 31(13)**)

CHAPTER 2

KEY INTERPRETATIVE PROVISIONS

Meaning of certain expressions that first appear in section 147

149 "Actual provision" and "affected persons"

(1) In this Part—

"the actual provision", and

"the affected persons",

have the meaning given by section 147(1).

(2) Subsection (1) does not apply if Chapters 1 and 3 to 6 apply in accordance with section 205(2) to (4) (oil-related ring-fence trades) but, in that event, in this Part—

"the actual provision" means the provision mentioned in section 205(1)(b), and

"the affected persons" means the two persons mentioned in section 205(2).

(3) Subsections (1) and (2) are subject to subsection (4).

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(4) If the participation condition (see section 148) would not be met but for section 161 or 162 (cases in which actual provision relates, to any extent, to financing arrangements), then in section 147(1)(d), (2)(b), (3), (4)(b) and (5) "the actual provision" is a reference to the actual provision so far as relating to the financing arrangements concerned.

150 "Transaction" and "series of transactions"

(1) In this Part "transaction" includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).

(2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.

(3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.

(4) Those matters are—

(a) that there is no transaction in the series to which both those persons are parties,

(b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and

(c) that there is one or more transactions in the series to which neither of those persons is a party.

(5) In this section "arrangement" means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

151 "Arm's length provision"

(1) In this Part "the arm's length provision" has the meaning given by section 147(1).

(2) For the purposes of this Part, the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises include the case in which provision is made or imposed as between two persons but no provision would have been made as between independent enterprises; and references in this Part to the arm's length provision are to be read accordingly.

152 Arm's length provision where actual provision relates to securities

(1) This section applies where—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies ("the issuing company").

(2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship,

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(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the special relationship.

(3) Subsection (2) has effect subject to subsections (4) and (5).

(4) If—

(a) a company ("L") makes a loan to another company with which it has a special relationship, and

(b) it is not part of L's business to make loans generally,

the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (2).

(5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(6) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness,

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—

(i) the issue of a security by the issuing company, or

(ii) the making of a loan, or a loan of a particular amount, to the issuing company, and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

153 Arm's length provision where security issued and guarantee given

(1) This section applies where the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security by a company which is one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by a company which is the other affected person.

(2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—

(a) the question whether the guarantee would have been provided at all in the absence of the special relationship,

(b) the amount that would have been guaranteed in the absence of the special relationship, and

(c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship.

(3) Subsection (2) has effect subject to subsections (4) and (5).

(4) If—

(a) a company ("G") provides a guarantee in respect of another company with which it has a special relationship, and

(b) it is not part of G's business to provide guarantees generally,

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the fact that it is not part of G's business to provide guarantees generally is to be disregarded in applying subsection (2).

(5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(6) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness,

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—

(i) the issue of a security by the issuing company, or

(ii) the making of a loan, or a loan of a particular amount, to the issuing company, and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

154 Interpretation of sections 152 and 153

(1) Subsections (3) to (7) apply for the purposes of sections 152 and 153.

(2) Subsection (6) applies also for the purposes of subsection (7)(a).

(3) "Special relationship" means any relationship by virtue of which the participation condition is met (see section 148) in the case of the affected persons concerned.

(4) 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.

(5) One company ("A") has a "participatory relationship" with another ("B") if—

(a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

(6) "Security" includes securities not creating or evidencing a charge on assets.

(7) 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,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

155 "Potential advantage" in relation to United Kingdom taxation

(1) Subsection (2) applies for the purposes of this Part.

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(2) The actual provision confers a potential advantage on a person in relation to United Kingdom taxation wherever, disregarding this Part, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of Effects A and B.

(3) Effect A is that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of the person's profits for any chargeable period.

(4) Effect B is that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of the person.

(5) In determining for the purposes of subsection (3) or (4) the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a non-UK resident, there is to be left out of account any income of that person which is—

(a) disregarded income within the meaning given by section 813 of ITA 2007 (limits on liability to income tax of non-UK residents), or

(b) disregarded company income within the meaning given by section 816 of that Act.

(6) For the purposes of subsections (2) to (4)—

[F111(a) Part 10 (corporate interest restriction),**]**

(b) paragraph E of the list in section 1000(1) of CTA 2010 (excessive interest etc treated as a distribution),

are to be disregarded.

Textual Amendments

F111 S. 155(6)(a) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 14**

156 "Losses" and "profits"

(1) In this Part "losses" includes amounts which are not losses but in respect of which relief may be given in accordance with—

(a) section 57 of ITTOIA 2005 (pre-trading expenses),

(b) section 88 of ITA 2007 (carry forward of certain interest),

(c) section 61 of CTA 2009 (pre-trading expenses),

(d) sections 387 to 391 of CTA 2009 (insurance companies: non-trading deficits on loan relationships),

(e) Chapter 16 **[**F112or Chapter 16A**]** of Part 5 of CTA 2009 (non-trading deficits on loan relationships),

(f) section 1223 of CTA 2009 (excess of management expenses), F113...

(g) Part 5 of CTA 2010 (group relief) **[**F114, or

(h) Part 5A of CTA 2010 (group relief for carried-forward losses).**]**

(2) In this Part "profits" includes income.

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Textual Amendments

F112 Words in s. 156(1)(e) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 178(a)**

F113 Word in s. 156(1)(f) omitted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 178(b)**

F114 S. 156(1)(h) and word inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 178(c)**

"Direct participation" in management, control or capital of a person

157 Direct participation

(1) Subsection (2) applies for the purposes of—

(a) this Part,

(b) in Part 2, section 132(7), F115...

(c) in Part 5, section 219(2) **[**F116, F117...

(d) in Part 6A, section 259NB(4)**][**F118, F119...

(e) in Part 10, section 463(4)**][**F120, and

(f) section 608T of ITTOIA 2005.**]**

(2) A person is directly participating in the management, control or capital of another person at a particular time if (and only if) that other person is at that time—

(a) a body corporate or a firm, and

(b) controlled by the first person.

Textual Amendments

F115 Word in s. 157(1)(b) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 11(a)**

F116 S. 157(1)(d) and word inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 10 para. 11(b)**

F117 Word in s. 157(1)(c) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 15(a)**

F118 S. 157(1)(e) and word inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 15(b)**

F119 Word in s. 157(1)(d) omitted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 3 para. 6(2)(a)**

F120 S. 157(1)(f) and word inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 6(2)(b)**

Modifications etc. (not altering text)

C25 S. 157(2) applied (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(a)**

C26 S. 157(2) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

C27 S. 157(2) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

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"Indirect participation" in management, control or capital of a person

158 Indirect participation: defined by sections 159 to 162

(1) This section is about how to read the references, in this Part and in some other provisions of this Act, to indirect participation.

(2) For the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 161 so provides.

(3) For the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 162 so provides.

(4) For the purposes of—

(a) sections 154(5) and 204(4),

(b) in Part 2, section 132(7), F121...

(c) in Part 5, section 219(2)**[**F122, and

(d) in Part 6A, section 259NB(4),**]**

a person is indirectly participating in the management, control or capital of another person only if section 159 or 160 so provides.

Textual Amendments

F121 Word in s. 158(4)(b) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 12(a)**

F122 S. 158(4)(d) and word inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 10 para. 12(b)**

Modifications etc. (not altering text)

C28 Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

C29 S. 158(4) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

C30 S. 158(4) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

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), F123...

(c) in Part 5, section 219(2) **[**F124, F125...

(d) in Part 6A, section 259NB(4)**][**F126, F127...

(e) in Part 10, section 463(4)**][**F128, and

(f) section 608T of ITTOIA 2005.**]**

(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

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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),

(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.

Textual Amendments

F123 Word in s. 159(1)(b) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 13(a)**

F124 S. 159(1)(d) and word inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 10 para. 13(b)**

F125 Word in s. 159(1)(c) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 16(a)**

F126 S. 159(1)(e) and word inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 16(b)**

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F127 Word in s. 159(1)(d) omitted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 3 para. 6(3)(a)**

F128 S. 159(1)(f) and word inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 6(3)(b)**

Modifications etc. (not altering text)

C28 Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

C31 S. 159(2) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

C32 S. 159(2) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

160 Indirect participation: one of several major participants

(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), F129...

(c) in Part 5, section 219(2) **[**F130, F131...

(d) in Part 6A, section 259NB(4)**][**F132, F133...

(e) in Part 10, section 463(4)**][**F134, and

(f) section 608T of ITTOIA 2005.**]**

(2) A person is indirectly participating in the management, control or capital of another person at a particular time if the first person is, at that time, one of a number of major participants in that other person's enterprise.

(3) For the purposes of this section, a person ("A") is a major participant in another person's enterprise at a particular time if at that time—

(a) that other person ("the subordinate") is a body corporate or firm, and

(b) the 40% test is met in the case of each of two persons—

(i) who, taken together, control the subordinate, and

(ii) of whom one is A.

(4) For the purposes of this section, the 40% test is met in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the subordinate.

(5) For the purposes of this section—

(a) the question whether a person is controlled by any two or more persons taken together, and

(b) any question whether the 40% test is met in the case of a person who is one of two persons,

is to be determined after attributing to each of the persons all the rights and powers which would be attributed by section 159(2) to a person were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of another person.

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(6) 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.

Textual Amendments

F129 Word in s. 160(1)(b) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 14(a)**

F130 S. 160(1)(d) and word inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 10 para. 14(b)**

F131 Word in s. 160(1)(c) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 17(a)**

F132 S. 160(1)(e) and word inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 17(b)**

F133 Word in s. 160(1)(d) omitted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 3 para. 6(4)(a)**

F134 S. 160(1)(f) and word inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 6(4)(b)**

Modifications etc. (not altering text)

C28 Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

C33 S. 160(2) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

C34 S. 160(2) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

161 Indirect participation: sections 148 and 175: financing cases

(1) Subsection (2) applies for the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a).

(2) A person ("P") is indirectly participating in the management, control or capital of another ("A") at the time of the making or imposition of the actual provision if—

(a) the actual provision relates, to any extent, to financing arrangements for A,

(b) A is a body corporate or firm,

(c) P and other persons acted together in relation to the financing arrangements, and

(d) P would be taken to have control of A if, at any relevant time, there were attributed to P the rights and powers of each of the other persons mentioned in paragraph (c).

(3) It is immaterial for the purposes of subsection (2)(c) whether P and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.

(4) In subsection (2)(d) "relevant time" means—

(a) a time when P and the other persons were acting together in relation to the financing arrangements, or

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(b) a time in the period of six months beginning with the day on which they ceased so to act.

(5) In determining for the purposes of subsection (2)(d) whether P would be taken to have control of another person ("A"), the rights and powers of any person (and not just P) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.

(6) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

Modifications etc. (not altering text)

C28 Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

162 Indirect participation: sections 148 and 175: further financing cases

(1) Subsection (2) applies for the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b).

(2) A person ("Q") is indirectly participating in the management, control or capital of each of the affected persons at the time of the making or imposition of the actual provision if—

(a) the actual provision relates, to any extent, to financing arrangements for one of the affected persons ("B"),

(b) B is a body corporate or firm,

(c) Q and other persons acted together in relation to the financing arrangements, and

(d) Q would be taken to have control of both B and the other affected person if, at any relevant time, there were attributed to Q the rights and powers of each of the other persons mentioned in paragraph (c).

(3) It is immaterial for the purposes of subsection (2)(c) whether Q and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.

(4) In subsection (2)(d) "relevant time" means—

(a) a time when Q and the other persons were acting together in relation to the financing arrangements, or

(b) a time in the period of six months beginning with the day on which they ceased so to act.

(5) In determining for the purposes of subsection (2)(d) whether Q would be taken to have control of another person ("A"), the rights and powers of any person (and not just Q) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.

(6) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

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Modifications etc. (not altering text)
C28 Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

163 Meaning of "connected" in section 159

(1) Subsections (2) and (3) apply for the purposes of section 159 and this section.

(2) Two persons are connected with each other if one of them is an individual and the other is—

(a) the individual's spouse or civil partner,

(b) a relative of the individual,

(c) a relative of the individual's spouse or civil partner, or

(d) the spouse, or civil partner, of a person within paragraph (b) or (c).

(3) Two persons are connected with each other if one of them is a trustee of a settlement and the other is—

(a) a person who in relation to that settlement is a settlor, or

(b) a person who is connected with a person within paragraph (a).

(4) In this section—

"relative" means brother, sister, ancestor or lineal descendant, and

"settlement" and "settlor" have the same meaning as in section 620 of ITTOIA 2005.

Modifications etc. (not altering text)
C28 Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

Application of OECD principles

164 Part to be interpreted in accordance with OECD principles

(1) This Part is to be read in such manner as best secures consistency between—

(a) the effect given to sections 147(1)(a), (b) and (d) and (2) to (6), 148 and 151(2), and

(b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.

(2) Subsection (1) has effect subject to—

section 147(1)(c) and (7) (oil-related provision to which Part does not apply),

sections 205 and 206 (rules for oil-related ring-fence trades),

section 217(3) to (7) (provision for sales of oil),

section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and

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section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

(3) In this section "the OECD model" means—

(a) the rules which, at the passing of ICTA (which occurred on 9 February 1988), were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or

(b) any rules in the same or equivalent terms.

[F135(4) In this section "the transfer pricing guidelines" means—

(a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations approved by the Organisation for Economic Co-operation and Development (OECD) on 22 July 2010 **[**F136as revised by the report, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports, published by the OECD on 5 October 2015**]** , or

(b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,

including, in either case, **[**F137material which is **]** published by the OECD as part of (or by way of update or supplement to) the version or other document concerned **[**F138and which is designated for the time being by order made by the Treasury**]** .**]**

(5) In this section "double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

Textual Amendments

F135 S. 164(4) substituted (with effect in accordance with s. 58(2) of the amending Act) by Finance Act 2011 (c. 11), **s. 58(1)**

F136 Words in s. 164(4)(a) inserted (with effect in accordance with s. 75(3) of the amending Act) by Finance Act 2016 (c. 24), **s. 75(1)(a)**

F137 Words in s. 164(4) substituted (with effect in accordance with s. 75(3) of the amending Act) by Finance Act 2016 (c. 24), **s. 75(1)(b)(i)**

F138 Words in s. 164(4) substituted (with effect in accordance with s. 75(3) of the amending Act) by Finance Act 2016 (c. 24), **s. 75(1)(b)(ii)**

CHAPTER 3

EXEMPTIONS FROM BASIC RULE

165 Exemption for dormant companies

(1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which meets the condition in subsection (2).

(2) The condition is that—

(a) the company was dormant throughout the pre-qualifying period, and

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(b) apart from section 147, the company has continued to be dormant at all times since the end of the pre-qualifying period.

(3) In subsection (2) "the pre-qualifying period" means—

(a) if there is an accounting period of the company that ends on 31 March 2004, that accounting period, or

(b) if there is no such accounting period, the period of 3 months ending with that date.

(4) In this section "dormant" has the meaning given by section 1169 of the Companies Act 2006.

166 Exemption for small and medium-sized enterprises

(1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see section 172).

(2) Exceptions to subsection (1) are provided—

(a) in the case of a small enterprise, by **[**[F139]sections 167 and 167A**]**, and

(b) in the case of a medium-sized enterprise, by sections 167 and 168.

Textual Amendments

F139 Words in s. 166(2)(a) substituted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 3**

Modifications etc. (not altering text)

C35 Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2)**, 1184(1) (with Sch. 2)

C36 S. 166(1) disapplied (24.2.2022) by Finance Act 2022 (c. 3), **Sch. 2 para. 41(1)**

167 Small and medium-sized enterprises: exceptions from exemption

(1) Subsections (2) and (3) set out exceptions to section 166(1).

(2) The first exception is if the small or medium-sized enterprise elects for section 166(1) not to apply in relation to the chargeable period.

Any such election is irrevocable.

(3) The second exception is if—

(a) the other affected person, or

(b) a party to a relevant transaction,

is, at the time when the actual provision is or was made or imposed, a resident of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).

(4) For the purposes of subsection (3)—

(a) a "party to a relevant transaction" is a person who, if the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions, and

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(b) "qualifying territory" and "non-qualifying territory" are defined in section 173.

(5) In subsection (3) "resident", in relation to a territory—

(a) means a person who, under the law of that territory, is liable to tax there by reason of the person's domicile, residence or place of management, but

(b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

Modifications etc. (not altering text)

C35 Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2)**, 1184(1) (with Sch. 2)

[F140 167A Small enterprises: exception from exemption: transfer pricing notice

(1) Section 166(1) does not apply in relation to any provision made or imposed if—

(a) the potentially advantaged person is a small enterprise for the chargeable period,

(b) the person meets the condition in subsection (2), and

(c) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.

(2) A person meets the condition referred to in subsection (1)(b) if—

(a) provision has been made or imposed as between the person and any other person by means of a transaction or series of transactions,

(b) the basic pre-condition in section 147 is met in respect of the provision, and

(c) the transaction, or one or more of the series of transactions, is taken into account in calculating, for the purposes of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc), the relevant IP profits of a trade of a person who is or was a party to the transaction or transactions.

(3) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.**]**

Textual Amendments

F140 S. 167A inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 4**

168 Medium-sized enterprises: exception from exemption: transfer pricing notice

(1) Section 166(1) does not apply in relation to any provision made or imposed if—

(a) the potentially advantaged person is a medium-sized enterprise for the chargeable period, and

(b) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.

(2) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.

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Modifications etc. (not altering text)

C35 Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2)**, 1184(1) (with Sch. 2)

169 Giving of transfer pricing notices

(1) This section applies to a transfer pricing notice given to a person.

(2) The notice may be given in relation to—

(a) any provision specified, or of a description specified, in the notice, or

(b) every provision in relation to which one or other of the assumptions in section 147(3) and (5) would, apart from section 166(1), be required to be made when calculating the person's profits and losses for tax purposes.

(3) The notice may be given only after a notice of enquiry has been given to the person in relation to the person's tax return for the chargeable period concerned.

(4) The notice must identify the officer of Revenue and Customs to whom any notice of appeal under section 170 is to be given.

(5) In subsection (3) "notice of enquiry" means a notice under—

(a) section 9A or 12AC of TMA 1970, or

(b) paragraph 24 of Schedule 18 to FA 1998.

Modifications etc. (not altering text)

C35 Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2)**, 1184(1) (with Sch. 2)

170 Appeals against transfer pricing notices

(1) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only **[**F141on one of the following grounds—

(a) that the condition in section 167A(1)(b) is not met, or

(b) that the condition in section 168(1)(a) is not met.**]**

(2) Any such appeal must be brought by giving written notice of appeal to the officer of Revenue and Customs identified in the notice in accordance with section 169(4).

(3) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

Textual Amendments

F141 Words in s. 170(1) substituted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 5**

Modifications etc. (not altering text)

C35 Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2)**, 1184(1) (with Sch. 2)

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171 Tax returns where transfer pricing notice given

(1) If a transfer pricing notice is given to a person ("T"), T may amend T's tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—

(a) the day on which the notice is given, or

(b) if T appeals under section 170 against the decision to give the notice, the day on which the appeal is finally determined or abandoned.

(2) If a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—

(a) the end of the period of 90 days specified in subsection (1), or

(b) the earlier amendment of the tax return for the purpose of complying with the notice.

[F142(2A) Subsection (2) does not apply to a partial closure notice which does not relate to any matter to which the transfer pricing notice relates.**]**

(3) So far as relating to any provision made or imposed by or in relation to a person—

(a) who is a **[**F143small or**]** medium-sized enterprise for a chargeable period,

(b) who does not make an election under section 167(2) for that period, and

(c) who is not excepted from section 166(1) in relation to that provision for that period because of section 167(3),

the tax return required to be made for that period is a return that disregards section 147(3) and (5).

(4) Subsection (3) does not prevent a tax return for a period becoming incorrect if in the case of any provision made or imposed—

(a) a transfer pricing notice is given which has effect in relation to that provision for that period,

(b) the return is not amended in accordance with subsection (1) for the purpose of complying with the notice, and

(c) the return ought to have been so amended.

(5) In this section—

"closure notice" means a notice under—

(a) section 28A or 28B of TMA 1970, or

(b) paragraph 32 of Schedule 18 to FA 1998,

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule, and

"tax return" means—

(a) a return under section 8, 8A or 12AA of TMA 1970, or

(b) a company tax return.

Textual Amendments

F142 S. 171(2A) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 40**

F143 Words in s. 171(3)(a) inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 6**

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Modifications etc. (not altering text)

C35 Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2)**, 1184(1) (with Sch. 2)

172 Meaning of "small enterprise" and "medium-sized enterprise"

(1) In this Chapter—

(a) "small enterprise" means a small enterprise as defined in the Annex, and

(b) "medium-sized enterprise" means an enterprise which—

(i) falls within the category of micro, small and medium-sized enterprises as defined in the Annex, and

(ii) is not a small enterprise as defined in the Annex.

(2) For the purposes of subsection (1), the Annex has effect with the modifications set out in subsections (4) to (7).

(3) In this section "the Annex" means the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (concerning the definition of micro, small and medium-sized businesses).

(4) Where any enterprise 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) of the Annex in determining for the purposes of this Part whether—

(a) that enterprise, or

(b) any other enterprise (including that of the liquidator or administrator),

is a small or medium-sized enterprise.

(5) Article 3 of the Annex has effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).

(6) The first sentence of Article 4(1) of the Annex has effect as if the data to apply to—

(a) the headcount of staff, and

(b) the financial amounts,

were the data relating to the chargeable period referred to in section 166(1) (instead of the period described in that sentence) and calculated on an annual basis.

(7) Article 4 of the Annex has effect with the omission of the following provisions—

(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 (genuine estimate in case of newly established enterprise).

173 Meaning of "qualifying territory" and "non-qualifying territory"

(1) In section 167(3)—

"non-qualifying territory" means any territory which is not a qualifying territory, and

"qualifying territory" means—

(a) the United Kingdom, or

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(b) any territory in relation to which condition A or condition B is met.

(2) Condition A is that—

(a) double taxation arrangements have been made in relation to the territory,

(b) the arrangements include a non-discrimination provision, and

(c) the territory is not designated as a non-qualifying territory for the purposes of this subsection in regulations made by the Treasury.

(3) Condition B is that—

(a) double taxation arrangements have been made in relation to the territory, and

(b) the territory is designated as a qualifying territory for the purposes of this subsection in regulations made by the Treasury.

(4) For the purposes of subsection (2)(b) a "non-discrimination provision", in relation to any double taxation arrangements, is a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—

(a) any taxation, or

(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(5) In subsection (4) "national", in relation to a state, includes—

(a) any individual possessing the nationality or citizenship of the state, and

(b) any legal person, partnership or association deriving its status as such from the law in force in that state.

(6) In this section "double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

(7) Regulations under this section may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

CHAPTER 4

POSITION, IF ONLY ONE AFFECTED PERSON POTENTIALLY ADVANTAGED, OF OTHER AFFECTED PERSON

Claim by affected person who is not advantaged

174 Claim by the affected person who is not potentially advantaged

(1) Subsection (2) applies if—

(a) only one of the affected persons (in this Chapter called "the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and

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(b) the other affected person (in this Chapter called "the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(2) On the making of a claim by the disadvantaged person—

(a) the profits and losses of the disadvantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision, and

(b) despite any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments are to be made in the disadvantaged person's case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.

(3) Provision about claims under this section is made by—

[[F144]section 174A (claim not allowed in some cases where the disadvantaged person is within the charge to income tax), **]**

section 175 (claim not allowed in some cases where actual provision relates to a security issued by one of the affected persons),

section 176 (claim cannot be made unless advantaged person has made return on the basis that the arm's length provision applies),

section 177 (when claim may be made or amended), and

sections 181 to 184 (option to make claims in accordance with section 182 in some cases where actual provision relates to a security issued by one of the affected persons).

(4) Subsection (2) has effect subject to—

section 180 (closing trading stock and closing work in progress in a trade),

sections 188 and 189 (effect of claims under this section on double taxation relief),

Chapter 5 (provision, where liabilities of an affected person under securities issued by that person are guaranteed, for attribution to guarantor of things done by that affected person),

section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and

section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

Textual Amendments

F144 Words in s. 174(3) inserted (with effect in accordance with s. 75(5)(6) of the amending Act) by Finance Act 2014 (c. 26), **s. 75(2)**

[[F145]174A Claims under section 174 where disadvantaged person within charge to income tax

A claim under section 174 may not be made if—

(a) the disadvantaged person is a person (other than a company) within the charge to income tax in respect of profits arising from the relevant activities, and

(b) the advantaged person is a company.**]**

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Textual Amendments

F145 S. 174A inserted (with effect in accordance with s. 75(5)(6) of the amending Act) by Finance Act 2014 (c. 26), **s. 75(3)**

175 Claims under section 174 where actual provision relates to a security

(1) A claim under section 174 may not be made if—

(a) the participation condition (see section 148) would not be satisfied but for section 161 or 162,

(b) the actual provision is provision in relation to a security issued by one of the affected persons ("the issuer"), and

(c) a guarantee is provided in relation to the security by a person with whom the issuer has a participatory relationship.

(2) For the purposes of subsection (1), one person ("A") has a "participatory relationship" with another ("B") if—

(a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

(3) In subsections (1)(b) and (4)(a) "security" includes securities not creating or evidencing a charge on assets.

(4) For the purposes of subsection (1)(b), 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,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

(5) The reference in subsection (1)(c) to a guarantee includes—

(a) a reference to a surety, and

(b) if the issuer is a company, a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuer has a reasonable expectation that in the event of a default by the issuer the person will be paid by, or out of the assets of, one or more companies.

176 Claims under section 174: advantaged person must have made return

(1) A claim may not be made under section 174 unless a calculation has been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision.

(2) A claim made under section 174 must be consistent with the calculation made on that basis in the case of the advantaged person.

(3) For the purposes of subsections (1) and (2), a calculation is to be taken to have been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision if (and only if)—

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(a) the calculations made for the purposes of any return by the advantaged person have been made on that basis because of this Part, or

(b) a relevant notice (see section 190) given to the advantaged person takes account of a determination in pursuance of this Part of an amount to be brought into account for tax purposes on that basis.

177 Time for making, or amending, claim under section 174

(1) A claim under section 174 can be made only in the period mentioned in subsection (2) or (3).

(2) If a return has been made by the advantaged person on the basis mentioned in section 176(1), the period is the two years beginning with the day of the making of the return.

(3) If a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) has been given to the advantaged person, the period is the two years beginning with the day on which that notice was given.

(4) Subsection (5) applies if—

(a) a claim under section 174 is made in relation to a return made on the basis mentioned in section 176(1), and

(b) a relevant notice taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.

(5) The disadvantaged person is entitled, within the period mentioned in subsection (3), to make any such amendment of the claim as may be appropriate in consequence of the determination contained in the relevant notice.

(6) Subsections (1) and (5) have effect subject to section 186(3) (which provides for the extension of the period for making or amending a claim).

178 Meaning of "return" in sections 176 and 177

(1) In sections 176 and 177 "return" means—

(a) any return required to be made under TMA 1970 or under Schedule 18 to FA 1998 for income tax or corporation tax purposes, or

(b) any voluntary amendment of a return within paragraph (a).

(2) In subsection (1)(b) "voluntary amendment" means—

(a) an amendment under section 9ZA or 12ABA of TMA 1970 (amendment of personal, trustee or partnership return by taxpayer), or

(b) an amendment under Schedule 18 to FA 1998 other than one made in response to the giving of a relevant notice (see section 190).

Claims: special cases

179 Compensating payment if advantaged person is controlled foreign company

[[F146](1) Subsection (2) applies if—

(a) the actual provision is provision made or imposed in relation to a CFC,

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(b) for the purpose of determining the CFC's assumed taxable total profits for an accounting period, the CFC's profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,

(c) in relation to the accounting period, sums are charged on chargeable companies at step 5 in section 371BC(1), and

(d) in consequence of the application of section 147(3) or (5) as mentioned in paragraph (b), the total of those sums is more than it would otherwise be.**]**

(2) Sections 174 to 178 have effect as if the **[**F147CFC**]** were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.

(3) In applying sections 174 to 178 in a case in which they apply because of subsection (2) —

(a) references to the advantaged person in sections 176(3)(a) and (b) and 177(2), (3) and (4)(b) include a reference to any of the **[**F148chargeable companies on which a sum is charged**]**, and

(b) references to corporation tax include a reference to **[**F149the CFC charge**]**.

[F150(4) In this section terms which are defined in Part 9A have the same meaning as they have in that Part.

(5) For the purposes of subsections (1)(c) and (d) and (3)(a) assume that any claims made under Chapter 9 of Part 9A for the accounting period were not made.**]**

Textual Amendments

F146 S. 179(1) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 42(2)**

F147 Words in s. 179(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 42(3)**

F148 Words in s. 179(3)(a) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 42(4)(a)**

F149 Words in s. 179(3)(b) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 42(4)(b)**

F150 S. 179(4)(5) substituted for s. 179(4) (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 42(5)**

180 Application of section 174(2)(a) in relation to transfers of trading stock etc

(1) Section 174(2)(a) does not affect the credits to be brought into account by the disadvantaged person in respect of—

(a) closing trading stock, or

(b) closing work in progress in a trade,

for accounting periods ending on or after the day given by subsection (2).

(2) That day is the last day of the accounting period of the advantaged person in which the actual provision was made or imposed.

(3) For the purposes of this section "trading stock", in relation to any trade, has the meaning given by—

(a) section 174 of ITTOIA 2005, or

(b) section 163 of CTA 2009.

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Alternative way of claiming if a security is involved

181 Section 182 applies to claims where actual provision relates to a security

(1) Subsection (2) applies if—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies.

(2) A claim under section 174 may be made in accordance with section 182.

(3) For the purposes of this Part, a "section 182 claim" is a claim under section 174 made in accordance with section 182.

(4) In subsections (1)(b) and (5)(a) "security" includes securities not creating or evidencing a charge on assets.

(5) For the purposes of subsection (1)(b), 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,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

182 Making of section 182 claims

(1) A section 182 claim may be made by—

(a) the disadvantaged person, or

(b) the advantaged person.

(2) A section 182 claim made by the advantaged person is to be taken to be made on behalf of the disadvantaged person.

(3) A section 182 claim may be made before or after a calculation within section 176(1) has been made.

(4) A section 182 claim must be made either—

(a) at any time before the end of the period mentioned in section 177(2), or

(b) within the period mentioned in section 177(3).

(5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making a claim).

183 Giving effect to section 182 claims

(1) A section 182 claim is not a claim within paragraph 57 or 58 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters).

(2) Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to TMA 1970) has effect in relation to a section 182 claim.

(3) If—

(a) a section 182 claim is made before a calculation within section 176(1) has been made,

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(b) such a calculation is subsequently made, and

(c) the claim is not consistent with the calculation,

the affected persons are to be treated as if (instead of the claim actually made) a claim had been made that was consistent with the calculation.

(4) All such adjustments are to be made (including by the making of assessments) as are required to give effect to subsection (3).

(5) Subsection (4) has effect despite any limit on the time within which any adjustment may be made.

184 Amending a section 182 claim if it is followed by relevant notice

(1) Subsection (2) applies if—

(a) a section 182 claim is made,

(b) a return is subsequently made by the advantaged person on the basis mentioned in section 176(1), and

(c) a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.

(2) If any amendment of the claim is appropriate in consequence of the determination contained in the relevant notice, the amendment may be made by—

(a) the disadvantaged person, or

(b) the advantaged person.

(3) If an amendment under subsection (2) is made by the advantaged person it is to be taken to be made on behalf of the disadvantaged person.

(4) Any amendment under subsection (2) must be made within the period mentioned in section 177(3).

(5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making an amendment).

Notification to persons who may be disadvantaged

185 Notice to potential claimants

(1) Subsection (2) applies if—

(a) a relevant notice (see section 190) is given to any person,

(b) the notice, or anything contained in it, takes account of a transfer-pricing determination, and

(c) it appears to an officer that there is a person ("DP") who is or may be a disadvantaged person by reference to the subject-matter of the determination.

(2) The officer must give to DP a notice containing particulars of the determination.

(3) A contravention of subsection (2) does not affect the validity—

(a) of the relevant notice, or

(b) of any determination to which the notice relates.

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(4) For the purposes of this section, a person is a disadvantaged person by reference to the subject-matter of a transfer-pricing determination if (and only if) the person—

(a) is entitled, in consequence of the making of the determination, to make or amend a claim under section 174, or

(b) will be entitled, because of section 212(3), to be a party to any proceedings on an appeal relating to the determination.

(5) In this section—

"officer" means officer of Revenue and Customs, and

"transfer-pricing determination" means a determination of an amount that is to be brought into account for tax purposes in respect of—

(a) any assumption made under section 147(3) or (5), or

(b) any advance-pricing-agreement assumptions (see section 222(6)).

186 Extending claim period if notice under section 185 not given or given late

(1) If there is a contravention of section 185(2), the Commissioners must consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim under section 174.

(2) Subsection (3) applies if—

(a) there is a contravention of section 185(2), or

(b) a notice required by section 185(2) is given after the relevant notice concerned.

(3) The Commissioners may, if they think fit, treat the period for the making or amendment of a claim under section 174 in the case concerned as extended by such further period as appears to them to be appropriate.

(4) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

Treatment of interest where claim made

187 Tax treatment if actual interest exceeds arm's length interest

(1) Subsection (6) applies if the following conditions are met.

(2) Condition A is that interest is paid by any person under the actual provision.

(3) Condition B is that section 147(3) or (5) applies in relation to the actual provision.

(4) Condition C is—

(a) that the amount ("ALINT") of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision, or

(b) that there would not have been any interest payable under the arm's length provision (so that ALINT is nil).

(5) Condition D is that the person receiving the interest paid under the actual provision makes—

(a) a claim under section 174, or

(b) a section 182 claim.

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(6) The interest paid under the actual provision, so far as it exceeds ALINT—

(a) is not to be regarded as chargeable under Chapter 2 of Part 4 of ITTOIA 2005,

(b) is not subject to the provisions of Part 15 of ITA 2007 (deduction of income tax at source), and

(c) is not required to be brought into account under Part 5 of CTA 2009 (loan relationships) as a non-trading credit.

[F151 Treatment of interest where claim prevented by section 174A

Textual Amendments

F151 S. 187A and cross-heading inserted (with effect in accordance with s. 75(5)(6) of the amending Act) by Finance Act 2014 (c. 26), **s. 75(4)**

187A Excess interest treated as a F152... distribution

(1) Subsection (2) applies if Conditions A to C in section 187 are met in circumstances where section 174A prevents a claim under section 174.

(2) The interest paid under the actual provision, so far as it exceeds ALINT, is treated for the purposes of the Income Tax Acts as a dividend paid by the company which paid the interest (and, accordingly, as a F153...distribution).]

Textual Amendments

F152 Word in s. 187A heading omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(3)**

F153 Word in s. 187A(2) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(3)**

Adjustment of double taxation relief where claim made

188 Double taxation relief by way of credit for foreign tax

(1) Subsection (2) applies if—

(a) a claim is made under section 174, and

(b) the disadvantaged person ("DP") is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm's length provision was made or imposed instead of the actual provision.

(2) Assumptions A and B are to be made in DP's case in relation to any credit for foreign tax which DP has been, or may be, given—

(a) under any double taxation arrangements, or

(b) under section 18(1)(b) and (2) (relief under unilateral relief arrangements).

(3) Subsection (2) has effect subject to section 189(2).

(4) Assumption A is that the foreign tax paid or payable by DP does not include any amount of foreign tax which would not be or have become payable were it to be

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assumed for the purposes of that tax that the arm's length provision had been made or imposed instead of the actual provision.

(5) Assumption B is that the amount of DP's relevant profits in respect of which DP is given credit for foreign tax does not include the amount (if any) by which DP's relevant profits are treated as reduced in accordance with section 174.

(6) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—

(a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and

(b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.

(7) In subsection (5) "DP's relevant profits" means the profits arising to DP from the carrying on of the relevant activities (see section 216).

(8) In this section—

"double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom), and

"foreign tax" means—

(a) any tax under the law of a territory outside the United Kingdom, or

(b) any amount that, for the purposes of any double taxation arrangements, is to be treated as if it were tax under the law of a territory outside the United Kingdom.

(9) In determining for the purposes of this section whether a person is—

(a) under any double taxation arrangements, or

(b) under section 18(1)(b) and (2),

to be given credit for foreign tax, ignore any requirement that a claim is made before such a credit is given.

189 Double taxation relief by way of deduction for foreign tax

(1) Subsection (2) applies if—

(a) a claim is made under section 174,

(b) the disadvantaged person ("DP") is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm's length provision was made or imposed instead of the actual provision,

(c) the application of that basis in the calculation of DP's profits or losses for any chargeable period involves a reduction in the amount of any income, and

(d) that income is also income that is to be reduced in accordance with section 112(1) (deduction for foreign tax where no credit allowed).

(2) If this subsection applies—

(a) the reduction mentioned in subsection (1)(c) is to be treated as made before any reduction under section 112(1), and

(b) tax paid, in the place in which any income arises, on so much of that income as is represented by the amount of the reduction mentioned in subsection (1)(c) is to be disregarded for the purposes of section 112(1).

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(3) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—

(a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and

(b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.

Interpretation of Chapter

190 Meaning of "relevant notice"

In this Chapter "relevant notice" means—

(a) a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,

(b) a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,

(c) a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,

(d) a notice under section 30B(1) of TMA 1970 amending a partnership return,

(e) a notice of an assessment under section 29 of TMA 1970,

(f) a notice of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), or

(g) a notice of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.

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—

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(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,

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

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default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

[F154 192A Provision for cases within Part 6A

(1) Subsection (2) applies to the extent that—

(a) there is an amount to be deducted in respect of a payment by the issuing company under the security,

(b) that amount is required to be reduced (whether or not to nil) under section 147(3) or (5),

(c) the guarantor company makes a claim under section 192(1) in respect of that reduction, and

(d) as regards the payment, provision in Part 6A would, but for the reduction, apply in relation to the tax treatment of the issuing company ("the relevant tax treatment").

(2) The relevant tax treatment is to apply in relation to the guarantor company.**]**

Textual Amendments

F154 S. 192A inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 31**

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—

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(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.

CHAPTER 6

BALANCING PAYMENTS

195 Qualifying conditions for purposes of section 196

(1) Conditions A to D are "the qualifying conditions" for the purposes of section 196.

(2) Condition A is that only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

(3) Condition B is that the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(4) Condition C is that—

(a) a payment (the "balancing payment") is made, or

(b) two or more payments (the "balancing payments") are made,

to the advantaged person by the disadvantaged person.

(5) Condition D is that the sole or main reason for making that payment or those payments is that section 147(3) or (5) applies.

196 Balancing payments between affected persons: no charge to, or relief from, tax

(1) If each of the qualifying conditions (see section 195) is met, subsection (2) applies—

(a) to the balancing payment if, or so far as, its amount does not exceed the available compensating adjustment, or

(b) to the balancing payments if, or so far as, their total amount does not exceed the available compensating adjustment.

(2) Any payment to which this subsection applies—

(a) is not to be taken into account in calculating profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and

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(b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.

(3) In subsection (1) "the available compensating adjustment" means the difference between PL1 and PL2 where—

PL1 is the profits and losses of the disadvantaged person calculated for tax purposes on the basis of the actual provision, and

PL2 is the profits and losses of the disadvantaged person as (or as they would be) calculated for tax purposes on a claim under section 174.

(4) For the purposes of subsection (3), take PL1 or PL2—

(a) as a positive amount if it is an amount of profits, and

(b) as a negative amount if it is an amount of losses.

(5) In this section, the following expressions have the meaning given by section 195—

"the balancing payment" and "the balancing payments", and

"the disadvantaged person".

197 Qualifying conditions for purposes of section 198

(1) Conditions A to F are the qualifying conditions for the purposes of section 198.

(2) Condition A is that one of the affected persons ("the issuing company") is a company that has liabilities under a security issued by it.

(3) Condition B is that those liabilities are to any extent the subject of a guarantee provided by a company ("the guarantor company").

(4) Condition C is that, 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).

(5) Condition D is that that reduction is required because of section 153.

(6) Condition E is that—

(a) a payment (the "balancing payment") is made, or

(b) two or more payments (the "balancing payments") are made,

by the guarantor company to the issuing company.

(7) Condition F is that the sole or main reasons for making that payment or those payments are—

(a) that section 147(3) or (5) applies because of section 153, or

(b) that sections 192 to 194 apply.

(8) In subsections (2) and (9)(a) "security" includes securities not creating or evidencing a charge on assets.

(9) For the purposes of subsection (2), 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,

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 (2) to a security is to be read accordingly.

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(10) In subsection (3) 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.

198 Balancing payments by guarantor to issuer: no charge to, or relief from, tax

(1) If each of the qualifying conditions (see section 197) is met, subsection (2) applies to the balancing payments made by all of the guarantor companies if, or so far as, the total amount of those payments does not exceed the total amount of the reductions within section 197(4).

(2) Payments to which this subsection applies—

(a) are not to be taken into account in calculating for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and

(b) are not for any purpose of the Corporation Tax Acts to be regarded as distributions.

(3) In this section, the following expressions have the meaning given by section 197—

"the balancing payments",

"the guarantor company", and

"the issuing company".

199 Pre-conditions for making election under section 200

(1) Conditions A to E are the pre-conditions for the purposes of section 200.

(2) Condition A is that both of the affected persons are companies.

(3) Condition B is that only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

(4) Condition C is that the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(5) Condition D is that the actual provision is provision in relation to a security (the "relevant security").

(6) Condition E is that the capital market condition is met (see section 204).

(7) In subsections (5) and (8)(a) "security" includes securities not creating or evidencing a charge on assets.

(8) For the purposes of subsection (5), 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 (5) to a security is to be read accordingly.

200 Election to pay tax rather than make balancing payments

(1) If each of the pre-conditions (see section 199) is met, the disadvantaged person may make an election—

(a) to make no balancing payment within section 196 to the advantaged person in connection with section 147(3) or (5) applying because of section 152 in relation to the relevant security in a chargeable period, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 152 in relation to the relevant security.

(2) Section 203 contains provision about the making and effect of elections under this section.

(3) In this section, the following expressions have the meaning given by section 199—

"the advantaged person",

"the disadvantaged person", and

"the relevant security".

201 Pre-conditions for making election under section 202

(1) Conditions A to E are the pre-conditions for the purposes of section 202.

(2) Condition A is that both of the affected persons are companies.

(3) Condition B is that only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

(4) Condition C is that the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(5) Condition D is that the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security ("the relevant security") by one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by the other affected person.

(6) Condition E is that the capital market condition is met (see section 204).

(7) In subsections (5) and (8)(a) "security" includes securities not creating or evidencing a charge on assets.

(8) For the purposes of subsection (5), 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,

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 (5) to a security is to be read accordingly.

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(9) In subsection (5) 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.

202 Election, in guarantee case, to pay tax rather than make balancing payments

(1) If each of the pre-conditions (see section 201) is met, the disadvantaged person may make an election—

(a) to make no balancing payment within section 198 to the advantaged person in connection with section 147(3) or (5) applying because of section 153 in relation to the relevant security in a chargeable period, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 153 in relation to the relevant security.

(2) Section 203 contains provision about the making and effect of elections under this section.

(3) In this section, the following expressions have the meaning given by section 201—

"the advantaged person",

"the disadvantaged person", and

"the relevant security".

203 Elections under section 200 or 202

(1) In this section "election" means election under section 200 or 202.

(2) An election must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued.

(3) An election is irrevocable.

(4) An election has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods.

(5) An election is of no effect if the Commissioners for Her Majesty's Revenue and Customs give the disadvantaged person a notice refusing to accept the election.

(6) A notice under subsection (5) may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.

(Paragraph 24 of Schedule 18 to FA 1998 makes provision about notices of enquiry in respect of company tax returns.)

(7) If an election has effect in relation to an accounting period of the advantaged person, the tax mentioned in subsection (1)(b) of the section under which the election is made—

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(a) is recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and

(b) is not recoverable from the advantaged person.

(8) In this section—

"the advantaged person", "the disadvantaged person" and "the relevant security"—

(a) in relation to an election under section 200, have the meaning given by section 199, and

(b) in relation to an election under section 202, have the meaning given by section 201, and

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.

(9) For the purposes of subsections (2) and (4), if the relevant security was issued in a chargeable period beginning before 1st April 2004 it is to be treated as if it had been issued in the chargeable period beginning on that date.

204 Meaning of "capital market condition" in sections 199 and 201

(1) For the purposes of section 199(6) or 201(6), the capital market condition is met if—

(a) the actual provision forms part of a capital market arrangement,

(b) the capital market arrangement involves the issue of a capital market investment,

(c) the securities that represent the capital market investment are issued wholly or mainly to independent persons, and

(d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.

(2) 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),

"capital market investment" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act), and

"independent person" means a person—

(a) who is not the disadvantaged person, and

(b) who does not have a participatory relationship with either of the affected persons.

(3) In subsection (2) "the disadvantaged person"—

(a) for the purposes of the application of this section in relation to section 199(6) has the meaning given by section 199(4), and

(b) for the purposes of the application of this section in relation to section 201(6) has the meaning given by section 201(4).

(4) For the purposes of subsection (2), a person ("A") who is a company has a "participatory relationship" with one of the affected persons ("B") if—

(a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or

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(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

CHAPTER 7

OIL-RELATED RING-FENCE TRADES

205 Provision made or imposed between ring-fence trade and other activities

(1) Subsections (2) to (4) apply if—

(a) a person carries on an oil-related ring-fence trade (see section 206), and

(b) any provision is made or imposed by the person as between—

(i) the oil-related ring-fence trade, and

(ii) any other activities carried on by the person.

(2) Chapters 1 and 3 to 6 (read in accordance with Chapters 2 and 8) apply in relation to the provision as if—

(a) the oil-related ring-fence trade, and the person's other activities, were carried on by two different persons,

(b) the provision were made or imposed as between those two persons by means of a transaction,

(c) those two persons were both controlled by the same person at the time when the provision was made or imposed, and

(d) a potential advantage in relation to United Kingdom taxation were conferred by the provision on each of those two persons.

(3) Subsection (2) has effect subject to subsection (4).

(4) Chapters 1 and 3 to 6 apply in relation to the provision only if the effect of their applying is—

(a) that a larger amount is taken for tax purposes to be the amount of the profits of the oil-related ring-fence trade for any chargeable period, or

(b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of the oil-related ring-fence trade.

(5) In subsection (4)(a), the reference to a larger amount includes, if there would not otherwise have been profits, an amount of more than nil.

206 Meaning of "oil-related ring-fence trade" in sections 205 and 218

(1) This section has effect for the interpretation of—

(a) section 205, and

(b) in Part 5, section 218(2)(f).

(2) Activities carried on by a person are an "oil-related ring-fence trade" carried on by that person if subsection (3) or (4) applies to the activities.

(3) This subsection applies to the activities if—

(a) they are carried on by the person as part of a trade, and

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(b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 (oil-related activities), they are treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.

(4) This subsection applies to the activities if—

(a) they are carried on by the person as a trade, and

(b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 they would, if the person did carry on any other activities as part of the trade, be treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.

[F155 206A Modification of basic rule where allowances restricted for certain expenditure

(1) This section applies where—

(a) in a case to which section 165A(1) of CAA 2001 (restriction of allowances for decommissioning expenditure) applies, R's available qualifying expenditure is restricted under section 165B(2) or 165C of that Act, or

(b) in a case to which section 416ZC(1) of that Act (restriction of allowances for expenditure on site restoration) applies, R's qualifying expenditure is restricted under section 416ZD(2) or section 165C as applied by section 416ZD(4)(a) of that Act.

(2) In calculating for tax purposes S's profits and losses in relation to the service provided by S to R, the amount which S is required to bring into account is an amount equal to R's expenditure (restricted as mentioned in subsection (1)(a) or (b)).

(3) Section 147(3) and (5) do not apply to the extent that they are inconsistent with subsection (2).

(4) In this section "R" and "S" have the meaning given by section 165A or 416ZC of CAA 2001 (as the case may be).]

Textual Amendments

F155 S. 206A inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 32 para. 14**

CHAPTER 8

SUPPLEMENTARY PROVISIONS AND INTERPRETATION OF PART

Unit trusts

207 Application of Part to unit trusts

(1) This Part has effect as follows.

(2) As if a unit trust scheme were a company that is a body corporate.

(3) As if the rights of the unit holders under a unit trust scheme were shares in the company that the scheme is deemed to be.

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(4) As if rights and powers of a person in the capacity of a person entitled to act for the purposes of a unit trust scheme were rights and powers of the scheme.

(5) As if provision made or imposed as between—

(a) a person in the capacity of a person entitled to act for the purposes of a unit trust scheme, and

(b) another person,

were made or imposed as between the scheme and that other person.

Determinations requiring Commissioners' sanction

208 The determinations which require the Commissioners' sanction

(1) A determination requires the Commissioners' sanction if it—

(a) is a transfer-pricing determination made for any of the specified purposes, and

(b) is not excepted by section 209 from the requirement for the Commissioners' sanction.

(2) In subsection (1) "transfer-pricing determination" means a determination of an amount to be brought into account for tax purposes in respect of any assumption made under section 147(3) or (5).

(3) For the purposes of subsection (1), each of the following is a specified purpose—

(a) the giving of a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,

(b) the giving of a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,

(c) the giving of a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,

(d) the giving of a notice under section 30B(1) of TMA 1970 amending a partnership return,

(e) the making of an assessment under section 29 of TMA 1970,

(f) the making of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), and

(g) the making of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.

(4) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

209 Determinations exempt from requirement for Commissioners' sanction

(1) A transfer-pricing determination made for a purpose specified in section 208(3) ("the specified purpose") does not require the Commissioners' sanction if—

(a) an agreement about the matters to which the determination relates has been made between an officer and the person in whose case the determination is made,

(b) the agreement is in force at the relevant time, and

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(c) the matters to which the agreement relates include the amount determined by the transfer-pricing determination.

(2) For the purposes of subsection (1)(b)—

(a) if the specified purpose is within section 208(3)(a) to (d), "the relevant time" is when the notice is given,

(b) if the specified purpose is within section 208(3)(e) or (f), "the relevant time" is when any notice of the assessment is given, and

(c) if the specified purpose is within section 208(3)(g), "the relevant time" is when any notice of the discovery determination is given.

(3) For the purposes of subsection (1)(b), an agreement made between an officer and any person in relation to any matter is "in force" at any time if (and only if)—

(a) the agreement is one that has been made or confirmed in writing,

(b) that time is after the end of the cooling-off period, and

(c) the person has not, before the end of the cooling-off period, served a notice on an officer stating that the person is repudiating or resiling from the agreement.

(4) In subsection (3) "the cooling-off period" means—

(a) if the agreement is made in writing, the 30 days beginning with the day when the agreement is made, and

(b) in any other case, the 30 days beginning with the day when the agreement is confirmed in writing.

(5) For the purposes of subsections (3) and (4), an agreement made between an officer and any person is "confirmed in writing" if an officer serves on the person a notice in writing—

(a) stating that the agreement has been made, and

(b) setting out the terms of the agreement.

(6) In this section—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"officer" means officer of Revenue and Customs, and

"transfer-pricing determination" has the meaning given by section 208(2).

210 The requirement for the Commissioners' sanction

(1) Subsection (2) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(a) to (d) if, under section 208(1), the determination requires the Commissioners' sanction.

(2) If the closure notice, or notice under section 30B(1) of TMA 1970, is given to a person—

(a) without the determination, so far as it is taken into account in the notice, having been approved by the Commissioners, or

(b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,

the notice has effect as if given in the terms (if any) in which it would have been given had the determination not been taken into account.

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(3) Subsection (4) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(e) to (g) if, under section 208(1), the transfer-pricing determination requires the Commissioners' sanction.

(4) If notice of the assessment, or notice of the discovery determination, is given to a person—

(a) without the transfer-pricing determination, so far as it is taken into account in the assessment or discovery determination, having been approved by the Commissioners, or

(b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,

the assessment or discovery determination has effect as if made (and notified) in the terms (if any) in which it would have been made had the transfer-pricing determination not been taken into account.

(5) For the purposes of subsections (2) and (4), the Commissioners' approval of a transfer-pricing determination requiring their sanction—

(a) must be given specifically in relation to the case concerned and must apply to the amount determined, but

(b) subject to that, may be given by the Commissioners (either before or after the determination is made) in any such form or manner as the Commissioners may determine.

[F156(6) In this section—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs, and

"transfer-pricing determination" has the meaning given by section 208(2).**]**

Textual Amendments

F156 S. 210(6) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by Taxation (International and Other Provisions) Act 2010 (Amendment) Order 2010 (S.I. 2010/2901), arts. 1(1), **4(4)**

211 Restriction of right to appeal against Commissioners' approval

(1) In subsection (2)—

"appeal" means an appeal by virtue of any provision of—

(a) TMA 1970, or

(b) Schedule 18 to FA 1998 (company tax returns and related matters), and

"approved determination" means a determination that, for the purposes of section 210(2) or (4), has been approved by the Commissioners.

(2) The matters that may be questioned on so much of an appeal as relates to an approved determination do not include the Commissioners' approval.

(3) Subsection (2) does not apply so far as the grounds for questioning the approval are the same as the grounds for questioning the determination.

(4) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

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Appeals

212 Appeals

(1) The appeals within this subsection are—

(a) an appeal under section 31 of, or Schedule 1A to, TMA 1970,

(b) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company's return, and

(c) an appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.

(2) Subsection (3) applies so far as the question in dispute on an appeal within subsection (1)—

(a) is or involves a determination of whether this Part has effect, and

(b) relates to any provision made or imposed as between two persons each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(3) If this subsection applies—

(a) each of the persons as between whom the actual provision was made or imposed is entitled to be a party in any proceedings,

(b) the tribunal is to determine the question separately from any other question in the proceedings, and

(c) the tribunal's determination on the question has effect as if made in an appeal to which each of those persons was a party.

(4) In subsection (1)(c)—

"discovery assessment" means a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 that Schedule), and

"discovery determination" means a discovery determination under paragraph 41 of that Schedule.

Effect of Part on capital allowances and chargeable gains

213 Capital allowances

(1) Nothing in this Part is to be read as affecting the calculation of the amount of any capital allowance or balancing charge made under CAA 2001.

(2) Subsection (1) does not apply in relation to claims under section 174.

[F157(3) But a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165E or 416ZC to 416ZE of CAA 2001.**]**

Textual Amendments

F157 S. 213(3) inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 32 para. 15**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

214 Chargeable gains

(1) Nothing in this Part is to be read as affecting the calculation in accordance with TCGA 1992 of the amount of any chargeable gain or allowable loss.

(2) Nothing in this Part requires the profits and losses of any person to be calculated for tax purposes as if, in the person's case, instead of income or losses to be brought into account in connection with the taxation of income, there were gains or losses to be brought into account in accordance with TCGA 1992.

(3) Subsections (1) and (2) do not apply in relation to claims under section 174.

Adjustments

215 Manner of making adjustments to give effect to Part

Any adjustments required to be made under this Part may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

Definitions

216 Meaning of "the relevant activities"

(1) In this Part "the relevant activities", in relation to a person ("A") who is one of the persons as between whom any provision is made or imposed, means activities that—

(a) are within subsection (2), and

(b) are not within subsection (3).

(2) The activities within this subsection are those of A's activities that comprise the activities in the course of which, or with respect to which, that provision is made or imposed.

(3) The activities within this subsection are any of A's activities carried on—

(a) separately from the activities mentioned in subsection (2), or

(b) for the purposes of a different part of A's business.

217 Meaning of "control" and "firm"

(1) References in this Part to a person controlling a body corporate or firm are to be read in accordance with section 1124 of CTA 2010.

(2) Subsection (1) has effect subject to subsection (4) and section 205(2).

(3) Subsection (4) applies if—

(a) the actual provision is made or imposed by or in relation to a sale of oil,

(b) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company ("the producer") which, although it may be the seller, is not the buyer, and

(c) at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier, at least 20% of the producer's ordinary share capital is owned directly or indirectly by one or more of the buyer and the companies (if any) that are linked to the buyer.

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(4) If this subsection applies, this Part has effect in relation to the actual provision as if—

(a) the buyer and the seller, and

(b) the producer, if it is not the seller,

were all controlled by the same person at the time of the making or imposition of the actual provision.

(5) For the purposes of subsection (3)(c), two companies are "linked" if—

(a) one is under the control of the other, or

(b) both are under the control of the same person or persons.

(6) For the purposes of subsection (3)—

(a) any question whether ordinary share capital is owned directly or indirectly by a company is to be decided as for Chapter 3 of Part 24 of CTA 2010, and

(b) rights to extract oil are to be taken to be exercisable by a company even if they are exercisable by that company only jointly with another company or two or more other companies.

(7) In this section "oil" includes any mineral oil or relative hydrocarbon oil, as well as natural gas.

(8) In this Part persons carrying on a trade, profession or other business in partnership are referred to collectively as a "firm".

PART 5

ADVANCE PRICING AGREEMENTS

218 Meaning of "advance pricing agreement"

(1) In this Part "advance pricing agreement" means a written agreement that—

(a) is made by the Commissioners with any person ("A") as a consequence of an application by A under section 223,

(b) relates to one or more of the matters mentioned in subsection (2), and

(c) declares that it is an agreement made for the purposes of this section.

(2) Those matters are—

(a) if A is not a company, the attribution of income to a branch or agency through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,

(b) if A is a company, the attribution of income to a permanent establishment through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,

(c) the attribution of income to any permanent establishment of A's, wherever situated, through which A has been carrying on, or is proposing to carry on, any business,

(d) the extent to which income that has arisen or may arise to A is to be taken for any purpose to be income arising in a country or territory outside the United Kingdom,

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(e) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between A and any associate (see section 219) of A's, and

(f) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between an oil-related ring-fence trade carried on by A (see section 206) and any other activities carried on by A.

219 Meaning of "associate" in section 218(2)(e)

(1) This section applies for the purposes of section 218(2)(e).

(2) Two persons are associates in relation to provision made or imposed as between them if at the time of the making or imposition of the provision—

(a) one of them is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of the two persons.

(3) Two persons are also associates in relation to any provision if section 217(4) (which applies to provision made or imposed in connection with sales of oil) requires the persons to be treated as controlled by the same person at the time of the making or imposition of that provision.

(4) For the interpretation of subsection (2), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (2) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

220 Effect of agreement on party to it

(1) Subsection (2) applies if a chargeable period is one to which an advance pricing agreement relates.

(2) The Tax Acts have effect in relation to the chargeable period as if, in the case of the person with whom the Commissioners made the agreement, questions relating to the matters mentioned in section 218(2) are to be determined—

(a) in accordance with the agreement, and

(b) without reference to the provisions in accordance with which they would otherwise be determined.

(3) Subsection (2) is subject to—

subsections (4) and (5), and

section 221.

(4) A question is to be determined as mentioned in subsection (2) only so far as the agreement provides for the question to be determined in that way.

(5) In the case of so much of a question as—

(a) relates to any matter mentioned in paragraph (e) or (f) of section 218(2), and

(b) is not comprised in a question that relates to a matter within another paragraph of section 218(2),

reference to a provision is capable of being excluded under subsection (2) by an advance pricing agreement only if the provision is in Part 4.

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221 Effect of revocation of agreement or breach of its conditions

(1) An advance pricing agreement does not have effect in accordance with section 220(2) in relation to any determination of a question if any of conditions A, B and C is met.

(2) Condition A is that a time to which the question relates is after a time as from which an officer has revoked the agreement in accordance with the agreement's terms.

(3) Condition B is that the question relates to a time after, or in relation to which, there has been a failure by a party to the agreement to comply with a significant provision of the agreement.

(4) Condition C is that the question relates to a matter as respects which a key condition has not been met or is no longer met.

(5) A provision of the agreement is "significant" for the purposes of subsection (3) if compliance with that provision is, under the terms of the agreement, to be a condition of the agreement's having effect.

(6) Any other condition that, under the terms of the agreement, is to be a condition of the agreement's having effect is a "key condition" for the purposes of subsection (4).

222 Effect of agreement on non-parties

(1) Subsections (2), (5) and (6) apply if—

(a) an advance pricing agreement has effect in relation to any provision ("the actual provision") made or imposed as between any person ("A") and another ("B"), and

(b) section 220(2) has the effect in A's case of requiring a question relating to the actual provision to be determined in accordance with the agreement rather than by reference to rules which would otherwise be applicable because of Part 4.

(2) The provisions mentioned in subsection (3) have effect in B's case on the assumption that any question within subsection (4) is to be determined, to the same extent as in A's case, by reference to the agreement.

(3) The provisions are—

sections 174 to 178 (transfer pricing: claim by disadvantaged person), and

sections 188 and 189 (transfer pricing: adjustment of double taxation relief if claim made).

(4) The questions are—

(a) whether A is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and

(b) what constitutes the arm's length provision in relation to the actual provision.

(5) Subsection (2) has effect subject to any advance pricing agreement made between the Commissioners and B.

(6) Any assumptions to be made because of the agreement are "advance-pricing-agreement assumptions" for the purposes of paragraph (b) of the definition in section 185(5) of "transfer-pricing determination".

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223 Application for agreement

(1) For the purposes of section 218(1)(a), an application by a person ("A") is an application under this section if it complies with subsections (2) to (5).

(2) It must be an application to the Commissioners for the clarification by agreement of the effect in A's case of provisions by reference to which questions relating to any one or more of the matters mentioned in section 218(2) are to be, or might be, determined.

(3) It must set out A's understanding of what would in A's case be the effect, in the absence of any agreement, of the provisions in relation to which clarification is sought.

(4) It must set out the respects in which it appears to A that clarification is required in relation to those provisions.

(5) It must set out how A proposes that matters should be clarified in a manner consistent with the understanding mentioned in subsection (3).

224 Provision in agreement about years ended or begun before agreement made

(1) An advance pricing agreement may contain provision relating to chargeable periods ending before the agreement is made, subject to subsection (2).

(2) An advance pricing agreement may not contain provision relating to chargeable periods ending before 27 July 1999.

(3) If an advance pricing agreement—

(a) relates to a chargeable period beginning or ending before the agreement is made, and

(b) provides for the manner in which adjustments are to be made for tax purposes in consequence of the agreement,

the adjustments are to be made for those purposes in the manner provided for in the agreement.

225 Modification and revocation of agreement

(1) Subsection (2) applies if an advance pricing agreement provides for the modification, or revocation, of the agreement—

(a) by the Commissioners, or

(b) by an officer.

(2) The agreement may provide for the modification or revocation to take effect as from such time as the Commissioners or officer may determine.

(3) A time determined under subsection (2) may be (but need not be) a time before the modification is made or the agreement is revoked.

226 Annulment of agreement for misrepresentation

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that the Commissioners and any person ("A") have at any time purported to enter into an advance pricing agreement.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Condition B is that, before that time, A fraudulently or negligently provided the Commissioners with information which was false or misleading.

(4) Condition C is that the information was so provided—

(a) for or in connection with the application to the Commissioners for the making of the agreement, or

(b) otherwise in connection with the preparation of the agreement.

(5) Condition D is that the Commissioners have notified A that the agreement is nullified by reason of the misrepresentation.

(6) The agreement is to be treated as never made.

227 Penalty for misrepresentation in connection with agreement

A person is liable to a penalty of not more than £10,000 if the person fraudulently or negligently makes a false or misleading statement to the Commissioners or an officer—

(a) for or in connection with any application to the Commissioners for them to enter into an advance pricing agreement, or

(b) otherwise in connection with the preparation of an advance pricing agreement.

228 Party to agreement: duty to provide information

A party to an advance pricing agreement must provide the Commissioners from time to time with all reports and other information that the party may be required to provide—

(a) under the agreement, or

(b) as a result of a request made by an officer in accordance with the agreement.

229 Modifications of agreement for double taxation purposes

(1) Subsection (2) applies if a mutual agreement made under and for the purposes of any double taxation arrangements is not consistent with the terms of an advance pricing agreement.

(2) The Commissioners must ensure that the advance pricing agreement is modified so far as may be necessary for enabling effect to be given to the mutual agreement in relation to the subject-matter of the advance pricing agreement.

(3) The Commissioners may comply with subsection (2) by exercising powers conferred on them by the advance pricing agreement or otherwise.

(4) In this section "double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

230 Interpretation of Part: meaning of "Commissioners" and "officer"

In this Part—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs, and

"officer" means an officer of Revenue and Customs.

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[F158]PART 6

TAX ARBITRAGE

Textual Amendments

F158 Pt. 6 omitted (with effect in relation to accounting periods beginning on or after 1.1.2017 in accordance with Sch. 10 para. 22 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 15**; and ss. 257, 257 so far as continuing to have effect are amended (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 15 paras. 41, **42**

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[F159PART 6A

HYBRID AND OTHER MISMATCHES

Textual Amendments

F159 Pt. 6A inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by Finance Act 2016 (c. 24), **Sch. 10 para. 1**

CHAPTER 1

INTRODUCTION

259A Overview of Part

(1) This Part has effect for the purposes of counteracting certain cases that it is reasonable to suppose would otherwise give rise to—

(a) a deduction/non-inclusion mismatch, or

(b) a double deduction mismatch.

(2) A deduction/non-inclusion mismatch arises where an amount is deductible from a person's income—

(a) without a corresponding amount of ordinary income arising to another person, or

(b) where an amount of ordinary income does arise to a person but is under taxed.

(3) A double deduction mismatch arises where—

(a) an amount is deductible from more than one person's income, or

(b) an amount is deductible from a person's income for the purposes of more than one tax.

(4) The cases with which this Part is concerned involve—

(a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,

(b) hybrid entities,

(c) companies with permanent establishments, or

(d) dual resident companies.

(5) This Part counteracts mismatches that would otherwise arise by making certain adjustments to a person's treatment for corporation tax purposes.

(6) Chapter 2 contains some key definitions for the purposes of this Part, see in particular—

(a) section 259B which provides that "tax" means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,

(b) section 259BB which defines "payment", "quasi-payment", "payment period", "relevant deduction", "payer", "payee", and "payee jurisdiction",

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(c) section 259BC which defines "ordinary income" and "taxable profits", in relation to taxes other than the CFC charge and foreign CFC charges,

(d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges,

(e) section 259BE which defines "hybrid entity" and other related terms, and

(f) section 259BF which defines "permanent establishment".

(7) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.

(8) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.

(9) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.

(10) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising in relation to internal transfers of money or money's worth made, or treated as made, by a multinational company's permanent establishment in the United Kingdom to the territory in which the company is resident for tax purposes.

(11) Chapter 7 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.

(12) Chapter 8 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a multinational company.

(13) Chapter 9 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.

(14) Chapter 10 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies or relevant multinational companies.

(15) Chapter 11 contains provision about imported mismatches.

(16) Chapter 12 contains provision—

(a) for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable, and

(b) for deductions from taxable total profits to be made where a relevant deduction has been denied under certain provisions of this Part and amounts of ordinary income arise later than is permitted.

[Chapter 12A contains provision allowing surplus dual inclusion income to be allocated
F160(16A) within a group of companies.**]**

(17) Chapter 13 contains anti-avoidance provision.

[Chapter 13A makes provision about the application of Chapters 3, 4, 5, 7, 9 and 11 in
F161(17A) cases involving transparent funds (within the meaning of that Chapter).**]**

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(18) Chapter 14 contains definitions and other provision about the interpretation of this Part.

(19) Each of Chapters 3 to 10 contains provision specifying that some or all of this Part (and any corresponding provision under the law of a territory outside the United Kingdom) is to be disregarded when determining whether a mismatch arises for the purposes of that Chapter and, if so, in what amount, see—

(a) section 259CA(4) and (5),
(b) section 259DA(5),
(c) section 259EA(5) and (6),
(d) section 259FA(4), (5) and (6),
(e) section 259GA(5) and (6),
(f) section 259HA(6) and (7),
(g) section 259IA(2) and (3), and
(h) section 259JA(5).

(20) The effect of the provisions mentioned in subsection (19) is that Chapters 3 to 10 (or any corresponding provision under the law of a territory outside the United Kingdom) have effect in the following sequence—

(a) Chapter 4,
(b) Chapter 3,
(c) Chapter 5,
(d) Chapter 6,
(e) Chapter 7,
(f) Chapter 8,
(g) Chapter 9, and
(h) Chapter 10.

Textual Amendments

F160 S. 259A(16A) inserted (with effect in accordance with Sch. 7 para. 40 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 15(2)**

F161 S. 259A(17A) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 35(2)**

CHAPTER 2

KEY DEFINITIONS

Meaning of "tax"

259B "Tax" means certain taxes on income and includes foreign tax etc

(1) In this Part "tax" means—

(a) income tax,
(b) the charge to corporation tax on income,
(c) diverted profits tax,

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(d) the CFC charge,

(e) foreign tax, or

(f) a foreign CFC charge.

(2) In subsection (1) "foreign tax" means a tax chargeable under the law of a territory outside the United Kingdom so far as it—

(a) is charged on income and corresponds to United Kingdom income tax, or

(b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.

(3) A tax **[**F162is outside the scope of subsection (2) if**]** it—

(a) is chargeable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

F163**[** A tax is not within paragraph (a) or (b) of subsection (2) so far as it is charged on (3ZA) income that—

(a) has arisen to an entity that—

(i) is not subject to the tax (as regards that income), and

(ii) is, under the law of the territory referred to in that subsection, regarded as being a person for the purposes of the tax, but

(b) is to be brought into account for the purposes of that tax by a different entity.**]**

F164**[** The payment of any withholding tax in respect of any amount is to be ignored for the (3A) purposes of this Part.**]**

(4) In this Part—

"CFC" and "the CFC charge" have the same meaning as in Part 9A (see section 371VA);

"foreign CFC charge" means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a "foreign CFC" is to be read accordingly).

F165**[** In any case where—

(5) (a) a person is resident in a territory outside the United Kingdom generally for the purposes of the law of the territory or for particular purposes under that law, and

(b) the law of the territory has no provision for a person to be resident for tax purposes under its law,

any reference in Chapter 8 or 11 to a person's residence for tax purposes in the territory is to be read as a reference to the person's residence as mentioned in paragraph (a).**]**

Textual Amendments

F162 Words in s. 259B(3) substituted (with effect in accordance with s. 24(10) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **s. 24(2)**

F163 S. 259B(3ZA) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 1**

F164 S. 259B(3A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 2(a)**, 19(4)

F165 S. 259B(5) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 2(b)**

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Equivalent provision to this Part under foreign law

259BA References to equivalent provision to this Part under the law of a territory outside the United Kingdom

(1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—

(a) this Part, or

(b) a provision of this Part,

is to be read in accordance with subsection (2).

(2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—

(a) is based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development ("OECD") on 5 October 2015 or any replacement or supplementary publication, and

(b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.

(3) In paragraph (a) of subsection (2) "replacement or supplementary publication" means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

Payments and quasi-payments etc

259BB Meaning of "payment", "quasi-payment", "payer", "payee" etc

(1) In this Part "payment" means any transfer—

(a) of money or money's worth directly or indirectly from one person ("the payer") to one or more other persons, and

(b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) an amount (a "relevant deduction") may be deducted from the payer's income for a taxable period (the "payment period") for the purposes of calculating the payer's taxable profits.

(2) For the purposes of this Part, there is a "quasi-payment", in relation to a taxable period (the "payment period") of a person ("the payer"), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom)—

(a) an amount (a "relevant deduction") may be deducted from the payer's income for that period for the purposes of calculating the payer's taxable profits, and

(b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.

(3) But a quasi-payment does not arise under subsection (2) if—

(a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and

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(b) the circumstances giving rise to the relevant deduction do not include any economic rights, in substance, existing between the payer and a person mentioned in subsection (2)(b).

(4) The assumptions are that (so far as would not otherwise be the case)—

(a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,

(b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and

(c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances—

(i) are, under the law of the payer jurisdiction, resident in that jurisdiction for tax purposes, and

(ii) carry on a business, in connection with which those circumstances arise, in the payer jurisdiction.

(5) In this Part—

(a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and

(b) references to a quasi-payment being made are to those circumstances arising.

(6) In this Part "payee" means—

(a) in the case of a payment, any person—

(i) to whom the transfer is made as mentioned in subsection (1)(a), or

(ii) to whom an amount of ordinary income arises as a result of the payment, and

(b) in the case of a quasi-payment, any person—

(i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or

(ii) to whom an amount of ordinary income arises as a result of the quasi-payment.

(7) For the purposes of this Part, in the case of a quasi-payment, the payer is "also a payee" if—

(a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,

(b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and

(c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).

(8) In this section "payer jurisdiction" means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.

(9) In this Part "payee jurisdiction", in relation to a payee, means a territory in which—

(a) the payee is resident for tax purposes under the law of that territory, or

(b) the payee has a permanent establishment.

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Ordinary income

259BC The basic rules

(1) This section has effect for the purposes of this Part.

(2) "Ordinary income" means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged ("taxable profits").

(3) But an amount of income is not brought into account for those purposes to the extent that **[**F166—

(a) it is charged to the relevant tax at a nil rate, or

(b) it is excluded, reduced or offset by any exemption, exclusion, relief, or credit—

(i) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or

(ii) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.**]**

(4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is "ordinary income".

(5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is "ordinary income" is proportionally reduced.

(6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—

(a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and

(b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,

but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.

(7) In subsection (6) "qualifying loss relief" means—

(a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or

(b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax,

(and in paragraph (b) "relevant tax loss" means a loss that might be used as mentioned in paragraph (a)).

(8) References to an amount of ordinary income being "included in" taxable profits are to that amount being brought into account for the purposes of calculating those profits.

[F167(8A) Income is to be treated as "ordinary income" if it would fall to be brought into account for the purpose of calculating taxable profits of a person but for the fact that the person is a qualifying institutional investor (and, if the person is based in a territory under the law of which there is no relevant tax on income of the kind in question, if the territory had such a tax).

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For the meaning of "qualifying institutional investor" see section 259NDA.**]**

(9) In this section "relevant tax" means a tax other than the CFC charge or a foreign CFC charge.

(10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

Textual Amendments

F166 Words in s. 259BC(3) substituted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 3**

F167 S. 259BC(8A) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 26**

259BD Chargeable companies in respect of CFCs and foreign CFCs

(1) This section has effect for the purposes of this Part.

(2) Subsections (3) to (7) apply where an amount of income arises to an entity ("C") that is a CFC, a foreign CFC or both and all or part of that amount (the "relevant income")—

(a) is not ordinary income of C under section 259BC, or

(b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and—

(i) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but

(ii) under taxed.

(3) The following steps determine whether, and to what extent, the relevant income is "ordinary income" of a chargeable company in relation to the CFC charge or a foreign CFC charge.

Step 1 Determine—

(a) whether any of the relevant income is brought into account in calculating C's chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and

(b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is "ordinary income" of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section—

"relevant chargeable profits" are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account;

"relevant charge" means a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits.

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Step 2 In relation to each relevant charge, determine the proportion of C's relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C's relevant chargeable profits for the purposes of a relevant charge are apportioned is a "relevant chargeable company".

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is "ordinary income" of a chargeable company and no further steps are to be taken.

Step 3 In relation to each relevant chargeable company, determine what is the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned.

That proportion of that income is "ordinary income" of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the "appropriate proportion", in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

(4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).

(5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are "taxable profits" of that company for the taxable period for which the charge is charged on it by reference to those profits.

(6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is "included in" those taxable profits.

(7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).

(8) For the purposes of subsection (2)(b), an amount of ordinary income is "under taxed" if the highest rate at which tax is charged, for C's taxable period, on the taxable profits in which the amount is included, taking into account on a just and reasonable basis any credit for underlying tax, is less than C's full marginal rate for that period.

(9) In subsection (8)—

(a) C's "full marginal rate" means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument, and

(b) "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment mentioned in subsection (2)(b).

(10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.

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(11) Subsection (12) applies for the purposes of step 1 in subsection (3), if—

(a) the amount of income arising to C mentioned in subsection (2)—

(i) is not all relevant income, and

(ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and

(b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.

(12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (2) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.

[For the purposes of subsection (2)—

F168(12A)

(a) a qualifying CFC amount arising to C is treated as an amount of relevant income,

(b) a qualifying CFC amount arising to C, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than C's full marginal rate for that period,

(c) in determining C's "full marginal rate", the reference to the taxable profits mentioned in subsection (9) includes any qualifying CFC amount, and

(d) in determining a "credit for underlying tax", the reference to profits includes any qualifying CFC amount.

(12B) For the purposes of subsection (12A) a "qualifying CFC amount" means an amount arising to C which is brought into account in calculating chargeable profits for the purposes of a foreign CFC charge.

(12C) But an amount is not regarded for this purpose as brought into account so far as—

(a) the amount is excluded, reduced or offset for the purposes of the foreign CFC charge by any exemption, exclusion, relief or credit that—

(i) applies specifically to all or part of the amount (as opposed to amounts brought into account for those purposes generally), or

(ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or

(b) the sum charged for the purposes of the foreign CFC charge is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).**]**

(13) In this section—

"chargeable company"—

(a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

(b) in relation to a foreign CFC charge, means an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;

"chargeable profits"—

(a) in relation to the CFC charge, has the same meaning as in that Part (see that section), and

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(b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part **[**F169(including any qualifying CFC amount within the meaning given by subsection (12B))**]**;

"hybrid transfer arrangement" has the meaning given by section 259DB.

Textual Amendments

F168 Ss. 259BD(12A)-(12C) inserted (15.9.2016 retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 7(2)**, 19(4)

F169 Words in s. 259BD(13) inserted (15.9.2016 retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 7(3)**, 19(4)

Hybrid entity etc

259BE Meaning of "hybrid entity", "investor" and "investor jurisdiction"

(1) For the purposes of this Part, an entity is "hybrid" if it meets conditions A and B.

(2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.

(3) Condition B is that—

(a) some or all of the entity's income or profits are treated (or would be if there were any) for the purposes of a tax charged under the law of any territory, as the income or profits of a person or persons other than the person mentioned in subsection (2), or

(b) under the law of a territory other than the one mentioned in subsection (2), the entity is not regarded as a distinct and separate person to an entity or entities that are distinct and separate persons under the law of the territory mentioned in that subsection.

(4) For the purposes of this Part—

(a) where subsection (3)(a) applies, a person who is treated as having the income or profits of the hybrid entity is an "investor" in it,

(b) where subsection (3)(b) applies, an entity that—

(i) is regarded as a distinct and separate person to the hybrid entity under the law of the territory mentioned in subsection (2), but

(ii) is not regarded as a distinct and separate person to the hybrid entity under the law of another territory,

is an "investor" in the hybrid entity, and

(c) any territory under the law of which an investor is within the charge to a tax is an "investor jurisdiction" in relation to that investor.

Permanent establishments

259BF Meaning of "permanent establishment"

(1) In this Part "permanent establishment" means anything that is—

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(a) a permanent establishment of a company within the meaning of the Corporation Tax Acts (see section 1119 of CTA 2010), or

(b) within any similar concept under the law of a territory outside the United Kingdom.

(2) A concept is not outside the scope of subsection (1)(b) by reason only that it is not based on Article 5 of a Model Tax Convention on Income and Capital published by the Organisation for Economic Cooperation and Development.

CHAPTER 3

HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

Introduction

259C Overview of Chapter

(1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

(3) Section 259CA contains the conditions that must be met for this Chapter to apply.

(4) Section 259CB defines "hybrid or otherwise impermissible deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259CC contains definitions of certain terms used in section 259CB.

(6) Section 259CD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(7) Section 259CE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.

(8) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee", and

(b) section 259N for the meaning of "financial instrument".

Application of Chapter

259CA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to D are met.

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(2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.

(3) Condition B is that—

(a) the payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(4) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).

(5) The provisions are—

(a) this Chapter and Chapters 5 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(6) Condition D is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),

(b) the payer and a payee are related (see section 259NC) at any time in the period—

(i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and

(ii) ending with the last day of the payment period, or

(c) the financial instrument, or any arrangement connected with it, is a structured arrangement.

(7) The financial instrument, or an arrangement connected with it, is a "structured arrangement" if it is reasonable to suppose that—

(a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or

(b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(9) Sections 259CD (cases where the payer is within the charge to corporation tax for the payment period) and 259CE (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

259CB Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid or otherwise impermissible deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where—

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(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of the terms, or any other feature, of the financial instrument.

[F170(3) So far as the excess arises—

(a) by reason of a relevant debt relief provision, or

(b) in relevant debt relief circumstances,

it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless).**]**

[F171(3A) So far as the excess arises by reason of an interest distribution designation, it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless of that designation).**]**

(4) Subject to **[**F172subsections (3), (3A) and**]** (9), for the purposes of subsection (2)(b)—

(a) it does not matter whether the excess or part arises for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have arisen for that other reason regardless of the terms, or any other feature, of the financial instrument), and

(b) an excess or part of an excess is to be taken to arise by reason of the terms, or any other feature, of the financial instrument (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (5) and (6)), it could arise by reason of the terms, or any other feature, of the financial instrument.

(5) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;

(c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

(i) resident for the purposes of a tax charged under the law of that territory, or

(ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

(6) Where the relevant assumption in subsection (5)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (4)(b)—

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(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
(b) section 690 of that Act (derivative contracts for unallowable purposes);
(c) Part 4 (transfer pricing);
(d) this Part;
[[F173](e) Part 10 (corporate interest restriction).**]**

(7) Case 2 applies where there are one or more amounts of ordinary income ("under-taxed amounts") that—
(a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
(b) are under taxed by reason of the terms, or any other feature, of the financial instrument.

(8) Subject to subsection (9), for the purposes of subsection (7)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have been under taxed for that other reason regardless of the terms, or any other feature, of the financial instrument).

(9) For the purposes of this section disregard—
(a) any excess or part of an excess mentioned in subsection (2), and
(b) any under-taxed amount,
that arises as a result of a payee being a relevant investment fund (see section 259NA).

(10) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).

(11) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$(UTA \times (FMR - R)) FMR$$

where—

"UTA" is the under-taxed amount;

"FMR" is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

"R" is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

(12) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

(13) See section 259CC for the meaning of "permitted taxable period", "relevant debt relief provision" and "under taxed".

Textual Amendments

F170 S. 259CB(3) substituted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 3**, 36

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F171 S. 259CB(3A) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 7(a)**, 36
F172 Words in s. 259CB(4) substituted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 7(b)**, 36
F173 S. 259CB(6)(e) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 18**

Modifications etc. (not altering text)
C37 S. 259CB(4) modified (24.2.2022) by Finance Act 2022 (c. 3), **Sch. 2 para. 45(3)**
C38 S. 259CB(8) modified (24.2.2022) by Finance Act 2022 (c. 3), **Sch. 2 para. 45(3)**

259CC Interpretation of section 259CB

(1) This section has effect for the purposes of section 259CB.

(2) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

[F174(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one).**]**

(3) Each of these is a "relevant debt relief provision"—

(a) section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account),

(b) section 357 of that Act (insolvent creditors),

(c) section 358 of that Act (exclusion of credits on release of connected companies' debts: general),

(d) section 359 of that Act (exclusion of credits on release of connected companies' debts during creditor's insolvency),

(e) section 361C of that Act (the equity-for-debt exception),

(f) section 361D of that Act (corporate rescue: debt released shortly after acquisition), and

(g) section 362A of that Act (corporate rescue: debt released shortly after connection arises).

[F175(3A) To determine whether excess arises in "relevant debt relief circumstances" see sections 259NEB to 259NEF.**]**

[F176(3B) An "interest distribution designation" means a designation made under regulation 5(2) of the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (S.I. 2009/2034).**]**

(4) An amount of ordinary income of a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.

(5) The payee's "full marginal rate" means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (4) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

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(6) A "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

F177 **[** (7) A qualifying capital amount arising to a payee is treated as an amount of ordinary income of a payee and references to tax include any qualifying capital tax.

(8) For the purposes of case 2—

(a) a qualifying capital amount arising to a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period,

(b) in determining the payee's "full marginal rate", the reference to the taxable profits mentioned in subsection (4) includes any qualifying capital amount, and

(c) in determining a "credit for underlying tax", the reference to profits includes any qualifying capital amount.

(9) If the rate at which a qualifying capital tax is charged on a qualifying capital amount of a payee exceeds the rate at which tax would be charged on an amount of income of the payee, the excess is to be ignored.

(10) For the purposes of subsections (7) to (9) a "qualifying capital amount" means an amount of a capital nature on which a qualifying capital tax is charged.

(11) A qualifying capital tax is not regarded for this purpose as charged on an amount so far as—

(a) the amount is excluded, reduced or offset for the purposes of the tax by any exemption, exclusion, relief or credit that—

(i) applies specifically to all or part of the amount (as opposed to amounts of a capital nature generally), or

(ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or

(b) the tax is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).

(12) For the purposes of subsections (7) to (11) a "qualifying capital tax" means—

(a) capital gains tax or the charge to corporation tax in respect of chargeable gains, or

(b) any tax chargeable under the law of a territory outside the United Kingdom that corresponds to a United Kingdom tax mentioned in paragraph (a),

but does not include any tax chargeable at a nil rate.**]**

Textual Amendments

F174 S. 259CC(2)(b) substituted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(3)**(13)

F175 S. 259CC(3A) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 4**, 36

F176 S. 259CC(3B) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 8**, 36

F177 S. 259CC(7)-(12) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 8**, 19(4)

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Counteraction

259CD Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

259CE Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD does not fully counteract that mismatch if (and only if)—

(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259CD, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

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(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees,

(b) to whom any under-taxed amounts (within the meaning given by section 259CB(7)) arise, and

(c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) The "counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 4

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259D Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

(3) Section 259DA contains the conditions that must be met for this Chapter to apply.

(4) Section 259DB defines "hybrid transfer arrangement".

(5) Section 259DC defines "hybrid transfer deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(6) Section 259DD contains definitions of certain terms used in section 259DC.

(7) Section 259DE contains provision in connection with excluding mismatches from counteraction by the Chapter where they arise as a consequence of the tax treatment of a financial trader.

(8) Section 259DF contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(9) Section 259DG contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.

(10) See also section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee".

Application of Chapter

259DA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).

(3) Condition B is that a payment or quasi-payment is made under or in connection with—
- (a) the hybrid transfer arrangement, or
- (b) the underlying instrument.

(4) Condition C is that—
- (a) the payer is within the charge to corporation tax for the payment period, or
- (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).

(6) Condition E is that—
- (a) it is a quasi-payment that is made as mentioned in subsection (3) and the payer is also a payee (see section 259BB(7)),
- (b) the payer and a payee are related (see section 259NC) at any time in the period—
  - (i) beginning with the day on which the hybrid transfer arrangement is made, and
  - (ii) ending with the last day of the payment period, or
- (c) the hybrid transfer arrangement is a structured arrangement.

(7) The hybrid transfer arrangement is a "structured arrangement" if it is reasonable to suppose that—
- (a) the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or
- (b) the terms of the hybrid transfer arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(9) Sections 259DF (cases where the payer is within the charge to corporation tax for the payment period) and 259DG (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

259DB Meaning of "hybrid transfer arrangement", "underlying instrument" etc

(1) This section has effect for the purposes of this Chapter.

(2) A "hybrid transfer arrangement" means—

(a) a repo,

(b) a stock lending arrangement, or

(c) any other arrangement,

that is an arrangement within subsection (3).

(3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument ("the underlying instrument") and—

(a) the dual treatment condition is met in relation to the arrangement, or

(b) a substitute payment could be made under the arrangement.

(4) The dual treatment condition is met in relation to the arrangement if—

(a) in relation to a person, for the purposes of a tax—

(i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and

(ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact the arrangement is so regarded, and

(b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.

(5) A payment or quasi-payment is a "substitute payment" if—

(a) it consists of or involves—

(i) an amount being paid, or

(ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),

(b) that amount, or the value of that benefit, is representative of a return of any kind ("the underlying return") that arises on, or in connection with, the underlying instrument, and

(c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.

(6) For the purposes of subsection (3) where there is an arrangement, to which a person ("P") and another person ("Q") are party, under which—

(a) a financial instrument ("the first instrument") ceases to be owned by P (whether or not because it ceases to exist), and

(b) Q comes to own a financial instrument ("the second instrument") under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,

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the second instrument is to be treated as being transferred from P to Q.

[For the purposes of subsection (4) references to tax include any qualifying capital tax [F178](7) within the meaning given by section 259DD(11).**]**

Textual Amendments

F178 S. 259DB(7) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 9**, 19(4)

259DC Hybrid transfer deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid transfer deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises for a reason mentioned in subsection (8).

(3) Subject to subsection (9), for the purposes of subsection (2)(b)—

(a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of any reasons mentioned in subsection (8)), and

(b) an excess or part of an excess is to be taken to arise for a reason mentioned in subsection (8) (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (4) and (5))), it could arise for a reason mentioned in subsection (8).

(4) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;

(c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

(i) resident for the purposes of a tax charged under the law of that territory, or

(ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

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(5) Where the relevant assumption in subsection (4)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (3)(b)—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) Part 4 (transfer pricing);

(c) this Part;

[[F179](d) Part 10 (corporate interest restriction).**]**

(6) Case 2 applies where there are one or more amounts of ordinary income ("under-taxed amounts") that—

(a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and

(b) are under taxed for a reason mentioned in subsection (8).

(7) Subject to subsection (9), for the purposes of subsection (6)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well (even if it would have been under taxed for that other reason regardless of any reason mentioned in subsection (8)).

(8) The reasons are—

(a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));

(b) the payment or quasi-payment being a substitute payment.

(9) For the purposes of this section, disregard—

(a) any excess or part of an excess mentioned in subsection (2), and

(b) any under-taxed amount,

in relation to which the financial trader exclusion applies (see section 259DE) or that arises as a result of a payee being a relevant investment fund (see section 259NA).

(10) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).

(11) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$(UTA \times (FMR - R)) FMR$$

where—

"UTA" is the under-taxed amount;

"FMR" is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

"R" is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

(12) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

(13) See section 259DD for the meaning of "permitted taxable period" and "under taxed".

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Textual Amendments

F179 S. 259DC(5)(d) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 19**

259DD Interpretation of section 259DC

(1) This section has effect for the purposes of section 259DC.

(2) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

[F180(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one).**]**

(3) An amount of ordinary income of a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.

(4) The payee's "full marginal rate" means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (3) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

(5) A "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

[F181(6) A qualifying capital amount arising to a payee is treated as an amount of ordinary income of a payee and references to tax include any qualifying capital tax.

(7) For the purposes of case 2—

(a) a qualifying capital amount arising to a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period,

(b) in determining the payee's "full marginal rate", the reference to the taxable profits mentioned in subsection (4) includes any qualifying capital amount, and

(c) in determining a "credit for underlying tax", the reference to profits includes any qualifying capital amount.

(8) If the rate at which a qualifying capital tax is charged on a qualifying capital amount of a payee exceeds the rate at which tax would be charged on an amount of income of the payee, the excess is to be ignored.

(9) For the purposes of subsections (6) to (8) a "qualifying capital amount" means an amount of a capital nature on which a qualifying capital tax is charged.

(10) A qualifying capital tax is not regarded for this purpose as charged on an amount so far as—

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(a) the amount is excluded, reduced or offset for the purposes of the tax by any exemption, exclusion, relief or credit that—

(i) applies specifically to all or part of the amount (as opposed to amounts of a capital nature generally), or

(ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or

(b) the tax is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).

(11) For the purposes of subsections (6) to (10) a "qualifying capital tax" means—

(a) capital gains tax or the charge to corporation tax in respect of chargeable gains, or

(b) any tax chargeable under the law of a territory outside the United Kingdom that corresponds to a United Kingdom tax mentioned in paragraph (a),

but does not include any tax chargeable at a nil rate.**]**

Textual Amendments

F180 S. 259DD(2)(b) substituted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(4)**(13)

F181 S. 259DD(6)-(11) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 10**, 19(4)

259DE The financial trader exclusion

(1) This section has effect for the purposes of section 259DC(9).

(2) The financial trader exclusion applies, in relation to an excess or part of an excess mentioned in section 259DC(2) or an under-taxed amount, where conditions A to C are met.

(3) Condition A is that the excess or part arises, or the under-taxed amount is under taxed, because the payment or quasi-payment—

(a) is a substitute payment,

(b) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and

(c) is brought into account by another person ("the financial trader") in calculating the profits of a trade under—

(i) Part 3 of CTA 2009 (trading income), or

(ii) an equivalent provision of the law of a territory outside the United Kingdom.

(4) Condition B is that the financial trader also brings any associated payments into account as mentioned in subsection (3)(c).

(5) In subsection (4) "associated payment" means a payment or quasi-payment—

(a) in relation to which the financial trader is the payer or a payee, and

(b) that is made under, or in connection with, the underlying instrument or an arrangement that relates to the underlying instrument.

(6) Condition C is that—

(a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, neither Chapter 3 (hybrid and

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other mismatches from financial instruments) nor any equivalent provision under the law of a territory outside the United Kingdom would apply, and

(b) the hybrid transfer arrangement under, or in connection with, which the substitute payment is made is not a structured arrangement (within the meaning given by section 259DA(7) and (8)).

Counteraction

259DF Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

259DG Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF does not fully counteract that mismatch if (and only if)—

(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DF, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

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(4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees,

(b) to whom any under-taxed amounts (within the meaning given by section 259DC(6)) arise, and

(c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) The "counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 5

HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259E Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because the payer is a hybrid entity.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

(3) Section 259EA contains the conditions that must be met for this Chapter to apply.

(4) Section 259EB defines "hybrid payer deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not fully counteracted by

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provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.

(7) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee", and

(b) section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259EA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that the payer is a hybrid entity ("the hybrid payer").

(4) Condition C is that—

(a) the hybrid payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259EB).

(6) The provisions are—

(a) this Chapter and Chapters 6 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(7) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the hybrid payer is also a payee (see section 259BB(7)),

(b) the hybrid payer and a payee are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

(c) that arrangement is a structured arrangement.

(8) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a hybrid payer deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

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(9) The arrangement may be designed to secure a hybrid payer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(10) Sections 259EC (cases where the hybrid payer is within the charge to corporation tax for the payment period) and 259ED (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

259EB Hybrid payer deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid payer deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of the hybrid payer being a hybrid entity.

[But there is no hybrid payer deduction/non-inclusion mismatch so far as the relevant [F182](1A) deduction is—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.**]**

(2) The amount of the hybrid payer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

(3) **[**[F183]Subject to subsections (4A) to (4C)**]** for the purposes of subsection (1)(b)—

(a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of whether the hybrid payer is a hybrid entity), and

(b) an excess or part of an excess is to be taken to arise by reason of the hybrid payer being a hybrid entity (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsection (4)), it could arise by reason of the hybrid payer being a hybrid entity.

(4) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business.

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[F184(4A) No excess is to be taken to arise by reason of a hybrid payer being a hybrid entity for the purposes of subsection (1)(b) so far as it is attributable to a qualifying institutional investor based in a territory under the law of which—

(a) the income or profits of the hybrid entity are treated as income and profits of the investor, or

(b) the hybrid entity is not regarded as a distinct and separate person to the investor.

(4B) Excess is attributable to such a qualifying institutional investor to the extent that ordinary income (arising by reason of the payment or quasi-payment) would fall to be brought into account by the investor if—

(a) where subsection (4A)(a) applies, under the law of the territory the income or profits of the hybrid entity were not treated as income and profits of the investor, and

(b) where subsection (4A)(b) applies, under the law of the territory the hybrid entity were regarded as a distinct and separate person to the investor.

(4C) To determine if a "qualifying institutional investor" is "based" in a particular territory for the purposes of subsections (4A) and (4B) see section 259NDA.**]**

(5) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Textual Amendments

F182 S. 259EB(1A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(5)**(13)

F183 Words in s. 259EB(3) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 27(2)**

F184 S. 259EB(4A)-(4C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 27(3)**

Counteraction

259EC Counteraction where the hybrid payer is within the charge to corporation tax for the payment period

(1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5) ("the restricted deduction") may not be deducted from the hybrid payer's income for the payment period unless it is deducted from dual inclusion income for that period.

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(3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer's income for the payment period—

(a) is carried forward to subsequent accounting periods of the payer, and

(b) for corporation tax purposes, may be deducted from dual inclusion income for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) In this section "dual inclusion income" of the payer for an accounting period means an amount that [F185]... is both—

(a) ordinary income of the payer for that period for corporation tax purposes, and

(b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.

(5) A taxable period of an investor is "permitted" for the purposes of paragraph (b) of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

[F186](6) For the purposes of subsection (4)(b) the reference to ordinary income of an investor in the payer for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction is taken to include a reference to an amount that meets the following requirements.

(7) The requirements are that—

(a) the amount may not be deducted under the law of any territory from the income of any person for the purposes of calculating taxable profits for a relevant taxable period;

(b) in the case of a person resident for tax purposes in a zero-tax territory, the amount could not be deducted from the income of the person for the purposes of calculating taxable profits for a relevant taxable period if the person were resident in the United Kingdom for tax purposes; and

(c) under the law of the investor jurisdiction, the amount could be deducted from the income of the investor in the hybrid payer for the purposes of calculating the investor's taxable profits for a relevant taxable period if the following assumptions were made.

(8) The assumptions are that, for the purposes of identifying the recipient of the amount for tax purposes in the investor jurisdiction—

(a) condition B in section 259BE(3) was not met by the hybrid payer as respects the investor jurisdiction, and

(b) as a result of that, the hybrid payer was not a hybrid entity as respects the investor jurisdiction.

(9) In subsection (7), "zero-tax territory", in relation to a person, means a territory in which the person—

(a) is not within the charge to tax, or

(b) is within the charge to tax at a nil rate.

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(10) Section 259B(5) (determination of residence where no concept of residence for tax purposes exists) applies to the reference in subsection (7)(b) to a person's residence for tax purposes in a zero-tax territory as it applies to references to a person's residence for tax purposes in Chapter 8 or 11.

(11) A taxable period of an investor or another person is "relevant" for the purposes of subsection (7) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in subsection (4)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the amount concerned may or could be deducted in calculating taxable profits to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F185 Words in s. 259EC(4) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 10(2)**

F186 S. 259EC(6)-(11) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 10(3)**

259ED Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or

(ii) such a provision does apply, but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—

(a) the amount of the relevant deduction that the provision prevents from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, is less than the amount of the mismatch, and

(b) the hybrid payer is still able to deduct some of the relevant deduction from income, for the payment period, that is not dual inclusion income.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from income of

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the hybrid payer, for the payment period, other than dual inclusion income, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, an amount equal to—

(a) the relevant amount, less

(b) any dual inclusion income,

is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to—

(a) the payee's share of the relevant amount, less

(b) the relevant proportion of any dual inclusion income,

is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees, and

(b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) The "relevant" proportion of any dual inclusion income for the payment period is the same as the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).

(8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(9) In this section—

"counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;

"dual inclusion income" means an amount that [F187]... is both—

(a) ordinary income of the payer for the payment period, and

(b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of a tax charged under the law of an investor jurisdiction.

(10) A taxable period of an investor is "permitted" for the purposes of subsection (9) if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

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Textual Amendments

F187 Words in s. 259ED(9) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 10(4)**

CHAPTER 6

DEDUCTION/NON-INCLUSION MISMATCHES RELATING TO TRANSFERS BY PERMANENT ESTABLISHMENTS

Introduction

259F Overview of Chapter

(1) This Chapter contains provision that counteracts certain excessive deductions that arise in relation to transfers of money or money's worth made, or taken to be made, by a multinational company's permanent establishment in the United Kingdom to the company in the parent jurisdiction.

(2) The Chapter counteracts such deductions by altering the corporation tax treatment of the company.

(3) Section 259FA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (3) of that section defines "multinational company" and "the parent jurisdiction".

(5) Subsection (8) of that section defines "the excessive PE deduction".

(6) Section 259FB contains provision for the counteraction of the excessive PE deduction.

(7) See also section 259BF for the meaning of "permanent establishment".

Application of Chapter

259FA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to C are met.

(2) Condition A is that a company is a multinational company.

(3) For the purposes of this Chapter, a company is a multinational company if—

(a) it is resident in a territory outside the United Kingdom ("the parent jurisdiction") for the purposes of a tax charged under the law of that territory, and

(b) it is within the charge to corporation tax because it carries on a business in the United Kingdom through a permanent establishment in the United Kingdom.

(4) Condition B is that, disregarding the provisions mentioned in subsection (5), there is an amount ("the PE deduction") that—

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(a) may (in substance) be deducted from the company's income for the purposes of calculating the company's taxable profits for an accounting period ("the relevant PE period") for corporation tax purposes, F188...

(b) is in respect of a transfer of money or money's worth from the company in the United Kingdom to the company in the parent jurisdiction that—

(i) is actually made, or

(ii) is (in substance) treated as being made for corporation tax purposes **[**F189, and

(c) is not in respect of the financing cost of loan capital which the permanent establishment is assumed to have by virtue of section 21(2) of CTA 2009 for the purpose of applying subsection (1) of that section (the separate enterprise principle).**]**

F190(4A) **[** For the purposes of this section "the PE deduction" does not include—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.**]**

(5) The provisions are—

(a) this Chapter and Chapters 7 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(6) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5)—

(a) the circumstances giving rise to the PE deduction will not result in—

(i) an increase in the taxable profits of the company for any permitted taxable period, or

(ii) a reduction of a loss made by the company for any permitted taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

(b) those circumstances will result in such an increase or reduction for one or more permitted taxable periods, but the PE deduction exceeds the aggregate effect on taxable profits.

(7) "The aggregate effect on taxable profits" is the sum of—

(a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

F191(7A) **[** For the purposes of subsections (6) and (7) any increase in taxable profits or reduction of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.**]**

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(8) In this Chapter "the excessive PE deduction" means—

(a) where paragraph (a) of subsection (6) applies, the PE deduction, or

(b) where paragraph (b) of subsection (6) applies, the PE deduction so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(9) For the purposes of subsections (6) and (7) a taxable period of the company, for the purposes of a tax charged under the law of the parent jurisdiction, is "permitted" if—

(a) the period begins before the end of 12 months after the end of the relevant PE period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period for the purposes of subsections (6) and (7), and

(ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

(10) Section 259FB contains provision for counteracting the excessive PE deduction.

Textual Amendments

F188 Word in s. 259FA(4)(a) omitted (retrospectively) by virtue of Finance Act 2021 (c. 26), **Sch. 7 paras. 17(2)**, 36

F189 S. 259FA(4)(c) and word inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 17(2)**, 36

F190 S. 259FA(4A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(6)**(13)

F191 S. 259FA(7A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 4**

Counteraction

259FB Counteraction of the excessive PE deduction

(1) For corporation tax purposes, the excessive PE deduction may not be deducted from the company's income for the relevant PE period unless it is deducted from dual inclusion income for that period.

(2) So much of the excessive PE deduction (if any) as, by virtue of subsection (1), cannot be deducted from the company's income for the relevant PE period—

(a) is carried forward to subsequent accounting periods of the company, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(3) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

(a) ordinary income of the company for that period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.

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(4) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (3) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

[F192(5) For the purposes of subsection (3)(b) the reference to ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction is taken to include a reference to excessive PE inclusion income of the company.

(6) Section 259FC defines "excessive PE inclusion income" of the company for this purpose.**]**

Textual Amendments

F192 S. 259FB(5)(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 11(2)**

[F193**259FC Meaning of excessive PE inclusion income**

(1) In section 259FB(5), "excessive PE inclusion income" of the company means—

(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company, or

(b) where paragraph (b) of that subsection applies, the PE inclusion income of the company so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(2) For this purpose, "PE inclusion income" of the company means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(a) is actually made, or

(b) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

(a) the circumstances giving rise to the amount will not result in—

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) "The aggregate effect on taxable profits" is the sum of—

(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259FB(3)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F193 S. 259FC inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 11(3)**

CHAPTER 7

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259G Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because a payee is a hybrid entity.

(2) The Chapter counteracts mismatches by—

(a) altering the corporation tax treatment of the payer for the payment period,

(b) treating income chargeable to corporation tax as arising to an investor who is within the charge to corporation tax, or

(c) treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.

(3) Section 259GA contains the conditions that must be met for this Chapter to apply.

(4) Section 259GB defines "hybrid payee deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

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(5) Section 259GC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(6) Section 259GD contains provision that counteracts the mismatch where an investor in the payee is within the charge to corporation tax and the mismatch is not fully counteracted by section 259GC or an equivalent provision under the law of a territory outside the United Kingdom.

(7) Section 259GE contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not otherwise fully counteracted.

(8) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee";

(b) section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259GA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that a payee is a hybrid entity (a "hybrid payee").

(4) Condition C is that—

(a) the payer is within the charge to corporation tax for the payment period,

(b) an investor in a hybrid payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, or

(c) a hybrid payee is a limited liability partnership.

(5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259GB).

(6) The provisions are—

(a) this Chapter and Chapters 8 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(7) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a hybrid payee (see section 259BB(7)),

(b) the payer and a hybrid payee or an investor in a hybrid payee are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

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(c) that arrangement is a structured arrangement.

(8) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a hybrid payee deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(9) The arrangement may be designed to secure a hybrid payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(10) The following provisions contain provision for the counteraction of the hybrid payee deduction/non-inclusion mismatch—

(a) section 259GC (cases where the payer is within the charge to corporation tax for the payment period),

(b) section 259GD (cases where an investor in a hybrid payee is within the charge to corporation tax), and

(c) section 259GE (cases where a hybrid payee is a limited liability partnership).

259GB Hybrid payee deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid payee deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of one or more payees being hybrid entities.

[F194(1A) But there is no hybrid payee deduction/non-inclusion mismatch so far as the relevant deduction is—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.**]**

(2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

[F195(2A) No excess is to be taken to arise by reason of a hybrid payee being a hybrid entity for the purposes of subsection (1)(b) so far as it is attributable to a qualifying institutional investor based in a territory under the law of which—

(a) the income or profits of the hybrid entity are not treated as income or profits of the investor, or

(b) the hybrid entity is regarded as a distinct and separate person to the investor.

(2B) Excess is attributable to such a qualifying institutional investor to the extent that ordinary income (arising by reason of the payment or quasi-payment) would fall to be brought into account by the investor if—

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(a) where subsection (2A)(a) applies, under the law of the territory the income or profits of the hybrid entity were treated as income or profits of the investor, and

(b) where subsection (2A)(b) applies, under the law of the territory the hybrid entity were not regarded as a distinct and separate person to the investor.

(2C) To determine if a "qualifying institutional investor" is "based" in a particular territory for the purposes of subsections (2A) and (2B) see section 259NDA.**]**

(3) A relevant amount of the excess is to be taken (so far as would not otherwise be the case) to arise as mentioned in subsection (1)(b) where—

(a) a payee is a hybrid entity,

(b) there is no territory—

(i) where that payee is resident for the purposes of a tax charged **[**F196at a higher rate than nil**]** under the law of that territory, or

(ii) under the law of which ordinary income arises to that payee, by reason of the payment or quasi-payment, for the purposes of a tax that is charged on that payee by virtue of that payee having a permanent establishment in that territory, and

(c) no income arising to that payee, by reason of the payment or quasi-payment, is brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge.

(4) For the purposes of subsection (3), the "relevant amount" of the excess is the lesser of—

(a) the amount of the excess, and

(b) an amount equal to the amount of ordinary income that it is reasonable to suppose would, by reason of the payment or quasi-payment, arise to the payee for corporation tax purposes, if—

(i) the payee were a company, and

(ii) the payment or quasi-payment were made in connection with a trade carried on by the payee in the United Kingdom through a permanent establishment in the United Kingdom.

F197(4A) **[** In applying subsection (4)(b) in a case where the payee is a partnership **[**F198or a relevant transparent entity**]**, it is to be assumed that no amount of ordinary income arises to the payee, by reason of the payment or quasi-payment, if—

(a) a partner in the partnership **[**F199, or a member of the entity,**]** is entitled to the amount, and

(b) having regard only to—

(i) the law of the territory where the partnership **[**F200or entity**]** is established, and

(ii) the law of the territory where the partner **[**F201or member**]** is resident for tax purposes or, if the partner **[**F201or member**]** is not resident anywhere for tax purposes, where the partner **[**F201or member**]** is established,

the payee would not be regarded as a hybrid entity.

F202(4AA) **[** Subsection (4AB) applies in relation to a payment or quasi-payment if—

(a) one or more of the payees is a partnership or a relevant transparent entity,

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(b) there is a territory under the law of which an amount of ordinary income would arise, or would potentially arise, to a hybrid entity as a result of the circumstances giving rise to the relevant deduction if the entity were a person resident in that territory for the purposes of a tax charged under the law of that territory, and

(c) that hybrid entity is not (ignoring subsection (4AB)(b)) a payee.

(4AB) Where this subsection applies—

(a) if any such hybrid entity is not either a partnership or a relevant transparent entity, subsection (4A) does not apply, or

(b) otherwise, every such hybrid entity is to be treated as a payee for the purposes of determining, for the purposes of subsection (1)(b), if an excess arises by reason of one or more payees being hybrid entities.**]**

(4B) In **[**[F203]subsections (4A) to (4AB) and (4C)**]** "partnership" has the meaning given by section 259NE(4).**]**

[An entity is a "relevant transparent entity" if—

[F204](4C)

(a) the entity is not a partnership,

(b) the entity is legally constituted in a territory outside the United Kingdom,

(c) all of the entity's income or profits for the purposes of a tax charged under the law of that territory are treated (or would be if there were any) for the purposes of that tax as the income or profits of its members, and

(d) any such tax that is, or that would be, charged on such a member that is resident for tax purposes in that territory is not charged at a nil rate.

(4D) For the purposes of subsection (4C), a person is a "member" of an entity if the person is entitled to a proportion of the profits of the entity as a result of—

(a) where the entity has share capital, holding shares forming part of that capital, or

(b) where the entity does not have share capital, an entitlement similar to that which would be enjoyed if the entity had share capital and the person held shares forming part of that capital.**]**

(5) In subsection (3)(c) "chargeable profits"—

(a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

(b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part.

(6) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

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Textual Amendments

F194 S. 259GB(1A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(7)**(13)

F195 S. 259GB(2A)-(2C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 28**

F196 Words in s. 259GB(3)(b)(i) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 5**

F197 S. 259GB(4A)(4B) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 11**, 19(4)

F198 Words in s. 259GB(4A) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(a)(6)** (with s. 26(7)-(10))

F199 Words in s. 259GB(4A)(a) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(b)(6)** (with s. 26(7)-(10))

F200 Words in s. 259GB(4A)(b)(i) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(c)(i)(6)** (with s. 26(7)-(10))

F201 Words in s. 259GB(4A)(b)(ii) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(c)(ii)(6)** (with s. 26(7)-(10))

F202 S. 259GB(4AA)(4AB) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(3)(6)** (with s. 26(7)-(10))

F203 Words in s. 259GB(4B) substituted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(4)(6)** (with s. 26(7)-(10))

F204 S. 259GB(4C)(4D) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(5)(6)** (with s. 26(7)-(10))

Counteraction

259GC Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

259GD Counteraction where the investor is within the charge to corporation tax

(1) This section applies in relation to an investor in a hybrid payee where—

(a) the investor is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259GC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC does not fully counteract that mismatch if (and only if)—

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(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch, or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the investor is the only investor in the hybrid payee, the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

(5) If there is more than one investor in the hybrid payee, an amount equal to the investor's share of the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

(6) For the purposes of subsections (4) and (5) the "appropriate proportion of the relevant amount"—

(a) if the hybrid payee is the only hybrid payee, is all of the relevant amount, or

(b) if there is more than one hybrid payee, is the proportion of the relevant amount apportioned to the hybrid payee upon an apportionment of that amount between all the hybrid payees on a just and reasonable basis having regard (in particular) to—

(i) any arrangements as to profit sharing that may exist between some or all of the payees, and

(ii) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.

(7) The investor's share of the appropriate proportion of the relevant amount is to be determined by apportioning that proportion of that amount between all the investors in the hybrid payee on a just and reasonable basis, having regard (in particular) to any arrangements as to profit sharing that may exist between some or all of those investors.

(8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(23) of that Act).

(9) The "counteraction period" means—

(a) if an accounting period of the investor coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the investor that is wholly or partly within the payment period.

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259GE Counteraction where a hybrid payee is an LLP

(1) This section applies in relation to a hybrid payee where the hybrid payee is a limited liability partnership and it is reasonable to suppose that—

(a) none of the following provisions applies—

(i) section 259GC;

(ii) section 259GD;

(iii) any provision under the law of a territory outside the United Kingdom that is equivalent to either of those sections, or

(b) one or more of those provisions apply, but the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) is not fully counteracted.

(2) The mismatch is not fully counteracted if (and only if), after the application of such of those provisions as apply—

(a) the relevant deduction is not reduced by the full amount of the mismatch,

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits, and

(c) the lesser of—

(i) the difference between the amount of the mismatch and the amount by which it is reasonable to suppose the relevant deduction is reduced, and

(ii) the amount of the relevant deduction that may still be deducted,

exceeds the sum of any amounts of income treated as arising under section 259GD or any equivalent provision under the law of a territory outside the United Kingdom.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(a) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5), or

(b) in a case where subsection (1)(b) applies, an amount equal to the excess mentioned in subsection (2)(c).

(4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

(5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

(6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—

(a) any arrangements as to profit sharing that may exist between some or all of the payees, and

(b) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

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(8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disapplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).

(9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part, except section 259M (anti-avoidance).

CHAPTER 8

MULTINATIONAL PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259H Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments, where the payer is within the charge to corporation tax, because a payee is multinational company.

(2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer.

(3) Section 259HA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (4) of that section defines "multinational company", "parent jurisdiction" and "PE jurisdiction".

(5) Section 259HB defines "multinational payee deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(6) Section 259HC contains provision that counteracts the mismatch.

(7) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee";

(b) section 259BF for the meaning of "permanent establishment".

Application of Chapter

259HA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that a payee is a multinational company.

(4) For the purposes of this Chapter, a company is a "multinational company" if—

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(a) it is resident in a territory ("the parent jurisdiction") for tax purposes under the law of that territory, and

(b) it is regarded as carrying on a business in another territory ("the PE jurisdiction") through a permanent establishment in that territory (whether it is so regarded under the law of the parent jurisdiction, the PE jurisdiction or any other territory).

[F205(5) Condition C is that—

(a) the payer is within the charge to corporation tax for the payment period, or

(b) the multinational company—

(i) is UK resident for the payment period, and

(ii) under the law of the parent jurisdiction, is regarded as carrying on a business in the PE jurisdiction through a permanent establishment in that territory but, under the law of the PE jurisdiction, is not regarded as doing so.**]**

(6) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (7), there would be a multinational payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259HB).

(7) The provisions are—

(a) this Chapter and Chapters 9 and 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(8) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),

(b) the payer and the multinational company are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

(c) that arrangement is a structured arrangement.

(9) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a multinational **[**F206payee**]** deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(10) The arrangement may be designed to secure a multinational payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(11) Section 259HC contains provision for the counteraction of the multinational payee deduction/non-inclusion mismatch.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F205 S. 259HA(5) substituted (with effect in accordance with s. 19(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 19(2)(a)**

F206 Word in s. 259HA(9)(a) substituted (retrospective to 15.9.2016) by the Finance Act 2019 (c. 1), **s. 19(2)(b)(7)**

259HB Multinational payee deduction/non-inclusion mismatches and their extent

(1) There is a "multinational payee deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of one or more payees being multinational companies.

F207 **[** (1A) But there is no multinational payee deduction/non-inclusion mismatch so far as the relevant deduction is—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.**]**

(2) The extent of the multinational payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

F208 **[** (2A) The excess is to be taken (so far as would not otherwise be the case) to arise for the purposes of subsection (1)(b) by reason of a payee being a multinational company so far as it would not arise if it is assumed—

(a) that the company is not regarded, under the law of the parent jurisdiction, the PE jurisdiction or any other territory, as carrying on a business in the PE jurisdiction through a permanent establishment in that jurisdiction, and

(b) that, for tax purposes under the law of the parent jurisdiction, all amounts of ordinary income arising, by reason of the payment or quasi-payment, to the company are regarded as arising to it in that jurisdiction and nowhere else.**]**

(3) For the purposes of subsection (1)(b)—

(a) where the law of a PE jurisdiction in relation to a payee that is a multinational company makes no provision for charging tax on any companies, so much of the excess as arises as a result is to be taken not to arise by reason of that payee being a multinational company, but

(b) subject to that, it does not matter whether the excess or part arises for another reason as well as one or more payees being multinational companies (even if it would have arisen for that other reason regardless of whether any payees are multinational companies).

(4) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

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(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Textual Amendments

F207 S. 259HB(1A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(8)**(13)

F208 S. 259HB(2A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 12**

Counteraction

[F209 259HC Counteraction of the multinational payee deduction/non-inclusion mismatch

For corporation tax purposes—

(a) if paragraph (b) of Condition C in subsection (5) of section 259HA is met, an amount equal to the multinational payee deduction/non-inclusion mismatch mentioned in subsection (6) of that section is to be treated as income arising to the multinational company in the United Kingdom (and nowhere else) for the payment period, and

(b) in any other case, the relevant deduction that may be deducted from the payer's income for that period is to be reduced by that amount.**]**

Textual Amendments

F209 S. 259HC substituted (with effect in accordance with s. 19(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 19(3)**

CHAPTER 9

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

Introduction

259I Overview of Chapter

(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.

(2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.

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(3) Section 259IA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (4) of that section defines "hybrid entity double deduction amount".

(5) Section 259IB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.

(6) Section 259IC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259IB.

(7) See also section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259IA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to C are met.

(2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose—

(a) could be deducted from the income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period ("the hybrid entity deduction period"), and

(b) could also be deducted, under the law of the investor jurisdiction, from the income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period ("the investor deduction period").

(3) The provisions are—

(a) this Chapter and Chapter 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as "the hybrid entity double deduction amount".

(5) Condition B is that—

(a) the investor is within the charge to corporation tax for the investor deduction period, or

(b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.

(6) Condition C is that—

(a) the hybrid entity and any investor in it are related (see section 259NC) at any time—

(i) in the hybrid entity deduction period, or

(ii) in the investor deduction period, or

(b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.

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(7) An arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure the hybrid entity double deduction amount, or

(b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.

(8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.

(9) Sections 259IB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259IC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

Counteraction

259IB Counteraction where the investor is within the charge to corporation tax

(1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.

(2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.

(3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's income for the investor deduction period—

(a) is carried forward to subsequent accounting periods of the investor, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the investor will have no dual inclusion income—

(a) for an accounting period after the investor deduction period ("the relevant period"), nor

(b) for any accounting period after the relevant period,

any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period—

(a) is carried forward to subsequent accounting periods of the investor, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

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(6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the investor for an accounting period.

(7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.

(8) In this section "dual inclusion income" of the investor for an accounting period means an amount that is both—

(a) ordinary income of the investor for that period for corporation tax purposes, and

(b) ordinary income of the hybrid entity for a permitted taxable period for the purposes of any tax under the law of a territory outside the United Kingdom.

(9) A taxable period of the hybrid entity is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period of the investor mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

259IC Counteraction where the hybrid entity is within the charge to corporation tax

(1) This section applies where—

(a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,

(b) it is reasonable to suppose that—

(i) no provision under the law of an investor jurisdiction that is equivalent to section 259IB applies, or

(ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period, and

(c) the secondary counteraction condition is met.

(2) The secondary counteraction condition is met if—

(a) the hybrid entity and any investor in it are in the same control group (see section 259NB) at any time in—

(i) the hybrid entity deduction period, or

(ii) the investor deduction period, or

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(b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259IA(7) and (8)).

(3) In this section "the restricted deduction" means—

(a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, or

(b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that it is reasonable to suppose, under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259IB, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period.

(4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's income for the hybrid entity deduction period **[**F210unless it is deducted from dual inclusion income for that period.**]**

(5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's income for the hybrid entity deduction period—

(a) is carried forward to subsequent accounting periods of the hybrid entity, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income—

(a) for an accounting period after the hybrid entity deduction period ("the relevant period"), nor

(b) for any accounting period after the relevant period,

any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.

(7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period—

(a) is carried forward to subsequent accounting periods of the hybrid entity, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person **[**F211other than an investor in the hybrid entity**]**, for a taxable period, that is not dual inclusion income of the hybrid entity for an accounting period.

(9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate

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overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.

(10) In this section "dual inclusion income" of the hybrid entity for an accounting period means an amount that is both—

(a) ordinary income of the hybrid entity for that period for corporation tax purposes, and

(b) ordinary income of an investor in the hybrid entity for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.

(11) A taxable period of an investor is "permitted" for the purposes of paragraph (b) of subsection (10) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Textual Amendments

F210 Words in s. 259IC(4) substituted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 12(2)**

F211 Words in s. 259IC(8) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(2)**

[F212 259ICA Deemed dual inclusion income for the purposes of section 259IC

(1) For the purposes of section 259IC(10)(b) the reference to ordinary income of an investor in the hybrid entity for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction is taken to include a reference to an amount that meets the following requirements.

(2) The requirements are that—

(a) the amount may not be deducted under the law of any territory from the income of any person for the purposes of calculating taxable profits for a relevant taxable period;

(b) in the case of a person resident for tax purposes in a zero-tax territory, the amount could not be deducted from the income of the person for the purposes of calculating taxable profits for a relevant taxable period if the person were resident in the United Kingdom for tax purposes; and

(c) under the law of the investor jurisdiction, the amount could be deducted from the income of the investor in the hybrid entity for the purposes of calculating the investor's taxable profits for a relevant taxable period if the following assumptions were made.

(3) The assumptions are that, for the purposes of identifying the recipient of the amount for tax purposes in the investor jurisdiction, it is assumed that—

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(a) condition B in section 259BE(3) was not met by the hybrid entity as respects the investor jurisdiction, and

(b) as a result of that, the hybrid entity was not a hybrid entity as respects the investor jurisdiction.

(4) In subsection (2), "zero-tax territory", in relation to a person, means a territory in which the person—

(a) is not within the charge to tax, or

(b) is within the charge to tax at a nil rate.

(5) Section 259B(5) (determination of residence where no concept of residence for tax purposes exists) applies to the reference in subsection (2)(b) to a person's residence for tax purposes in a zero-tax territory as it applies to references to a person's residence for tax purposes in Chapter 8 or 11.

(6) A taxable period of an investor or another person is "relevant" for the purposes of subsection (2) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259IC(10)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the amount concerned may or could be deducted in calculating taxable profits to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F212 S. 259ICA inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 12(3)**

[F213]259IDSection 259ID income for the purposes of section 259IC

. . . . . .

Textual Amendments

F213 S. 259ID omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 12(4)**

CHAPTER 10

DUAL TERRITORY DOUBLE DEDUCTION CASES

Introduction

259J Overview of Chapter

(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company—

(a) being a dual resident company, or

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(b) being a relevant multinational company.

(2) The counteraction operates by altering the corporation tax treatment of the company.

(3) Section 259JA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (3) of that section defines "dual resident company".

(5) Subsection (4) of that section defines "relevant multinational company", "parent jurisdiction" and "PE jurisdiction".

(6) Subsection (5) of that section defines "dual territory double deduction amount".

(7) Section 259JB contains provision that counteracts the mismatch where the company is a dual resident company.

(8) Section 259JC contains provision that counteracts the mismatch where the company is a multinational company and the United Kingdom is the parent jurisdiction.

(9) Section 259JD contains provision that counteracts the mismatch where the company is a relevant multinational company, the United Kingdom is the PE jurisdiction and the mismatch is not counteracted under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259JC.

(10) See also section 259BF for the meaning of "permanent establishment".

Application of Chapter

259JA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A and B are met.

(2) Condition A is that a company is a—

(a) dual resident company, or

(b) relevant multinational company.

(3) For the purposes of this Chapter a company is a "dual resident company" if—

(a) it is UK resident, and

(b) it is also within the charge to a tax under the law of a territory outside the United Kingdom because—

(i) it derives its status as a company from that law,

(ii) its place of management is in that territory, or

(iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.

(4) For the purposes of this Chapter a company is a "relevant multinational company" if—

(a) it is within the charge to a tax, under the law of a territory ("the PE jurisdiction") in which it is not resident for tax purposes, because it carries on business in that territory through a permanent establishment in that territory, and

(b) either—

(i) the PE jurisdiction is the United Kingdom, or

(ii) the territory in which the company is resident for tax purposes ("the parent jurisdiction") is the United Kingdom.

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(5) Condition B is that there is an amount ("the dual territory double deduction amount") that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company or a relevant multinational company—

(a) be deducted from the company's income for an accounting period ("the deduction period") for corporation tax purposes, and

(b) also be deducted from the company's income for a taxable period ("the foreign deduction period") for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(6) The following provisions provide for the counteraction of the dual territory double deduction amount—

(a) section 259JB (cases where a company is dual resident),

(b) section 259JC (cases where a company is a relevant multinational and the United Kingdom is the parent jurisdiction), and

(c) section 259JD (cases where a company is a relevant multinational, the United Kingdom is the PE jurisdiction and the amount is not counteracted in the parent jurisdiction).

Counteraction

259JB Counteraction where mismatch arises because of a dual resident company

(1) This section applies where the dual territory double deduction amount arises by reason of the company being a dual resident company.

(2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

(3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—

(a) is carried forward to subsequent accounting periods of the company, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company—

(a) is carried forward to subsequent accounting periods of the company, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

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(6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person **[**F214other than the company**]**, for a taxable period, that is not dual inclusion income of the company for an accounting period.

(7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

(8) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

(a) ordinary income of the company for that period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(9) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Textual Amendments

F214 Words in s. 259JB(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(3)**

259JC Counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction

(1) This section applies where—

(a) the dual territory double deduction amount arises by reason of the company being a relevant multinational company, and

(b) the United Kingdom is the parent jurisdiction.

(2) If some or all of the dual territory double deduction amount is (in substance) deducted ("the impermissible overseas deduction"), for the purposes of a tax under the law of a territory outside the United Kingdom, from the income of any person, for any taxable period, that is not dual inclusion income of the company—

(a) the dual territory double deduction amount that may be deducted, for corporation tax purposes, from the company's income for the deduction period is reduced by the amount of the impermissible overseas deduction, and

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(b) such just and reasonable adjustments (if any) as are required to give effect to that reduction, for corporation tax purposes, are to be made.

(3) Any adjustment required to be made under subsection (2) may be made (whether or not by an officer of Revenue and Customs)—

(a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and

(b) despite any time limit imposed by or under any enactment.

(4) In this section "dual inclusion income" of the company means an amount that is both—

(a) ordinary income of the company for an accounting period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(5) A taxable period is "permitted" for the purposes of paragraph (b) of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the accounting period of the company mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

259JD Counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction

(1) This section applies where—

(a) the dual territory double deduction amount arises as a result of the company being a relevant multinational company,

(b) the United Kingdom is the PE jurisdiction, and

(c) it is reasonable to suppose that no provision of the law of the parent jurisdiction that is equivalent to section 259JC applies.

(2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

(3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—

(a) is carried forward to subsequent accounting periods of the company, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the company has ceased to be a relevant multinational company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010

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in calculating the company's taxable total profits of the accounting period in which it ceased to be a relevant multinational company.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a relevant multinational company—

(a) is carried forward to subsequent accounting periods of the company, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person **[**F215other than the company**]**, for a taxable period, that is not dual inclusion income of the company for an accounting period.

(7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

(8) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

(a) ordinary income of the company for that period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(9) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

F216**[** (10) For the purposes of subsection (8)(b) the reference to ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom is taken to include a reference to excessive PE inclusion income of the company.

(11) Section 259JE defines "excessive PE inclusion income" of the company for this purpose.**]**

Textual Amendments

F215 Words in s. 259JD(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(4)**

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F216 S. 259JD(10)(11) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 13(2)**

Meaning of excessive PE inclusion income

[F217259JE

("1) In section 259JD(10), "excessive PE inclusion income" of the company means—

(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company, or

(b) where paragraph (b) of that subsection applies, the PE inclusion income of the company so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(2) For this purpose, "PE inclusion income" of a company for an accounting period means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(a) is actually made, or

(b) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

(a) the circumstances giving rise to the amount will not result in—

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

(5) "The aggregate effect on taxable profits" is the sum of—

(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259JD(8)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction

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in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F217 S. 259JE inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 13(3)**

CHAPTER 11

IMPORTED MISMATCHES

Introduction

259K Overview of Chapter

(1) This Chapter contains provision denying deductions in connection with payments or quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.

(2) Section 259KA contains the conditions that must be met for this Chapter to apply and defines "imported mismatch payment" and "imported mismatch arrangement".

(3) Section 259KB defines "dual territory double deduction", "excessive PE deduction" and "PE jurisdiction".

(4) Section 259KC contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.

F218 **[** Section 259KD provides for relief where an amount is deducted from dual inclusion (4A) income.**]**

F219 **[** Section 259KE sets a limit on reductions under section 259KC.**]** (4B)

F220 **[** Section 259KF contains provision for cases also falling within Part 4 (transfer (4C) pricing).**]**

(5) See also section 259BB for the meaning of "payment", "quasi-payment", "relevant deduction", "payment period" and "payer".

Textual Amendments

F218 S. 259K(4A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 15**, 19(4)

F219 S. 259K(4B) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 20**

F220 S. 259K(4C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 32**

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Application of Chapter

259KA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to G are met.

(2) Condition A is that a payment or quasi-payment ("the imported mismatch payment") is made under, or in connection with, an arrangement ("the imported mismatch arrangement").

(3) Condition B is that, in relation to the imported mismatch payment, the payer ("P") is within the charge to corporation tax for the payment period.

(4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.

(5) A "series of arrangements" means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement ("the over-arching arrangement").

(6) Condition D is that—

(a) under an arrangement in the series other than the imported mismatch arrangement, there is a payment or quasi-payment ("the mismatch payment") in relation to which it is reasonable to suppose that there is or will be—

(i) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),

(ii) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),

(iii) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),

(iv) a hybrid payee deduction/non-inclusion mismatch (see section 259GB),

(v) a multinational payee deduction/non-inclusion mismatch (see section 259HB),

(vi) a hybrid entity double deduction amount (see section 259IA(4)), or

(vii) a dual territory double deduction (see section 259KB), or

(b) as a consequence of an arrangement in the series other than the imported mismatch arrangement, there is or will be an excessive PE deduction (see section 259KB),

and in this Chapter "the relevant mismatch" means the mismatch, amount or deduction concerned.

[[F221](7) Condition E is that it is reasonable to suppose that the relevant mismatch is not capable of counteraction.

(7A) A relevant mismatch is capable of counteraction to the extent it is capable of being considered, for the purposes of determining the tax treatment of a person, other than P, under the law of a territory that is OECD mismatch compliant.

(7B) If a proportion of the relevant mismatch is not capable of being so considered under the law of any such territory—

(a) Condition E is met in relation to that proportion, and

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(b) the remainder of the relevant mismatch is to be ignored for the purposes of this Part.

(7C) A determination about the extent to which a relevant mismatch is capable of being so considered is to be made on a just and reasonable basis.

(7D) A territory is OECD mismatch compliant if under the law of that territory effect is given to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development on 5 October 2015 or any replacement or supplementary publication (within the meaning of section 259BA(3)).**]**

F222(8) . . . . . .

(9) Condition G is that—

(a) subsection (6)(a) applies and P is in the same control group (see section 259NB) **[**F223as a payee**]**, in relation to the mismatch payment, at any time in the period—

(i) beginning with the day the over-arching arrangement is made, and

(ii) ending with the last day of the payment period in relation to the imported mismatch payment,

(b) subsection (6)(b) applies and P is in the same control group as the company in relation to whom the excessive PE deduction arises at any time in that period, or

(c) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.

(10) The imported mismatch arrangement, or the over-arching arrangement, is a "structured arrangement" if it is reasonable to suppose that—

(a) the arrangement concerned is designed to secure the relevant mismatch, or

(b) the terms of the arrangement concerned share the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.

(11) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.

(12) Section 259KC contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

Textual Amendments

F221 S. 259KA(7)-(7D) substituted for s. 259KA(7) (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 21(2)**

F222 S. 259KA(8) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 21(3)**

F223 Words in s. 259KA(9)(a) substituted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 21(4)**

259KB Meaning of "dual territory double deduction", "excessive PE deduction" and "PE jurisdiction"

(1) This section has effect for the purposes of this Chapter.

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(2) A "dual territory double deduction" means an amount that can be deducted by a company both—

(a) from income for the purposes of a tax charged under the law of one territory, and

(b) from income for the purposes of a tax charged under the law of another territory.

(3) A "PE deduction" is an amount that—

(a) may (in substance) be deducted from a company's income for the purposes of calculating the company's taxable profits, for a taxable period, for the purposes of a tax that is charged on the company, under the law of a territory ("the PE jurisdiction"), by virtue of the company having a permanent establishment in that territory, and

(b) is in respect of a transfer of money or money's worth, from the company in the PE jurisdiction to the company in another territory ("the parent jurisdiction") in which it is resident for the purposes of a tax, that—

(i) is actually made, or

(ii) is (in substance) treated as being made for tax purposes.

F224(3A) **[** For the purposes of this section a "PE deduction" does not include—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.**]**

(4) A PE deduction is "excessive" so far as it exceeds the sum of—

(a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

F225(4A) **[** For the purposes of subsection (4) any increase in taxable profits or reduction of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.**]**

(5) A taxable period of the company is "permitted" for the purposes of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the taxable period mentioned in subsection (3)(a), or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period for the purposes of subsection (4), and

(ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

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Textual Amendments

F224 S. 259KB(3A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(9)**(13)

F225 S. 259KB(4A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 6**

Counteraction

259KC Denial of the relevant deduction in relation to the imported mismatch payment

(1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.

(2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by the amount of the relevant mismatch.

[F226(2A) But any reduction under this section has effect subject to section 259KD (deductions from dual inclusion income)**][**F227and section 259KE (limit on reduction under section 259KC)**]**.

(3) For corporation tax purposes, where this subsection applies, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by P's share of the relevant mismatch.

(4) P's share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis—

(a) where **[**F228section 259KA(6)(a)**]** applies, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment, or

(b) where the relevant mismatch is an excessive PE deduction, having regard (in particular) to—

(i) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the transfer, or

(ii) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, the extent to which the imported mismatch payment and each relevant payment would have funded (directly or indirectly) the transfer if it had actually been made.

(5) For the purposes of subsection (4)(a) and (b)(i), the imported mismatch payment is to be taken to fund the mismatch payment or transfer to the extent that the mismatch payment or transfer cannot be shown instead to be funded (directly or indirectly) by one or more relevant payments.

(6) For the purposes of subsection (4)(b)(ii), it is to be assumed that the imported mismatch payment would have funded the transfer if it had actually been made to the extent that it cannot be shown by P that, if it had been made, the transfer would have instead been funded (directly or indirectly) by one or more relevant payments.

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(7) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment or any mismatch payment, is a "relevant payment" in relation to the relevant mismatch if it is made under an arrangement in the series of arrangements mentioned in section 259KA(4) and—

(a) where **[**F229section 259KA(6)(a)**]** applies, it funds (directly or indirectly) the mismatch payment,

(b) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, it funds (directly or indirectly) that transfer, or

(c) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, it would have funded (directly or indirectly) that transfer had that transfer actually been made.

(8) In proceedings before a court or tribunal in connection with this section—

(a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and

(b) in relation to subsection (5), it is for P to show that the mismatch payment or transfer is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

Textual Amendments

F226 S. 259KC(2A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 16(2)**, 19(4)

F227 Words in s. 259KC(2A) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 22**

F228 Words in s. 259KC(4)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 16(3)**, 19(4)

F229 Words in s. 259KC(7)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 16(3)**, 19(4)

[F230**259KD** Deductions from dual inclusion income

(1) If—

(a) section 259KA(6)(a) applies as a result of any of sub-paragraphs (iii) to (vii), or

(b) section 259KA(6)(b) applies,

a reduction under section 259KC is not to exceed the relevant net amount.

(2) For the purposes of this section "the relevant net amount" means—

(a) if section 259KA(6)(a)(iii), (iv), (v) or (vi) applies, the amount which, if Chapter 5, 7, 8 or 9 applied to the tax treatment of any person in respect of the mismatch payment, could not be deducted from that person's income under that Chapter (ignoring the effect of any of the carry-forward provisions),

(b) if section 259KA(6)(a)(vii) applies, the amount by which the dual territory double deduction of the company mentioned in section 259KB(2) for a deduction period exceeds its dual inclusion income for that period, or

(c) if section 259KA(6)(b) applies, the amount by which the excessive PE deduction of the company mentioned in section 259KB(4) for the permitted

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taxable period mentioned there exceeds its dual inclusion income for that period.

(3) In subsection (2)(a) "the carry-forward provisions" means—

(a) section 259EC(3) (hybrid payer deduction/non-inclusion mismatches),

(b) section 259IB(3) to (5) (hybrid entity double deduction mismatches: investor within charge to corporation tax), and

(c) section 259IC(5) to (7) (hybrid entity double deduction mismatches: hybrid entity within charge to corporation tax).

(4) In subsection (2)(b) "dual inclusion income" of a company for a deduction period (that is to say, a period for which the dual territory double deduction is deducted as mentioned in section 259KB(2)(a)) means an amount that is both—

(a) ordinary income of the company for that period for the purposes of a tax charged as mentioned in section 259KB(2)(a), and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged as mentioned in section 259KB(2)(b).

(5) A taxable period of the company is "permitted" for the purposes of subsection (4)(b) if—

(a) the period begins before the end of 12 months after the end of the deduction period, or

(b) where that period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

(6) In subsection (2)(c) "dual inclusion income" of a company for a period means an amount that is both—

(a) ordinary income of the company for that period for the purposes of a tax charged under the law of the PE jurisdiction, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.

(7) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (6) if—

(a) the period begins before the end of 12 months after the end of the period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.**]**

Textual Amendments

F230 S. 259KD inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 17**, 19(4)

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[F231 259KE Limit on reduction under section 259KC

(1) This section applies where, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for a payment period is to be reduced under section 259KC.

(2) The reduction is not to exceed the amount that the relevant mismatch would have been if the amount of the mismatch payment had been equal to the amount of the imported mismatch payment.**]**

Textual Amendments

F231 S. 259KE inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 23**

[F232 259KF Provision for cases within Part 4

(1) This section applies where, in calculating the profits and losses of P for tax purposes, the amount to be deducted in respect of the imported mismatch payment is required to be reduced (whether or not to nil) under section 147(3) or (5) (tax calculations to be based on arm's length, not actual, provision).

(2) For the purposes of section 259KC(2), the amount of the relevant mismatch is to be determined as if the mismatch payment was reduced by the same proportion as the reduction mentioned in subsection (1).

(3) For the purposes of section 259KC(3)—

(a) the amount of the relevant mismatch is taken to be the amount it would have been had the arm's length provision been made or imposed instead of the actual provision in relation to the imported mismatch payment (making such assumptions as to the amount of the mismatch payment as are reasonable in the circumstances), and

(b) P's share of the relevant mismatch is to be determined accordingly.

(4) In subsection (3) "the arm's length provision" and "the actual provision" are to be construed in accordance with section 147(1).**]**

Textual Amendments

F232 S. 259KF inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 33**

CHAPTER 12

ADJUSTMENTS IN LIGHT OF SUBSEQUENT EVENTS ETC

259L Adjustments where suppositions cease to be reasonable

(1) Where—

(a) a reasonable supposition is made for the purposes of any provision of this Part, and

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(b) the supposition turns out to be mistaken or otherwise ceases to be reasonable,

such consequential adjustments as are just and reasonable may be made.

(2) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

(4) No adjustment is to be made under this section on the basis that an amount of ordinary income arises, as a result of a payment or quasi-payment, to a payee after that payee's last permitted taxable period in relation to the payment or quasi-payment (see section 259LA, which makes provision about certain such cases).

259LA Deduction from taxable total profits where an amount of ordinary income arises late

(1) This section applies where—

(a) a relevant deduction in respect of a payment or quasi-payment is reduced by section 259CD, 259DF, 259GC or 259HC or by more than one of those sections,

(b) no other provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, applies or will apply to the tax treatment of any person in respect of the payment or quasi-payment,

(c) the section or sections had effect because it was reasonable to suppose that the relevant deduction exceeded, or would exceed, the sum of the amounts of ordinary income arising, by reason of the payment or quasi-payment, to each payee for a permitted taxable period, and

(d) an amount of ordinary income ("the late income") arises—

(i) by reason of the payment or quasi-payment, but

(ii) not as a consequence of any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom,

to a payee for a taxable period ("the late period") that is not a permitted taxable period.

(2) An amount equal to the late income may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the payer's taxable total profits of the accounting period in which the late period ends.

(3) So much of that amount (if any) as cannot be deducted, in accordance with subsection (2), at step 2 in section 4(2) of CTA 2010 in calculating the taxable total profits of the accounting period in which the late period ends—

(a) is carried forward to subsequent accounting periods of the payer, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(4) But the total amount deducted from taxable total profits under this section, in relation to a payment or quasi-payment, may not exceed the total amount by which the relevant deduction is reduced as mentioned in (1)(a).

(5) In this section "permitted taxable period"—

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(a) where the relevant deduction was reduced under section 259CD, has the meaning given by section 259CC(2),

(b) where the relevant deduction was reduced under section 259DF, has the meaning given by section 259DD(2),

(c) where the relevant deduction was reduced under section 259GC, has the meaning given by section 259GB(6),

(d) where the relevant deduction was reduced under section 259HC, has the meaning given by section 259HB(4), or

(e) where the relevant deduction was reduced under two or more of the sections mentioned in the preceding paragraphs of this subsection, includes any taxable period that is a permitted period under a provision mentioned in the paragraphs concerned.

[Adjustments in light of later treatment for accounting purposes

F233 259LB

(1) This section applies where—

(a) a payment or quasi-payment gives rise to a debit of a company that is recognised for accounting purposes,

(b) a relevant deduction of the company in respect of some or all of the debit is reduced by any provision of this Part,

(c) there is a reversal of some or all of the debit by a credit of the company that is recognised for accounting purposes after the end of the payment period, and

(d) the credit is brought into account for corporation tax purposes.

(2) Such consequential adjustments as are just and reasonable may be made in respect of so much of the debit as gives rises to the relevant deduction and as is reversed by the credit.

(3) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(4) The power to make adjustments by virtue of this section may be exercised despite any time limit imposed by or under any enactment.**]**

Textual Amendments

F233 S. 259LB inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 18**, 19(4)

[F234 CHAPTER 12A

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

Textual Amendments

F234 Pt. 6A Ch. 12A inserted (with effect in accordance with Sch. 7 para. 40 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 15(3)**

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Introduction

259ZM Overview of Chapter

(1) This Chapter contains provision that allows surplus dual inclusion income to be allocated within a group of companies.

(2) Section 259ZMA contains the conditions that must be met for this Chapter to apply.

(3) Subsection (2) of that section defines "the DII surplus" and subsection (3) of that section defines "the DII shortfall".

(4) Sections 259ZMB to 259ZMD contain provision allowing the unused part of the DII surplus of one company to be treated as dual inclusion income of another company in the same group, where it can be matched against the unused part of the DII shortfall of the other company.

(5) Section 259ZME identifies when companies are in the same group.

Application of Chapter

259ZMA Circumstances in which Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that, for an accounting period ("the surplus period"), the dual inclusion income of a company ("company A") exceeds its counteraction amount.

In this Chapter, the amount of the excess is referred to as "the DII surplus".

(3) Condition B is that, for an accounting period ("the shortfall period"), the counteraction amount of another company ("company B") exceeds its dual inclusion income.

In this Chapter, the amount of the excess is referred to as "the DII shortfall".

(4) See section 259ZMF for the meanings of "dual inclusion income" and "counteraction amount".

(5) Condition C is that there is a period ("the overlapping period") that is common to both the surplus period and the shortfall period (and see subsections (8) and (9)).

(6) Condition D is that there is a time during the overlapping period when both company A and company B are within the charge to corporation tax.

(7) Condition E is that there is a time during the overlapping period when company A and company B are members of the same group of companies (see section 259ZME).

(8) Subsection (9) applies if, during any part of the overlapping period—

(a) either company A or company B is not within the charge to corporation tax, or

(b) company A and company B are not members of the same group of companies.

(9) That part is treated as not forming part of the overlapping period but instead as—

(a) forming part of the surplus period that is not included in the overlapping period, and

(b) forming part of the shortfall period that is not included in the overlapping period.

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Allocation of DII surplus

259ZMB Claims for allocation of DII surplus

(1) Company B may make a claim (an "allocation claim") for all or part of the unused part of the DII surplus of company A for the overlapping period (see section 259ZMC) to be allocated to company B for the shortfall period, if the following requirements are met.

Requirement 1 Company A consents to the allocation claim.

Requirement 2 The allocation claim identifies the amount of the DII surplus to which it relates.

Requirement 3 Company B has an amount of ordinary income for the shortfall period ("matchable income") that—

(a) is not dual inclusion income, and

(b) is equal to or exceeds the amount of the DII surplus to which the allocation claim relates.

Requirement 4 The allocation claim identifies the amount of matchable income to which the claim relates.

Requirement 5 The amount of matchable income to which the claim relates—

(a) is equal to the amount of the DII surplus to which the claim relates, and

(b) does not exceed the unused part of the DII shortfall of company B for the shortfall period (see section 259ZMD).

(2) If company B makes an allocation claim—

(a) the amount of company A's dual inclusion income for the surplus period is reduced by the amount of matchable income to which the claim relates, and

(b) the amount of matchable income to which the claim relates is treated in relation to company B as if the following assumptions were made.

(3) The assumptions are that—

(a) things done by or to company A in relation to that amount are treated as done by or to company B, and

(b) all other factual circumstances (or circumstances treated as existing as a result of any provision made by this Part) in relation to that amount are unchanged.

259ZMC The unused part of the DII surplus

(1) This section identifies the unused part of the DII surplus of company A for the overlapping period, for the purposes of an allocation claim made by company B ("the current allocation claim").

(2) The unused part of the DII surplus of company A for the overlapping period is the amount equal to—

(a) the DII surplus for the overlapping period (see subsection (3)), less

(b) the amount of prior allocations for that period (see subsections (4) to (7)).

(3) To determine the DII surplus for the overlapping period—

(a) take the proportion of the surplus period included in the overlapping period, and

(b) apply that proportion to the DII surplus for the surplus period.

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The DII surplus for the overlapping period is the amount given as a result of paragraph (b).

(4) To determine the amount of prior allocations for the overlapping period—

(a) identify any prior allocation claims for the purposes of this section (see subsection (5)), and

(b) take the steps set out in subsection (6) in relation to each such claim.

The amount of prior allocations for the overlapping period is the total of the previously used amounts given at Step 3 in subsection (6) for all the prior allocation claims.

(5) An allocation claim is a prior allocation claim for the purposes of this section if—

(a) it is an allocation claim made by a company in respect of all or part of the DII surplus of company A for the surplus period,

(b) it is made before the current allocation claim, and

(c) it has not been withdrawn.

(6) These are the steps referred to in subsection (4)(b) to be taken in relation to each prior allocation claim.

Step 1 Identify the overlapping period for the prior allocation claim.

Step 2 Identify any period that is common to the overlapping period for the current allocation claim and the overlapping period for the prior allocation claim. If there is a common period, go to Step 3. If there is no common period, there is no previously allocated amount in relation to the prior allocation claim (and ignore Step 3).

Step 3 Determine the previously allocated amount of the DII surplus in relation to the prior allocation claim (see subsection (7)).

(7) To determine the previously allocated amount of the DII surplus in relation to the prior allocation claim—

(a) take the proportion of the overlapping period for the prior allocation claim that is included in the common period identified at Step 2 in subsection (6) in relation to that claim, and

(b) apply that proportion to the amount of the DII surplus allocated on the prior allocation claim.

The previously allocated amount of the DII surplus in relation to the prior allocation claim is the amount given as a result of paragraph (b).

(8) If two or more allocation claims are made at the same time, for the purposes of this section treat the claims as made—

(a) in such order as the companies making them may jointly elect, or

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(9) For the purposes of Step 3 in subsection (6), the amount of the DII surplus allocated on a prior allocation claim is determined on the basis that an amount is allocated on the claim before it is allocated on a later claim.

(10) If the use of the proportion mentioned in subsection (3) or (7) would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.

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259ZMD The unused part of the DII shortfall

(1) This section identifies the unused part of the DII shortfall of company B for the shortfall period, for the purposes of an allocation claim made by company B ("the current allocation claim").

(2) The unused part of the DII shortfall of company B for the shortfall period is the amount equal to—

(a) the DII shortfall for the shortfall period, less

(b) the amount of prior matches for the shortfall period (see subsections (3) to (5)).

(3) To determine the amount of prior matches for the shortfall period—

(a) identify any prior allocation claims for the purposes of this section (see subsection (4)), and

(b) determine the previously matched amount of the DII shortfall in relation to each prior allocation claim (see subsection (5)).

The amount of prior matches for the shortfall period is the total of the previously matched amounts of the DII shortfall in relation to all the prior allocation claims.

(4) An allocation claim is a prior allocation claim for the purposes of this section if—

(a) it is an allocation claim made by company B for the shortfall period,

(b) it is made before the current allocation claim, and

(c) it has not been withdrawn.

(5) The previously matched amount of the DII shortfall in relation to a prior allocation claim is the amount that is treated as dual inclusion income of company B for the shortfall period as a result of the claim (see section 259ZMB(3)(a)).

(6) If two or more allocation claims are made at the same time, for the purposes of this section treat the claims as made—

(a) in such order as company B may elect, or

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(7) For the purposes of subsection (3)(b), the amount of the DII shortfall matched in relation to a prior allocation claim is determined on the basis that an amount is matched on the claim before it is matched on a later claim.

Groups

259ZME Groups of companies

(1) For the purposes of this Chapter, company A and company B are members of the same group of companies if—

(a) one is a 75% subsidiary of the other, or

(b) both are 75% subsidiaries of a third company.

(2) In subsection (1), "75% subsidiary" has the same meaning as in Part 5 of CTA 2010 (group relief) (see section 151 of that Act).

(3) Sections 154, 155A, 155B and 156 of CTA 2010 (members of group of companies: arrangements for transfers of companies) apply for the purposes of this Chapter as they

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apply for the purposes of Part 5 of CTA 2010, but as if references to a surrenderable amount were to the DII surplus.

"Dual inclusion income" and "counteraction amount"

259ZMF Meaning of "dual inclusion income" and "counteraction amount"

(1) This section applies for the purposes of this Chapter.

(2) The "dual inclusion income" of a company for an accounting period means the amount of any income that is dual inclusion income of the company for that period for the purposes of any provision of this Part.

(3) An amount of income that is dual inclusion income of a company for the purposes of more than one provision of this Part is not counted more than once for the purposes of subsection (2).

(4) The "counteraction amount" of a company for an accounting period means the total of all the following amounts that are applicable to the company for that period—

(a) the restricted deduction, within the meaning given by section 259EC(2);

(b) where section 259ED applies and there is only one payee, the relevant amount, within the meaning given by section 259ED(3);

(c) where section 259ED applies and there is more than one payee, the payee's share of the relevant amount, within the meaning given by section 259ED(3) and (6);

(d) the excessive PE deduction, within the meaning given by section 259FA(8);

(e) where section 259IB applies, the hybrid entity double deduction amount, within the meaning given by section 259IA(4);

(f) where section 259IC applies, the restricted deduction, within the meaning given by section 259IC(3);

(g) the dual territory double deduction amount, within the meaning given by section 259JA(5), reduced by the amount of the impermissible overseas deduction (if any), within the meaning given by section 259JC(2);

(h) a dual territory double deduction, within the meaning given by section 259KB(2);

(i) an excessive PE deduction, within the meaning given by section 259KB(3) to (5).**]**

CHAPTER 13

ANTI-AVOIDANCE

259M Countering the effect of avoidance arrangements

(1) This section applies where—

(a) relevant avoidance arrangements exist,

(b) as a result of those arrangements, any person (whether party to the arrangements or not) would, apart from this section, obtain a relevant tax advantage, and

(c) that person is—

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(i) within the charge to corporation tax at the time the person would obtain the relevant tax advantage, or

(ii) would be within the charge to corporation tax at that time but for the relevant avoidance arrangements.

(2) The relevant tax advantage is to be counteracted by making such adjustments to the person's treatment for corporation tax purposes as are just and reasonable.

(3) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(4) A person obtains a "relevant tax advantage" if—

(a) the person avoids, to any extent, any provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, restricting whether or how that person may make a deduction from income for the purposes of calculating taxable profits, [F235]...

(b) the person avoids, to any extent, an amount being treated as income of that person under any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom**[**[F236], or

(c) the person does anything which, to any extent, results in an amount being treated as dual inclusion income of that person under any provision of this Part.**]**

(5) "Relevant avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to enable any person to obtain a relevant tax advantage.

(6) But arrangements are not "relevant avoidance arrangements" if the obtaining of the relevant tax advantage can reasonably be regarded as consistent with the principles on which the provisions of this Part, or the equivalent provisions under the law of a territory outside the United Kingdom, that are relevant to the arrangements are based (whether express or implied) and the policy objectives of those provisions.

(7) For the purposes of determining the principles and policy objectives mentioned in subsection (6), regard may, where appropriate, be had to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development ("OECD") on 5 October 2015 or any replacement or supplementary publication.

(8) In subsection (7) "replacement or supplementary publication" means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that subsection (or any replacement of, or supplement to, it).

Textual Amendments

F235 Word in s. 259M(4) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 14**

F236 S. 259M(4)(c) and word inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 14**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F237CHAPTER 13A

SPECIAL PROVISION CONCERNING TRANSPARENT FUNDS

Textual Amendments

F237 Pt. 6A Ch. 13A inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 35(3)**

259MA Meaning of "transparent fund"

(1) In this Chapter "transparent fund" means a collective investment scheme, or an AIF (that is not a collective investment scheme), if—

(a) were all of the profits or income of the fund to arise from sources inside the United Kingdom and

(b) were all of its participants within the charge to income tax,

its profits or income would be profits or income of its participants for the purposes of that tax.

(2) In this section—

"AIF" has the meaning given by regulation 3 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773);

"collective investment scheme" has the meaning given by section 235 of the Financial Services and Markets Act 2000;

"participant", in relation to a transparent fund, means a person who—

(a) takes part in the arrangements constituting the fund, whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise, and

(b) does not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

259MB Application of Chapters 3, 4, 5 and 7

(1) This section applies where—

(a) Chapter 3, 4, 5 or 7 applies in respect of a payment or quasi-payment,

(b) the relevant structured arrangement condition is not met, and

(c) it is reasonable to suppose that a proportion of the payment or quasi-payment is attributable to a person as a result of that person's interest (direct or indirect) in a transparent fund that is the primary fund in relation to that person.

(2) For the purposes of this section, a proportion of a payment or quasi-payment is attributable to a person if, as a result of that payment or quasi-payment—

(a) ordinary income arises to that person, or

(b) would arise if the person were resident for tax purposes in the United Kingdom.

(3) The primary fund in relation to a person is—

(a) where the income arises or would arise because of an indirect interest the person has in a transparent fund as a result of another transparent fund, or a

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series of transparent funds, having an interest in that first fund, that first fund, or

(b) where the income arises or would arise because of a direct or indirect interest the person has in a single transparent fund, that fund.

(4) The relevant structured arrangement condition is the condition—

(a) where Chapter 3 applies, in section 259CA(6)(c),

(b) where Chapter 4 applies, in section 259DA(6)(c),

(c) where Chapter 5 applies, in section 259EA(7)(c), and

(d) where Chapter 7 applies, in section 259GA(7)(c).

(5) The Chapter in question applies subject to subsection (6).

(6) If it is reasonable to suppose that the proportion of the payment or quasi-payment that is attributable to a person as a result of the person's interest in the primary fund is less than 10% of the relevant amount, that proportion is to be ignored for the purposes of determining the extent of a mismatch under the Chapter in question.

(7) For the purposes of subsection (6) "the relevant amount" means the amount of ordinary income that it would, on the relevant assumption, have been reasonable to expect to arise to the primary fund as a result of—

(a) in the case of a payment, the payment, or

(b) in the case of a quasi payment, the circumstances giving rise to the relevant deduction (see section 259BB(2)).

(8) The relevant assumption is that the primary fund were a person to whom ordinary income would arise as a result of that payment or those circumstances.

(9) Where a person to whom a proportion of the payment or quasi-payment is attributable as a result of the person's interest in the primary fund is connected (within the meaning given by section 1122 of CTA 2010, ignoring subsections (4) and (7) of that section) to another person to whom a proportion is attributable as a result of that person's interest in that same fund, the rights and interests of those persons are to be aggregated (and accordingly if the proportion attributable between them is 10% or more of the relevant amount, that proportion is not to be ignored).

259MC Application of Chapter 9

(1) This section applies where—

(a) Chapter 9 applies in relation to a hybrid entity double deduction amount (see section 259IA(4)) in respect of an investor in a hybrid entity,

(b) the condition in section 259IA(6)(b) is not met, and

(c) that investor in the hybrid entity is an investor in it as a result of an interest (direct or indirect) it has in a transparent fund ("the relevant fund") that directly holds an interest in—

(i) the hybrid entity, or

(ii) another entity that is not a transparent fund and which holds a direct or indirect interest in the hybrid entity.

(2) Chapter 9 applies subject to subsection (3).

(3) If it is reasonable to suppose that—

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) some or all of the hybrid entity double deduction amount that relates to the investor arises as a result of the investor's interest in the relevant fund, and

(b) the amount that arises as a result of that interest ("the relevant amount") is less than 10% of the potential double deduction amount,

the relevant amount is to be ignored for the purposes of determining the extent of a mismatch under that Chapter.

(4) In this section "potential double deduction amount" means the hybrid double deduction amount that would arise in relation to the relevant fund if it were an investor in the hybrid entity.

(5) Where the investor is connected (within the meaning given by section 1122 of CTA 2010, ignoring subsections (4) and (7) of that section) to another investor with an interest in the relevant fund, the rights and interests of those investors are to be aggregated (and accordingly, if the sum of the relevant amounts in respect of each of them is 10% or more of the potential double deduction amount, that proportion is not to be ignored).

259MD Application of Chapter 11

(1) Subsection (2) applies where—

(a) Chapter 11 applies as a result of sub-paragraph (i), (ii), (iii) or (iv) of section 259KA(6)(a) applying as a result of a payment or quasi-payment to which section 259MB would apply if the Chapter corresponding to that sub-paragraph applied in relation to that payment or quasi-payment, and

(b) the condition in section 259KA(9)(c) is not met.

(2) Where this subsection applies, section 259MB(6) applies for the purposes of determining the extent of a relevant mismatch under Chapter 11.

(3) The Chapters corresponding to the sub-paragraphs of section 269KA(6)(a) mentioned in subsection (1) are as follows—

Sub-paragraph (i)	Chapter 3
Sub-paragraph (ii)	Chapter 4
Sub-paragraph (iii)	Chapter 5
Sub-paragraph (iv)	Chapter 7.

(4) Subsection (5) applies where—

(a) Chapter 11 applies as a result of section 259KA(6)(a)(vi) applying as a result of a hybrid double deduction amount to which section 259MC would apply if Chapter 9 applied in relation to that amount, and

(b) the condition in section 259KA(9)(c) is not met.

(5) Where this subsection applies, section 259MC(3) applies for the purposes of determining the extent of a relevant mismatch under Chapter 11.**]**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

CHAPTER 14

INTERPRETATION

Financial instruments

259N Meaning of "financial instrument"

(1) A "financial instrument" means—

(a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),

(b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),

(c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),

(d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or

(e) anything else that is a financial instrument.

(2) In subsection (1)(e) "financial instrument" has the meaning that it has for the purposes of UK generally accepted accounting practice.

(3) But "financial instrument" does not include—

(a) a hybrid transfer arrangement (within the meaning given by section 259DB), or

[F238(b) anything of a description specified in regulations made by the Treasury.**]**

F239(4) . . . . . .

Textual Amendments

F238 S. 259N(3)(b) substituted (with effect in accordance with s. 19(8)(9) of the amending Act) by Finance Act 2019 (c. 1), **s. 19(4)(a)**

F239 S. 259N(4) omitted (with effect in accordance with s. 19(8)(9) of the amending Act) by virtue of Finance Act 2019 (c. 1), **s. 19(4)(b)**

Relevant investment funds

259NA Meaning of "relevant investment fund"

(1) "Relevant investment fund" means—

(a) an open-ended investment company within the meaning of section 613 of CTA 2010,

(b) an authorised unit trust within the meaning of section 616 of that Act, or

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(c) an offshore fund within the meaning of section 354 of this Act (see section 355),

which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect).

(2) "The genuine diversity of ownership condition" means—

(a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and

(b) in the case of an open-ended investment company or an authorised unit trust, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).

Control groups and related persons

259NB Control groups

(1) A person ("A") is in the same control group as another person ("B")—

(a) throughout any period for which they are consolidated for accounting purposes,

(b) on any day on which the participation condition is met in relation to them, or

(c) on any day on which the 50% investment condition is met in relation to them.

(2) A and B are consolidated for accounting purposes for a period if—

(a) their financial results for the period are required to be comprised in group accounts,

(b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or

(c) their financial results for the period are in fact comprised in group accounts.

(3) In subsection (2), "group accounts" means accounts prepared under—

(a) section 399 of the Companies Act 2006, or

(b) any corresponding provision of the law of a territory outside the United Kingdom.

(4) The participation condition is met in relation to A and B ("the relevant parties") on a day if, within the period of 6 months beginning with the day—

(a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or

(b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.

(5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

(6) The 50% investment condition is met in relation to A and B if—

(a) A has a 50% investment in B, or

(b) a third person has a 50% investment in each of A and B.

(7) Section 259ND applies for the purposes of determining whether a person has a "50% investment" in another person.

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259NC Related persons

(1) Two persons are "related" on any day that—

(a) they are in the same control group (see section 259NB), or

(b) the 25% investment condition is met in relation to them.

(2) The 25% investment condition is met in relation to a person ("A") and another person ("B") if—

(a) A has a 25% investment in B, or

(b) a third person has a 25% investment in each of A and B.

(3) Section 259ND applies for the purposes of determining whether a person has a "25% investment" in another person.

Modifications etc. (not altering text)

C39 S. 259NC applied by 2010 c. 4, s. 356OT(6) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

C40 S. 259NC applied by 2007 c. 3, s. 517U(6) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

259ND Meaning of "50% investment" and "25% investment"

(1) Where this section applies for the purposes of determining whether a person has a "50% investment" in another person for the purposes of section 259NB(6), references in this section to X% are to be read as references to 50%.

(2) Where this section applies for the purposes of determining whether a person has a "25% investment" in another person for the purposes of section 259NC(2), references in this section to X% are to be read as references to 25%.

(3) A person ("P") has an X% investment in a company ("C") if it is reasonable to suppose that—

(a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,

(b) P possesses or is entitled to acquire X% or more of the voting power in C, or

(c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X% or more of the proceeds of the disposal.

(4) A person ("P") has an X% investment in another person ("Q") if it is reasonable to suppose that—

(a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or

(b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.

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(5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.

(6) For the purposes of subsections (3) and (4), in determining what percentage investment a person ("P") has in another person ("U"), where P acts together with a third person ("T") in relation to U, P is to be taken to have all of T's rights and interests in relation to U.

[F240(7) P is to be taken to "act together" with T in relation to U if (and only if) subsection (7A) or (7B) applies.

(7A) This subsection applies if—

(a) P and T are party to a partnership agreement that—

(i) it is reasonable to suppose is designed to affect the value of any of T's rights or interest in relation to U, or

(ii) relates to the exercise of any of T's rights in relation to U, or

(b) the same person manages—

(i) some or all of P's rights or interests in relation to U, and

(ii) some or all of T's rights or interests in relation to U.

(7B) This subsection applies if P has a relevant investment in U and—

(a) P and T are connected (within the meaning given by section 163),

(b) for the purposes of influencing the conduct of U's affairs—

(i) P is able to secure that T acts in accordance with P's wishes,

(ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes,

(iii) T is able to secure that P acts in accordance with T's wishes, or

(iv) P can reasonably be expected to act, or typically acts, in accordance with T's wishes, or

(c) P and T are party to any arrangement that—

(i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or

(ii) relates to the exercise of any of T's rights in relation to U.

(7C) To determine whether P has a "relevant investment" in U at a particular time, subsections (3) and (4) apply but as if—

(a) for "an X%", in both places, there were substituted " a relevant ", and

(b) for "X% or more", in each place, there were substituted " greater than 5% ".

(7D) For that purpose—

(a) subsection (6) is to be ignored, and

(b) P's rights and interests are to be aggregated with the rights and interests of persons connected to P (within the meaning given by section 1122 of CTA 2010, ignoring subsection (4) of that section).**]**

(8) F241... P does not "act together" with T in relation to U under **[**F242paragraph (b) of subsection (7A)**]** where—

(a) the person who manages the rights or interests of P mentioned in sub-paragraph (i) of that paragraph, does so as the operator of a collective investment scheme,

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(b) that person manages the rights or interests of T mentioned in sub-paragraph (ii) of that paragraph as the operator of a different collective investment scheme, and

(c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U 's affairs.

(9) In subsection (8) "collective investment scheme" and "operator" have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

Textual Amendments

F240 S. 259ND(7)-(7D) substituted for s. 259ND(7) (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 24(2)**, 36

F241 Word in s. 259ND(8) omitted (retrospectively) by virtue of Finance Act 2021 (c. 26), **Sch. 7 paras. 24(3)(a)**, 36

F242 Words in s. 259ND(8) substituted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 24(3)(b)**, 36

Modifications etc. (not altering text)

C41 S. 259ND(3)-(9) applied (with modifications) (with effect in accordance with s. 121(6) of the amending Act) by 2014 c. 26, Sch. 33A para. 2(4) (as inserted by Finance Act 2021 (c. 26), **Sch. 30 para. 10**)

⌈F243 Qualifying institutional investors etc

Textual Amendments

F243 S. 259NDA and cross-heading inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 29**

259NDA Meaning of "qualifying institutional investor" etc

(1) This section has effect for the purposes of this Part.

(2) References to "qualifying institutional investor" have the meaning given by paragraph 30A of Schedule 7AC to TCGA 1992.

(3) A qualifying institutional investor is "based" in a territory—

(a) if it is resident for tax purposes in the territory, or

(b) where it is not resident anywhere for tax purposes, if it is established in the territory.⌋

Partnerships

259NE Treatment of a person who is a member of a partnership

(1) This section applies where a person is a member of a partnership.

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(2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person's share of (as the case may be) income, profits or an amount of the partnership.

(3) For this purpose "the person's share" of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.

(4) In this section—

(a) "partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and

(b) "member" of a partnership is to be read accordingly.

[F244 Securitisation companies

Textual Amendments

F244 S. 259NEZA and cross-heading inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 34**, 36

259NEZA Securitisation companies

(1) If the tax treatment of a securitisation company would (apart from this section) fall to be adjusted by virtue of provision in this Part, the provision is to be treated as of no effect as regards that company (and accordingly, no such adjustment may be made).

(2) In this section—

"securitisation company" means a company to which specified regulations apply;

"specified regulations" has the meaning given by regulation 2 of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296).**]**

[F245 Priority

Textual Amendments

F245 S. 259NEA and cross-heading inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 20**

259NEA Priority

For the purposes of this Part, the provisions of Part 10 (corporate interest restriction) are to be treated as of no effect.**]**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F246 Relevant debt relief circumstances

Textual Amendments

F246 Ss. 259NEB-259NEF and cross-heading inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 5**, 36

259NEB Relevant debt relief circumstances: introductory

(1) This section applies for the purposes of section 259CB(3).

(2) Excess arises in "relevant debt relief circumstances" if (and only if)—

(a) the payment or quasi-payment mentioned in section 259CB(2) comprises the release of a liability to pay an amount under a debtor relationship (within the meaning given by section 302(6) of CTA 2009), and

(b) the circumstances in section 259NEC, 259NED, 259NEE, or 259NEF apply.

(3) For the purposes of those sections references to—

(a) "the relevant release" means the release of liability mentioned in subsection (2)(a),

(b) "loan relationship" is to be construed in accordance with section 302 of CTA 2009,

(c) "amortised cost basis of accounting" is to be construed in accordance with section 313(4) and (4A) of that Act,

(d) "connected companies relationship" is to be construed in accordance with section 348 of that Act, and

(e) "deemed release" and "relevant rights" are to be construed in accordance with section 358(3) to (4A) of that Act.

259NEC Release of debts

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship, and

(b) condition A, B, C, D or E is met.

(3) Condition A is that the release is part of a statutory insolvency arrangement (within the meaning of section 1319 of CTA 2009).

(4) Condition B is that the release is not a release of relevant rights and is—

(a) in consideration of shares forming part of the ordinary share capital of a payee, or

(b) in consideration of any entitlement to such shares.

(5) Condition C is that—

(a) a payee meets one of the insolvency conditions (see subsection (8)), and

(b) the debtor relationship is not a connected companies relationship.

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(6) Condition D is that the release is in consequence of the making of a mandatory reduction instrument or a third country instrument or the exercise of a stabilisation power under Part 1 of the Banking Act 2009 **[**F247or the exercise of a third-country instrument or a stabilisation power under Schedule 11 to the Financial Services and Markets Act 2023**]**.

(7) Condition E is that—

(a) the release is neither a deemed release nor a release of relevant rights, and

(b) immediately before the release, it is reasonable to assume that, without the release and any arrangements of which the release forms part, there would be a material risk that at some time within the next 12 months a payee would be unable to pay its debts.

(8) For the purposes of this section a company meets the insolvency conditions if—

(a) it is in insolvent liquidation,

(b) it is in insolvent administration,

(c) it is in insolvent administrative receivership,

(d) an appointment of a provisional liquidator is in force in relation to the company under section 135 of the Insolvency Act 1986 or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(e) under the law of a country or territory outside the United Kingdom circumstances corresponding to those mentioned in paragraph (a), (b), (c) or (d) exist.

(9) Section 323(A1) of CTA 2009 applies for the interpretation of subsection (7)(b); and the rest of that section applies for the interpretation of subsection (8).

Textual Amendments

F247 Words in s. 259NEC(6) inserted (31.12.2023) by The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023 (S.I. 2023/1313), regs. 1(2), **13**

259NEDRelease of connected companies debts

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place in an accounting period for which—

(i) an amortised cost basis of accounting is used in respect of the debtor relationship, and

(ii) the debtor relationship is a connected companies relationship, and

(b) the release is neither—

(i) a deemed release, nor

(ii) a release of relevant rights.

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259NEE Release of connected companies debts during creditor's insolvency

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship,

(b) condition A, B, C, D or E in section 357 of CTA 2009 is met in relation to the payer,

(c) immediately before the time when any of those conditions was first met the debtor relationship was a connected companies relationship, and

(d) immediately after that time it was not such a relationship.

259NEF Corporate rescue: debt released shortly after connection arises

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place within 60 days of the payer and a payee becoming connected with one another (within the meaning of section 363 of CTA 2009), and

(b) the corporate rescue conditions are met.

(3) The corporate rescue conditions are—

(a) that the payer and the payee became connected as a result of an arm's length transaction, and

(b) immediately before the payer and the payee became connected it was reasonable to assume that, without the connection and any arrangements of which the connection forms part, there would be a material risk that at some point within the next 12 months the payee would have been unable to pay its debts.

(4) For the purposes of subsection (3)(b), a payee is unable to pay its debts if—

(a) it is unable to pay its debts as they fall due, or

(b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.**]**

Definitions

259NF Definitions

In this Part—

"arrangement" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"CFC" and "CFC charge" have the meaning given by section 259B(4);

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"control group" has the meaning given by section 259NB;

"financial instrument" has the meaning given by section 259N;

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"foreign CFC" and "foreign CFC charge" have the meaning given by section 259B(4);

"hybrid entity" has the meaning given by section 259BE;

"investor", in relation to a hybrid entity, has the meaning given by section 259BE(4);

"investor jurisdiction" has the meaning given by section 259BE(4);

"ordinary income" is to be read in accordance with sections 259BC and 259BD;

"payee"—

(a) in relation to a payment, has the meaning given by section 259BB(6)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);

"payee jurisdiction" has the meaning given by 259BB(9);

"payer"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2);

"payment" has the meaning given by section 259BB(1);

"payment period"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(b), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2);

"permanent establishment" has the meaning given by section 259BF;

"quasi-payment" has the meaning given by section 259BB(2) to (5);

"related" has the meaning given by section 259NC;

"relevant deduction"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(b), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);

"relevant investment fund" has the meaning given by section 259NA;

"tax" has the meaning given by section 259B;

"taxable period" means—

(a) in relation to corporation tax, an accounting period,

(b) in relation to income tax, a tax year,

(c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371BC(3)),

(d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and

(e) in relation to any other tax, a period for which the tax is charged;

"taxable profits" is to be read in accordance with sections 259BC(2) and 259BD(5).**]**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F248]PART 7

TAX TREATMENT OF FINANCING COSTS AND INCOME

Textual Amendments

F248 Pt. 7 repealed (with effect in accordance with Sch. 5 para. 25(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 11(1)**

Modifications etc. (not altering text)

C42 Pt. 7 modified (11.7.2023) by Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 38** (with Sch. 3 paras. 37, 39, 40)

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***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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PART 8

OFFSHORE FUNDS [F249ETC]

Textual Amendments

F249 Word in Pt. 8 heading inserted (retrospective to 5.12.2013) by Finance Act 2014 (c. 26), **s. 289(5)(b)**(6)

Tax treatment of participants in offshore funds

354 Power to make regulations about tax treatment of participants

(1) The Treasury may by regulations make provision about the treatment of participants in an offshore fund for the purposes of enactments relating to income tax, corporation tax or capital gains tax.

(2) Regulations under subsection (1) may, in particular, make special provision about the treatment of participants in an offshore fund comprising—

(a) a part of umbrella arrangements (see section 360), or

(b) arrangements relating to a class of interest in other arrangements (see section 361).

(3) Regulations under subsection (1) may, in particular—

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(a) make provision for an offshore fund, or a trustee or officer of an offshore fund, to make elections relating to the treatment of participants in the offshore fund for the purposes of income tax, corporation tax or capital gains tax,

(b) make provision about the supply of information by offshore funds, or trustees or officers of offshore funds—

(i) to Her Majesty's Revenue and Customs, or

(ii) to participants,

(c) make provision about the preparation of accounts and the keeping of records by offshore funds or trustees or officers of offshore funds, and

(d) make other provision about the administration of offshore funds.

(4) Regulations under subsection (1) may, in particular, make provision consequential on the repeal by the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) of Chapter 5 of Part 17 of ICTA (offshore funds).

(5) Regulations under subsection (1) may, in particular—

(a) provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter,

(b) make provision by reference to standards or other documents issued by any person,

(c) modify an enactment (whenever passed or made),

(d) make different provision for different cases or different purposes, and

(e) make incidental, consequential, supplementary and transitional provision and savings.

(6) Regulations under subsection (1) may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.

(7) In this section—

"enactment" includes subordinate legislation (within the meaning of the Interpretation Act 1978), and

"modify" includes amend, repeal or revoke.

355 Meaning of "offshore fund"

(1) In section 354 "offshore fund" means—

(a) a mutual fund constituted by a body corporate resident outside the United Kingdom,

(b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or

(c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom.

(2) Subsection (1)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.

(3) In this section—

"body corporate" does not include a limited liability partnership, and

"co-ownership" is not restricted to the meaning of that term in the law of any part of the United Kingdom.

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(4) See also section 151W(b) of TCGA 1992, section 564U(b) of ITA 2007 and section 519(4)(b) of CTA 2009 (which have the effect that investment bond arrangements are not an offshore fund for the purposes of section 354).

356 Meaning of "mutual fund"

(1) In section 355 "mutual fund" means arrangements with respect to property of any description (including money) that meet conditions A, B and C.

(2) Subsection (1) is subject—

(a) to the exceptions made by or under sections 357 and 359, and

(b) to sections 360 and 361.

(3) Condition A is that the purpose or effect of the arrangements is to enable the participants—

(a) to participate in the acquisition, holding, management or disposal of the property, or

(b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(4) Condition B is that the participants do not have day-to-day control of the management of the property.

(5) For the purposes of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.

(6) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—

(a) the net asset value of the property that is the subject of the arrangements, or

(b) an index of any description.

(7) The Treasury may by regulations amend condition C.

(8) Regulations under subsection (7) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

357 Exceptions to definition of "mutual fund"

(1) Arrangements are not a mutual fund for the purposes of section 355 if—

(a) condition D is met, and

(b) condition E or F is met.

(2) Condition D is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in section 356(6) only in the event of the winding up, dissolution or termination of the arrangements.

(3) Condition E is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

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(4) Condition F is that—

(a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements,

(b) subsection (5), (6) or (7) applies, and

(c) the arrangements are not designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.

(5) This subsection applies if none of the assets that are the subject of the arrangements is a relevant income-producing asset (see section 358).

(6) This subsection applies if, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.

(7) This subsection applies if—

(a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and

(b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.

(8) For the purposes of this section the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

358 Meaning of "relevant income-producing asset"

(1) This section has effect for the purposes of section 357.

(2) An asset is a relevant income-producing asset if it produces income on which, if it were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (but see subsections (3) and (4)).

(3) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—

(a) the asset (taking account of the hedging), or

(b) any product of the hedging arrangements.

(4) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets (as defined by this section).

359 Power to make regulations about exceptions to definition of "mutual fund"

(1) The Treasury may by regulations amend or repeal any provision of section 357 or 358.

(2) The Treasury may by regulations provide that arrangements are not a mutual fund for the purposes of section 355—

(a) in specified circumstances, or

(b) if they are of a specified description.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Regulations under this section may include provision having effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.

(4) Regulations under subsection (1) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

Supplementary

360 Treatment of umbrella arrangements

(1) This section has effect for the purposes of this Part.

(2) In the case of umbrella arrangements (see section 363)—

(a) each part of the umbrella arrangements is to be treated as separate arrangements, and

(b) the umbrella arrangements are to be disregarded.

(3) Subsection (2)(a) is subject to section 361.

361 Treatment of arrangements comprising more than one class of interest

(1) This section has effect for the purposes of this Part.

(2) Where there is more than one class of interest in arrangements (the "main arrangements")—

(a) the arrangements relating to each class of interest are to be treated as separate arrangements, and

(b) the main arrangements are to be disregarded.

(3) In relation to umbrella arrangements, "class of interest" does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

362 Meaning of "participant" and "participation"

(1) In this Part references to "participant", in relation to arrangements (or a fund), are to a person taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise.

(2) In this Part references (however expressed) to participation, in relation to arrangements (or a fund), are to be read in accordance with subsection (1).

363 Meaning of "umbrella arrangements" and "part of umbrella arrangements"

(1) In this Part "umbrella arrangements" means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.

(2) In this Part references to a part of umbrella arrangements are to the arrangements relating to a separate pool.

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[F250 363A [F251 Residence of undertakings for collective investment in transferable securities and alterative investment funds]]

[F252 (1) This section applies to—

(a) a UCITS which is authorised in a foreign country or territory pursuant to Article 5 of the UCITS Directive, and

(b) an AIF which is authorised or registered in a foreign country or territory, or is not authorised or registered but has its registered office in a foreign country or territory,

unless the UCITS or AIF is an excluded entity.

(2) If the UCITS or AIF is a body corporate which (apart from this section) would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax or capital gains tax, the body corporate is instead to be treated as if it were not resident in the United Kingdom.

(2A) A UCITS or AIF is "an excluded entity" if it—

(a) is a unit trust scheme the trustees of which are UK resident,

(b) is resident in the United Kingdom by virtue of section 14 of CTA 2009,

(c) is, or has been, an investment trust with respect to an accounting period, or

(d) is or has been—

(i) a company UK REIT in relation to an accounting period, or

(ii) a member of a group of companies at a time when the group is or was a group UK REIT in relation to an accounting period.

(2B) The Treasury may, by regulations, modify this section so as to—

(a) add a description of UCITS or AIF as an excluded entity,

(b) provide that a description of UCITS or AIF is no longer an excluded entity, or

(c) vary a description of an excluded entity.]

(3) If, by virtue of section 99 [F253]... of TCGA 1992, that Act applies in relation to the [F254 UCITS or AIF] as if it were a company, that Act applies as if the company were [F255 not resident] in the United Kingdom (if it would not otherwise do so).

(4) In this section [F256—

"AIF" has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013,

"foreign country or territory" means a country or territory outside the United Kingdom,

"investment trust with respect to an accounting period" is to be construed in accordance with section 1158 of CTA 2010,

"UCITS" means an undertaking for collective investment in transferable securities,

"the UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council,

"company UK REIT in relation to an accounting period" and "group UK REIT in relation to an accounting period" are to be construed in accordance with section 527 of CTA 2010.]]

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Textual Amendments

F250 S. 363A inserted (19.7.2011) by Finance Act 2011 (c. 11), **s. 59**

F251 S. 363A heading substituted (retrospective to 5.12.2013) by Finance Act 2014 (c. 26), **s. 289(5)(c)**(6)

F252 Ss. 363A(1)-(2B) substituted for s. 363A(1)(2) (retrospective to 5.12.2013) by Finance Act 2014 (c. 26), **s. 289(2)**(6)

F253 Words in s. 363A(3) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017 (S.I. 2017/1204), regs. 1(1), **14**

F254 Words in s. 363A(3) substituted (retrospective to 5.12.2013) by Finance Act 2014 (c. 26), **s. 289(3)**(6)

F255 Words in s. 363A(3) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 46 para. 146**

F256 Words in s. 363A(4) substituted (retrospective to 5.12.2013) by Finance Act 2014 (c. 26), **s. 289(4)**(6)

PART 9

AMENDMENTS TO RELOCATE PROVISIONS OF TAX LEGISLATION

364 Oil activities

Schedule 1, which inserts a new Chapter 16A (oil activities) in Part 2 (trading income) of ITTOIA 2005, has effect.

365 Alternative finance arrangements

Schedule 2, which—

(a) inserts a new Part 10A in ITA 2007 (see Part 1 of the Schedule),

(b) inserts a new Chapter 4 in Part 4 of TCGA 1992 (see Part 2 of the Schedule), and

(c) makes other amendments (see Part 3 of the Schedule),

has effect.

366 Power to amend the alternative finance provisions

(1) The Treasury may by order amend the alternative finance provisions.

(2) The amendments which may be made by such an order include—

(a) the variation of provision already included in the alternative finance provisions, and

(b) the introduction into the alternative finance provisions of new provision relating to alternative finance arrangements.

(3) In subsection (2)(b) "alternative finance arrangements" means arrangements which in the Treasury's opinion—

(a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, but

(b) achieve a similar effect without including provision for the payment of interest.

(4) An order under subsection (1) may, in particular—

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(a) make provision of a kind similar to provision already made by the alternative finance provisions,
(b) make other provision about the treatment for the purposes of the Tax Acts of arrangements to which the order applies,
(c) make provision generally or only in relation to specified cases or circumstances,
(d) make different provision for different cases or circumstances, and
(e) make incidental, supplemental, consequential and transitional provision and savings.

(5) An order making consequential provision under subsection (4)(e) may, in particular, include provision amending a provision of the Tax Acts.

(6) In this section "the alternative finance provisions" means—
(a) section 367A of ICTA,
(b) Chapter 4 of Part 4 of TCGA 1992,
(c) sections 372A to 372D, Part 10A and section 1005(2A) of ITA 2007,
(d) Chapter 6 of Part 6 of CTA 2009,
(e) sections 110, 256 to 259 and 1019 of CTA 2010.

(7) An order under this section that—
(a) includes such amendments as are mentioned in subsection (2)(b), or
(b) amends an enactment not contained in the alternative finance provisions but contained in an Act,
may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

367 Leasing arrangements: finance leases and loans

Schedule 3, which inserts—
(a) a new Part 11A in ITA 2007 (leasing arrangements: finance leases and loans), and
(b) a new section 37A in TCGA 1992 (consideration on disposal of certain leases),
has effect.

368 Sale and lease-back etc

Schedule 4, which inserts a new Part 12A in ITA 2007 (sale and lease-back etc), has effect.

369 Factoring of income etc

Schedule 5, which inserts new Chapters 5B and 5C (finance arrangements, and loan or credit transactions) in Part 13 of ITA 2007 (anti-avoidance), has effect.

370 UK representatives of non-UK residents

Schedule 6, which inserts—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) new Chapters 2B and 2C in Part 14 of ITA 2007 (income tax: UK representatives of non-UK residents), and

(b) a new Part 7A in TCGA 1992 (capital gains tax: UK representatives of non-UK residents),

has effect.

371 Miscellaneous relocations

Schedule 7 (amendments to relocate some miscellaneous tax enactments) has effect.

[F257PART 9A

CONTROLLED FOREIGN COMPANIES

Textual Amendments

F257 Pt. 9A inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 1** (with ss. 56-58)

CHAPTER 1

OVERVIEW

371AA Overview of Part

(1) A charge ("the CFC charge") is charged under this Part on UK resident companies which have certain interests in CFCs.

(2) The CFC charge is charged by reference to the chargeable profits of CFCs.

(3) A "CFC" is a non-UK resident company which is controlled by a UK resident person or persons (but see subsection (6)).

(4) Chapter 2 sets out the basic details of the CFC charge, including—

(a) the CFC charge gateway (through which profits of a CFC must pass in order to be chargeable profits), and

(b) the steps to be taken for charging the CFC charge.

(5) Chapter 2 is supplemented by Chapters 3 to 17; in particular—

(a) Chapter 3 sets out how to determine which (if any) of Chapters 4 to 8 apply in relation to the profits of a CFC,

(b) so far as applicable, Chapters 4 to 8 set out how to determine which profits (if any) of a CFC pass through the CFC charge gateway, with—

(i) Chapter 4 dealing with profits attributable to UK activities,

(ii) Chapter 5 dealing with non-trading finance profits,

(iii) Chapter 6 dealing with trading finance profits,

(iv) Chapter 7 dealing with profits derived from captive insurance business, and

(v) Chapter 8 dealing with cases involving solo consolidation,

(c) Chapter 9 sets out exemptions for profits from qualifying loan relationships,

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(d) Chapters 10 to 14 set out full exemptions from the CFC charge,

(e) Chapter 15 sets out how to determine the persons whose interests in a CFC are relevant to the charging of the CFC charge,

(f) Chapter 16 sets out how to determine the creditable tax of CFCs (for which credit is given against chargeable profits), and

(g) Chapter 17 sets out how to apportion a CFC's chargeable profits and creditable tax among the persons who have relevant interests in the CFC.

(6) Chapter 18 explains the concept of "control" and also sets out certain cases in which a non-UK resident company is to be taken to be a CFC even though it is not controlled by a UK resident person or persons.

(7) Chapter 19 explains the concepts of "assumed taxable total profits", "assumed total profits" and "the corporation tax assumptions" which are referred to in this Part.

(8) Chapter 20 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.

(9) Chapter 21 contains provision about the management of the CFC charge, including the collection of sums charged.

(10) Chapter 22 contains supplementary provision, including definitions of terms used in this Part.

(11) Nothing in this Part affects—

(a) the liability to corporation tax of a non-UK resident company in accordance with section 5(2) and (3) of CTA 2009 (non-UK resident companies within the charge to corporation tax), or

(b) the determination of such a company's chargeable profits for corporation tax purposes in accordance with Chapter 4 of Part 2 of CTA 2009.

(12) This Part is part of the Corporation Tax Acts.

CHAPTER 2

THE CFC CHARGE

371BA Introduction to the CFC charge

(1) The CFC charge is charged in relation to accounting periods of CFCs in accordance with section 371BC.

(2) Section 371BC applies in relation to a CFC's accounting period if (and only if)—

(a) the CFC has chargeable profits for the accounting period, and

(b) none of the exemptions set out in Chapters 10 to 14 applies for the accounting period.

(3) A CFC's chargeable profits for an accounting period are its assumed taxable total profits for the accounting period determined on the basis—

(a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as pass through the CFC charge gateway, and

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(b) that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).

(4) "The CFC charge gateway" is explained in section 371BB.

(5) Subsection (3) is subject to section 371SB(7) and (8) (which relates to settlement income included in a CFC's chargeable profits).

371BB The CFC charge gateway

(1) Take the following steps to determine the extent to which a CFC's assumed total profits for an accounting period pass through the CFC charge gateway.

Step 1 In accordance with Chapter 3, determine which (if any) of Chapters 4 to 8 apply for the accounting period. If none of those Chapters applies, none of the CFC's assumed total profits pass through the CFC charge gateway and step 2 is not to be taken.

Step 2 Determine the extent to which the CFC's assumed total profits fall within any of the Chapters which applies for the accounting period. The CFC's assumed total profits pass through the CFC charge gateway so far as they fall within any of those Chapters.

(2) Subsection (1) is subject to—

(a) Chapter 9 (exemptions for profits from qualifying loan relationships), and

(b) section 371JE (which provides for adjustments of profits which would otherwise pass through the CFC charge gateway linked to the exemption set out in Chapter 10).

Modifications etc. (not altering text)

C43 S. 371BB applied (with modifications) by 2009 c. 4, ss. 18H-18HE (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 6** (with Sch. 20 para. 55(2))

371BC Charging the CFC charge

(1) Take the following steps if, as provided for by section 371BA(2), this section applies in relation to a CFC's accounting period.

Step 1 In accordance with Chapter 15, determine the persons ("the relevant persons") who have relevant interests in the CFC at any time during the accounting period. If none of the relevant persons is a company which meets the UK residence condition (see subsection (2)), the CFC charge is not charged in relation to the accounting period and no further steps are to be taken.

Step 2 In accordance with Chapter 16, determine the CFC's creditable tax for the accounting period.

Step 3 In accordance with Chapter 17, apportion the CFC's chargeable profits and creditable tax among the relevant persons.

Step 4 Take each relevant person which is a company meeting the UK residence condition and, in accordance with section 371BD, determine if the company is a chargeable company. If there are no chargeable companies, the CFC charge is not charged in relation to the accounting period and step 5 is not to be taken.

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Step 5 The CFC charge is charged on each chargeable company as follows. A sum equal to—

(a) corporation tax at the appropriate rate on P% of the CFC's chargeable profits, less

(b) Q% of the CFC's creditable tax,

is charged on the chargeable company as if it were an amount of corporation tax charged on the company for the relevant corporation tax accounting period. This step is subject to sections 371BG **[**F258to 371BI**]** .

(2) A company meets the UK residence condition if it is UK resident at a time during the accounting period when it has a relevant interest in the CFC.

(3) For the purpose of taking step 5 in subsection (1) in relation to a chargeable company ("CC")—

"the appropriate rate", subject to **[**F259subsection (4) and**]** section 371BH, means—

(a) the rate of corporation tax applicable to CC's profits of the relevant corporation tax accounting period on which corporation tax is chargeable (see section 4(1) and (2) of CTA 2010), or

(b) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period,

"P%" means the percentage of the CFC's chargeable profits apportioned to CC,

"Q%" means the percentage of the CFC's creditable tax apportioned to CC, and

"the relevant corporation tax accounting period" means CC's accounting period for corporation tax purposes during which the CFC's accounting period ends.

F260**[** In determining "the appropriate rate", it must be assumed that all of CC's profits of (4) the relevant corporation tax accounting period on which corporation tax is chargeable are chargeable at the main rate rather than the Northern Ireland rate.**]**

Textual Amendments

F258 Words in s. 371BC(1) substituted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 8**

F259 Words in s. 371BC(3) inserted (with effect in accordance with s. 5 of the amending Act) by Corporation Tax (Northern Ireland) Act 2015 (c. 21), **Sch. 2 para. 2(2)**

F260 S. 371BC(4) inserted (with effect in accordance with s. 5 of the amending Act) by Corporation Tax (Northern Ireland) Act 2015 (c. 21), **Sch. 2 para. 2(3)**

371BD Chargeable companies

(1) A company ("C") which meets the UK residence condition is a chargeable company for the purposes of step 4 in section 371BC(1) if the total of the following percentages is at least 25%—

(a) the percentage of the CFC's chargeable profits apportioned to C at step 3 in section 371BC(1), and

(b) the percentages (if any) of those profits which are apportioned at that step to relevant persons who, at any time during the accounting period, are connected or associated with C.

(2) Subsection (1) is subject to sections 371BE and 371BF.

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371BE Companies which are managers of offshore funds etc

(1) A company ("C") is not a chargeable company for the purposes of step 4 in section 371BC(1) if—

(a) the CFC is an offshore fund (as defined in section 355),

(b) the genuine diversity of ownership condition set out in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) is met in relation to the fund,

(c) C meets the fund management condition, and

(d) apart from this section, a sum of no more than £500,000 would be charged on C as a chargeable company at step 5 in section 371BC(1).

(2) In applying regulation 75 of the 2009 Regulations for the purposes of subsection (1)(b), the reference in paragraph (1) to the period of account is to be read as a reference to the accounting period.

(3) C meets the fund management condition if at all times during the accounting period when C has relevant interests in the offshore fund—

(a) the assets of the offshore fund are managed by C or a person connected with C,

(b) C or the person connected with C receives out of those assets fees for managing those assets, and

(c) C holds its relevant interests only or mainly for the purpose of attracting participants (as defined in section 362) to the fund who are not connected with C.

(4) If the accounting period is less than 12 months, the amount specified in subsection (1)(d) is to be reduced proportionately.

371BF Companies which are participants in offshore funds

(1) A company ("C") is not a chargeable company for the purposes of step 4 in section 371BC(1) if—

(a) the CFC is an offshore fund (as defined in section 355),

(b) at the relevant time and at all subsequent relevant times, C reasonably believes that the requirement of section 371BD(1) will not be met in relation to it, and

(c) the meeting of that requirement in relation to C is in no way attributable to any step—

(i) which was taken by C or any person connected or associated with C, and

(ii) which, at the time it was taken, could reasonably have been expected to cause that requirement to be met.

(2) "The relevant time" means—

(a) the beginning of the accounting period, or

(b) if C has no relevant interests in the offshore fund at the beginning of the accounting period, the time when C first has a relevant interest during the accounting period.

(3) "Subsequent relevant time" means any time during the accounting period at which there is an increase or some other change in the relevant interests in the offshore fund which C has.

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371BG Companies holding shares as trading assets etc

(1) Subsection (2) applies if conditions A to C are met in relation to a relevant interest, or a part of a relevant interest, which a chargeable company ("CC") has in the CFC at all times during the CFC's accounting period.

(2) Step 5 in section 371BC(1) is to be taken in relation to CC on the following basis.

(3) That basis is—

(a) so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period is to be left out of P%, and

(b) so much of Q% as is so attributable is to be left out of Q%.

(4) Condition A is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares ("the relevant shares") in the CFC (directly or indirectly).

(5) Condition B is that any increase in the value of the relevant shares at any time during the relevant corporation tax accounting period is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.

(6) Condition C is that any dividend or other distribution received at any time during the relevant corporation tax accounting period by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.

(7) Subsection (8) applies if—

(a) CC has the relevant interest, or the part of a relevant interest, by virtue of section 371OB(3) or (4),

(b) the CFC is an offshore fund (as defined in section 355) which does not meet the qualifying investments test in section 493 of CTA 2009, and

(c) conditions B and C would be met but for the offshore fund not meeting that test.

(8) Conditions B and C are to be taken to be met.

(9) This section is subject to section 371BH.

371BH Companies carrying on BLAGAB

(1) Subsection (2) applies in relation to a chargeable company ("CC") if—

(a) CC carries on basic life assurance and general annuity business during the relevant corporation tax accounting period,

(b) the I-E rules apply to CC for the relevant corporation tax accounting period, and

(c) the following are met in relation to a relevant interest, or a part of a relevant interest, which CC has in the CFC at all times during the CFC's accounting period—

(i) condition D,

(ii) condition E or F (or both), and

(iii) condition G.

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(2) An additional sum is charged on CC at step 5 in section 371BC(1) and, for this purpose, step 5 is to be taken on the following basis.

(3) That basis is—

(a) in paragraph (a) at step 5, the reference to the appropriate rate is to be read as a reference to—

(i) the policyholders' rate of tax under section 102 of FA 2012 applicable to the I-E profit for the relevant corporation tax accounting period, or

(ii) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period, and

(b) any reduction of P% or Q% under section 371BG(3) by reference to any relevant interest of CC is to be ignored, but—

(i) P% is to be reduced so that it represents only the policyholders' share of the BLAGAB component of the apportioned profit (see subsections (10) to (12)), and

(ii) Q% is to be reduced by the same proportion as P% is reduced under sub-paragraph (i).

(4) Condition D is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares ("the relevant shares") in the CFC (directly or indirectly).

(5) Condition E is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.

(6) The requirement is that any increase (or any part of any increase) in the value of the relevant shares which occurs at that time is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.

(7) Condition F is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.

(8) The requirement is that any dividend or other distribution (or any part of any dividend or other distribution) received at that time by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.

(9) Condition G is that the assets which represent the relevant interest, or the part of a relevant interest, during the CFC's accounting period are (to any extent) assets held by CC for the purposes of CC's long-term business.

(10) "The apportioned profit" means so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period.

(11) Take the following steps to determine the "BLAGAB component" of the apportioned profit.

Step 1 Assume that the apportioned profit is income falling within section 74(1)(j) of FA 2012 paid to CC at the end of the CFC's accounting period.

Step 2 Calculate how much of that income would be referable, in accordance with Chapter 4 of Part 2 of FA 2012, to CC's basic life assurance and general annuity business. That amount is the "BLAGAB component" of the apportioned profit.

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(12) The "policyholders' share" of the BLAGAB component of the apportioned profit is equal to the policyholders' share of the I - E profit for the relevant corporation tax accounting period as determined in accordance with the rules contained in Chapter 5 of Part 2 of FA 2012.

Modifications etc. (not altering text)

C44 S. 371BH modified (with effect in accordance with reg. 2(2) of the amending S.I.) by The Insurance Companies and CFCs (Avoidance of Double Charge) Regulations 2012 (S.I. 2012/3044), regs. 1(1), **5**

[F261 371BI Banking companies

(1) In relation to a chargeable company that is a banking company for the relevant corporation tax accounting period, step 5 in section 371BC(1) is to be taken in accordance with subsections (2) to (5).

(2) The amount given by paragraph (a) at step 5 is to be increased by an amount equal to—

$$(PCP - SASA) \times SP$$

where—

"PCP" is P% of the CFC's chargeable profits;

"SASA" is so much (if any) of the chargeable company's available surcharge allowance as the company specifies for the purposes of this subsection in its company tax return for the relevant corporation tax accounting period;

"SP" is the percentage specified in section 269DA(1) of CTA 2010 (surcharge on banking companies).

(3) Subsection (5) applies in relation to the chargeable company if—

(a) there are arrangements that result in a relevant transfer, and

(b) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on the chargeable company at step 5 in section 371BC(1) in consequence of subsection (2).

(4) There is a "relevant transfer" if there is, in substance—

(a) a transfer (directly or indirectly) of all or a significant part of the chargeable profits of the CFC, for the CFC's accounting period, to a non-banking company, or

(b) a transfer (directly or indirectly) of a loss or deductible amount to the CFC, for the CFC's accounting period, from a non-banking company, resulting in the elimination or significant reduction of the CFC's chargeable profits for that period.

(5) For the purposes of subsection (2), the CFC's chargeable profits are to be taken to be what they would have been had the relevant transfer not taken place.

(6) Subsections (7) to (9) apply in relation to an accounting period of a CFC ("the relevant CFC accounting period") where—

(a) a company ("C")—

(i) has an accounting period for corporation tax purposes during which the relevant CFC accounting period ends, and

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(ii) is a banking company for that accounting period,

(b) there are arrangements that—

(i) do not result in a relevant transfer, but

(ii) disregarding subsections (7) to (9), would result in some or all of the CFC's chargeable profits for the relevant CFC accounting period being apportioned to one or more non-banking companies at step 3 in section 371BC(1) instead of being apportioned to C, and

(c) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on C at step 5 in section 371BC(1) in consequence of subsection (2) (whether in relation to the relevant CFC accounting period or any other accounting period of the CFC).

(7) If the arrangements would otherwise result in C not having a relevant interest in the CFC, C is to be treated as having the relevant interest in the CFC.

(8) The CFC's chargeable profits and creditable tax for the relevant CFC accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).

(9) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the result of the arrangements mentioned in subsection (6)(b)(ii).

(10) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"available surcharge allowance" means available surcharge allowance under section 269DE or (as the case may be) 269DJ of CTA 2010;

"banking company" has the same meaning as in Chapter 4 of Part 7A of CTA 2010 (see section 269DO of that Act);

"deductible amount" means—

(a) an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),

(b) an expense of a UK property business or overseas property business,

(c) an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,

(d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and relationships treated as such) (see section 301(2) of that Act), or

(e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act);

"company tax return" has the same meaning as in Schedule 18 to FA 1998;

"non-banking company" means a company that, at any time when the arrangements mentioned in subsection (3) or (as the case may be) (6) have effect, is neither—

(a) a banking company, nor

(b) a CFC in relation to which a banking company is a chargeable company.

(11) Sections 269DE(6) and 269DJ(5) of CTA 2010 contain restrictions on the amount of available surcharge allowance that can be specified and section 269DK of that Act makes provision about what happens if those restrictions are exceeded.**]**

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Textual Amendments

F261 S. 371BI inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 9**

CHAPTER 3

THE CFC CHARGE GATEWAY: DETERMINING WHICH (IF ANY) OF CHAPTERS 4 TO 8 APPLIES

371CA Does Chapter 4 apply?

(1) Chapter 4 (profits attributable to UK activities) applies for a CFC's accounting period unless condition A, B, C or D is met.

(2) Condition A is that, at no time during the accounting period, does the CFC hold assets or bear risks under an arrangement to which both subsections (3) and (4) apply.

(3) This subsection applies to an arrangement if—

(a) the main purpose, or one of the main purposes, of the arrangement is to reduce or eliminate any liability of any person to tax or duty imposed under the law of the United Kingdom, and

(b) in consequence of the arrangement, at any time the CFC expects its business to be more profitable than it would otherwise be (other than negligibly so).

(4) This subsection applies to an arrangement if—

(a) there is an expectation that, as a consequence of the arrangement, one or more persons will have liabilities to tax or duty imposed under the law of any territory reduced or eliminated, and

(b) it is reasonable to suppose that, but for that expectation, the arrangement would not have been made.

(5) Condition B is that, at no time during the accounting period, does the CFC have any UK managed assets or bear any UK managed risks (see subsection (9)).

(6) Condition C is that, at all times during the accounting period, the CFC has itself the capability to ensure that the CFC's business would be commercially effective were—

(a) the UK managed assets of the CFC, and

(b) the UK managed risks borne by the CFC,

to stop being UK managed.

(7) In subsection (6) the reference to the capability of the CFC includes (in particular) its capability to select persons not connected with it to provide it with goods or services and to manage the transactions it has with persons not connected with it.

(8) In determining if the requirements of subsection (6) are met at any time ("the relevant time") during the accounting period, assume—

(a) that the CFC would continue to carry on the same business as it is actually carrying on at the relevant time, and

(b) that no relevant UK activities (see subsection (10)) by which any asset or risk was UK managed would be replaced—

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(i) by activities carried on by any person connected with the CFC at any time, or

(ii) in any other way which relies to any extent upon the CFC receiving (directly or indirectly) resources or other assistance from a person connected with it at any time.

(9) An asset or risk is "UK managed" if—

(a) the acquisition, creation, development or exploitation of the asset, or

(b) the taking on, or bearing, of the risk,

is managed or controlled to any significant extent by way of relevant UK activities.

(10) "Relevant UK activities" means activities carried on in the United Kingdom—

(a) by the CFC, otherwise than through a UK permanent establishment, or

(b) by companies connected with the CFC under arrangements which would not, it is reasonable to suppose, be entered into by companies not connected with each other.

(11) Condition D is that the CFC's assumed total profits consist only of one or both of the following—

(a) non-trading finance profits;

(b) property business profits.

Modifications etc. (not altering text)

C45 Pt. 9A Ch. 3 applied (with modifications) by 2009 c. 4, s. 18HA (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371CB Does Chapter 5 apply?

(1) Subject to sections 371CC and 371CD, Chapter 5 (non-trading finance profits) applies for a CFC's accounting period if (and only if) the CFC has non-trading finance profits.

(2) In this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding any profits falling within subsection (3) or (4) or Chapter 8 (solo consolidation).

(3) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a trade—

(a) which is carried on by the CFC, and

(b) no trading profits of which pass through the CFC charge gateway for the accounting period.

(4) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a UK property business or overseas property business carried on by the CFC.

(5) Neither subsection (3) nor subsection (4) applies in relation to funds—

(a) held only or mainly because of a prohibition or restriction on the CFC paying dividends or making other distributions imposed under—

(i) the law of the territory in which the CFC is incorporated or formed,

(ii) the articles of association or other document regulating the CFC, or

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(iii) any arrangement entered into by or in relation to the CFC,

(b) held with a view to paying dividends or making other distributions at a time after the end of the relevant 12 month period,

(c) held with a view to acquiring shares in any company or making any capital contribution to a person,

(d) held with a view to acquiring, developing or otherwise investing in land at a time after the end of the relevant 12 month period,

(e) held only or mainly for contingencies, or

(f) held only or mainly for the purpose of reducing or eliminating a liability of any person to tax or duty imposed under the law of any territory.

(6) Subsection (5)(a) does not cover a prohibition or restriction which ceases to have effect before the end of the relevant 12 month period.

(7) "The relevant 12 month period" means the period of 12 months after the end of the accounting period.

(8) In the case of a chargeable company which makes a claim under Chapter 9, in this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding also the CFC's qualifying loan relationship profits (as defined in Chapter 9).

371CC Incidental non-trading finance profits: the 5% rule

(1) This section applies in relation to a CFC's accounting period if one or both of the following requirements is met—

(a) the CFC has trading profits or property business profits (or both);

(b) the CFC has exempt distribution income and, at all times during the accounting period, a substantial part of its business is the holding of shares or securities in companies which are its 51% subsidiaries.

(2) Chapter 5 does not apply for the accounting period if the CFC's non-trading finance profits are no more than 5% of the relevant amount.

(3) "The relevant amount" is—

(a) if the requirement of subsection (1)(a) is met, the total of the CFC's trading profits and property business profits determined before deduction of interest or any tax or duty imposed under the law of any territory,

(b) if the requirement of subsection (1)(b) is met, the total of the CFC's exempt distribution income, or

(c) if both those requirements are met, the sum of the totals given by paragraphs (a) and (b).

(4) Subsection (5) applies for the purposes of subsection (2) if—

(a) the requirement of subsection (1)(b) is met (whether or not the requirement of subsection (1)(a) is also met),

(b) at any time during the accounting period, a 51% subsidiary of the CFC ("the CFC subsidiary") is also a CFC, and

(c) the CFC subsidiary has relevant non-trading finance profits as determined in accordance with subsection (6) or (7).

(5) The CFC subsidiary's relevant non-trading finance profits are to be added to the CFC's non-trading finance profits.

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(6) If—

(a) the CFC subsidiary has an accounting period ("the relevant period") which is the same as the CFC's accounting period or otherwise falls wholly within the CFC's accounting period, and

(b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,

the CFC subsidiary's "relevant non-trading finance profits" are its non-trading finance profits for the relevant period.

(7) If—

(a) the CFC subsidiary has an accounting period ("the relevant period") which otherwise overlaps with the CFC's accounting period, and

(b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,

the CFC subsidiary's "relevant non-trading finance profits" are a just and reasonable proportion of its non-trading finance profits for the relevant period.

(8) In this section references to the CFC's trading profits are to those profits excluding any of them which pass through the CFC charge gateway for the accounting period.

(9) "Exempt distribution income" means any dividends or other distributions which are not brought into account in determining the CFC's assumed total profits on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).

(10) This section needs to be read with section 371CD.

371CD Incidental non-trading finance profits: the further 5% rule

(1) This section applies in relation to a CFC's accounting period if—

(a) the requirements of section 371CC(1)(a) and (b) are both met, but

(b) the CFC's non-trading finance profits (as added to under section 371CC(5) if applicable) are more than 5% of the relevant amount for the purposes of section 371CC(2).

(2) Chapter 5 does not apply for the accounting period if the CFC's adjusted non-trading finance profits are no more than 5% of the total of the CFC's exempt distribution income (as defined in section 371CC(9)).

(3) The CFC's "adjusted non-trading finance profits" are its non-trading finance profits excluding any profits falling within section 371CB(3) or (4).

(4) Subsection (5) applies if any CFC subsidiary's relevant non-trading finance profits are added under section 371CC(5) to the CFC's non-trading finance profits for the purposes of section 371CC(2).

(5) The CFC subsidiary's relevant non-trading finance profits are also to be added to the CFC's adjusted non-trading finance profits for the purposes of subsection (2) above.

371CE Does Chapter 6 apply?

(1) Subject to what follows, Chapter 6 (trading finance profits) applies for a CFC's accounting period if (and only if)—

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(a) the CFC has trading finance profits, and

(b) at any time during the accounting period, the CFC has funds or other assets which derive (directly or indirectly) from UK connected capital contributions.

(2) The CFC's trading finance profits are to be treated for the purposes of this Part as if they were non-trading finance profits (and, accordingly, Chapter 6 cannot apply for the accounting period) if—

(a) the CFC is a group treasury company in the accounting period **[**F262(see section 371CEA)**]**, and

(b) a notice is given to an officer of Revenue and Customs requesting that the CFC's trading finance profits be treated as if they were non-trading finance profits.

(3) Profits treated as non-trading finance profits under subsection (2) are not to be taken to fall within section 371CB(3) or (4).

F263(4) . . . . . .

F263(5) . . . . . .

(6) A notice under subsection (2)(b)—

(a) may be given only by a company or companies determined under subsection (7) or (8), and

(b) must be given—

(i) within 20 months after the end of the accounting period, or

(ii) within such longer period as an officer of Revenue and Customs may allow.

(7) A company may give a notice if—

(a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(8) Two or more companies may together give a notice if—

(a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(9) In subsections (7) and (8) "X%" means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the accounting period.

Textual Amendments

F262 Words in s. 371CE(2)(a) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(2)(a)**

F263 S. 371CE(4)(5) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(2)(b)**

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[Section 371CE: meaning of "group treasury company"

F264**371CEA** (1) This section makes provision for determining whether the CFC is a group treasury company in the accounting period for the purposes of section 371CE.

(2) The CFC is a group treasury company in the accounting period if—

(a) it is a member of a worldwide group in relation to a period of account in which the accounting period wholly or partly falls,

(b) throughout the accounting period—

(i) all, or substantially all, of the activities undertaken by it consist of treasury activities undertaken for the group, and

(ii) all, or substantially all, of its assets and liabilities relate to such activities, and

(c) at least 90% of its relevant income for the accounting period is group treasury revenue.

(3) For the purposes of this section a company undertakes treasury activities for the group if it does one or more of the following in relation to, or on behalf of, the group or any of its members—

(a) managing surplus deposits of money or overdrafts,

(b) making or receiving deposits of money,

(c) lending money,

(d) subscribing for or holding shares in a company which is a UK group company undertaking treasury activities for the group at least 90% of whose relevant income is group treasury revenue for its relevant accounting period,

(e) investing in debt securities, and

(f) hedging assets, liabilities, income or expenses.

(4) For the purposes of this section "group treasury revenue", in relation to a company, means revenue—

(a) arising from the treasury activities that the company undertakes for the group, and

(b) accounted for as such under generally accepted accounting practice,

before any deduction (whether for expenses or otherwise).

(5) But revenue consisting of a dividend or other distribution is not group treasury revenue of the company unless it is from a company that meets the conditions in subsection (3)(d).

(6) In this section—

"debt security" has the same meaning as in the Handbook made by the Financial Conduct Authority or Prudential Regulation Authority under the Financial Services and Markets Act 2000 (as the Handbook in question has effect from time to time),

"period of account" has the same meaning as in Part 10,

"relevant accounting period" has the same meaning as in Part 10,

"relevant income", in relation to a company, means income—

(a) arising from the activities of the company, and

(b) accounted for as such under generally accepted accounting practice,

before any deduction (whether for expenses or otherwise),

"UK group company" has the same meaning as in Part 10, and

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"worldwide group" has the same meaning as in Part 10.**]**

Textual Amendments

F264 S. 371CEA inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(3)**

371CF Does Chapter 7 apply?

(1) Chapter 7 (captive insurance business) applies for a CFC's accounting period if (and only if)—

(a) at any time during the accounting period, the main part of the CFC's business is insurance business, and

(b) the CFC's assumed total profits include amounts falling within subsection (2).

(2) An amount falls within this subsection if it derives (directly or indirectly) from—

(a) a contract of insurance which is entered into with—

(i) a UK resident company connected with the CFC, or

(ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or

(b) a contract of insurance which—

(i) is entered into with a UK resident person, and

(ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.

(3) In subsection (2)(b)(ii)—

"services" does not include services provided as part of insurance business, and

"UK connected company" means—

(a) a UK resident company connected with the CFC, or

(b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

371CG Does Chapter 8 apply?

(1) Chapter 8 (solo consolidation) applies for a CFC's accounting period if (and only if) condition A or B is met.

(2) Condition A is that, at any time during the accounting period—

(a) the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the **[**F265PRA Handbook**]** , and

(b) the CFC's parent undertaking in relation to that waiver is a UK resident company.

(3) Condition B is that, at any time during the accounting period—

(a) the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC,

(b) the UK resident bank must meet requirements of the **[**F266PRA Handbook**]** in relation to its capital,

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(c) any fall in the value of the shares held in the CFC would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets those requirements of the **[**F266PRA Handbook**]** , and

(d) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares in the CFC is to obtain a tax advantage for itself or any company connected with it.

(4) In this section—

[F267"the PRA Handbook" means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time), and**]**

"UK resident bank" means a UK resident person carrying on banking business.

(5) The Treasury may by regulations amend this Chapter or Chapter 8 as they consider appropriate to take account of—

(a) any changes to the **[**F268PRA Handbook**]** , or

(b) any relevant document published by the **[**F269Financial Conduct Authority or the Prudential Regulation Authority**]** from time to time.

(6) "Relevant document" means—

(a) a document which replaces the **[**F270PRA Handbook**]** , or

(b) a document which changes or replaces a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

Textual Amendments

F265 Words in s. 371CG(2)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(a)**

F266 Words in s. 371CG(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(b)**

F267 Words in s. 371CG(4) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(c)**

F268 Words in s. 371CG(5)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(d)(i)**

F269 Words in s. 371CG(5)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(d)(ii)**

F270 Words in s. 371CG(6)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(e)**

CHAPTER 4

THE CFC CHARGE GATEWAY: PROFITS ATTRIBUTABLE TO UK ACTIVITIES

Modifications etc. (not altering text)

C46 Pt. 9A Ch. 4 applied (with modifications) by 2009 c. 4, s. 18HB (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

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371DA Introduction to Chapter

(1) Take the steps set out in section 371DB(1) to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

(2) In this Chapter references to the CFC's assumed total profits are to those profits excluding its non-trading finance profits and property business profits (if any).

(3) For the purposes of this Chapter—

(a) "the OECD Report" means the Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-operation and Development ("OECD") dated 22 July 2010,

(b) terms used which are also used in the OECD Report have the same meaning as they have in the OECD Report,

(c) "the CFC group" means the CFC taken together with the companies with which it is connected as those companies may change from time to time,

(d) "the provisional Chapter 4 profits" has the meaning given at step 7 in section 371DB(1),

(e) "the relevant assets and risks" has the meaning given at step 1 in section 371DB(1), subject to any exclusions at step 2 or 6,

(f) "SPF" means a significant people function or a key entrepreneurial risk-taking function,

(g) an SPF is a "UK SPF" so far as the SPF is carried out in the United Kingdom—

(i) by the CFC, otherwise than through a UK permanent establishment, or

(ii) by a company connected with the CFC, and

(h) an SPF is a "non-UK SPF" so far as it is not a UK SPF.

(4) The Treasury may by regulations amend this Chapter as they consider appropriate to take account of any relevant document published by OECD from time to time.

(5) "Relevant document" means—

(a) a document which replaces, updates or supplements the report mentioned in subsection (3)(a), or

(b) a document which replaces, updates or supplements a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

371DB The steps

(1) Here are the steps referred to in section 371DA(1).

The steps are to be taken in accordance with the principles set out in the OECD Report (so far as relevant).

Step 1 Identify the assets which the CFC has or has had, and the risks which the CFC bears or has borne, and from which amounts included in the CFC's assumed total profits have arisen. The identified assets and risks are called "the relevant assets and risks"

Step 2 Exclude from the relevant assets and risks any asset or risk to which subsection (2) applies (subject to subsections (3) and (4)).

Step 3 Identify the SPFs carried out by the CFC group which are relevant to—

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(a) the economic ownership of the assets included in the relevant assets and risks, or

(b) the assumption and management of the risks included in the relevant assets and risks.

For this purpose, assume that the CFC group is a single company.

Step 4 Determine the extent to which the SPFs identified at step 3 are UK SPFs and the extent to which they are non-UK SPFs. If none of the SPFs is a UK SPF to any extent, then no profits fall within this Chapter and no further steps are to be taken.

Step 5 Assume that the UK SPFs determined at step 4 are carried out by a permanent establishment which the CFC has in the United Kingdom and, accordingly, determine the extent to which the assets and risks included in the relevant assets and risks would be attributed to the permanent establishment. For this purpose, assume that the non-UK SPFs determined at step 4 are all carried out by the CFC itself (if that is not otherwise the case).

Step 6 Exclude from the relevant assets and risks any asset or risk, or any assets or risks taken together, to which section 371DC applies.

Step 7 Re-determine the CFC's assumed total profits on the basis that the CFC—

(a) does not hold, or has not held, the assets included in the relevant assets and risks, and

(b) does not bear, or has not borne, the risks included in the relevant assets and risks,

so far as they would be attributed to the permanent establishment mentioned at step 5.“The provisional Chapter 4 profits” are the CFC's assumed total profits so far as they are left out of the re-determined profits.

Step 8 Exclude from the provisional Chapter 4 profits any amounts which are required to be excluded by section 371DD, 371DE or 371DF. The remaining profits (if any) fall within this Chapter.

(2) This subsection applies to an asset or risk if the CFC's assumed total profits are only negligibly higher than what they would be if the CFC—

(a) did not hold, or had not held, the asset to any extent at all, or

(b) did not bear, or had not borne, the risk to any extent at all.

(3) The total number of assets and risks which may be excluded at step 2 in subsection (1) is limited as follows.

(4) As well as applying to each asset and risk separately, subsection (2) must also apply to all the assets and risks included in the total number taken together.

371DC Exclusion: UK activities a minority of total activities

(1) For the purposes of step 6 in section 371DB(1), this section applies to an asset or risk included in the relevant assets and risks if amount A is no more than 50% of amount B.

(2) Amount A is the total of—

(a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—

(i) not held the asset, or

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(ii) not borne the risk,

so far as it would be attributed to the permanent establishment mentioned at step 5 in section 371DB(1), and

(b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—

(i) not held the asset, or

(ii) not borne the risk,

so far as it would be so attributed.

(3) Amount B is the total of—

(a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—

(i) not held the asset to any extent at all, or

(ii) not borne the risk to any extent at all, and

(b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—

(i) not held the asset to any extent at all, or

(ii) not borne the risk to any extent at all.

(4) Subsection (5) applies if it is not reasonably practicable to separate a number of assets or risks included in the relevant assets and risks for the purpose of determining amounts A and B in relation to each of those assets or risks separately.

(5) In subsections (1) to (3) references to an asset or risk are to be read as references to those assets or risks taken together.

371DD Exclusion: economic value

(1) Subsection (2) applies if—

(a) an asset or risk is included in the relevant assets and risks,

(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1), and

(c) as a result of that determination, an amount is included in the provisional Chapter 4 profits.

(2) The amount is to be excluded from the provisional Chapter 4 profits if—

(a) the net economic value to the CFC group which results from the holding of the asset, or the bearing of the risk, exceeds what that value would have been had the asset been held, or the risk been borne, solely by UK resident companies connected with the CFC, and

(b) the relevant non-tax value is a substantial proportion of the excess value mentioned in paragraph (a).

(3) "Net economic value" does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of any territory outside the United Kingdom.

(4) "The relevant non-tax value" is the excess value mentioned in subsection (2)(a) so far as it does not derive (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of the United Kingdom.

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(5) Subsection (6) applies if—

(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

(6) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

371DE Exclusion: independent companies' arrangements

(1) Subsection (2) applies if—

(a) an asset or risk is included in the relevant assets and risks,

(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1),

(c) as a result of that determination, an amount is included in the provisional Chapter 4 profits, and

(d) the UK SPFs are carried out by companies connected with the CFC under arrangements made between the CFC and those companies.

(2) The amount is to be excluded from the provisional Chapter 4 profits if it is reasonable to suppose that, were the SPFs which are UK SPFs not to be carried out by companies connected with the CFC, the CFC would enter into arrangements with companies not connected with the CFC which—

(a) would be structured in the same way as the arrangements mentioned in subsection (1)(d), and

(b) would, in relation to the CFC's business, have the same commercial effect as those arrangements.

(3) Subsection (4) applies if—

(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

(4) In subsection (1) references to an asset or risk are to be read as references to those assets or risks taken together.

371DF Exclusion: trading profits (the basic rule)

(1) All trading profits are to be excluded from the provisional Chapter 4 profits if the following conditions are met—

(a) the business premises condition (see section 371DG),

(b) the income condition (see section 371DH),

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(c) the management expenditure condition (see section 371DI),
(d) the IP condition (see section 371DJ), and
(e) the export of goods condition (see section 371DK).

(2) Trading profits are also to be excluded from the provisional Chapter 4 profits in accordance with section 371DI(7) and (8) (so far as applicable).

(3) This section is subject to section 371DL (anti-avoidance).

371DG Exclusion: trading profits (business premises condition)

(1) This section applies for the purposes of section 371DF(1)(a).

(2) The business premises condition is met if, at all times during the accounting period, the CFC has in the territory in which it is resident for the accounting period premises—
(a) which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
(b) from which the CFC's activities in that territory are wholly or mainly carried on.

(3) "Premises" means—
(a) an office, shop, factory or other building or part of a building,
(b) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, or
(c) a building site or the site of a construction or installation project, but only if the building work or project has a duration of at least 12 months.

371DH Exclusion: trading profits (income condition)

(1) This section applies for the purposes of section 371DF(1)(b).

(2) The income condition is met if no more than 20% of the CFC's relevant trading income derives (directly or indirectly) from—
(a) UK resident persons, or
(b) UK permanent establishments of non-UK resident companies.

(3) For the purposes of subsection (2) the CFC's "relevant trading income" is its trading income, excluding any income arising from the sale in the United Kingdom of goods produced by the CFC in the territory in which it is resident for the accounting period.

(4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, the CFC's main business is banking business in relation to which the CFC is regulated in the territory in which it is resident for the accounting period.

(5) The income condition is met if the CFC's relevant UK trading income is no more than 10% of the CFC's trading income.

(6) The CFC's "relevant UK trading income" is its trading income so far as it derives (directly or indirectly) from—
(a) UK resident persons, or
(b) UK permanent establishments of non-UK resident companies,

but excluding interest received from UK resident companies which are connected or associated with the CFC.

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(7) Neither subsection (2)(a) nor subsection (6)(a) covers income deriving (directly or indirectly) from a UK resident company if—

(a) the company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and

(b) an expense corresponding to the income is brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

371DI Exclusion: trading profits (management expenditure condition)

(1) This section applies for the purposes of section 371DF(1)(c).

(2) The management expenditure condition is met if the UK related management expenditure is no more than 20% of the total related management expenditure.

(3) "The total related management expenditure" is the total of the following expenditure incurred during the accounting period by the CFC—

(a) expenditure incurred in the employment of any member of the CFC's staff who carries out relevant management functions,

(b) expenditure incurred in the engagement (directly or indirectly) of any individual who is not a member of the CFC's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the CFC, and

(c) expenditure incurred in the engagement (directly or indirectly) of any company related to the CFC so far as the expenditure represents expenditure incurred by the related company in—

(i) the employment of any member of the related company's staff who carries out relevant management functions, or

(ii) the engagement by the related company (directly or indirectly) of any individual who is not a member of the related company's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the related company.

(4) "The UK related management expenditure" is the total related management expenditure so far as it relates to members of staff or other individuals who carry out relevant management functions in the United Kingdom.

(5) A person carries out a "relevant management function" if the person manages or controls any assets or risks included in the relevant assets and risks.

(6) This covers (for example) a person who formulates plans or makes decisions in relation to—

(a) the acquisition, creation, development or exploitation of such assets, or

(b) the taking on, or bearing, of such risks.

(7) Subsection (8) applies if—

(a) the conditions mentioned in section 371DF(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,

(b) there is an asset or risk which is included in the relevant assets and risks and to which any part of the total related management expenditure relates,

(c) the 50% condition is met in relation to that asset or risk, and

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(d) trading profits arising from that asset or risk are included in the provisional Chapter 4 profits.

(8) The trading profits are to be excluded from the provisional Chapter 4 profits.

(9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure so far as relating to the asset or risk is no more than 50% of the total related management expenditure so far as relating to the asset or risk.

(10) Subsection (11) applies if—

(a) any part of the total related management expenditure relates to a number of assets or risks included in the relevant assets and risks, and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the total related management expenditure relates to each of those assets or risks separately.

(11) Subsections (7) to (9) apply in relation to those assets or risks taken together and references to an asset or risk are to be read accordingly.

371DJ Exclusion: trading profits (IP condition)

(1) This section applies for the purposes of section 371DF(1)(d).

(2) The IP condition is met unless—

(a) the CFC's assumed total profits include amounts arising from intellectual property held by the CFC ("the exploited IP"),

(b) all or parts of the exploited IP were—

(i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or

(ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,

(c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and

(d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.

(3) The significance condition is met if—

(a) the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or

(b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits are significantly higher than what they would otherwise have been.

(4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—

(a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or

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(b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.

(5) "The relevant period" means the period covering the accounting period and the 6 years before the accounting period.

371DK Exclusion: trading profits (export of goods condition)

(1) This section applies for the purposes of section 371DF(1)(e).

(2) The export of goods condition is met if no more than 20% of the CFC's trading income arises from goods exported from the United Kingdom, excluding goods exported from the United Kingdom to the territory in which the CFC is resident for the accounting period.

371DL Exclusion: trading profits (anti-avoidance)

(1) This section applies if—

(a) a condition mentioned in section 371DF(1) is met, or

(b) the 50% condition mentioned in section 371DI is met in relation to an asset or risk (or a number of assets or risks taken together),

but it is reasonable to suppose that that would not be the case apart from an arrangement falling within subsection (3).

(2) The condition is to be taken not to be met or (as the case may be) not to be met in relation to the asset or risk (or the assets or risks taken together).

(3) An arrangement falls within this subsection if—

(a) the arrangement involves the CFC group organising (or reorganising) a significant part of its business in a particular way, and

(b) the main purpose, or one of the main purposes, of that organising (or reorganising) is to secure that—

(i) one or more of the conditions mentioned in section 371DF(1) are met, or

(ii) the 50% condition mentioned in section 371DI is met in relation to one or more assets or risks.

CHAPTER 5

THE CFC CHARGE GATEWAY: NON-TRADING FINANCE PROFITS

Modifications etc. (not altering text)

C47 Pt. 9A Ch. 5 applied (with modifications) by 2009 c. 4, s. 18HC (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

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371EA The basic rule

(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are its non-trading finance profits so far as they fall within any of sections 371EB to 371EE.

(2) In this Chapter references to the CFC's non-trading finance profits are to be read in accordance with section 371CB(2) and, so far as applicable, section 371CB(8).

371EB UK activities

(1) To determine the extent to which the CFC's non-trading finance profits fall within this section, take steps 1 to 5 and 7 in section 371DB(1) as if references in section 371DB to the CFC's assumed total profits were references to its non-trading finance profits.

(2) Non-trading finance profits fall within this section so far as they would be included in the provisional Chapter 4 profits as determined on the basis mentioned in subsection (1).

371EC Capital investment from the UK

(1) Non-trading finance profits fall within this section so far as they arise from relevant UK funds or other assets.

(2) Subsection (3) applies in relation to any profits which (apart from subsection (3)) would fall within this section if—

- (a) an amount of expenditure incurred by the CFC in managing the relevant UK funds or other assets itself was brought into account in calculating the profits, and
- (b) it is reasonable to suppose that the amount of expenditure is less than the fee which a company not connected with the CFC would charge the CFC for carrying out the same management activities.

(3) There is to be deducted from the profits an amount representing what it is reasonable to suppose the difference between the amount of expenditure and the fee would be.

(4) "Relevant UK funds or other assets" means—

- (a) funds or other assets which represent, or derive (directly or indirectly) from, any capital contribution to the CFC made (directly or indirectly) by a UK connected company (whether in relation to an issue of shares in the CFC or otherwise),
- (b) funds or other assets which represent, or derive (directly or indirectly) from, any amounts included in the CFC's chargeable profits for any earlier accounting period in relation to which the CFC charge is charged,
- (c) funds or other assets which represent, or derive (directly or indirectly) from, any amounts which, by virtue of section 174 (transfer pricing: claims by disadvantaged person), are left out of account in determining the CFC's assumed total profits for the accounting period or any earlier accounting period, or
- (d) funds or other assets—
  - (i) which represent, or derive (directly or indirectly) from, any funds or other assets received by the CFC (directly or indirectly) from a UK connected company, and

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(ii) which are not covered by paragraphs (a) to (c).

(5) In subsection (4)(d)(i) the reference to funds or other assets received by the CFC does not include funds or other assets received—

(a) in exchange for goods or services provided by the CFC, or

(b) by way of a loan.

(6) "UK connected company" means—

(a) a UK resident company connected with the CFC, or

(b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

371ED Arrangements in lieu of dividends etc to UK resident companies etc

(1) Non-trading finance profits fall within this section so far as they arise from an arrangement [F271]... in relation to which the following condition is met.

(2) The condition is that—

(a) the arrangement is made by the CFC (directly or indirectly)—

(i) with a UK resident company connected with the CFC, or

(ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and

(b) it is reasonable to suppose—

(i) that the arrangement is made as an alternative to the CFC paying dividends or making any other distribution to the other company (directly or indirectly), and

(ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

Textual Amendments

F271 Words in s. 371ED(1) omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 47 paras. 3**, 21

371EE Leases to UK resident companies etc

(1) Non-trading finance profits fall within this section so far as they arise from a relevant finance lease in relation to which the following condition is met.

(2) The condition is that—

(a) the lease is made by the CFC (directly or indirectly)—

(i) with a UK resident company connected with the CFC, or

(ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and

(b) it is reasonable to suppose—

(i) that the lease is made as an alternative to the other company purchasing (directly or indirectly) the asset [F272("the relevant asset")

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which is the subject of the lease or making (directly or indirectly) an arrangement which would fall within subsection (3)**]** , and

(ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

[An arrangement would fall within this subsection if—

F273(3) (a) the arrangement would meet one or both of the following requirements—

(i) it would not be a relevant finance lease;

(ii) it would not involve the CFC, and

(b) under the arrangement the other company would (directly or indirectly) purchase rights to use the relevant asset.**]**

Textual Amendments

F272 Words in s. 371EE(2)(b)(i) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 4(2)**, 21

F273 S. 371EE(3) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 4(3)**, 21

CHAPTER 6

THE CFC CHARGE GATEWAY: TRADING FINANCE PROFITS

371FA The basic rule

(1) Take the following steps to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

This is subject to regulations under section 371FD or 371FE.

Step 1 Determine if, during the accounting period, the CFC's free capital exceeds what it is reasonable to suppose its free capital would be were it a company which is not the 51% subsidiary of any other company. If there is excess free capital, "the step 1 amount" is—

(a) the excess free capital, or

(b) if less, the CFC's free capital so far as deriving (directly or indirectly) from UK connected capital contributions.

Step 2 This step applies only if the CFC carries on insurance business during the accounting period; if it does not, go straight to step 3. Determine if, during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose its free assets would be were it a company which is not the 51% subsidiary of any other company. If there is excess free assets, "the step 2 amount" is—

(a) the excess free assets, or

(b) if less, the CFC's free assets so far as deriving (directly or indirectly) from UK connected capital contributions.

Step 3 If no excesses are determined at steps 1 and 2, no profits fall within this Chapter. Otherwise, the profits falling within this Chapter are the CFC's trading finance profits so far as it is reasonable to suppose that those profits arise from the investment or other use of the step 1 amount or the step 2 amount (or both

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(2) For the purposes of step 1 in subsection (1) the CFC's "free capital" is the funding it has for its business so far as the funding does not give rise to debits which are brought into account in determining the CFC's non-trading finance profits or trading finance profits.

(3) For the purposes of step 2 in subsection (1) the CFC's "free assets" is the amount by which the value of its assets exceeds its loan capital.

(4) Subsections (2) and (3) are subject to sections 371FB and 371FC and subsection (3) is also subject to subsection (6).

(5) Subsection (6) applies if—

(a) the CFC, acting outside its insurance business, gives a guarantee against losses of an insurance business of another company which is connected with the CFC,

(b) the guarantee is necessary for the purpose of meeting regulatory requirements applicable to the other company's insurance business,

(c) in consequence of having given the guarantee, the CFC is required by regulatory requirements applicable to its insurance business to hold more assets than it would otherwise be required to hold, and

(d) during the accounting period, the CFC holds assets solely for the purpose of meeting that requirement for more assets.

(6) The value of the assets held by the CFC as mentioned in subsection (5)(d) is to be deducted from the CFC's free assets.

(7) For the purposes of this section the "value" of an asset is the amount which it is reasonable to suppose the CFC would obtain for the transfer of all the CFC's rights in respect of the asset from a person not connected with the CFC.

Modifications etc. (not altering text)

C48 S. 371FA(1) excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by The Controlled Foreign Companies (Excluded Banking Business Profits) Regulations 2012 (S.I. 2012/3041), regs. 1(2), **3(2)**

371FB Qualifying loan relationships

(1) Subsection (2) applies if, during the CFC's accounting period, the CFC is the ultimate debtor in relation to a qualifying loan relationship (within the meaning of Chapter 9) of another CFC ("the creditor CFC").

(2) E% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).

(3) "E%" is given by the following formula—

$$100\ \% \times EP\ P$$

where—

EP is the total amount of the profits of the qualifying loan relationship which are exempt, and

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P is the total amount of the profits of the qualifying loan relationship.

(4) For the purposes of subsection (3)—

(a) references to the profits of the qualifying loan relationship are to the profits of the qualifying loan relationship for accounting periods of the creditor CFC which fall wholly or partly in the CFC's accounting period,

(b) the profits of the qualifying loan relationship for an accounting period of the creditor CFC are to be determined in accordance with Chapter 9,

(c) the steps in subsection (5) are to be taken to determine the amount of the profits of the qualifying loan relationship for an accounting period of the creditor CFC which are "exempt", and

(d) the profits of the qualifying loan relationship for an accounting period of the creditor CFC which falls only partly in the CFC's accounting period, and the amount of those profits which are exempt, are to be apportioned between—

(i) the part of the creditor CFC's accounting period which falls in the CFC's accounting period, and

(ii) the part which does not,

with only those profits, and the amount of exempt profits, apportioned to the part mentioned in sub-paragraph (i) being included in P or EP (as the case may be).

(5) Here are the steps referred to in subsection (4)(c).

The steps are to be taken separately in relation to each chargeable company which makes a claim under Chapter 9 in relation to the creditor CFC's accounting period.

The amount of the profits of the qualifying loan relationship for the creditor CFC's accounting period which are exempt is the total of the amounts given by step 2.

Step 1 Determine the amount of the profits of the qualifying loan relationship for the accounting period which, in the case of the chargeable company, are exempt under Chapter 9.

Step 2 Multiply the amount determined at step 1 by P% (as defined in section 371BC(3), ignoring sections 371BG(3)(a) and 371BH(3)(b)).

371FC Loans from foreign permanent establishments of UK resident companies

(1) Subsection (2) applies if—

(a) there is a company ("C") which has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),

(b) during a relevant accounting period of C which begins on or after 1 January 2013, C has a creditor relationship which, applying the assumptions set out in section 18H(3) of CTA 2009 in relation to C for the relevant accounting period, would be a qualifying loan relationship (within the meaning of Chapter 9 of this Part) of C in relation to which the CFC would be the ultimate debtor,

(c) in the application of section 18H(2) of CTA 2009 for the relevant accounting period, C makes a claim under Chapter 9 of this Part (as applied by section 18H(2)), and

(d) the relevant accounting period falls wholly or partly in the CFC's accounting period.

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(2) 75% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).

(3) Terms used in this section which are defined in section 18A of CTA 2009 have the meaning given by that section.

371FD Exclusion: banking business

(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from banking business, or banking business of a specified description, carried on by the CFC.

(2) Regulations under subsection (1) may (in particular) make provision by reference to—

(a) the territory in which a CFC is resident or any territory in which its banking business is regulated or carried on, or

(b) the regulatory requirements imposed from time to time in any territory in relation to banking business.

371FE Exclusion: insurance business

(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from insurance business, or insurance business of a specified description, carried on by the CFC.

(2) In subsection (1) "insurance business" does not include insurance business so far as consisting of the effecting or carrying out of contracts of insurance covered by section 371GA(2) (UK insurance contracts), including the investment of premiums received from such contracts.

(3) Regulations under subsection (1) may (in particular) make provision by reference to—

(a) the territory in which a CFC is resident or any territory in which its insurance business is regulated or carried on, or

(b) the regulatory requirements imposed from time to time in any territory in relation to insurance business.

CHAPTER 7

THE CFC CHARGE GATEWAY: CAPTIVE INSURANCE BUSINESS

Modifications etc. (not altering text)

C49 Pt. 9A Ch. 7 applied (with modifications) by 2009 c. 4, s. 18HD (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

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371GA The basic rule

(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits so far as they—

(a) arise from the CFC's insurance business,

(b) fall within subsection (2), and

(c) fall within subsection (7) where applicable.

(2) An amount falls within this subsection if it derives (directly or indirectly) from—

(a) a contract of insurance which is entered into with—

(i) a UK resident company connected with the CFC, or

(ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or

(b) a contract of insurance which—

(i) is entered into with a UK resident person, and

(ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.

(3) In subsection (2)(b)(ii)—

"services" does not include services provided as part of insurance business, and

"UK connected company" means—

(a) a UK resident company connected with the CFC, or

(b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

(4) Subsection (2)(a)(i) does not cover a premium paid under a contract of insurance if—

(a) the UK resident company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and

(b) the premium is wholly brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

(5) Subsection (2)(a) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (2)(a).

(6) Subsection (7) applies in relation to an amount if—

(a) the CFC is resident in an EEA state for the accounting period, and

(b) the amount does not arise from the activities of a permanent establishment which the CFC has in a territory which is not an EEA state.

(7) An amount falls within this subsection so far as it derives (directly or indirectly) from a contract of insurance if—

(a) the insured has no significant UK non-tax reason for entering into the contract of insurance, or

(b) if the contract of insurance is a contract of reinsurance, the original insured has no significant UK non-tax reason for entering into the original contract of insurance.

(8) "UK non-tax reason" means a reason other than one relating to a liability, or potential liability, of any person to tax or duty imposed under the law of the United Kingdom.

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(9) In this section "original contract of insurance", in relation to a contract of reinsurance which is one in a chain of contracts of reinsurance, means the original contract of insurance reinsured by the first contract in the chain; and in subsection (7)(b) the reference to the original insured is to be read accordingly.

CHAPTER 8

THE CFC CHARGE GATEWAY: SOLO CONSOLIDATION

371HA The basic rule

(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits which are not also included in the CFC's relevant profits amount.

(2) The CFC's "relevant profits amount" is what the relevant profits amount would be for the purposes of Chapter 3A of Part 2 of CTA 2009 (see section 18A(6) of that Act) in relation to the CFC were that amount to be determined as if—

(a) the CFC were a permanent establishment in a territory outside the United Kingdom of the UK resident company mentioned in section 371CG(2)(b) or the UK resident bank mentioned in section 371CG(3), and

(b) the CFC's accounting period were a relevant accounting period of that UK resident company or UK resident bank for the purposes of that Chapter.

CHAPTER 9

EXEMPTIONS FOR PROFITS FROM QUALIFYING LOAN RELATIONSHIPS

Modifications etc. (not altering text)

C50 Pt. 9A Ch. 9 applied (with modifications) by 2009 c. 4, s. 18HE (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371IA The basic rule

(1) This Chapter applies if—

(a) apart from this Chapter, Chapter 5 (non-trading finance profits) would apply for a CFC's accounting period,

(b) the CFC's non-trading finance profits include qualifying loan relationship profits, and

(c) the business premises condition set out in section 371DG is met.

(2) A chargeable company ("company C") in relation to the accounting period may make a claim to an officer of Revenue and Customs for step 2 in section 371BB(1) (the CFC charge gateway) to be taken, in the case of company C only, subject to this Chapter.

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(3) If company C makes a claim, in the case of company C only, the CFC's qualifying loan relationship profits pass through the CFC charge gateway so far as (and only so far as) they are not exempt under this Chapter.

(4) The CFC's "qualifying loan relationship profits" are **[**F274so much of the profits of all its qualifying loan relationships taken together as are non-trading finance profits which—

(a) fall within section 371EC (capital investment from the UK), and

(b) do not fall within section 371EB (UK activities).**]**

(5) The extent to which those profits are "exempt" is to be determined—

(a) firstly, by applying either section 371IB or section 371ID to each of the CFC's qualifying loan relationships, and

(b) secondly, by applying section 371IE (if relevant).

(6) Section 371IF sets out how to determine the profits of a qualifying loan relationship.

(7) Sections 371IG to 371II define "qualifying loan relationship" etc.

(8) Section 371IJ contains provision about claims under this Chapter.

(9) In this Chapter references to the CFC's non-trading finance profits are to those profits excluding any profits—

(a) falling within section 371CB(3) or (4) or Chapter 8 (solo consolidation), or

(b) arising from a relevant finance lease.

(10) In this Chapter—

(a) "loan relationship" has the meaning given by section 302(1) of CTA 2009 (and does not include anything which, although not falling within section 302(1), is treated for any purpose as if it were a loan relationship), and

(b) other terms used which are defined in Part 5 of CTA 2009 are to be read accordingly.

(11) See section 371CB(8) which deals with the interaction between this Chapter and section 371CB and Chapter 5 in the case of a chargeable company which makes a claim under this Chapter.

Textual Amendments

F274 Words in s. 371IA(4) substituted (with effect in accordance with s. 20(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 20(2)**

371IB Loans funded out of qualifying resources

(1) This section applies to a qualifying loan relationship if company C's claim under this Chapter states that this section is to apply to the qualifying loan relationship.

(2) X% of the profits of the qualifying loan relationship are exempt if company C's claim establishes—

(a) that, at all times during the relevant period, at least X% of the principal outstanding on the relevant loan (as that may vary from time to time during the relevant period) is funded by the CFC wholly out of qualifying resources, and

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(b) that the ultimate debtor in relation to the qualifying loan relationship (see section 371IG(2) to (7)) is resident at all times during the relevant period in one territory only and that its territory of residence does not change at any time during the relevant period.

(3) "X%" is the percentage specified in company C's claim for the purposes of this section in relation to the qualifying loan relationship (which may be 100%).

(4) "The relevant period" means—

(a) the accounting period, or

(b) if for any part of the accounting period no principal is outstanding on the relevant loan, the part of the accounting period during which there is principal outstanding.

(5) "The relevant loan" means the loan which is the subject of the qualifying loan relationship.

(6) "Qualifying resources" means—

(a) profits of the CFC's business so far as it consists of the making of loans to relevant members of the CFC group which are used solely for the purposes of the business of the CFC group in the relevant territory, or

(b) funds or other assets received by the CFC in relation to shares held by the CFC in, or issued by the CFC to, members of the CFC group.

(7) Funds or other assets received by the CFC fall within subsection (6)(b) only so far as they derive (directly or indirectly) from—

(a) profits of the business of the CFC group in the relevant territory,

(b) the qualifying value of relevant pre-acquisition funds or other assets (see section 371IC), or

(c) an issue of shares which meets the following requirements—

(i) the shares are shares in a member of the CFC group ("the parent member") which is not the 75% subsidiary of any company,

(ii) the shares are ordinary shares which are not redeemable, and

(iii) the shares are issued to persons who are not members of the CFC group.

(8) Subsection (9) applies if the qualifying loan relationship is made under, or is otherwise connected (directly or indirectly) with, an arrangement under which a member of the CFC group incurs a debt in the United Kingdom to—

(a) a non-UK resident person, or

(b) a UK resident person who is not a member of the CFC group.

(9) It is to be assumed for the purposes of subsection (2) that, at all times during the relevant period, the amount of funds or other assets—

(a) out of which the principal outstanding on the relevant loan is funded by the CFC, and

(b) which are not qualifying resources,

is no less than the amount of the debt mentioned in subsection (8).

[[F275](9A) Subsection (9) does not apply if the debt incurred by the member of the CFC group as mentioned in subsection (8) represents the principal on a loan made to the member to which subsection (9B) or (9D) applies.

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(9B) This subsection applies to a loan if the member repays it within 48 hours of the loan being made.

(9C) But subsection (9B) does not apply to a loan if the repayment of the loan within the 48 hours occurs under, or is connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to ensure that subsection (9) does not apply because of—

(a) the loan, or

(b) any other debt which a member of the CFC group incurs (or is expected to incur) in the United Kingdom.

(9D) This subsection applies to a loan if—

(a) there is an issue of shares which meets the requirements of subsection (7)(c)(i) to (iii),

(b) the loan was made before the issue of shares but with the expectation that it would be repaid by the member out of funds deriving (directly or indirectly) from the issue of shares,

(c) the loan is repaid by the member out of such funds within the period of 6 months beginning with the day on which the loan was made, and

(d) the loan—

(i) was made by a person who was not a member of the CFC group, and

(ii) was not made (wholly or partly nor directly or indirectly) out of funds or other assets provided by a member of the CFC group.**]**

(10) For the purposes of this section and section 371IC—

(a) subject to subsections (11) and (12), "the CFC group", as at any time, means the CFC taken together with the companies with which it is connected at that time,

(b) a member of the CFC group is "relevant" if it is resident in the relevant territory and no other territory,

(c) "the relevant territory" means the territory of residence of the ultimate debtor mentioned in subsection (2)(b),

(d) references to the business of the CFC group in the relevant territory do not include the making of loans to persons resident outside the relevant territory,

(e) references to the profits of the business of the CFC group in the relevant territory do not include—

(i) profits arising (directly or indirectly) from funds or other assets received by relevant members of the CFC group in relation to shares held by them in members of the CFC group which are not relevant members, or

(ii) so far as not covered by sub-paragraph (i), profits arising (directly or indirectly) from the business of the CFC group in any territory outside the relevant territory, and

(f) section 931U of CTA 2009 (definitions of "ordinary share" and "redeemable") applies as it applies for the purposes of Part 9A of CTA 2009 (company distributions).

(11) If the CFC is controlled by one UK resident company only ("the controller"), in relation to any time before the CFC came to be controlled by the controller, except in subsection (6), references to the CFC group include references to the controller taken together with any companies with which it is connected at that time.

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(12) If the CFC is controlled by two or more UK resident companies which are all connected with each other ("the controllers"), in relation to any time—

(a) before which the CFC came to be controlled by the controllers, and

(b) at which the controllers (or those of the controllers which exist at that time) are all connected with each other,

except in subsection (6), references to the CFC group include references to the controllers (or those of the controllers which exist) taken together with any other companies with which they are all connected at that time.

Textual Amendments

F275 Ss. 371IB(9A)-(9D) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 19**, 21

371IC What is the "qualifying value" of "relevant pre-acquisition funds or other assets"?

(1) This section applies for the purposes of section 371IB(7)(b).

(2) It applies if—

(a) a member of the CFC group acquires shares in a company ("the target company") from persons who are not members of that group ("the unconnected persons"),

(b) in consideration for the acquisition of the shares, a member of the CFC group ("the parent member") which is not the 51% subsidiary of any company issues shares to the unconnected persons, and

(c) the value of the consideration given for the acquisition of the shares by the parent member and any other members of the CFC group represents wholly or partly the value or a part of the value of any funds or other assets held by the target company.

(3) Those funds or other assets are "relevant pre-acquisition funds or other assets" and, subject to what follows, their value or the part of their value represented by the value of the consideration is their "qualifying value".

(4) The qualifying value is to be reduced by Y% if one or both of the following paragraphs applies—

(a) the issue of shares by the parent member to the unconnected persons represents only part of the consideration given for the acquisition of the shares in the target company;

(b) in connection with the acquisition of the shares in the target company, an extraordinary distribution is made to persons holding shares in the parent member.

(5) "Y%" is given by the following formula—

$$100\ \% \times \frac{B}{A + B}$$

where—

A is the value of the consideration which is in the form of the issue of shares by the parent member to the unconnected persons, and

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B is, as the case may be—

(a) the value of the consideration which is not in the form of the issue of shares by the parent member to the unconnected persons,

(b) the value of the extraordinary distribution, or

(c) the total of the values given by paragraphs (a) and (b).

371ID The 75% exemption

(1) This section applies to a qualifying loan relationship if section 371IB does not apply to the qualifying loan relationship.

(2) 75% of the profits of the qualifying loan relationship are exempt.

[F276 371IE The "matched interest profits" exemption

(1) This section applies if—

(a) there are profits of qualifying loan relationships which are not exempt after sections 371IB and 371ID have been applied to each qualifying loan relationship,

(b) the relevant corporation tax accounting period (as defined in section 371BC(3)) of company C is a relevant accounting period of it in relation to a period of account of a worldwide group,

(c) the CFC's accounting period ends in that period of account, and

(d) apart from this section, the profits mentioned in paragraph (a) would be included in the chargeable profits of the CFC.

(2) In this section "the matched interest profits" means so much of the profits mentioned in subsection (1)(a) as remain after excluded credits and excluded debits are left out of account.

(3) If the aggregate net tax-interest expense of the group for the period is nil, all of the matched interest profits are exempt.

(4) Otherwise, there is a more limited exemption if the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies exceeds the aggregate net tax-interest expense of the group for the period.

(5) For the purposes of this section "the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies" is determined as follows.

Step 1 For each relevant chargeable company (including C) determine the percentage (P%) of the CFC's chargeable profits that are apportioned to the company under step 5 of section 371BC(1).

Step 2 For each relevant chargeable company (including C) multiply P% by the matched interest profits.

Step 3 The sum of the amounts for each company found under step 2 is "the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies".

(6) For the purposes of this section a company is a relevant chargeable company if the relevant corporation tax accounting period of the company is a relevant accounting period in relation to the period of account of the group.

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(7) The limited exemption is given effect by treating the matched interest profits as equal to the amount found by multiplying the amount that they would otherwise be by—

E RPMIP

where—

E is the amount of the excess mentioned in subsection (4), and

RPMIP is the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies.

(8) For the purposes of this section the aggregate net tax-interest expense of a worldwide group for a period of account is determined in accordance with Part 10 (corporate interest restriction) but without regard to debits, credits or other amounts arising from—

(a) banking business carried on by a company within the charge to corporation tax, or

(b) insurance business carried on by a company within the charge to corporation tax.

(9) For the purposes of this section—

"excluded credit" has the meaning given by section 386(3),

"excluded debit" has the meaning given by section 383(3), and

"period of account", "relevant accounting period" and "worldwide group" have the same meanings as in Part 10.**]**

Textual Amendments

F276 S. 371IE substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 22(2)**

371IF Determining the profits of a qualifying loan relationship

Take the following steps to determine the profits of a qualifying loan relationship for the purposes of this Chapter.

Step 1 Determine the credits from the qualifying loan relationship which are brought into account in determining the CFC's non-trading finance profits. The result is "the step 1 credits".

Step 2 Determine the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

(a) are from any derivative contract or other arrangement (other than a qualifying loan relationship) entered into by the CFC as a hedge of risk in connection with the qualifying loan relationship, and

(b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 1 credits and if the debits exceed the credits subtract the deficit from the step 1 credits. The result is "the step 2 credits".

Step 3 Allocate to the qualifying loan relationship a just and reasonable proportion of the credits from the CFC's relevant debtor relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not

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reflected in the step 2 credits). Add the credits to the step 2 credits. The result is "the step 3 credits". A debtor relationship of the CFC is "relevant" if the loan which is the subject of it is used by the CFC to fund the loan which is the subject of the qualifying loan relationship

Step 4 Allocate to the qualifying loan relationship a just and reasonable proportion of the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

(a) are from any derivative contract or other arrangement (other than a qualifying loan relationship or a relevant debtor relationship) entered into by the CFC as a hedge of risk in connection with a relevant debtor relationship, and

(b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 3 credits and if the debits exceed the credits subtract the deficit from the step 3 credits. The result is "the step 4 credits".

Step 5 Allocate to the qualifying loan relationship a just and reasonable proportion of—

(a) the debits from the CFC's loan relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 4 credits), and

(b) any amounts set off under Chapter 16 **[**[F277]or Chapter 16A**]** of Part 5 of CTA 2009 (non-trading deficits) against amounts which, apart from the set off, would be included in the CFC's non-trading finance profits.

Reduce the step 4 credits accordingly to give the profits of the qualifying loan relationship.

Textual Amendments

F277 Words in s. 371IF Step 5 inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 179**

371IG What is a "qualifying loan relationship"?

(1) In this Chapter "qualifying loan relationship" means a creditor relationship of the CFC—

(a) the ultimate debtor in relation to which is a qualifying company, and

(b) which is not prevented from being a qualifying loan relationship by section 371IH.

(2) In this Chapter "the ultimate debtor", in relation to a creditor relationship of the CFC, means the debtor in relation to the creditor relationship.

This is subject to what follows.

(3) Subsection (4) or (5) (as the case may be) applies if—

(a) there is a loan ("loan A") which is the subject of a creditor relationship of the CFC,

(b) loan A, or a part of loan A, is made and used to fund (directly or indirectly) another loan ("loan B") to a person ("P"), and

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(c) loan B, or a part of loan B, is not made and used to fund (directly or indirectly) a further loan to any person.

(4) If all of loan A is made and used to fund (directly or indirectly) loan B, the ultimate debtor in relation to the CFC's creditor relationship mentioned in subsection (3)(a) is P.

(5) If only part of loan A is made and used to fund (directly or indirectly) loan B—

(a) that part of loan A is to be treated for the purposes of this Chapter as a separate loan giving rise to a separate creditor relationship of the CFC, and

(b) the ultimate debtor in relation to that separate creditor relationship is P.

(6) If the requirement of subsection (3)(c) is met in relation to a part of loan B only, in subsections (4) and (5) references to loan B are to be read as references to that part of loan B only.

(7) But neither subsection (4) nor subsection (5) applies if—

(a) the debtor ("D") in relation to the CFC's creditor relationship is a qualifying company the main business of which is banking business or insurance business,

(b) the use of loan A, or the part of loan A, as mentioned in subsection (3)(b) occurs in the ordinary course of D's banking business or insurance business (as the case may be), and

(c) P is not a UK resident qualifying company.

(8) In this section "qualifying company" means a company which—

(a) is connected with the CFC, and

(b) is controlled by the UK resident person or persons who control the CFC.

371IH Exclusions from definition of "qualifying loan relationship"

(1) If the ultimate debtor in relation to a creditor relationship of the CFC is a non-UK resident company, the creditor relationship cannot be a qualifying loan relationship so long as some or all of the company's debits—

(a) are being brought into account for the purposes of Chapter 4 of Part 2 of CTA 2009 (UK permanent establishments of non-UK resident companies) in determining the company's profits which are attributable to a UK permanent establishment, or

(b) are being brought into account for the purposes of Part 3 of ITTOIA 2005 (property income) in determining the company's profits of a UK property business.

(2) If the ultimate debtor in relation to a creditor relationship of the CFC is a UK resident company, the creditor relationship can be a qualifying loan relationship only so long as—

(a) an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) is in effect in relation to the company, and

(b) all the company's debits are being brought into account for the purpose of determining exemption adjustments in relation to the company under that section.

(3) If the ultimate debtor in relation to a creditor relationship of the CFC is another CFC, the creditor relationship cannot be a qualifying loan relationship so long as—

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(a) some or all of the other CFC's debits are relevant to the application of Chapters 3 to 8 or Chapter 12 in the case of the other CFC, and

(b) as a result of that, the CFC charge is not being charged in relation to the other CFC's accounting periods or any sums charged are less than what they would otherwise have been.

(4) In subsections (1) to (3) references to the debits of the company which is the ultimate debtor in relation to a creditor relationship of the CFC are references to—

(a) the ultimate debtor's debits in relation to the loan which is the subject of the CFC's creditor relationship, or

(b) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), the ultimate debtor's debits in relation to loan B.

(5) A creditor relationship of the CFC cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the creditor relationship to provide (directly or indirectly) funding for—

(a) a loan to another person, or

(b) so far as not covered by paragraph (a), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.

(6) Subsection (5) does not apply if—

(a) the main business of the ultimate debtor is banking business or insurance business, and

(b) the funding for the loan or arrangement would be provided in the ordinary course of the ultimate debtor's banking business or insurance business (as the case may be).

(7) A creditor relationship of the CFC cannot be a qualifying loan relationship if—

(a) the main business of the ultimate debtor in relation to the creditor relationship is banking business or insurance business, and

(b) the creditor relationship is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor to provide (directly or indirectly) funding for a loan or arrangement as mentioned in subsection (5)(a) or (b) in order to obtain a tax advantage for the ultimate debtor.

(8) A creditor relationship of the CFC cannot be a qualifying loan relationship if the loan which is the subject of the creditor relationship is made to any extent (other than a negligible one) out of funds received by the CFC (directly or indirectly)—

(a) from a relevant UK connected company other than by way of a loan, or

(b) as a result of an arrangement which gives rise to a deduction in the calculation of the profits of a trade of a relevant UK connected company (apart from the ultimate debtor) for the purposes of Part 3 of CTA 2009 (trading income).

(9) For the purposes of subsection (8) a company is "relevant UK connected" if—

(a) the company is a UK resident company connected with the CFC,

(b) the company's main business is banking business or insurance business, and

(c) the company's banking business or insurance business (as the case may be) is a trade.

[Subsection (9B) applies to a creditor relationship of a CFC if—

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F278(9A) (a) a creditor relationship ("the UK creditor relationship") of a UK connected company is made where the debtor is a non-UK resident company connected with the UK connected company,

(b) subsequently, an arrangement ("the relevant arrangement") is made directly or indirectly in connection with the UK creditor relationship, and

(c) the main purpose, or one of the main purposes, of the relevant arrangement is to secure that—

(i) the relevant UK credits of a UK connected company for a corporation tax accounting period of the company are lower than they would be if the relevant arrangement had not been made, or

(ii) the relevant UK debits of a UK connected company for a corporation tax accounting period of the company are greater than they would be if the relevant arrangement had not been made.

(9B) The CFC's creditor relationship cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, the relevant arrangement.

(9C) Subsection (9D) applies for the purposes of subsection (9A)(c)(i) and (ii) in determining what the relevant UK credits or debits of a UK connected company for a corporation tax accounting period would be if the relevant arrangement had not been made.

(9D) Assume that, at all times after the relevant time, the UK creditor relationship remains in place on the same terms as it had at the relevant time.

(9E) In subsections (9A) to (9D)—

"corporation tax accounting period" means an accounting period for corporation tax purposes,

"the relevant time" means the time immediately before—

(a) the time when the relevant arrangement is made, or

(b) if earlier, the time when the UK creditor relationship ends,

"relevant UK credits", in relation to a UK connected company, means credits which the company has under Part 5 or 7 of CTA 2009,

"relevant UK debits", in relation to a UK connected company, means debits which the company has under Part 5 or 7 of CTA 2009, and

"UK connected company" means a UK resident company which—

(a) is connected with the CFC, or

(b) was connected with a company with which the CFC is connected.**]**

(10) A creditor relationship of the CFC cannot be a qualifying loan relationship if—

(a) the CFC receives relevant UK funds or other assets for the purpose of funding the loan which is the subject of the CFC's creditor relationship,

(b) the provision of the relevant UK funds or other assets is itself funded (wholly or partly and directly or indirectly) by a loan made to a UK connected company by—

(i) a non-UK resident person, or

(ii) a UK resident person who is not connected with the CFC,

(c) the relevant loan is **[**F279used to any extent (other than a negligible one)**]** to repay wholly or partly another loan made to the ultimate debtor by a person not connected with the ultimate debtor, and

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(d) the events mentioned in paragraphs (a) to (c) take place under, or are otherwise connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.

(11) In subsection (10)—

(a) "relevant UK funds or other assets" and "UK connected company" have the same meaning as in section 371EC, and

(b) in paragraph (c) "the relevant loan" means—

(i) the loan which is the subject of the CFC's creditor relationship, or

(ii) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), loan B.

(12) In subsections (4)(b) and (11)(b)(ii) references to loan B do not include any part of loan B—

(a) which loan A is not made and used to fund, or

(b) in relation to which the requirement of section 371IG(3)(c) is not met.

Textual Amendments

F278 Ss. 371IH(9A)-(9E) inserted (with effect in accordance with s. 293(2) of the amending Act) by Finance Act 2014 (c. 26), **s. 293(1)**

F279 Words in s. 371IH(10)(c) substituted (with effect in accordance with s. 294(2) of the amending Act) by Finance Act 2014 (c. 26), **s. 294(1)**

371II Power to amend definitions

The HMRC Commissioners may by regulations amend this Chapter—

(a) so as to amend the definition of "qualifying resources" for the purposes of section 371IB, or

(b) so as to amend the definition of "qualifying loan relationship" or "ultimate debtor" for the purposes of this Chapter.

371IJ Claims

(1) A claim under this Chapter must be made by being included in company C's company tax return for the relevant corporation tax accounting period (as defined in section 371BC(3)).

(2) The claim may be included in the return originally made or by amendment.

(3) The claim may be amended or withdrawn by company C only by amending the return.

(4) A claim under this Chapter may be made, amended or withdrawn at any time up to whichever is the last of the following dates—

(a) the first anniversary of the filing date for company C's company tax return for the relevant corporation tax accounting period under paragraph 14 of Schedule 18 to FA 1998;

(b) if notice of enquiry is given into that return under paragraph 24 of that Schedule, 30 days after the enquiry is completed **[**[F280]so far as relating to the matters to which the claim relates**]**;

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(c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2) of that Schedule, 30 days after notice of the amendment is issued;

(d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.

(5) A claim under this Chapter may be made, amended or withdrawn at a later time if an officer of Revenue and Customs allows it.

(6) In any event, if after a claim under this Chapter is made there is a change of circumstances affecting the tested income amount or **[**F281the aggregate net tax-interest expense that is mentioned in section 371IE**]**, the claim may be amended at any time within the period of 12 months after the change of circumstances for the purpose of taking account of the change of circumstances.

(7) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim under this Chapter within the time allowed by or under this section.

(8) In subsection (4) references to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim under this Chapter.

(9) An enquiry is so restricted if—

(a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998, and

(b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim under this Chapter.

Textual Amendments

F280 Words in s. 371IJ(4)(b) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 43**

F281 Words in s. 371IJ(6) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 22(3)**

CHAPTER 10

THE EXEMPT PERIOD EXEMPTION

371JA Introduction to Chapter

(1) This Chapter sets out an exemption called "the exempt period exemption" for the purposes of section 371BA(2)(b).

(2) Section 371JE also provides for adjustments of profits which would otherwise pass through the CFC charge gateway (see section 371BB(2)(b)) linked to the exempt period exemption.

371JB The basic rule

(1) The exempt period exemption applies for a CFC's accounting period if—

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(a) the accounting period ends during an exempt period of the CFC (see sections 371JC and 371JD),

(b) the subsequent period condition is met, and

(c) the chargeable company condition is met.

(2) The subsequent period condition is met if—

(a) the CFC does not cease to be a CFC before having at least one accounting period which begins after the end of the exempt period, and

(b) section 371BC (charging the CFC charge) does not apply in relation to the CFC's first accounting period to begin after the end of the exempt period (see section 371BA(2)).

(3) The chargeable company condition is met if, at all times during the relevant period—

(a) the charging condition in section 371JC is met, and

(b) each company which would be a chargeable company for the purposes of that condition is an original chargeable company or is connected with an original chargeable company.

(4) In subsection (3)—

"original chargeable company" means a company which, for the purposes of the charging condition in section 371JC, would be a chargeable company at the beginning of the exempt period, and

"the relevant period" means the period which—

(a) begins immediately after the beginning of the exempt period, and

(b) ends at the end of the CFC's first accounting period to begin after the end of the exempt period.

(5) This section is subject to section 371JF (anti-avoidance).

371JC When does an exempt period begin?

(1) An exempt period of a CFC begins at any time ("the relevant time") during an accounting period of the CFC if—

(a) the initial condition is met,

(b) the charging condition is met at the relevant time, and

(c) at no time during the relevant preceding period (if there is one) is the charging condition met.

(2) The initial condition is met if—

(a) immediately before the relevant time, the company ("C") which is the CFC is carrying on a business, or

(b) if the relevant time is the time at which C is incorporated or formed, C is incorporated or formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies when C begins to control the company or companies.

(3) To determine if the charging condition is met at any time, assume—

(a) that the company which is the CFC is a CFC at the time in question if that is not otherwise the case,

(b) that the time in question is itself an accounting period of the CFC, and

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(c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.

(4) The charging condition is met at the time in question if, as a result of steps 1, 3 and 4 in section 371BC(1), there would be one or more chargeable companies in relation to the assumed accounting period.

(5) "The relevant preceding period" means the period of 12 months ending immediately before the relevant time, excluding any part of that period during which the company which is the CFC does not exist.

371JD How long is an exempt period?

(1) Subject to what follows, an exempt period of a CFC lasts 12 months.

(2) Subsection (3) applies if a notice is given to an officer of Revenue and Customs requesting that the length of an exempt period of a CFC be extended (or further extended).

(3) An officer of Revenue and Customs may extend (or further extend) the length of the exempt period.

(4) A notice under subsection (2) must be given no later than the end of the exempt period (as it stands at the time the notice is given).

(5) A notice under subsection (2) may be given only by a company which, at the time the notice is given, would be a chargeable company for the purposes of the charging condition in section 371JC.

371JE Adjustment of profits passing through the CFC charge gateway

(1) This section applies for a CFC's accounting period if—

(a) the accounting period begins, but does not end, during an exempt period of the CFC, and

(b) the subsequent period condition and the chargeable company condition in section 371JB are both met.

(2) The CFC's assumed total profits which would otherwise pass through the CFC charge gateway are to be adjusted to ensure that no profits which arise in the exempt period, as determined on a just and reasonable basis, pass through the CFC charge gateway.

(3) This section is subject to section 371JF (anti-avoidance).

371JF Anti-avoidance

(1) The exempt period exemption does not apply for a CFC's accounting period ("the relevant accounting period") if condition A or B is met.

(2) Condition A is that—

(a) an arrangement is entered into at any time,

(b) the main purpose, or one of the main purposes, of the arrangement is to secure a tax advantage for any person,

(c) the arrangement is linked to the exempt period exemption applying or being expected to apply (apart from this section)—

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(i) for the relevant accounting period, or

(ii) for that period and one or more other accounting periods of the CFC, and

(d) the arrangement involves one or both of the following—

(i) the CFC holding assets which give rise to non-trading finance profits or trading finance profits of the CFC, or

(ii) the CFC holding intellectual property which gives rise to any income of the CFC.

(3) Condition B is that—

(a) an arrangement is entered into at any time,

(b) in consequence of the arrangement, the length of any accounting period of the CFC is less than 12 months, and

(c) the main purpose, or one of the main purposes, of the arrangement is to secure that the exempt period exemption applies—

(i) for the relevant accounting period, or

(ii) for that period and one or more other accounting periods of the CFC.

(4) In this section references to the exempt period exemption include references to section 371JE.

371JG Amendment of company tax returns

(1) This section applies in relation to a company's company tax return for a corporation tax accounting period if an exempt period of a CFC falls (wholly or partly) in the corporation tax accounting period.

(2) Any amendment of the return which relates to the application (or non-application) of the exempt period exemption or section 371JE for an accounting period of the CFC may be made by the company at any time no later than 12 months after the relevant filing date.

(3) "The relevant filing date" means the date which is the filing date under paragraph 14 of Schedule 18 to FA 1998 for the company's company tax return for its corporation tax accounting period in which ends the CFC's first accounting period to begin after the end of the exempt period.

(4) "Corporation tax accounting period" means an accounting period for corporation tax purposes.

CHAPTER 11

THE EXCLUDED TERRITORIES EXEMPTION

Modifications etc. (not altering text)

C51 Pt. 9A Chs. 11-14 applied (with modifications) by 2009 c. 4, s. 18I-18ID (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

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371KA Introduction to Chapter

This Chapter sets out an exemption called "the excluded territories exemption" for the purposes of section 371BA(2)(b).

371KB The basic rule

(1) The excluded territories exemption applies for a CFC's accounting period if—

(a) the CFC is resident (see section 371KC) in an excluded territory for the accounting period,

(b) the total of the following amounts is no more than the threshold amount for the accounting period (see section 371KD)—

(i) the CFC's category A income (if any) for the accounting period (see sections 371KE and 371KF),

(ii) the CFC's category B income (if any) for the accounting period (see section 371KG),

(iii) the CFC's category C income (if any) for the accounting period (see section 371KH), and

(iv) the CFC's category D income (if any) for the accounting period (see section 371KI),

(c) the IP condition is met (see section 371KJ), and

(d) the CFC is not, at any time during the accounting period, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.

(2) In this Chapter "excluded territory" means a territory specified as such in regulations made by the HMRC Commissioners.

(3) The HMRC Commissioners may also by regulations, in relation to CFCs resident in a specified excluded territory or to other specified cases, do one or more of the following—

(a) provide that one or both of the requirements set out in subsection (1)(b) and (c) does not have to be met in order for the excluded territories exemption to apply;

(b) modify one or both of those requirements, including by modifying any provision of this Chapter mentioned in subsection (1)(b) or (c);

(c) specify further requirements which must be met in order for the excluded territories exemption to apply.

(4) If an amount is included in more than one of the categories of income mentioned in subsection (1)(b)(i) to (iv), the amount is to be counted only once in determining if the threshold amount is exceeded.

371KC How to determine the territory in which a CFC is resident

(1) For the purposes of this Chapter the territory in which a CFC is resident for an accounting period is to be determined in accordance with this section; and in this Chapter "the CFC's territory" means that territory as so determined.

(2) The CFC is taken to be resident in the territory determined in accordance with section 371TA.

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(3) But section 371TA(1)(b) is to be applied only if, at all times during the accounting period, the CFC or persons with interests in the CFC are liable under the law of the territory in question to tax on the CFC's income.

(4) If, as a result of subsection (3), no territory of residence can be determined, the excluded territories exemption cannot apply for the accounting period.

371KD What is "the threshold amount"?

(1) The threshold amount for a CFC's accounting period is—

(a) 10% of the CFC's accounting profits for the accounting period, or

(b) if more, £50,000.

(2) If the accounting period is less than 12 months, the amount specified in subsection (1)(b) is to be reduced proportionately.

(3) In this Chapter references to a CFC's accounting profits for an accounting period are to be read ignoring section 371VD(7) and (8).

371KE Category A income: the basic rule

(1) A CFC's category A income for an accounting period consists of any gross amounts (that is, amounts before deduction of expenses or transfers to or from reserves) of any relevant income to which subsection (3), (4) or (5) applies. This is subject to section 371KF.

(2) "Relevant income" means any income of the CFC which—

(a) is brought into account in determining the CFC's accounting profits for the accounting period, or

(b) is not so brought into account but arises in the accounting period.

(3) This subsection applies to any relevant income (apart from any dividend or other distribution of a company) so far as it is exempt from tax in the CFC's territory.

(4) This subsection applies to any relevant income so far as the tax which falls to be paid in respect of the relevant income in the CFC's territory is at a reduced rate by virtue of a provision having effect under the law of that territory the purpose of which is (wholly or mainly) to encourage (directly or indirectly) investment in that territory.

(5) This subsection applies to any relevant income if—

(a) any tax falls to be paid in respect of the relevant income in the CFC's territory,

(b) under the law of that territory, the CFC, any person who has an interest in the CFC or any person connected with the CFC is entitled to any repayment of tax or any payment in respect of a credit for tax, and

(c) that repayment or payment—

(i) is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a), but

(ii) is not a form of relief in respect of losses incurred by the CFC.

371KF Category A income: permanent establishments in excluded territories

(1) This section applies if—

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(a) a CFC's category A income for an accounting period would include (apart from this section) the gross amount of any relevant income which arises from the activities of a permanent establishment ("PE") which the CFC has in a territory outside the CFC's territory, and

(b) the territory in which PE is established is an excluded territory.

(2) The gross amount of that relevant income is to be included in the CFC's category A income only so far as it would also have been included had the references in section 371KE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

371KG Category B income

(1) A CFC's category B income for an accounting period consists of any notional interest which—

(a) is deducted from any of the CFC's relevant income for tax purposes under the law of the CFC's territory or any territory in which the CFC has a permanent establishment, but

(b) is not deducted in determining the CFC's assumed taxable total profits for the accounting period.

(2) But the CFC's category B income is not to exceed its relevant non-local income.

(3) "Notional interest" means an amount representing a notional interest expense or other financing charge calculated by reference to any of the CFC's equity or debt.

(4) "Relevant income" has the same meaning as in section 371KE.

(5) "Relevant non-local income" means the gross amount (that is, the amount before deduction of expenses or transfers to or from reserves) of any non-trading income—

(a) which is included in the CFC's relevant income, and

(b) which is received (directly or indirectly) from—

(i) a person resident outside the CFC's territory, or

(ii) a permanent establishment which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

371KH Category C income

A CFC's category C income for an accounting period is the total of the following amounts—

(a) amounts included in the CFC's accounting profits for the period which fall within section 371VD(4)(a) (whether or not those amounts would have been included in those profits apart from section 371VD(4)(a)), and

(b) amounts included in those profits by virtue only of section 371VD(4)(b).

371KI Category D income

(1) A CFC's category D income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of any income which—

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(a) is brought into account in determining the CFC's accounting profits for the accounting period, and

(b) is to be included in the CFC's category D income in accordance with subsection (3) or (4).

(2) Subsection (3) applies if—

(a) income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,

(b) in the CFC's territory, the income is reduced by an amount ("the relevant amount") for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and

(c) there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.

(3) The relevant amount is to be included in the CFC's category D income.

(4) Income is to be included in the CFC's category D income so far as the tax which falls to be paid in respect of the income in the CFC's territory is at a reduced rate by virtue of a ruling or other decision or an arrangement made in relation to the CFC by a governmental authority in that territory.

371KJ The IP condition

(1) This section applies for the purposes of section 371KB(1)(c).

(2) The IP condition is met unless—

(a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC ("the exploited IP"),

(b) all or parts of the exploited IP were—

(i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or

(ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,

(c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and

(d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.

(3) The significance condition is met if—

(a) the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or

(b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.

(4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—

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(a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or

(b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.

(5) "The relevant period" means the period covering the accounting period and the 6 years before the accounting period.

CHAPTER 12

THE LOW PROFITS EXEMPTION

371LA Introduction to Chapter

This Chapter sets out an exemption called "the low profits exemption" for the purposes of section 371BA(2)(b).

371LB The basic rule

(1) The low profits exemption applies for a CFC's accounting period if subsection (2), (3), (4) or (5) applies.

(2) This subsection applies if the CFC's accounting profits for the accounting period are no more than £50,000.

(3) This subsection applies if the CFC's assumed taxable total profits for the accounting period are no more than £50,000.

(4) This subsection applies if—

(a) the CFC's accounting profits for the accounting period are no more than £500,000, and

(b) the amount of those profits representing non-trading income is no more than £50,000.

(5) This subsection applies if—

(a) the CFC's assumed taxable total profits for the accounting period are no more than £500,000, and

(b) the amount of those profits representing non-trading income is no more than £50,000.

(6) If the accounting period is less than 12 months, the amounts specified in subsections (2), (3), (4)(a) and (b) and (5)(a) and (b) are to be reduced proportionately.

371LC Anti-avoidance

(1) The low profits exemption does not apply for a CFC's accounting period ("the relevant accounting period") if condition A or B is met.

(2) Condition A is that—

(a) an arrangement is entered into at any time,

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(b) in consequence of the arrangement, the low profits exemption would (apart from this section) apply for the relevant accounting period, and

(c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—

(i) for the relevant accounting period, or

(ii) for that period and one or more other accounting periods of the CFC.

(3) Condition B is that, at any time during the relevant accounting period, the CFC's business is, wholly or mainly, the provision of UK intermediary services.

(4) For the purposes of subsection (3) the CFC provides "UK intermediary services" if—

(a) a UK resident individual ("the service provider") personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person ("the client"), and

(b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the CFC.

(5) The low profits exemption does not apply for a CFC's accounting period by virtue of section 371LB(2) or (4) if condition C is met.

(6) Condition C is that, in determining the CFC's assumed taxable total profits for the accounting period, Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

CHAPTER 13

THE LOW PROFIT MARGIN EXEMPTION

371MA Introduction to Chapter

This Chapter sets out an exemption called "the low profit margin exemption" for the purposes of section 371BA(2)(b).

371MB The basic rule

(1) The low profit margin exemption applies for a CFC's accounting period if the CFC's accounting profits for the period are no more than 10% of the CFC's relevant operating expenditure.

(2) In this section references to the CFC's accounting profits are to those profits as determined before any deduction for interest.

(3) The CFC's "relevant operating expenditure" is its operating expenditure brought into account in determining its accounting profits for the accounting period, excluding—

(a) the cost of goods purchased by the CFC, other than goods used by the CFC in the territory in which it is resident for the accounting period, and

(b) any expenditure which gives rise, directly or indirectly, to income of a person related to the CFC.

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371MC Anti-avoidance

The low profit margin exemption does not apply for a CFC's accounting period ("the relevant accounting period") if—

(a) an arrangement is entered into at any time,

(b) in consequence of the arrangement, the low profit margin exemption would (apart from this section) apply for the relevant accounting period, and

(c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profit margin exemption applies—

(i) for the relevant accounting period, or

(ii) for that period and one or more other accounting periods of the CFC.

CHAPTER 14

THE TAX EXEMPTION

371NA Introduction to Chapter

This Chapter sets out an exemption called "the tax exemption" for the purposes of section 371BA(2)(b).

371NB The basic rule

(1) Take the following steps to determine if the tax exemption applies for a CFC's accounting period.

Step 1 Applying section 371TB, determine the territory ("the CFC's territory") in which the CFC is resident for the accounting period. If no territory of residence can be determined by applying section 371TB, the tax exemption cannot apply and no further steps are to be taken.

Step 2 Determine the amount of tax ("the local tax amount") which is paid in the CFC's territory in respect of the CFC's local chargeable profits arising in the accounting period (applying section 371NC so far as relevant). If the local tax amount is determined under designer rate tax provisions (see section 371ND), the tax exemption cannot apply and step 3 is not to be taken.

Step 3 In accordance with section 371NE, determine the amount of the corresponding UK tax for the accounting period. The tax exemption applies if the local tax amount is at least 75% of the corresponding UK tax.

(2) Subsection (3) applies if an amount of tax is paid in the CFC's territory by a person (whether or not the CFC) in respect of any of the CFC's local chargeable profits arising in the accounting period taken together with other amounts.

(3) For the purposes of step 2 in subsection (1) the amount of tax is to be apportioned between the CFC's local chargeable profits in question and the other amounts on a just and reasonable basis.

(4) In this Chapter references to the CFC's local chargeable profits are to its profits as determined for tax purposes under the law of the CFC's territory, ignoring any capital gains or losses.

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371NC Reductions to "the local tax amount"

(1) This section applies for the purposes of step 2 in section 371NB(1).

(2) The local tax amount is to be reduced to what it would have been—

(a) had any income, or any income and expenditure (where the income exceeds the expenditure), to which subsection (3) applies not been brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, and

(b) had any expenditure to which subsection (4) applies been brought into account in determining those profits.

(3) This subsection applies to any income, or any income and expenditure, of the CFC—

(a) which is brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but

(b) which does not fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.

(4) This subsection applies to any expenditure of the CFC—

(a) which is not brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but

(b) which does fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.

(5) Subsection (6) applies if—

(a) in the CFC's territory any tax falls to be paid in respect of the CFC's local chargeable profits arising in the accounting period,

(b) under the law of that territory, any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and

(c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).

(6) The local tax amount is to be reduced (or further reduced after any reduction under subsection (2)) by the amount of that repayment or payment.

371ND What are "designer rate tax provisions"?

(1) For the purposes of step 2 in section 371NB(1) "designer rate tax provisions" means provisions—

(a) which appear to the HMRC Commissioners to be designed to enable companies to exercise significant control over the amount of tax which they pay, and

(b) which are specified in regulations made by the HMRC Commissioners.

(2) Regulations under subsection (1) may make different provision for different cases or with respect to different territories.

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371NE How to determine "the corresponding UK tax"

(1) For the purposes of step 3 in section 371NB(1) "the corresponding UK tax" is the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.

(2) In determining that amount of corporation tax—

(a) ignore any relief from corporation tax attributable to the local tax amount which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and

(b) deduct from what would otherwise be that amount of corporation tax—

(i) any amount which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and

(ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.

(3) In subsection (2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

CHAPTER 15

RELEVANT INTERESTS IN A CFC

Introduction

371OA Application of Chapter

This Chapter applies for the purpose of determining the persons who have "relevant interests" in a CFC for the purposes of step 1 in section 371BC(1).

371OB Provision about interpretation

(1) This section applies for the purposes of this Chapter.

(2) A person's interest in a company is an "indirect" interest so far as the person has the interest by virtue of having an interest in another company; and references to a "direct" interest in a company are to be read accordingly.

(3) An interest held by an open-ended investment company within the meaning of Chapter 2 of Part 13 of CTA 2010 (see sections 613 and 615) is treated as held by the company's shareholders in proportion to their shareholdings.

(4) An interest held by the trustees of an authorised unit trust is treated as held by the persons who have rights under the trust in proportion to their rights.

(5) An interest held by a bare trustee or nominee (including by virtue of subsection (3) or (4)) is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.

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(6) "Bare trustee" means a person acting as trustee for—

(a) a person absolutely entitled as against the trustee,

(b) two or more persons who are so entitled,

(c) a person who would be so entitled but for being a minor or otherwise lacking legal capacity, or

(d) two or more persons who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.

(7) Subsection (8) applies in a case not covered by subsection (5) if—

(a) an interest is held in a fiduciary or representative capacity (including by virtue of subsection (3) or (4)), and

(b) there are one or more identifiable beneficiaries.

(8) The interest is taken to be held by that beneficiary or, as the case may be, apportioned between those beneficiaries on a just and reasonable basis.

What is a "relevant interest" in a CFC?

371OC "Relevant interests" of UK resident companies

(1) A UK resident company's interest in a CFC is a "relevant interest", except so far as subsection (2) applies to it.

(2) This subsection applies to the interest so far as it is an indirect interest which the UK resident company has by virtue of having an interest in another UK resident company.

371OD "Relevant interests" of persons related to UK resident companies

(1) This section applies if, by virtue of section 371OC, a UK resident company ("UKRC") has a relevant interest in a CFC.

(2) A related person's interest in the CFC is a "relevant interest", except so far as subsection (4) or (5) applies to it.

(3) "Related person" means a person, other than a UK resident company, who is connected or associated with UKRC.

(4) This subsection applies to the related person's interest so far as it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person.

(5) This subsection applies to the interest so far as it is the same as UKRC's relevant interest in the CFC by virtue of UKRC having an interest in the related person.

371OE Other "relevant interests"

(1) This section applies if a person ("P") has a direct interest in a CFC which is not a relevant interest by virtue of section 371OC or 371OD.

(2) P's direct interest is a "relevant interest", except so far as subsection (3) applies to it.

(3) This subsection applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC by virtue of the other person having an interest in P.

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(4) In subsection (3) the reference to another person's relevant interest is to another person's relevant interest by virtue of section 371OC or 371OD.

CHAPTER 16

CREDITABLE TAX OF A CFC

371PA What is "creditable tax"?

(1) For the purposes of step 2 in section 371BC(1) a CFC's creditable tax for an accounting period is the total of—

(a) the amount of any relief from corporation tax attributable to any foreign tax which, applying the corporation tax assumptions, would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income included or represented in the CFC's chargeable profits for the accounting period,

(b) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's chargeable profits for the accounting period by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax),

(c) any amount of income tax or corporation tax actually charged in respect of any income included or represented in the CFC's chargeable profits for the accounting period, and

(d) any amount of a foreign CFC charge paid in respect of any income included or represented in the CFC's chargeable profits for the accounting period.

(2) In subsection (1)(a) "foreign tax" means—

(a) the local tax amount, or

(b) any tax under the law of a relevant foreign territory.

(3) In subsection (1)(b) "relevant income tax" means income tax which the CFC bears by deduction on a payment so far as the payment is included or represented in the CFC's chargeable profits.

(4) In subsection (1)(d) "foreign CFC charge" means a charge under the law of a relevant foreign territory (by whatever name known) which is similar to the CFC charge.

(5) In subsection (1)(b) to (d) references to an amount being set off, an amount actually charged or an amount paid do not include so much of any such amount as has been or falls to be repaid to the CFC or any other person whether on the making of a claim or otherwise.

(6) "Relevant foreign territory" means a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.

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CHAPTER 17

APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

Introduction

371QA Application of Chapter

This Chapter applies for the purpose of apportioning a CFC's chargeable profits and creditable tax for an accounting period among the relevant persons as required by step 3 in section 371BC(1).

371QB Provision about interpretation

(1) This section applies for the purposes of this Chapter.

(2) Section 371OB applies as it applies for the purposes of Chapter 15.

(3) "Ordinary shares", in relation to any company, means shares of a single class, however described, which is the only class of share issued by the company.

(4) For the purposes of subsection (3)—

(a) "share" includes a fraction of a share, and

(b) shares issued by a company which are paid up to different amounts are not to be taken to be of a single class.

(5) A person ("P") holds ordinary shares in the CFC "indirectly" if P directly holds ordinary shares in a company which is share-linked to the CFC.

(6) A company is "share-linked" to the CFC if it has an interest in the CFC only by virtue of it holding directly—

(a) ordinary shares in the CFC, or

(b) ordinary shares in another company which is share-linked to the CFC (whether by virtue of paragraph (a) or this paragraph),

and "share-linked company" means a company which is share-linked to the CFC.

How are the apportionments to be made?

371QC The basic rules

(1) If conditions X to Z are met, the CFC's chargeable profits and creditable tax are to be apportioned among the relevant persons in accordance with section 371QD.

(2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant person is to be determined on a just and reasonable basis.

(3) Condition X is that the relevant persons all have their relevant interests by virtue only of their holding, directly or indirectly, ordinary shares in the CFC.

(4) Condition Y is that each relevant person meets the requirement that the person is either—

(a) UK resident at all times during the accounting period, or

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(b) non-UK resident at all times during the accounting period.

(5) Condition Z is that no company which has an intermediate interest in the CFC at any time in the accounting period has that interest otherwise than by virtue of holding, directly or indirectly, ordinary shares in the CFC.

(6) A company ("C") has an "intermediate interest" in the CFC if—

(a) C has an interest in the CFC, and

(b) one or more of the relevant persons have relevant interests in the CFC by virtue of having an interest in C.

371QD Apportionments to be made in proportion to shareholding

(1) If conditions X to Z in section 371QC are met, apply subsections (2) and (3) to each relevant person.

(2) Determine the percentage ("P%") of the issued ordinary shares in the CFC represented by the relevant person's relevant interest.

(3) P% of the CFC's chargeable profits and P% of the CFC's creditable tax is then apportioned to the relevant person.

(4) This section is supplemented by sections 371QE and 371QF.

371QE Indirect shareholdings

(1) This section applies to the relevant interest of a relevant person ("R") so far as R has that interest by virtue of holding, indirectly, ordinary shares in the CFC ("the relevant shares").

(2) The percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it) is given by the following formula—

$$P \times S$$

where—

P is the product of the appropriate fractions of R and each of the share-linked companies through which R indirectly holds the relevant shares, other than the share-linked company which directly holds the relevant shares, and

S is the percentage of the issued ordinary shares in the CFC which the relevant shares represent.

(3) "The appropriate fraction", in relation to any person who directly holds ordinary shares in a share-linked company, means that fraction of the issued ordinary shares in the share-linked company which the holding represents.

(4) If R has different indirect holdings of shares in the CFC (as in the case where different shares are held through different share-linked companies)—

(a) apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and

(b) then add the separate results together to give the total percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it).

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371QF Variable shareholdings

(1) This section applies if the percentage of the issued ordinary shares in the CFC represented by a relevant person's relevant interest varies during the accounting period.

(2) That percentage is taken to be the percentage equal to the sum of the relevant percentages for each holding period.

(3) "Holding period" means a part of the accounting period during which the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest remains the same.

(4) "Relevant percentage", in relation to a holding period, means the percentage given by the following formula—

$$P \times \frac{H}{A}$$

where—

P is the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest during the holding period,

H is the number of days in the holding period, and

A is the number of days in the accounting period.

371QG Anti-avoidance

(1) This section applies in relation to an accounting period ("the relevant accounting period") of a CFC if—

(a) at any time an arrangement is entered into, and

(b) the main purpose, or one of the main purposes, of the arrangement is to obtain for any person a tax advantage within section 1139(2)(da) of CTA 2010 in relation to—

(i) the relevant accounting period, or

(ii) that period and one or more other accounting periods of the CFC.

(2) The CFC's chargeable profits and creditable tax for the relevant accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).

(3) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the effects of the arrangement mentioned in subsection (1)(a) so far as those effects are referable to the purpose mentioned in subsection (1)(b).

CHAPTER 18

CONTROL ETC

371RA Overview of Chapter

(1) Sections 371RB and 371RE set out how to determine for the purposes of this Part if a company is "controlled" by another person or persons.

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(2) **[**F282Sections 371RC and 371RG set**]** out certain cases in which a non-UK resident company which would not otherwise be a CFC is to be taken to be a CFC for the purposes of this Part.

Textual Amendments

F282 Words in s. 371RA(2) substituted (with effect in accordance with s. 20(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 20(3)**

371RB Legal and economic control

(1) A person ("P") "controls" a company ("C") if—

(a) by means of the holding of shares or the possession of voting power in or in relation to C or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating C or any other company,

P has the power to secure that the affairs of C are conducted in accordance with P's wishes.

(2) A person ("P") "controls" a company ("C") if it is reasonable to suppose that P would—

(a) if the whole of C's share capital were disposed of, receive (directly or indirectly and whether at the time of the disposal or later) over 50% of the proceeds of the disposal,

(b) if the whole of C's income were distributed, receive (directly or indirectly and whether at the time of the distribution or later) over 50% of the distributed amount, or

(c) in the event of the winding-up of C or in any other circumstances, receive (directly or indirectly and whether at the time of the winding-up or other circumstances or later) over 50% of C's assets which would then be available for distribution.

(3) For the purposes of subsection (2) any rights which P has as a relevant bank are to be ignored.

(4) In subsection (2)—

(a) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,

(b) in determining for the purposes of paragraph (b) the percentage of the distributed amount which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of the distributed amount at the time of the distribution, and

(c) in determining for the purposes of paragraph (c) the percentage of C's assets which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of C's assets at the time of the winding-up or other circumstances.

(5) "Relevant bank" means a person ("RB") who—

(a) carries on banking business which is regulated in the territory in which RB is resident, and

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(b) is acting, in the ordinary course of that business, in relation to money lent to C by RB in the ordinary course of that business.

(6) In subsections (2) and (4) references to P receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for P's benefit.

(7) If two or more persons, taken together, meet the requirement of subsection (1) or (2) for controlling a company, those persons are taken to control the company.

Modifications etc. (not altering text)

C52 S. 371RB applied by 2009 c. 4, s. 931E(4)(6) (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 31** (with Sch. 20 para. 53))

371RC Legal and economic control: the 40% rule

(1) This section applies to a non-UK resident company ("C") if—

(a) in accordance with section 371RB(7), two persons ("the controllers") control C, and

(b) one of the controllers is UK resident and the other is non-UK resident.

(2) If conditions X and Y are met, C is to be taken to be a CFC (if C would not otherwise be).

(3) Condition X is that the UK resident controller has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

(4) Condition Y is that the non-UK resident controller has interests, rights and powers representing—

(a) at least 40%, but

(b) no more than 55%,

of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

371RD Legal and economic control: supplementary provision

(1) Subsection (2) applies for the purpose of—

(a) determining, in accordance with section 371RB, if a person, or two or more persons, control a company, or

(b) determining if condition X or Y in section 371RC is met in relation to two persons who control a company.

(2) There is to be attributed to each person all the rights and powers mentioned in subsection (3) (so far as they would not otherwise be attributed to the person).

(3) The rights and powers referred to in subsection (2) are—

(a) rights and powers which the person ("P") is entitled to acquire at a future date or which P will, at a future date, become entitled to acquire,

(b) rights and powers of other persons so far as they fall within subsection (4),

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(c) if P is UK resident, rights and powers of any UK resident person who is connected with P, and

(d) if P is UK resident, rights and powers which would, in accordance with subsection (2), be attributed to a UK resident person ("Q") who is connected with P if Q were P (including rights and powers which would be attributed to Q by virtue of this paragraph).

(4) Rights and powers fall within this subsection so far as they—

(a) are required, or may be required, to be exercised in 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)(b) to (d) and (4) references to a person's rights and powers include references to any rights or powers which the person—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(6) In determining for the purposes of this section whether one person is connected with another, section 1122(4) of CTA 2010 (as applied by section 371VF(2)(b)) is to be ignored.

(7) In this section and sections 371RB and 371RC references to—

(a) rights and powers of a person, or

(b) rights and powers which a person is or will become entitled to acquire,

include references to rights and powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

Modifications etc. (not altering text)

C53 S. 371RD applied by 2009 c. 4, s. 931E(5)(6) (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 31** (with Sch. 20 para. 53))

371RE Control determined by reference to accounting standards

(1) A person ("P") "controls" a company ("C") at any time when P is C's parent [F283]....

(2) But C is not to be taken to be a CFC by virtue of subsection (1) at the time in question unless the 50% condition is met at that time.

(3) To determine if the 50% condition is met at the time in question, assume—

(a) that C is a CFC at that time,

(b) that that time is itself an accounting period of the CFC, and

(c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.

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(4) The 50% condition is met at the time in question if, as a result of steps 1 and 3 in section 371BC(1), at least 50% of the CFC's chargeable profits would be apportioned to P taken together with its UK resident **[**F284subsidiaries**]** (if any).

(5) **[**F285"Parent"**]** and **[**F286"subsidiary"**]** are to be read in accordance with **[**F287Financial Reporting Standard 102 issued in March 2013 by the Financial Reporting Council**]** , as from time to time modified, amended or revised.

(6) For the purposes of this section it does not matter if P does not prepare, or is not required to prepare, consolidated financial statements in accordance with **[**F288Financial Reporting Standard 102**]** (but see section 371RF(3)).

Textual Amendments

F283 Word in s. 371RE(1) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(a)**

F284 Word in s. 371RE(4) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(b)**

F285 Word in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(c)(i)**

F286 Word in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(c)(ii)**

F287 Words in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(c)(iii)**

F288 Words in s. 371RE(6) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(d)**

371RF Power to amend section 371RE etc

(1) The Treasury may by regulations amend section 371RE as they consider appropriate to take account of—

(a) any modification, amendment or revision of Financial Reporting Standard 2, or

(b) any relevant document.

(2) "Relevant document" means—

(a) a document which replaces Financial Reporting Standard 2, or

(b) a document which replaces, modifies, amends or revises a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

(3) The Treasury may by regulations make provision corresponding to section 371RE—

(a) which operates by reference to any other accounting standard dealing with consolidated financial statements, and

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(b) which is to apply, instead of section 371RE, to determine if a person "controls" a company where that person prepares, or is required to prepare, consolidated financial statements in accordance with that standard.

(4) The Treasury may by regulations provide that, if specified conditions are met, a company is not to be taken to be a CFC by virtue of—

(a) section 371RE, or

(b) provision corresponding to section 371RE contained in regulations under subsection (3).

(5) In subsections (3) and (4) references to section 371RE are to that section as amended from time to time by regulations under subsection (1).

[F289371RG Companies in which a UK resident company has more than a 50% investment

(1) If a UK resident company (whether alone or together with any associated enterprises) directly or indirectly has more than a 50% investment in a non-UK resident company, the non-UK resident company is to be taken to be a CFC (if it would not otherwise be).

(2) A person ("P") is an "associated enterprise" in relation to a UK resident company if—

(a) P directly or indirectly has a 25% investment in the company (or vice versa), or

(b) another person directly or indirectly has a 25% investment in each of P and the company.

(3) Section 259ND (meaning of "50% investment" and "25% investment") applies for the purposes of determining for the purposes of this section—

(a) whether a person has "more than a 50% investment" in another person, and

(b) whether a person has a "25% investment" in another person,

and, accordingly, references in section 259ND to "X%" are to be read as references to more than 50% or to 25% (as appropriate) and references in that section to "X % or more" are to be read as references to more than 50% or to 25% or more (as appropriate).**]**

Textual Amendments

F289 S. 371RG inserted (with effect in accordance with s. 20(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 20(4)**

CHAPTER 19

ASSUMED TAXABLE TOTAL PROFITS, ASSUMED TOTAL PROFITS AND THE CORPORATION TAX ASSUMPTIONS

Overview

371SA Overview of Chapter

This Chapter explains the concepts of "assumed taxable total profits" and "assumed total profits" (see section 371SB) and "the corporation tax assumptions" (see section 371SC) which are referred to in this Part.

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"Assumed taxable total profits" and "assumed total profits"

371SB What are "assumed taxable total profits" and "assumed total profits"?

(1) For the purposes of this Part a CFC's "assumed taxable total profits" for an accounting period are what, applying the corporation tax assumptions, would be the CFC's taxable total profits of the accounting period for corporation tax purposes.

(2) "Taxable total profits" has the meaning given by section 4(2) of CTA 2010 (calculation of taxable total profits).

(3) But, for this purpose, in section 4(3) of CTA 2010—

(a) step 1 is to be applied subject to subsections (4) to (6) below, and

(b) step 2 is to be ignored.

(4) Any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary is to be added to the income determined at step 1.

(5) If there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

(6) If by virtue of subsection (4) any income ("the settlement income") is added to the income determined at step 1, any dividend or other distribution which derives from the settlement income is to be excluded from the income determined at step 1.

(7) Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in—

(a) the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and

(b) the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.

(8) If the CFC charge is charged in relation to the beneficiary's accounting period, the income is not to be included in the settlor's chargeable profits.

(9) For the purposes of this Part a CFC's "assumed total profits" for an accounting period are its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

"The corporation tax assumptions"

371SC What are "the corporation tax assumptions"?

(1) In this Part "the corporation tax assumptions" means the assumptions set out in sections 371SD to 371SR.

(2) The corporation tax assumptions are to be applied in determining the following for an accounting period ("the relevant accounting period") of a CFC—

(a) the CFC's assumed taxable total profits in accordance with section 371SB(1),

(b) the corresponding UK tax in accordance with section 371NE, and

(c) the CFC's creditable tax in accordance with Chapter 16.

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371SD UK residence etc

(1) Assume—

(a) that the CFC is UK resident at all times during the relevant accounting period,

(b) if the relevant accounting period is not the CFC's first accounting period, that the CFC has been UK resident from the beginning of the CFC's first accounting period, and

(c) except where the CFC ceases to be a CFC at the end of the relevant accounting period, that the CFC will continue to be UK resident until it ceases to be a CFC,

and that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods (as determined in accordance with section 371VB) are accounting periods for corporation tax purposes, accordingly.

(2) Subsection (1)—

(a) does not require it to be assumed that there is any change in the place or places at which the CFC carries on its activities, and

(b) requires (in particular) that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (exemption for profits from securities free of tax to residents abroad).

(3) If the CFC is (actually) UK resident immediately before the beginning of its first accounting period, assume that its UK residence from the beginning of that accounting period (as assumed in accordance with subsection (1)) is not continuous with its (actual) UK residence before the beginning of that accounting period.

(4) Except where the relevant accounting period is the CFC's first accounting period, assume that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period.

(5) Subsection (4) applies (in particular) for the purpose of applying any relief which is relevant to two or more accounting periods.

(6) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

371SE Close company

Assume that the CFC is not a close company.

371SF Claims and elections

(1) In relation to any relief under the Corporation Tax Acts which is dependent upon the making of a claim or election, assume the CFC—

(a) to have made that claim or election which would give the maximum amount of relief, and

(b) to have made that claim or election within any applicable time limit.

(2) Subsection (1) does not cover (so far as it would otherwise do so) a claim or election under—

(a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),

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(b) section 1275 of CTA 2009 (relief for unremittable income),

(c) section 9A of CTA 2010 (designated currency of a UK resident investment company), or

(d) regulations made under paragraph 16 of Schedule 8 to FA 2006 (election for lease to be treated as long funding lease).

(3) Subsection (1) is also subject to section 371SK(5).

371SG Disapplication of assumption in section 371SF(1)

(1) This section applies if a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed—

(a) not to have made for the relevant accounting period a specified claim or election otherwise covered by section 371SF(1),

(b) to have made for the relevant accounting period a specified claim or election, being different from one assumed by section 371SF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or

(c) to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement (as the case may be).

(2) In determining for the purposes of section 371BA(3) the CFC's assumed total profits and the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010—

(a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and

(b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.

(3) In determining the CFC's creditable tax—

(a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and

(b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.

(4) The claims which may be specified in a notice under subsection (1) by virtue of paragraph (b) include claims under the provision mentioned in section 371SF(2)(b) or 371SK(5).

(5) A notice under subsection (1)—

(a) may be given only by a company or companies determined under subsection (6) or (7), and

(b) must be given—

(i) within 20 months after the end of the relevant accounting period, or

(ii) within such longer period as an officer of Revenue and Customs may allow.

(6) A company may give a notice if—

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(a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(7) Two or more companies may together give a notice if—

(a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(8) In subsections (6) and (7) "X%" means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

371SH Elections under section 9A of CTA 2010

(1) This section applies if—

(a) during the relevant accounting period or any earlier accounting period of the CFC, a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made an election under section 9A of CTA 2010 (designated currency of a UK resident investment company) in the form specified in the notice, and

(b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make an election under that section in the form specified in the notice (see, in particular, section 9A(2)).

(2) Assume—

(a) that an election under section 9A of CTA 2010 has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and

(b) that, accordingly, sections 9A and 9B of that Act apply to determine the effect (if any) of that election.

(3) Subsection (2)(b) does not apply if—

(a) a notice is given to an officer of Revenue and Customs revoking the notice under subsection (1), and

(b) the time at which the notice revoking the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to revoke its assumed election under section 9A of CTA 2010.

(4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).

(5) A company may give a notice if—

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(a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(6) Two or more companies may together give a notice if—

(a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(7) In subsections (5) and (6) (and this subsection)—

"the applicable accounting period" means the accounting period of the CFC during which the notice under subsection (1) or (3) (as the case may be) is given, and

"X%" means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

371SI Modification of sections 6 and 7 of CTA 2010

(1) This section applies if—

(a) in accordance with section 371SH, the CFC is assumed to have made an election under section 9A of CTA 2010, but

(b) applying the corporation tax assumptions apart from this section, section 6 or 7 of CTA 2010 could not apply in relation to the CFC for a period of account because the CFC does not prepare its accounts in accordance with generally accepted accounting practice.

(2) If sterling is the CFC's designated currency for the period of account, assume that section 6 of CTA 2010 applies in relation to the CFC as if the words "in accordance with generally accepted accounting practice" were—

(a) omitted from subsection (1A)(a), and

(b) in subsection (2), inserted after "its accounts in sterling".

(3) If the CFC's designated currency for the period of account is a currency other than sterling, assume that section 7 of CTA 2010 applies in relation to the CFC as if the words "in accordance with generally accepted accounting practice" were—

(a) omitted from subsection (1A)(a), and

(b) at step 1 in subsection (2), inserted after "that currency".

371SJ Elections for leases to be treated as long funding leases

(1) This section applies if—

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(a) a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made a long funding lease election in the form specified in the notice, and

(b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make a long funding lease election in the form specified in the notice.

(2) Assume—

(a) that a long funding lease election has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and

(b) that, accordingly, regulation 2(5) of the 2007 Regulations applies to determine the effect (if any) of that election.

(3) Subsection (2)(b) does not apply if—

(a) a notice is given to an officer of Revenue and Customs withdrawing the notice under subsection (1), and

(b) the time at which the notice withdrawing the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to withdraw its assumed long funding lease election.

(4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).

(5) A company may give a notice if—

(a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(6) Two or more companies may together give a notice if—

(a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(7) In this section—

(a) "the 2007 Regulations" means the Long Funding Leases (Elections) Regulations 2007 (S.I. 2007/304),

(b) terms defined in the 2007 Regulations have the same meaning as they have in the 2007 Regulations,

(c) "the applicable accounting period" means the CFC's accounting period in which falls the effective date specified in the notice under subsection (1), and

(d) "X%" means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

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(8) The Treasury may by regulations amend this section as they consider appropriate to take account of any regulations made by them from time to time under paragraph 16 of Schedule 8 to FA 2006 (elections for leases to be treated as long funding leases).

371SK Intangible fixed assets

(1) This section applies for the purpose of applying Part 8 of CTA 2009 (intangible fixed assets).

(2) Assume that any intangible fixed asset acquired or created by the CFC before its first accounting period was acquired or created by the CFC at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.

(3) In subsection (2) references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

(4) The assumption in subsection (2) does not affect the determination of the question whether Part 8 of CTA 2009 applies to an asset in accordance with section 882 of that Act (application of Part 8 to assets created or acquired on or after 1 April 2002).

(5) Assume also that the CFC—

(a) has not claimed any relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of reinvestment), or

(b) made any provisional declaration of entitlement to such relief.

(6) Subsection (5) is subject to section 371SG(4).

[F290 371SKA Restrictions on certain deductions: deductions allowances

(1) This section applies for the purposes of—

(a) applying Part 7ZA of CTA 2010 (restrictions on obtaining certain deductions), and

(b) applying any provision of Part 7ZA of CTA 2010 for the purposes of Part 7A of that Act (restrictions on obtaining certain deductions: banking companies).

(2) Assume that each of the following is nil—

(a) the CFC's deductions allowance for the relevant accounting period,

(b) the CFC's trading profits deductions allowance for the relevant accounting period, and

(c) the CFC's non-trading profits deductions allowance for the relevant accounting period.

(3) But if section 269ZX of CTA 2010 (increase of deductions allowance **[**[F291]in connection with onerous or impaired leases**]**) applies in relation to the relevant accounting period, the reference in subsection (2) to "nil" is to be read as a reference to an amount equal to the increase provided for by subsection (3) of that section.**]**

Textual Amendments

F290 S. 371SKA inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 180**

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F291 Words in s. 371SKA(3) substituted (with effect in accordance with s. 30(17)-(19) of the amending Act) by Finance Act 2022 (c. 3), **s. 30(16)**

371SL Group relief etc

(1) Assume that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

(2) Subsection (3) applies if—

(a) under Part 5 of CTA 2010 (group relief) **[**F292or Part 5A of that Act (group relief for carried-forward losses)**]** the CFC actually surrenders any relief which is allowed to another company by way of group relief **[**F293or group relief for carried-forward losses**]**, but

(b) applying the corporation tax assumptions apart from subsection (3), the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period.

(3) Assume that the relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period.

[This section is subject to section 371SLA (corporate interest restriction).**]**
F294(4)

Textual Amendments

F292 Words in s. 371SL(2)(a) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 181(a)**

F293 Words in s. 371SL(2)(a) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 181(b)**

F294 S. 371SL(4) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 23(2)**

[Corporate interest restriction

F295**371SLA**

(1) This section applies for the purpose of applying Part 10 (corporate interest restriction).

(2) Assume—

(a) that the CFC is a member of a worldwide group for a period of account of which it would be a member if section 371SL were ignored, and

(b) that the CFC is the only UK group company in the period (within the meaning of that Part).

(3) Assume also that Part 10 applies as if subsections (2) and (3) of section 392 (interest capacity of the group: the de minimis amount) were omitted.**]**

Textual Amendments

F295 S. 371SLA inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 23(3)**

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371SM Capital allowances

(1) This section applies if, before the CFC's first accounting period, the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade.

(2) For the purposes of Part 2 of CAA 2001 (plant and machinery allowances) assume that the plant or machinery—

(a) was provided for purposes wholly other than those of the trade, and

(b) was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period,

and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly.

(3) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

(4) This section is to be read as if it were contained in Part 2 of CAA 2001.

371SN Unremittable overseas income

(1) For the purposes of Part 18 of CTA 2009 (unremittable overseas income) assume that in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.

(2) "The relevant territories" means—

(a) the United Kingdom,

(b) the territory in which the CFC is taken to be resident for the relevant accounting period as determined under Chapter 20, and

(c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

371SO Tax advantages

(1) This section applies if there is an arrangement or other conduct a purpose of which is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 by obtaining by any means what would, applying the corporation tax assumptions apart from this section, be a tax advantage within section 1139(2)(a) to (d) of that Act.

(2) So far as they would not otherwise do so, the Corporation Tax Acts are to be assumed to apply in relation to the arrangement or other conduct in the same way as they would apply were the purpose of obtaining a tax advantage within section 1139(2)(da) of CTA 2010 the purpose of obtaining an actual tax advantage within section 1139(2)(a) to (d) of that Act by the means in question.

371SP Disguised interest: application of Chapter 2A of Part 6 of CTA 2009

(1) This section applies if—

(a) applying the corporation tax assumptions apart from this section, Chapter 2A of Part 6 of CTA 2009 (disguised interest) would, but for section 486D(1) of that Act, apply in relation to a return produced for the CFC by an arrangement to which the CFC is a party, and

(b) it is reasonable to assume that the main purpose, or one of the main purposes, of the CFC being a party to the arrangement is to obtain a tax advantage within

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section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.

(2) Chapter 2A of Part 6 of CTA 2009 is to be assumed to apply in relation to the return.

(3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 486D(4) of CTA 2009.

(4) This section is without prejudice to the generality of section 371SO.

371SQ Shares accounted for as liabilities: application of section 521C of CTA 2009

(1) This section applies if—

(a) applying the corporation tax assumptions apart from this section, section 521C of CTA 2009 (shares accounted for as liabilities) would, but for section 521C(1)(f) of that Act, apply to a share held by the CFC, and

(b) the main purpose, or one of the main purposes, for which the CFC holds the share is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.

(2) Section 521C of CTA 2009 is to be assumed to apply to the share.

(3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 521E(4) of CTA 2009.

(4) This section is without prejudice to the generality of section 371SO.

371SR Double taxation relief: [F296countering effect of avoidance arrangements]

(1) This section applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 (double taxation relief: conditions to be met for **[**F297countering effect of avoidance arrangements**]**) would or might be met in relation to the CFC in relation to the relevant accounting period.

(2) Assume that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period that would be referable to the purpose referred to in condition B of section 82.

Textual Amendments

F296 Words in s. 371SR heading substituted (with effect in accordance with s. 31(6) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(5)(b)**

F297 Words in s. 371SR(1) substituted (with effect in accordance with s. 31(6) of the amending Act) by Finance Act 2018 (c. 3), **s. 31(5)(a)**

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CHAPTER 20

RESIDENCE OF CFCS

371TA The basic rule

(1) For the purposes of this Part a CFC is taken to be resident for an accounting period ("the relevant accounting period") in—

(a) the territory determined by applying section 371TB, or

(b) if no territory can be determined by applying that section—

(i) if subsection (2) applies, the territory in which the CFC is taken to be resident under the double taxation arrangements in question, or

(ii) otherwise, the territory in which the CFC is incorporated or formed.

(2) This subsection applies if the CFC is incorporated or formed in the United Kingdom but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).

(3) This section is subject to section 371KC and step 1 in section 371NB(1).

371TB How to determine the territory in which the CFC is resident

(1) The CFC is taken to be resident in the territory under the law of which, at all times during the relevant accounting period, the CFC is liable to tax by reason of domicile, residence or place of management.

(2) If there are two or more territories (each of which is called an "eligible territory") falling within subsection (1), the CFC is taken to be resident in only one of the eligible territories.

(3) To determine that territory, go through the following subsections.

If two or more subsections apply, the earlier or earliest subsection takes precedence.

(4) If an election or designation under subsection (8) or (9) has effect for the relevant accounting period by virtue of section 371TC(9)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.

(5) If, at all times during the relevant accounting period, the CFC's place of effective management is situated in one of the eligible territories only, the CFC is taken to be resident in that territory.

(6) If—

(a) at all times during the relevant accounting period, the CFC's place of effective management is situated in two or more of the eligible territories, and

(b) immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of those eligible territories,

the CFC is taken to be resident in the territory in which over 50% of the amount of the CFC's assets is situated.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

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(7) If, immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of the eligible territories, the CFC is taken to be resident in that territory.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

(8) If, in accordance with section 371TC(1), an election specifying an eligible territory is made, the CFC is taken to be resident in that territory.

(9) If an officer of Revenue and Customs designates an eligible territory on a just and reasonable basis (see section 371TC(6) to (8)), the CFC is taken to be resident in that territory.

371TC Elections and designations about residence

(1) An election under section 371TB(8)—

(a) may be made only by a company or companies determined under subsection (2) or (3),

(b) must be made by notice to an officer of Revenue and Customs,

(c) must be made no later than 12 months after the end of the relevant accounting period,

(d) must state, in relation to each company making the election, the percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period,

(e) must be signed on behalf of each company making the election, and

(f) is irrevocable.

(2) A company may make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the company would be a chargeable company whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would represent more than half of X%.

(3) Two or more companies may together make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the companies would all be chargeable companies whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would, taken together, represent more than half of X%.

(4) In subsections (2) and (3) "X%" means the total percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

(5) In subsections (2) to (4) references to apportioned percentages of the CFC's chargeable profits for the relevant accounting period are to the percentages apportioned at step 3 in section 371BC(1).

(6) A designation under section 371TB(9) is irrevocable.

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(7) An officer of Revenue and Customs must give notice of a designation to each company which the officer considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.

(8) The notice must specify—

(a) the date on which the designation was made,

(b) the CFC's name,

(c) the relevant accounting period, and

(d) the territory designated.

(9) An election or designation has effect in relation to—

(a) the relevant accounting period, and

(b) each successive accounting period of the CFC until subsection (10) applies to an accounting period,

regardless of any change in the persons who have interests in the CFC or any change in those interests.

(10) This subsection applies to an accounting period ("the later period") if—

(a) one or more of the territories which were eligible territories in relation to the relevant accounting period does not fall within section 371TB(1) in relation to the later period, or

(b) some other territory also falls within section 371TB(1) in relation to the later period.

CHAPTER 21

MANAGEMENT

371UA Introduction to Chapter

(1) The HMRC Commissioners are responsible for the management of the CFC charge, including the collection of sums charged.

(2) In this Chapter—

"closure notice" means a notice under paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry and statement of conclusions),

"discovery assessment" means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule), and

"the Taxes Acts" has the same meaning as in TMA 1970.

371UB Application of the Taxes Acts to the CFC charge

(1) The provision of step 5 in section 371BC(1) relating to the charging of a sum as if it were an amount of corporation tax is to be taken as applying all enactments applying generally to corporation tax.

(2) This is subject to—

(a) the provisions of the Taxes Acts, and

(b) any necessary modifications.

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(3) The enactments referred to in subsection (1) include—

(a) those relating to returns of information and the supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of corporation tax,

(c) those conferring or regulating a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(4) In particular, TMA 1970 is to have effect as if—

(a) any reference to corporation tax included a reference to a sum charged at step 5 in section 371BC(1) as if it were an amount of corporation tax, and

(b) any reference to profits of a company included, in the case of a chargeable company in relation to a CFC's accounting period, references to the percentage of the CFC's chargeable profits in respect of which the company is charged at step 5 in section 371BC(1).

(5) Nothing in—

(a) paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to TMA 1970 (claims or elections not included in returns),

applies to an election under section 371TB(8).

[F298 371UBA Payments in respect of a charge on a banking company: information to be provided

(1) This section applies if—

(a) a sum is charged on a chargeable company at step 5 in section 371BC(1),

(b) the chargeable company is a banking company (within the meaning of Chapter 4 of Part 7A of CTA 2010) for the relevant corporation tax accounting period, and

(c) a payment is made (whether or not by the chargeable company) that is wholly or partly in respect of the sum charged on the chargeable company as mentioned in paragraph (a).

(2) The responsible company must notify an officer of Revenue and Customs in writing, on or before the date the payment is made, of the amount of the payment that is in respect of the sum charged on the chargeable company as mentioned in subsection (1)(a).

(3) "The responsible company" is—

(a) if the chargeable company is party to relevant group payment arrangements, the company that is, under those arrangements, to discharge the liability of the chargeable company to pay corporation tax for the relevant corporation tax accounting period, and

(b) otherwise, the chargeable company.

(4) "Relevant group payment arrangements" means arrangements under section 59F(1) of TMA 1970 (arrangements for paying of tax on behalf of group members) that relate to the relevant corporation tax accounting period.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) The requirement in subsection (2) is to be treated, for the purposes of Part 7 of Schedule 36 to FA 2008 (information and inspection powers: penalties), as a requirement in an information notice.

(6) This section is subject to any provision to the contrary in regulations under section 59E of TMA 1970 (further provision as to when corporation tax is due and payable).

(7) In this section "relevant corporation tax accounting period" has the meaning given by section 371BC(3).**]**

Textual Amendments

F298 S. 371UBA inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 10**

371UC Just and reasonable apportionments

(1) This section applies if—

(a) an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with section 371QC(2), and

(b) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return.

(2) An officer of Revenue and Customs may determine that another basis is to be used for the apportionment; and matters are then to proceed as if that were the only basis allowed by the Taxes Acts.

(3) The officer's determination may be questioned on an appeal against an amendment of the company's tax return made under paragraph 30 or 34 of Schedule 18 to FA 1998.

(4) But it may be questioned only on the ground that the basis of apportionment determined by the officer is not just and reasonable.

[F299]371UD Relief against sum charged

. . . . . .

Textual Amendments

F299 S. 371UD omitted (with effect in accordance with s. 36(3)-(5) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **s. 36(1)**

371UE Appeals affecting more than one person

(1) This section applies if—

(a) a relevant appeal involves any question concerning the application of this Part in relation to a particular person, and

(b) the resolution of that question is likely to affect the liability under this Part of any other person in relation to the CFC concerned.

(2) Each of the following is a "relevant appeal"—

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(a) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company tax return, and

(b) an appeal under paragraph 48 of that Schedule against a discovery assessment.

(3) The appeal is to be conducted as follows.

(4) Each of the persons whose liability under this Part is likely to be affected by the resolution of the question is entitled to be a party to the proceedings.

(5) The tribunal must determine the question separately from any other questions in the proceedings.

(6) The tribunal's determination on the question is to have effect as if made in an appeal to which each of those persons was a party.

371UF Recovery of sum charged from other UK resident companies

(1) This section applies if a sum charged on a company ("the defaulting company") at step 5 in section 371BC(1) as if it were an amount of corporation tax is not fully paid before the date on which it is due and payable in accordance with the Taxes Acts.

(2) An officer of Revenue and Customs may give a notice of liability to another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.

(3) If such a notice is given to a company ("the responsible company"), the following are payable by the responsible company—

(a) the whole or, as the case may be, the corresponding part of the sum charged so far as it is unpaid as at the time the notice is given,

(b) the whole or, as the case may be, the corresponding part of any unpaid interest due on the sum charged as at the time the notice is given, and

(c) any interest accruing on the sum charged after the notice is given so far as referable to the sum payable by the responsible company under paragraph (a).

(4) Subsection (5) applies if any sum payable by the responsible company under subsection (3) is not fully paid by the end of the period of 3 months starting with the date on which the notice is given.

(5) Without affecting the right of recovery from the responsible company, the outstanding amount may be recovered from the defaulting company.

CHAPTER 22

SUPPLEMENTARY PROVISION

371VA Definitions

In this Part—

"accounting period", in relation to a CFC, is to be read in accordance with section 371VB,

"accounting profits", in relation to a CFC, is to be read in accordance with sections 371VC and 371VD,

"arrangement" includes—

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(a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and

(b) a series of arrangements or a part of an arrangement,

"assumed taxable total profits", in relation to a CFC, is to be read in accordance with section 371SB(1) to (6),

"assumed total profits", in relation to a CFC, is to be read in accordance with section 371SB(9), subject to section 371DA(2),

"banking business" means the business of—

(a) banking, deposit-taking, money-lending or debt-factoring, or

(b) any activity similar to an activity falling within paragraph (a),

"CFC" is to be read in accordance with section 371AA(3), subject to sections 371RC and 371RE(2) and regulations under section 371RF(4),

"the CFC charge" is to be read in accordance with section 371AA(1),

"chargeable company", in relation to a CFC's accounting period, means a company which is a chargeable company for the purposes of step 4 in section 371BC(1),

"chargeable profits", in relation to a CFC, is to be read in accordance with section 371BA(3),

"company" is to be read subject to section 371VE,

"company tax return" means a return required to be made under Schedule 18 to FA 1998,

"contract of insurance" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

"control" is to be read in accordance with sections 371RB and 371RE, subject to section 371RF,

"the corporation tax assumptions" is to be read in accordance with section 371SC,

"creditable tax", in relation to a CFC, is to be read in accordance with section 371PA,

"the HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"insurance business" means the business of effecting or carrying out of contracts of insurance, including the investment of premiums received,

"intellectual property" means—

(a) any patent, trade mark, registered design, copyright or design right, or

(b) any licence or other right in relation to anything falling within paragraph (a),

"interest", as in an interest in a company, is to be read in accordance with section 371VH,

"the local tax amount", in relation to a CFC, means the amount of tax determined at step 2 in section 371NB(1),

"non-trading finance profits" is to be read in accordance with section 371VG,

"non-trading income" means income which is not trading income,

"property business profits" is to be read in accordance with section 371VI,

[[F300]"relevant finance lease" is to be read in accordance with section 371VIA,**]**

"relevant interest" is to be read in accordance with Chapter 15,

"tax advantage" has the meaning given by section 1139 of CTA 2010,

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"trading finance profits" is to be read in accordance with section 371VG,

"trading income", in relation to a CFC, means income brought into account in determining the CFC's trading profits for the accounting period in question,

"trading profits", in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income),

"UK connected capital contribution", in relation to a CFC, means any capital contribution to the CFC made (directly or indirectly) by a UK resident company connected with the CFC (whether in relation to an issue of shares in the CFC or otherwise), and

"UK permanent establishment", in relation to a non-UK resident company, means a permanent establishment which the company has in the United Kingdom and through which it carries on a trade in the United Kingdom.

Textual Amendments

F300 Words in s. 371VA substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 6**, 21

371VB Accounting periods

(1) This section applies for the purposes of this Part.

(2) An accounting period of a CFC begins—

(a) when the CFC becomes a CFC, or

(b) immediately after the end of the previous accounting period of the CFC, if the CFC is still a CFC.

(3) An accounting period of a CFC comes to an end on the occurrence of any of the following—

(a) the CFC ceasing to be a CFC,

(b) the CFC becoming, or ceasing to be, liable to tax in a territory by reason of domicile, residence or place of management,

(c) the CFC ceasing to have any source of income at all, or

(d) a company which has a relevant interest in the CFC ceasing to have any relevant interest in the CFC at all or ceasing to be within the charge to corporation tax.

(4) Without affecting subsections (2) and (3), sections 10(1)(a) to (d), (i) and (j) and (5), 11(1) and (2) and 12 of CTA 2009 (corporation tax accounting periods) apply as they apply for corporation tax purposes.

(5) Subsection (6) applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain.

(6) An officer of Revenue and Customs may by notice specify as an accounting period of the CFC such period not exceeding 12 months as the officer considers appropriate.

(7) Subsection (8) applies if after the giving of a notice under subsection (6)—

(a) further facts come to the knowledge of an officer of Revenue and Customs, and

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(b) as a result of that, it appears to an officer of Revenue and Customs that any accounting period specified in the notice is not the true accounting period.

(8) An officer of Revenue and Customs must by notice amend the notice under subsection (6) so as to specify what appears to the officer to be the true accounting period.

(9) A notice under subsection (6) or (8) must be given to each company which the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period in question.

371VC Accounting profits

(1) This section and section 371VD (with which this section needs to be read) apply for the purposes of this Part.

(2) A CFC's accounting profits for an accounting period are its pre-tax profits for the period.

(3) If financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax profits are to be determined by reference to the amounts disclosed in those statements (subject to subsections (4) and (5)).

(4) Subsection (5) applies if—

(a) the CFC's financial statements for the accounting period (or any aspect of them) are not prepared in accordance with an acceptable accounting practice, or

(b) no financial statements are prepared at all for the CFC for the accounting period within 12 months after the end of that period.

(5) The CFC's pre-tax profits are to be determined by reference to the amounts which would have been disclosed had financial statements for the accounting period been prepared for the CFC in accordance with—

(a) the acceptable accounting practice in accordance with which financial statements for the CFC are normally prepared, or

(b) if paragraph (a) cannot be applied, international accounting standards.

(6) Each of the following is an "acceptable accounting practice"—

(a) international accounting standards,

(b) UK generally accepted accounting practice, and

(c) accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.

(7) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.

(8) If the CFC's accounting profits (or any amounts included in them) are determined in a currency other than sterling, they are to be translated into their sterling equivalent using the average rate of exchange for the accounting period calculated from daily spot rates.

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371VD Adjustments to accounting profits

(1) This section applies for the purpose of determining a CFC's accounting profits for an accounting period.

(2) The following are to be ignored in determining the profits—

(a) any dividend or other distribution which is not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that it would be exempt for the purposes of Part 9A of CTA 2009 (company distributions),

(b) any property business profits or property business losses, and

(c) any capital profits or losses.

(3) In subsection (2)(b) "property business losses" means any losses of a UK property business or overseas property business of the CFC; such losses are to be determined in a way corresponding to the way in which property business profits are determined.

(4) The profits are to include—

(a) any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary, and

(b) the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner, as determined by apportioning that income between the partners on a just and reasonable basis.

(5) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (4)(a), the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

(6) In subsection (4)(b) "partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly.

(7) Part 4 (transfer pricing) applies as it applies in relation to the determination of the CFC's assumed taxable total profits for the accounting period.

(8) But subsection (7) is to be ignored if the difference made in the amount of the profits as a result of its application would not be more than £50,000.

371VE Cell companies etc

(1) This Part applies in relation to unincorporated cells and incorporated cells as if they were non-UK resident companies.

(2) An "unincorporated cell" is an identifiable part (by whatever name known) of a non-UK resident company which meets the following condition.

(3) The condition is that, under the law under which the non-UK resident company is incorporated or formed, under the articles of association or other document regulating the non-UK resident company or under any arrangement entered into by or in relation to the non-UK resident company—

(a) assets and liabilities of the non-UK resident company may be wholly or mainly allocated to the part of the company in question,

(b) liabilities so allocated are to be met wholly or mainly out of assets so allocated, and

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(c) there are members of the non-UK resident company who have rights in relation to the company's assets which cover only or mainly assets so allocated.

(4) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (2) as a company for the purposes of this Part; but its assets and liabilities are to be apportioned between it and the unincorporated cell (and any other unincorporated cells which are part of the company) on a just and reasonable basis.

(5) An "incorporated cell" is an entity (by whatever name known) established under the articles of association or other document regulating a non-UK resident company—

(a) which, under the law under which the non-UK resident company is incorporated or formed, has a legal personality distinct from that of the non-UK resident company, but

(b) which is not itself a company (ignoring this section).

(6) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (5) as a company for the purposes of this Part.

(7) The Treasury may by regulations provide for this Part to apply in relation to—

(a) parts of companies falling within specified descriptions, or

(b) other entities falling within specified descriptions which are not themselves companies (ignoring this section),

as if they were non-UK resident companies.

(8) Regulations under subsection (7) may add to, repeal or otherwise amend subsections (1) to (6).

371VF Connected persons etc

(1) This section applies for the purposes of this Part.

(2) The following provisions of CTA 2010 apply—

(a) section 882(2) to (7) ("associated" persons), and

(b) section 1122 ("connected" persons).

(3) A person is "related" to a CFC if—

(a) the person is connected or associated with the CFC,

(b) at least 25% of the CFC's chargeable profits would be apportioned to the person at step 3 in section 371BC(1) were that step required to be taken in relation to the accounting period in question, or

(c) if the CFC is a CFC by virtue of section 371RC, the person is connected or associated with either or both of the controllers.

371VG Finance profits

(1) In this Part "non-trading finance profits", in relation to a CFC, means any amounts—

(a) which are included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under—

(i) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), or

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(ii) Part 9A of that Act (company distributions), or

[F301(b) which are included in the CFC's assumed total profits for the accounting period in question and which—

(i) arise from a relevant finance lease, but

(ii) are not trading profits.**]**

(2) Subsection (1) is subject to subsection (3) and sections 371CB(2) and (8), 371CE(2) and 371IA(9).

(3) Any credits or debits which are to be brought into account in determining the CFC's property business profits for the accounting period in question in accordance with section 371VI(2) are not to be brought into account in determining the CFC's non-trading finance profits.

(4) In this Part "trading finance profits", in relation to a CFC, means any amounts included in the CFC's assumed total profits for the accounting period in question—

(a) which are trading profits by virtue of section 297, 573 or 931W of CTA 2009, or

(b) which are trading profits arising from F302... a relevant finance lease.

(5) Subsection (4) is subject to section 371CE(2).

Textual Amendments

F301 S. 371VG(1)(b) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 7(2)**, 21

F302 Words in s. 371VG(4)(b) omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 47 paras. 7(3)**, 21

371VH Interests in companies

(1) This section applies for the purposes of this Part.

(2) The following persons have an "interest" in a company—

(a) any person who has, or is entitled to acquire, share capital or voting rights in the company,

(b) any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,

(c) any person who is entitled—

(i) to direct how income or assets of the company are to be applied,

(ii) to have such income or assets applied on the person's behalf, or

(iii) otherwise to secure that such income or assets will be applied (directly or indirectly) for the person's benefit, and

(d) any other person who, either alone or together with other persons, has control of the company.

(3) In subsection (2) references to a person being entitled to do anything cover cases in which—

(a) a person is presently entitled to do it at a future date, or

(b) a person will at a future date be entitled to do it.

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(4) In subsection (2)(c) references to a person being entitled to do anything also cover cases in which it is reasonable to suppose that a person is presently able, or will at a future date become able, to do the thing (even though the person presently has, or will have, no entitlement to do the thing).

(5) Subsection (6) applies if a person's entitlement (or supposed ability) to do anything mentioned in subsection (2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.

(6) The person is not to have an interest in the company under subsection (2)(c) by virtue of that entitlement (or supposed ability) unless the default has occurred.

(7) Rights which a person has as a loan creditor of a company are to be ignored for the purposes of subsection (2).

(8) In subsection (7)—

"loan creditor" has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section, and

"rights" does not include any rights excluded from subsection (7) by subsection (10).

(9) Subsection (10) applies if, in accordance with generally accepted accounting practice, a loan creditor divides its rights and liabilities under a loan relationship to which it is a party as mentioned in section 415(1) of CTA 2009 (loan relationships with embedded derivatives).

F303 ...

(10) Any rights falling within section 415(1)(b) of CTA 2009 are to be excluded from subsection (7).

F304 **[** (10A) For the purposes of subsection (9), if for any relevant period accounts for a loan creditor are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined in relation to the loan creditor for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.**]**

(11) Subsections (12) and (13) apply if—

(a) apart from subsection (12), a person has, or two or more persons together have, an interest in a company ("company 1"), and

(b) company 1 has an interest in another company ("company 2").

(In paragraph (b) "interest" includes an interest by virtue of subsection (12).)

(12) The person or persons mentioned in subsection (11)(a) are to be taken to have an interest in company 2 (and references to a person's interest in a company are to be read accordingly).

(13) For the purposes of references to one person's interest in a company being the same as another person's interest—

(a) the person mentioned in subsection (11)(a), or

(b) each of the persons so mentioned,

is to be taken as having, to the extent of that person's interest in company 1, the same interest as company 1 has in company 2.

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(14) If two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they are taken to have the interest in equal shares.

Textual Amendments

F303 Words in s. 371VH(9) omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 47 paras. 8(2)**, 21

F304 S. 371VH(10A) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 8(3)**, 21

371VI Property business profits

(1) Subject to what follows, in this Part "property business profits", in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).

(2) Any credits or debits—

(a) which are brought into account under Part 5 of CTA 2009 in determining the CFC's assumed total profits for the accounting period, and

(b) which fall within subsection (3) or (5),

are to be brought into account in determining the CFC's property business profits.

(3) Credits and debits fall within this subsection so far as they are from a debtor relationship of the CFC where the loan which is the subject of the debtor relationship—

(a) is made and used solely for the purposes of a relevant property business, and

(b) is not used to any extent for the purpose of funding (directly or indirectly)—

(i) a loan to any other person, or

(ii) so far as not covered by sub-paragraph (i), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.

(4) In subsection (3) "debtor relationship" has the meaning given by section 302(6) of CTA 2009 (and does not include anything which, although not falling within section 302(1) of that Act, is treated for any purpose as if it were a debtor relationship); and "loan" is to be read accordingly.

(5) Credits and debits fall within this subsection so far as they—

(a) are from any derivative contract or other arrangement entered into by the CFC as a hedge of risk in connection with a relevant property business, and

(b) are attributable to that hedge of risk.

(6) "Relevant property business" means a UK property business or overseas property business of the CFC, profits of which are included in the CFC's property business profits apart from subsection (2).

[F305 371VIA Relevant finance leases

(1) In this Part "relevant finance lease" means an arrangement falling within subsection (2) or (3).

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(An arrangement which is a loan relationship of any company does not fall within either of those subsections.)

(2) An arrangement falls within this subsection if—

(a) it provides for an asset to be leased or otherwise made available by a person ("the lessor") to another person, and

(b) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated in the accounts of the lessor, or of a person connected with the lessor, as a finance lease or a loan.

(3) A hire-purchase, conditional sale or other arrangement relating to an asset falls within this subsection if it does not fall within subsection (2) but is of a similar character to an arrangement which would fall within that subsection.

(4) If for any relevant period accounts for a person are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined for the purposes of this section in relation to that person for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.

(5) In this section "accounts", in relation to a company, includes accounts relating to two or more companies of which that company is one.**]**

Textual Amendments

F305 S. 371VIA inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 9**, 21

371VJ Regulations

Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.**]**

[F306PART 10]

[F306CORPORATE INTEREST RESTRICTION]

Textual Amendments

F306 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)

Modifications etc. (not altering text)

C54 Pt. 10 excluded by 2010 c. 4, s. 937NA (as inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 7**)

C55 Pt. 10 excluded by 2010 c. 4, s. 938V(d) (as substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 9**)

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C56 Pt. 10 excluded by 2010 c. 4, s. 938N(e) (as substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 8**)

[F306CHAPTER 1]

[F306INTRODUCTION]

[F306372 Overview

(1) This Part contains provision that—

(a) disallows certain amounts that a company would (apart from this Part) be entitled to bring into account for the purposes of corporation tax in respect of interest and other financing costs, and

(b) allows certain amounts disallowed under this Part in previous accounting periods to be brought into account in later accounting periods.

(2) In this Chapter—

(a) section 373 defines some key concepts including, in particular, "the total disallowed amount" in relation to a period of account of a worldwide group, and

(b) section 374 provides for Schedule 7A to have effect.

(3) Chapter 2 provides for—

(a) the disallowance in certain circumstances of tax-interest expense amounts of companies that are members of a worldwide group, and

(b) the carrying forward of disallowed tax-interest expense amounts, and for bringing those amounts into account in certain circumstances in relation to a later period of account of the worldwide group.

(4) Chapter 3—

(a) defines "a tax-interest expense amount" and "a tax-interest income amount" of a company for a period of account of a worldwide group, which are amounts that are (or apart from this Part would be) brought into account for the purposes of corporation tax,

(b) defines "the net tax-interest expense" of a company for a period of account of a worldwide group, which is any excess of the company's tax-interest expense amounts for the period over its tax-interest income amounts for the period,

(c) defines "the net tax-interest income" of a company for a period of account of a worldwide group, which is any excess of the company's tax-interest income amounts for the period over its tax-interest expense amounts for the period, and

(d) defines "aggregate net tax-interest expense" and "aggregate net tax-interest income" of a worldwide group for a period of account of the worldwide group, which are made up of each member of the group's net tax-interest expense or net tax-interest income for the period.

(5) Chapter 4 contains provision about the calculation of "the interest capacity" of a worldwide group for a period of account of the group, which is the aggregate of the interest allowance for the period and any unused interest allowance of the group from the previous 5 years (or, if that aggregate is less than the de minimis amount, the de minimis amount).

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(6) Chapter 5 makes provision about the calculation of "the interest allowance" of a worldwide group for a period of account of the group.

The interest allowance for a period of account is calculated using the fixed ratio method unless the group elects for the group ratio method to be used for the period.

(7) Chapter 6 defines concepts used in Chapter 5 including—

the "tax-EBITDA" of a company for a period of account of a worldwide group (which is an amount derived from amounts brought into account for the purposes of corporation tax);

the "aggregate tax-EBITDA" of a worldwide group for a period of account of the group (which is an amount derived from the tax-EBITDA of members of the group).

(8) Chapter 7 defines additional concepts used in Chapter 5 including—

"the net group-interest expense", "the adjusted net group-interest expense" and "the qualifying net group-interest expense" of a worldwide group for a period of account of the group (which are amounts derived from the financial statements of the worldwide group);

the "group-EBITDA" of the worldwide group for a period of account of the group (which is an amount derived from the financial statements of the worldwide group).

(9) Chapter 8 contains provision altering the way in which this Part has effect in relation to the provision of public infrastructure assets or the carrying on of certain other related activities.

(10) Chapter 9 contains special provision altering the operation of certain provisions of this Part in relation to—

(a) particular types of company (for example, banking companies, companies carrying on oil-related activities, REITs or insurance companies), or

(b) particular types of transaction or accounting (for example, long funding operating leases or fair value accounting).

(11) Chapter 10 contains rules connected with tax avoidance.

(12) Chapter 11 contains the remaining interpretative and supplementary provision, including definitions of—

"related party";

"a worldwide group";

"ultimate parent";

"period of account" of a worldwide group.**]**

[F306373 Meaning of "subject to interest restrictions", "the total disallowed amount" etc

(1) A worldwide group is "subject to interest restrictions" in a period of account of the group if—

(a) the aggregate net tax-interest expense of the group for the period (see section 390), exceeds

(b) the interest capacity of the group for the period (see section 392).

(2) "The total disallowed amount" of a worldwide group in a period of account of the group is—

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(a) if the group is subject to interest restrictions in the period, the amount of the excess mentioned in subsection (1);

(b) otherwise, nil.

(3) "The interest reactivation cap" of a worldwide group in a period of account of the group is (subject to subsection (4))—

(a) the interest allowance of the group for the period (see section 396), less

(b) the aggregate net tax-interest expense of the group for the period.

(4) If the amount determined under subsection (3) is a negative amount, the interest reactivation cap of the worldwide group in the period is nil.

(5) A worldwide group is "subject to interest reactivations" in a period of account of the group if—

(a) the interest reactivation cap of the group in the period is not nil, and

(b) at least one member of the group is within the charge to corporation tax at any time during the period, and has an amount available for reactivation in the return period that is not nil (see paragraph 26 of Schedule 7A).

(6) This section has effect for the purposes of this Part.**]**

[F306374 Interest restriction returns

(1) Schedule 7A makes provision about—

(a) the preparation and submission of interest restriction returns by reporting companies of worldwide groups, and

(b) other related matters such as enquiries and information powers.

(2) Part 1 of that Schedule includes provision—

(a) for the appointment of a reporting company of a worldwide group for a period of account, but

(b) for companies ("non-consenting companies") to elect to be unaffected by allocations of interest restrictions made by the company.

(3) Part 2 of that Schedule includes provision—

(a) for various elections to be made in an interest restriction return that are relevant to the operation of this Part (for example, the group ratio election),

(b) entitling the reporting company of a worldwide group to allocate interest restrictions among its members but with a rule that allocates a pro-rata share to a non-consenting company, and

(c) entitling the reporting company of a worldwide group to allocate interest reactivations among its members.

(4) The remaining Parts of that Schedule contain provision about—

(a) the keeping and preservation of records (see Part 3),

(b) enquiries into interest restriction returns (see Part 4),

(c) determinations made by officers of Revenue and Customs in the event of the breach of filing or other obligations (see Part 5),

(d) information powers exercisable by members of the group (see Part 6),

(e) information powers exercisable by officers of Revenue and Customs (see Part 7), and

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(f) the amendment of company tax returns to reflect the effect of this Part of this Act and supplementary matters (see Parts 8 and 9).**]**

[F306CHAPTER 2]

[F306DISALLOWANCE AND REACTIVATION OF TAX-INTEREST EXPENSE AMOUNTS**]**

[F306375 Disallowance of deductions: full interest restriction return submitted

(1) This section applies where—

(a) an interest restriction return is submitted for a period of account of a worldwide group ("the relevant period of account"),

(b) the return complies with the requirements of paragraph 20(3) of Schedule 7A (requirements for full interest restriction return), and

(c) the return includes a statement that the group is subject to interest restrictions in the return period.

(2) A company that is listed on the statement under paragraph 22 of Schedule 7A (statement of allocated interest restrictions) must, in any accounting period for which the statement specifies an allocated disallowance, leave out of account tax-interest expense amounts that, in total, equal that allocated disallowance.

(3) A non-consenting company in relation to the return may—

(a) elect that subsection (2) is not to apply in relation to such relevant accounting period of the company as is specified in the election, or

(b) revoke an election previously made.

(4) If—

(a) an election under this section has effect in relation to an accounting period of a company, and

(b) paragraph 24 of Schedule 7A allocates to that period a pro-rata share of the total disallowed amount that is not nil,

the company must leave out of account in that period tax-interest expense amounts that, in total, equal that pro-rata share.

(5) See section 377 for provision as to which tax-interest expense amounts are to be left out of account as a result of this section.**]**

[F306376 Disallowance of deductions: no return, or non-compliant return, submitted

(1) This section applies where—

(a) a worldwide group is subject to interest restrictions in a period of account of the group ("the relevant period of account"),

(b) the relevant date has passed, and

(c) condition A, B or C is met.

(2) In this section "the relevant date" means—

(a) where the appointment of a reporting company has effect in relation to the relevant period of account, the filing date in relation to the period (see paragraph 7(5) of Schedule 7A);

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(b) otherwise, the last day of the period of 12 months beginning with the end of the relevant period of account.

(3) Condition A is that no appointment of a reporting company has effect in relation to the relevant period of account.

(4) Condition B is that—

(a) the appointment of a reporting company has effect in relation to the relevant period of account, and

(b) no interest restriction return has been submitted for the period.

(5) Condition C is that—

(a) the appointment of a reporting company has effect in relation to the relevant period of account,

(b) an interest restriction return has been submitted for the period, and

(c) the return does not comply with the requirements of paragraph 20(3) of Schedule 7A (for example by including inaccurate figures).

(6) A relevant company must, in any accounting period to which paragraph 24 of Schedule 7A allocates a pro-rata share of the total disallowed amount that is not nil, leave out of account tax-interest expense amounts that, in total, equal that pro-rata share.

(7) See section 377 for provision as to which tax-interest expense amounts are to be left out of account as a result of this section.

(8) In this section "relevant company" means a company that was a member of the worldwide group at any time during the relevant period of account.**]**

[F306 377 Disallowance of deductions: identification of the tax-interest amounts to be left out of account

(1) This section applies where—

(a) a company is required to leave tax-interest expense amounts out of account in an accounting period under section 375 or 376, and

(b) the total of the tax-interest expense amounts that, apart from that provision, would be brought into account in the accounting period exceeds the total of the tax-interest expense amounts that are required by that provision to be left out of account in that period.

(2) Tax-interest expense amounts must (subject to the following provisions of this section) be left out of account in the following order.

First, leave out of account tax-interest expense amounts that meet condition A in section 382 and would (if brought into account) be brought into account under Part 5 of CTA 2009 (non-trading debits in respect of loan relationships).

Second, leave out of account tax-interest expense amounts that meet condition B in section 382 and would (if brought into account) be brought into account under Part 5 of CTA 2009 as a result of section 574 of that Act (non-trading debits in respect of derivative contracts).

Third, leave out of account tax-interest expense amounts that meet condition A in section 382 and would (if brought into account) be brought into account under Part 3 of CTA 2009 as a result of section 297 of that Act (debits in respect of loan relationships treated as expenses of trade).

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Fourth, leave out of account tax-interest expense amounts that meet condition B in section 382 and would (if brought into account) be brought into account under Part 3 of CTA 2009 as a result of section 573 of that Act (debits in respect of derivative contracts treated as expenses of trade).

Fifth, leave out of account tax-interest expense amounts that meet condition C in section 382 and do not also meet condition A or B in that section (finance leases, debt factoring and service concession arrangements).

(3) The company may—

(a) elect that subsection (2) is not to apply to the accounting period, or

(b) revoke an election previously made.

(4) An election under this section must specify the particular tax-interest expense amounts that are to be left out of account.**]**

[F306 378 Disallowed tax-interest expense amounts carried forward

(1) For the purposes of this Part a tax-interest expense amount of a company is "disallowed" in an accounting period if the company is required to leave it out of account in that accounting period under section 375 or 376.

(2) A tax-interest expense amount of a company that is disallowed in an accounting period is (subject to the remaining provisions of this section) carried forward to subsequent accounting periods.

(3) Where—

(a) a tax-interest expense amount of a company would (apart from this Part) be brought into account in calculating the profits or losses of a trade carried on by the company in an accounting period,

(b) the tax-interest expense amount is disallowed in that accounting period, and

(c) in a subsequent accounting period ("the later accounting period") the company ceases to carry on the trade, or the scale of the activities in the trade becomes small or negligible,

the tax-interest expense amount is not carried forward to F307... accounting periods after the later accounting period.

(4) Where—

(a) a tax-interest expense amount of a company would (apart from this Part) be brought into account in calculating the profits or losses of a trade carried on by the company in an accounting period,

(b) the tax-interest expense amount is disallowed in that accounting period, and

(c) in a subsequent accounting period ("the later accounting period") the trade is uncommercial and non-statutory,

the tax-interest expense amount is not carried forward to the later accounting period or accounting periods after the later accounting period.

(5) For the purposes of subsection (4), a trade is "uncommercial and non-statutory" in an accounting period if, were the company to have made a loss in the trade in the period, relief for the loss under section 37 of CTA 2010 (relief for trade losses against total profits) would have been unavailable by virtue of section 44 of that Act (trade must be commercial or carried on for statutory functions).

(6) Where—

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(a) a tax-interest expense amount of a company would (apart from this Part) be brought into account in calculating the profits or losses of an investment business carried on by the company in an accounting period,

(b) the tax-interest expense amount is disallowed in that accounting period, and

(c) in a subsequent accounting period ("the later accounting period") the company ceases to carry on the investment business, or the scale of the activities in the investment business becomes small or negligible,

the tax-interest expense amount is not carried forward to [F308]... accounting periods after the later accounting period.

(7) Where a tax-interest expense amount—

(a) is disallowed in an accounting period,

(b) is carried forward to a subsequent accounting period ("the later accounting period"), and

(c) is brought into account in the later accounting period in accordance with section 379,

it is not carried forward to accounting periods after the later accounting period.**]**

Textual Amendments

F307 Words in s. 378(3) omitted (retrospectively) by virtue of Finance Act 2018 (c. 3), **Sch. 8 paras. 18**, 23(1)

F308 Words in s. 378(6) omitted (retrospectively) by virtue of Finance Act 2018 (c. 3), **Sch. 8 paras. 18**, 23(1)

[F306379 Reactivation of interest

(1) This section applies where—

(a) an interest restriction return is submitted for a period of account of a worldwide group ("the relevant period of account"),

(b) the return complies with the requirements of paragraph 20(3) of Schedule 7A (requirements for full interest restriction return), and

(c) the return contains a statement that the group is subject to interest reactivations in the return period.

(2) A company that is listed on the statement under paragraph 25 of Schedule 7A (statement of allocated interest reactivations) must, in the specified accounting period, bring into account tax-interest expense amounts that—

(a) are brought forward to the specified accounting period from an earlier accounting period, and

(b) in total, equal the allocated reactivation for the return period.

(3) A tax-interest expense amount is brought into account in the specified accounting period under subsection (2) by being treated as a tax-interest expense amount of the specified accounting period (so that, for example, a tax-interest expense amount that is a relevant loan relationship debit falling within section 383(2)(a)(ii) is brought into account in the specified period as a non-trading debit under Part 5 of CTA 2009).

(4) See section 380 for provision as to which tax-interest expense amounts are to be brought into account under subsection (2).

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(5) In this section "the specified accounting period" means—

(a) the earliest relevant accounting period of the company, or

(b) where the company became a member of the relevant worldwide group during the relevant period of account, the earliest relevant accounting period of the company in which it was a member of the group.**]**

[F306380 Reactivation of deductions: identification of the tax-interest amounts to be brought into account

(1) This section applies where—

(a) a company is required to bring tax-interest expense amounts into account in an accounting period under section 379, and

(b) the total of the tax-interest expense amounts that are brought forward to the accounting period from earlier accounting periods exceeds the total of the tax-interest expense amounts that are required by that provision to be brought into account in that accounting period.

(2) Tax-interest expense amounts must (subject to the following provisions of this section) be brought into account in the following order.

First, bring into account tax-interest expense amounts that meet condition A in section 382 and are brought into account under Part 5 of CTA 2009 (non-trading debits in respect of loan relationships).

Second, bring into account tax-interest expense amounts that meet condition B in section 382 and are brought into account under Part 5 of CTA 2009 as a result of section 574 of that Act (non-trading debits in respect of derivative contracts).

Third, bring into account tax-interest expense amounts that meet condition A in section 382 and are brought into account under Part 3 of CTA 2009 as a result of section 297 of that Act (debits in respect of loan relationships treated as expenses of trade).

Fourth, bring into account tax-interest expense amounts that meet condition B in section 382 and are brought into account under Part 3 of CTA 2009 as a result of section 573 of that Act (debits in respect of derivative contracts treated as expenses of trade).

Fifth, bring into account tax-interest expense amounts that meet condition C in section 382 and do not also meet condition A or B in that section (finance leases, debt factoring and service concession arrangements).

(3) The company may—

(a) elect that subsection (2) is not to apply to the accounting period, or

(b) revoke an election previously made.

(4) An election under this section must specify the particular tax-interest expense amounts that are to be brought into account.**]**

[F306381 Set-off of disallowances and reactivations in the same accounting period

(1) This section applies where, as a result of the operation of this Part in relation to different periods of account (whether of the same or a different worldwide group), a company would, apart from this section—

(a) be required to leave out of account one or more tax-interest expense amounts in an accounting period under section 375 or 376, and

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(b) be required to bring one or more tax-interest expense amounts into account in that accounting period under section 379.

(2) In this section—

(a) "the gross disallowed amount" means the amount, or total of the amounts, mentioned in subsection (1)(a);

(b) "the gross reactivated amount" means the amount, or total of the amounts, mentioned in subsection (1)(b).

(3) Where the gross disallowed amount is equal to the gross reactivated amount, no tax-interest expense amounts are to be left out of account in the accounting period under this Part or brought into account in the accounting period under this Part.

(4) Where the gross disallowed amount is more than the gross reactivated amount—

(a) the requirement in section 375 or 376 is to leave out of account tax-interest expense amounts that, in total, equal the gross disallowed amount less the gross reactivated amount, and

(b) no amount is to be brought into account in the accounting period under section 379.

(5) Where the gross reactivated amount is more than the gross disallowed amount—

(a) no amount to be left out of account in the accounting period under section 375 or 376, and

(b) the requirement in section 379 is to bring into account the gross reactivated amount less the gross disallowed amount.**]**

[F306CHAPTER 3]

[F306TAX-INTEREST AMOUNTS**]**

[F306Tax-interest expense and income amounts: basic rules]

[F306382 The tax-interest expense amounts of a company

(1) References in this Part to a "tax-interest expense amount" of a company for a period of account of a worldwide group are to any amount that—

(a) is (or apart from this Part would be) brought into account for the purposes of corporation tax in a relevant accounting period of the company, and

(b) meets condition A, B or C.

[F309(1A) But, in the case of a company which is a charity (as defined in paragraph 1 of Schedule 6 to FA 2010) at the end of the period of account, references in this Part to a "tax-interest expense amount" of the company do not include references to an amount which meets Condition A, B or C.**]**

(2) Condition A is that the amount is a relevant loan relationship debit (see section 383).

(3) Condition B is that the amount is a relevant derivative contract debit (see section 384).

(4) Condition C is that the amount is in respect of the financing cost implicit in amounts payable under a relevant arrangement or transaction.

(5) In subsection (4) "relevant arrangement or transaction" means—

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(a) a finance lease,

(b) debt factoring, or any similar transaction, or

(c) a service concession arrangement if and to the extent that the arrangement is accounted for as a financial liability.

(6) Subsection (8) applies if an accounting period in which a tax-interest expense amount is (or apart from this Part would be) brought into account for the purposes of corporation tax contains one or more disregarded periods.

(7) A "disregarded period" is any period falling within the accounting period—

(a) which does not fall within the period of account of the worldwide group, or

(b) throughout which the company is not a member of the group.

(8) Where this subsection applies, the tax-interest expense amount mentioned in subsection (6) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that subsection.

(9) An amount may be reduced to nil under subsection (8).

(10) If—

(a) an amount would have met condition A, B or C but for the application of a rule preventing its deduction,

(b) some or all of it is deductible at a subsequent time as a result of the application of another rule, and

(c) none of conditions A to C are met at that time,

so much of the amount as is subsequently deductible is treated, at that time, as meeting whichever of condition A, B or C would have been met but for the application of the rule mentioned in paragraph (a).

(11) An example of a case to which subsection (10) applies is a case where—

(a) an amount is prevented from being deducted as a result of any provision made by Part 6A (hybrid and other mismatches), and

(b) another provision of that Part subsequently applies so as to permit some or all of it to be deducted from total profits.**]**

Textual Amendments

F309 S. 382(1A) 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. 2**

[F306 383 Relevant loan relationship debits

(1) This section applies for the purposes of section 382.

(2) An amount is a "relevant loan relationship debit" if—

(a) it is a debit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a loan relationship under—

(i) Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or

(ii) Part 5 of that Act (other loan relationships), and

(b) is not an excluded debit.

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(3) A debit is "excluded" for the purposes of subsection (2)(b) if—

(a) it is in respect of an exchange loss (within the meaning of Parts 5 and 6 of CTA 2009), or

(b) it is in respect of an impairment loss.

384 Relevant derivative contract debits

(1) This section applies for the purposes of section 382.

(2) An amount is a "relevant derivative contract debit" if—

(a) it is a debit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a derivative contract under—

(i) Part 3 of CTA 2009 as a result of section 573 of that Act (derivative contracts for purposes of trade), or

(ii) Part 5 of that Act as a result of section 574 of that Act (other derivative contracts),

(b) it is not an excluded debit, and

(c) the condition in subsection (4) is met.

(3) A debit is "excluded" for the purposes of subsection (2)(b) if—

(a) it is in respect of an exchange loss (within the meaning of Part 7 of CTA 2009),

(b) it is in respect of an impairment loss, or

[F310(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).**]**

[F311(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.**]**

(4) The condition referred to in subsection (2)(c) is that the underlying subject matter of the derivative contract consists only of one or more of the following—

(a) interest rates;

(b) any index determined by reference to income or retail prices;

(c) currency;

(d) an asset or liability representing a loan relationship;

(e) any other underlying subject matter which is—

(i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or

(ii) of small value in comparison with the value of the underlying subject matter as a whole.

(5) For the purposes of this section, whether part of the underlying subject matter of the derivative contract is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.

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(6) In this section "underlying subject matter" has the same meaning as in Part 7 of CTA 2009.

Textual Amendments

F310 S. 384(3)(c) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 2(2)**

F311 S. 384(3A) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 2(3)**

385 The tax-interest income amounts of a company

(1) References in this Part to a "tax-interest income amount" of a company for a period of account of a worldwide group are to any amount that—

(a) is (or apart from this Part would be) brought into account for the purposes of corporation tax in a relevant accounting period of the company, and

(b) meets condition A, B, C or D.

(2) Condition A is that the amount is a relevant loan relationship credit (see section 386).

(3) Condition B is that the amount is a relevant derivative contract credit (see section 387).

(4) Condition C is that the amount is in respect of the financing income implicit in amounts receivable under a relevant arrangement or transaction.

(5) In subsection (4) "relevant arrangement or transaction" means—

(a) a finance lease,

(b) debt factoring, or any similar transaction, or

(c) a service concession arrangement if and to the extent that the arrangement is accounted for as a financial asset.

(6) Condition D is that the amount is in respect of income that—

(a) is receivable from another company, and

(b) is in consideration of the provision of a guarantee of any borrowing of that other company.

(7) Subsection (9) applies if an accounting period in which a tax-interest income amount is (or apart from this Part would be) brought into account for the purposes of corporation tax contains one or more disregarded periods.

(8) A "disregarded period" is any period falling within the accounting period—

(a) which does not fall within the period of account of the worldwide group, or

(b) throughout which the company is not a member of the group.

(9) Where this subsection applies, the tax-interest income amount mentioned in subsection (7) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that subsection.

(10) An amount may be reduced to nil under subsection (9).

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

386 Relevant loan relationship credits

(1) This section applies for the purposes of section 385.

(2) An amount is a "relevant loan relationship credit" if—

(a) it is a credit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a loan relationship under—

(i) Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or

(ii) Part 5 of that Act (other loan relationships), and

(b) it is not an excluded credit.

(3) A credit is "excluded" for the purposes of subsection (2)(b) if—

(a) it is in respect of an exchange gain (within the meaning of Parts 5 and 6 of CTA 2009), or

(b) it is in respect of the reversal of an impairment loss.

387 Relevant derivative contract credits

(1) This section applies for the purposes of section 385.

(2) An amount is a "relevant derivative contract credit" if—

(a) it is a credit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a derivative contract under—

(i) Part 3 of CTA 2009 as a result of section 573 of that Act (derivative contracts for purposes of trade), or

(ii) Part 5 of that Act as a result of section 574 of that Act (other derivative contracts),

(b) is not an excluded credit, and

(c) the condition in subsection (4) is met.

(3) A credit is "excluded" for the purposes of subsection (2)(b) if—

(a) it is in respect of an exchange gain (within the meaning of Part 7 of CTA 2009),

(b) it is in respect of the reversal of an impairment loss, or

[F312(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).**]**

[F313(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—

(a) a tax-interest expense amount, or

(b) a tax-interest income amount,

of the company in any relevant accounting period.**]**

(4) The condition referred to in subsection (2)(c) is that the underlying subject matter of the derivative contract consists only of one or more of the following—

(a) interest rates;

(b) any index determined by reference to income or retail prices;

(c) currency;

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(d) an asset or liability representing a loan relationship;

(e) any other underlying subject matter which is—

(i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or

(ii) of small value in comparison with the value of the underlying subject matter as a whole.

(5) For the purposes of this section, whether part of the underlying subject matter of the derivative contract is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.

(6) In this section "underlying subject matter" has the same meaning as in Part 7 of CTA 2009.**]**

Textual Amendments

F312 S. 387(3)(c) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 3(2)**

F313 S. 387(3A) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 3(3)**

[F306 Double taxation relief

388 Double taxation relief

(1) This section applies where—

(a) apart from this section, an amount ("the relevant amount") would be a tax-interest income amount brought into account for the purposes of corporation tax in a relevant accounting period ("the relevant accounting period") of a company, and

(b) the amount of corporation tax chargeable in respect of the relevant amount is reduced under section 18(2) (entitlement to credit for foreign tax reduces UK tax by amount of the credit).

(2) The relevant amount is not a tax-interest income amount to the extent that it consists of notional untaxed income.

(3) For this purpose, the amount of the relevant amount that consists of "notional untaxed income" is—

A B

where—

A is the amount of the reduction mentioned in subsection (1)(b);

B is the rate of corporation tax payable by the company, before any credit under Part 2 (double taxation relief), on the company's profits for the relevant accounting period.**]**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F306 Net tax-interest expense

389 The "net tax-interest expense" or "net tax-interest income" of a company

(1) A company has "net tax-interest expense" for a period of account of a worldwide group if the total of its tax-interest expense amounts for the period exceeds the total of its tax-interest income amounts for the period.

(2) The amount of the net tax-interest expense of the company for the period is the amount of the excess.

(3) A company has "net tax-interest income" for a period of account of a worldwide group if the total of its tax-interest income amounts for the period exceeds the total of its tax-interest expense amounts for the period.

(4) The amount of the net tax-interest income of the company for the period is the amount of the excess.

(5) The net tax-interest expense or net tax-interest income of a company for a period of account of a worldwide group is "referable" to an accounting period of the company to the extent that it comprises tax-interest expense amounts or tax-interest income amounts that are (or apart from this Part would be) brought into account in the accounting period.

(6) This section applies for the purposes of this Part.

390 The worldwide group's aggregate net tax-interest expense and income

(1) The "aggregate net tax-interest expense" of a worldwide group for a period of account of the group is (subject to subsection (2))—

(a) the total of the net tax-interest expense for the period of each relevant company that has such an amount, less

(b) the total of the net tax-interest income for the period of each relevant company that has such an amount.

(2) Where the amount determined under subsection (1) is negative, the "aggregate net tax-interest expense" of the group for the period is nil.

(3) The "aggregate net tax-interest income" of a worldwide group for a period of account of the group is (subject to subsection (4))—

(a) the total of the net tax-interest income for the period of each relevant company that has such an amount, less

(b) the total of the net tax-interest expense for the period of each relevant company that has such an amount.

(4) Where the amount determined under subsection (3) is negative, the "aggregate net tax-interest income" of the group for the period is nil.

(5) In this section "relevant company" means a company that was a member of the group at any time during the period of account of the group.

(6) This section applies for the purposes of this Part.**]**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F306 Interpretation

391 Meaning of "impairment loss"

(1) In this Part "impairment loss" means a loss in respect of the impairment of a financial asset.

(2) A reference to a debit in respect of an impairment loss does not include a debit that is (or apart from this Part would be) brought into account in an accounting period in respect of an asset for which fair value accounting is used.**]**

[F314 391A Amounts capitalised in carrying value of intangible fixed assets

In determining for the purposes of this Part whether an amount is a tax-interest expense amount or tax-interest income amount, section 906(1) of CTA 2009 (priority of intangible fixed asset rules) does not apply in respect of any matter which may be brought into account in accordance with Part 5 or 7 of that Act.**]**

Textual Amendments

F314 S. 391A inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 2**

[F306 CHAPTER 4

INTEREST CAPACITY

392 The interest capacity of a worldwide group for a period of account

(1) For the purposes of this Part "the interest capacity" of a worldwide group for a period of account of the group ("the current period") is (subject to subsection (2))—

$$A + B$$

where—

A is the interest allowance of the group for the current period (see Chapter 5);

B is the aggregate of the interest allowances of the group for periods before the current period so far as they are available in the current period (see section 393).

(2) Where the amount determined under subsection (1) is less than the de minimis amount for the current period, the interest capacity of the worldwide group for the period is the de minimis amount.

(3) For this purpose "the de minimis amount" for a period of account is—

(a) £2 million, or

(b) where the period is more than or less than a year, the amount mentioned in paragraph (a) proportionately increased or reduced.

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393 Amount of interest allowance for a period that is "available" in a later period

(1) This section applies for the purposes of this Chapter.

(2) The amount of the interest allowance of a worldwide group for a period of account ("the originating period") that is "available" in a later period of account of the group ("the receiving period") is (subject to subsection (5)) the lower of amounts A and B.

(3) Amount A is—

(a) the amount of the interest allowance for the originating period, less

(b) the total of the amount or amounts (if any) of that interest allowance that were used in the originating period, or in any subsequent period of account of the group before the receiving period (see section 394).

(4) Amount B is the amount (if any) of the interest allowance for the originating period that is unexpired in the receiving period (see section 395).

(5) The amount of the interest allowance for the originating period that is "available" in the receiving period is nil if—

(a) an abbreviated return election **[**F315has effect**]** in relation to the originating period, the receiving period or any intervening period of account of the group, or

(b) an interest restriction return is not submitted for any such period.

Textual Amendments

F315 Words in s. 393(5)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 19**, 23(1)

394 When interest allowance is "used"

(1) This section applies for the purposes of this Chapter.

(2) The amount of the interest allowance of a worldwide group for a period of account of the group ("the originating period") that is "used" in the originating period is the lower of—

(a) the interest allowance for the originating period, and

(b) the sum of—

(i) the aggregate net tax-interest expense of the group for the originating period;

(ii) the total amount of tax-interest expense amounts required to be brought into account in the originating period under section 379 (reactivation of interest) by members of the group.

(3) The amount of the interest allowance for the originating period that is "used" in a later period of account of the group ("the receiving period") is the lower of—

(a) the interest allowance so far as it is available in the receiving period (see section 393), and

(b) the relevant part of the aggregate net tax-interest expense of the group for the receiving period (see subsection (4)).

(4) In subsection (3)(b) "the relevant part of the aggregate net tax-interest expense of the group for the receiving period" is (subject to subsection (5))—

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$$A - B - C$$

where—

A is the aggregate net tax-interest expense of the group for the receiving period;

B is the interest allowance of the group for the receiving period;

C is the amount of the interest allowance of the group for any period before the originating period that is used in the receiving period.

(5) Where the amount determined under subsection (4) is negative, "the relevant part of the aggregate net tax-interest expense of the group for the receiving period" is nil.

395 Amount of interest allowance for a period of account that is "unexpired" in later period

(1) This section contains provision for determining for the purposes of this Chapter the extent to which an interest allowance of a worldwide group for a period of account ("the originating period") is "unexpired" in a later period of account of the group ("the receiving period").

(2) If the receiving period—

(a) begins 5 years or less after the originating period begins, and

(b) ends 5 years or less after the originating period ends,

all of the interest allowance for the originating period is unexpired in the receiving period.

(3) If the receiving period begins 5 years or more after the originating period ends, none of the interest allowance for the originating period is unexpired in the receiving period.

(4) Subsection (5) applies if the receiving period—

(a) begins more than 5 years after the originating period begins, and

(b) ends 5 years or less after the originating period ends.

(5) The amount of the interest allowance for the originating period that is unexpired in the receiving period is—

$$(A - B) \times \frac{X}{Y}$$

where—

A is the interest allowance for the originating period;

B is—

(a) the aggregate net tax-interest expense of the group for the originating period, or

(b) if lower, the interest allowance for the originating period;

X is the number of days in the period—

(a) beginning with the day on which the receiving period begins, and

(b) ending with the day 5 years after the day on which the originating period ends;

Y is the number of days in the originating period.

(6) Subsection (7) applies if the receiving period—

(a) begins 5 years or less after the originating period begins, and

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(b) ends more than 5 years after the originating period ends.

(7) The amount of the interest allowance for the originating period that is unexpired in the receiving period is—

$$(C - D) \times \frac{X}{Z}$$

where—

C is the aggregate net tax-interest expense of the group for the receiving period;

D is—

(a) the interest allowance of the group for the receiving period, or

(b) if lower, the aggregate net tax-interest expense of the group for the receiving period;

X has the same meaning as in subsection (5);

Z is the number of days in the receiving period.

(8) Subsection (9) applies if—

(a) the receiving period—

(i) begins more than 5 years after the originating period begins, and

(ii) ends more than 5 years after the originating period ends, and

(b) subsection (3) does not apply.

(9) The amount of the interest allowance for the originating period that is unexpired in the receiving period is the lower of the amounts determined under subsections (5) and (7).

[

Carry forward of interest allowance: new holding company

F316395A

(1) This section applies if—

(a) a company ("C") ceases to be the ultimate parent of a worldwide group ("the old group") because of a qualifying takeover, and

(b) another company ("N") becomes the ultimate parent of a worldwide group ("the new group") as a result of the takeover.

(2) For this purpose there is a qualifying takeover if there is a change in the ownership of C which is disregarded for the purposes of Chapters 2 to 6 of Part 14 of CTA 2010 as a result of section 724A of that Act where—

(a) C is the other company referred to as C in that section, and

(b) N is the new company referred to as N in that section.

[F317(3) For the purposes of this Chapter and Chapter 5—

(a) so far as it would not otherwise be the case—

(i) the first period of account of the new group is treated as beginning with the day on which the qualifying takeover occurs (the "takeover day"), and

(ii) the last period of account of the old group is treated as ending on the day before the takeover day;

(b) the interest allowance of the new group is determined as if periods of account of the old group which ended before the beginning of the first period of account of the new group were periods of account of the new group.**]]**

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Textual Amendments

F316 S. 395A inserted (with effect in accordance with Sch. 11 para. 23 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 3**

F317 S. 395A(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. 3**

CHAPTER 5

INTEREST ALLOWANCE

Interest allowance

396 The interest allowance of a worldwide group for a period of account

(1) For the purposes of this Part "the interest allowance" of a worldwide group for a period of account of the group is—

A + B

where—

A is the basic interest allowance of the group for the period;

B is the amount (if any) of the aggregate net tax-interest income of the group for the period (see section 390(3) and (4)).

(2) In subsection (1) "the basic interest allowance" means—

(a) where no group ratio election is in force in relation to the period, the basic interest allowance calculated using the fixed ratio method (see section 397);

(b) where such an election is in force in relation to the period, the basic interest allowance calculated using the group ratio method (see section 398).

397 Basic interest allowance calculated using fixed ratio method

(1) For the purposes of section 396, the basic interest allowance of a worldwide group for a period of account of the group, calculated using the fixed ratio method, is the lower of the following amounts—

(a) 30% of the aggregate tax-EBITDA of the group for the period;

(b) the fixed ratio debt cap of the group for the period.

(2) See—

section 400 for the meaning of "fixed ratio debt cap";

section 405 for the meaning of "aggregate tax-EBITDA".

398 Basic interest allowance calculated using group ratio method

(1) For the purposes of section 396, the basic interest allowance of a worldwide group for a period of account of the group, calculated using the group ratio method, is the lower of the following amounts—

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(a) the group ratio percentage of the aggregate tax-EBITDA of the group for the period;
(b) the group ratio debt cap of the group for the period.

(2) See—

section 399 for the meaning of "group ratio percentage";
section 400 for the meaning of "group ratio debt cap";
section 405 for the meaning of "aggregate tax-EBITDA".

399 The group ratio percentage

(1) For the purposes of this Part "the group ratio percentage" of a worldwide group for a period of account of the group is (subject to subsection (2)) the following proportion expressed as a percentage—

A B

where—

A is the qualifying net group-interest expense of the group for the period;

B is the group-EBITDA of the group for the period.

(2) "The group ratio percentage" is 100% where—
(a) the percentage determined under subsection (1) is negative or higher than 100%, or
(b) B in that subsection is zero.

(3) See—

section 414 for the meaning of "qualifying net group-interest expense";
section 416 for the meaning of "group-EBITDA".

400 The debt cap

(1) For the purposes of section 397 (and this section), "the fixed ratio debt cap" of a worldwide group for a period of account of the group is the sum of the following amounts—
(a) the adjusted net group-interest expense of the group for the period;
(b) the excess debt cap of the group that was generated in the immediately preceding period of account of the group (if any) (see subsections (3) to (7)).

(2) For the purposes of section 398 (and this section), "the group ratio debt cap" of a worldwide group for a period of account of the group is the sum of the following amounts—
(a) the qualifying net group-interest expense of the group for the period;
(b) the excess debt cap of the group that was generated in the immediately preceding period of account of the group (if any) (see subsections (3) to (7)).

(3) Where no group ratio election is in force in relation to a period of account of a worldwide group ("the generating period"), "the excess debt cap" of the group that is generated in the period is (subject to subsections (5) and (6))—

A − B

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where—

A is the fixed ratio debt cap of the group for the generating period;

B is 30% of the aggregate tax-EBITDA of the group for the generating period.

(4) Where a group ratio election is in force in relation to a period of account of a worldwide group ("the generating period"), "the excess debt cap" of the group that is generated in the period is (subject to subsections (5) and (6))—

$$A - B$$

where—

A is the group ratio debt cap of the group for the generating period;

B is the group ratio percentage of the aggregate tax-EBITDA of the group for the generating period.

(5) Where the amount determined under subsection (3) or (4) is negative, "the excess debt cap" of the group that is generated in the period is nil.

(6) Where the amount determined under subsection (3) or (4) is greater than the carry-forward limit, "the excess debt cap" of the group that is generated in the period is the carry-forward limit.

(7) For this purpose the "carry-forward limit" is the sum of the following amounts—

(a) the excess debt cap generated in the period of account of the group immediately preceding the generating period (if any);

(b) the total disallowed amount of the group in the generating period.

(8) See—

section 373 for the meaning of "the total disallowed amount";
section 405 for the meaning of "aggregate tax-EBITDA";
section 413 for the meaning of "adjusted net group-interest expense";
section 414 for the meaning of "qualifying net group-interest expense".

[Carry forward of excess debt cap: new holding company

F318 400A

(1) This section applies if—

(a) a company ("C") ceases to be the ultimate parent of a worldwide group ("the old group") because of a qualifying takeover, and

(b) another company ("N") becomes the ultimate parent of a worldwide group ("the new group") as a result of the takeover.

(2) For this purpose there is a qualifying takeover if there is a change in the ownership of C which is disregarded for the purposes of Chapters 2 to 6 of Part 14 of CTA 2010 as a result of section 724A of that Act where—

(a) C is the other company referred to as C in that section, and

(b) N is the new company referred to as N in that section.

(3) In determining in accordance with section 400 **[**F319the new group's fixed ratio debt cap**]** or group ratio debt cap for its first period of account, its excess debt cap generated in the immediately preceding period of account is taken to be that of the old group

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for the period of account of the old group **[**[F320]ending on the day before the takeover day (see section 395A(3))**]**.**]**

Textual Amendments

F318 S. 400A inserted (with effect in accordance with Sch. 11 para. 23 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 4**

F319 Words in s. 400A(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. 4(a)**

F320 Words in s. 400A(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. 4(b)**

Effect of group ratio (blended) election

401 Effect of group ratio (blended) election on group ratio percentage

(1) Where a group ratio (blended) election (see paragraph 14 of Schedule 7A) has effect in relation to a period of account of a worldwide group ("the relevant period of account"), this Chapter applies subject to this section.

(2) Section 399 (meaning of "group ratio percentage") does not apply for the purpose of determining the group ratio percentage of the group for the relevant period of account.

(3) Instead, the group ratio percentage of the group for the relevant period of account is determined by taking the following steps—

Step 1 For each investor in the group, multiply the investor's applicable percentage by the investor's share in the group.

Step 2 Add together the amounts found under Step 1.

(4) For the purposes of this section, an investor's "applicable percentage" is the highest of the following percentages—

(a) 30%;

(b) the percentage determined under section 399;

(c) in the case of a related party investor that, throughout the relevant period of account, is a member of a worldwide group ("the investor's worldwide group") other than that mentioned in subsection (1), the group ratio percentage of the investor's worldwide group for the relevant period of account.

(5) Subsection (6) applies where financial statements of the investor's worldwide group are drawn up in respect of one or more periods ("the investor's periods of account") that are comprised in or overlap with (but are not coterminous with) the relevant period of account.

(6) The group ratio percentage of the investor's worldwide group for the relevant period of account is to be determined for the purposes of subsection (4)(c) by taking the following steps—

Step 1 Find the group ratio percentage of the investor's worldwide group for each of the investor's periods of account.

Step 2 Find the proportion of the relevant period of account that coincides with each of the investor's periods of account.

Step 3 For each of the investor's periods of account, multiply the group ratio percentage found under Step 1 by the proportion found under Step 2.

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Step 4 Add together the amounts found under Step 3.

402 Effect of group ratio (blended) election on group ratio debt cap

(1) Where a group ratio (blended) election (see paragraph 14 of Schedule 7A) has effect in relation to a period of account of a worldwide group ("the relevant period of account"), this Chapter applies subject to this section.

(2) In section 400 (the debt cap), subsection (2)(a) is treated as if—

(a) it did not refer to the qualifying net group-interest expense of the group for the period, and

(b) instead it referred to the blended net group-interest expense of the group for the period, as determined in accordance with this section.

(3) The blended net group-interest expense of the group for the relevant period of account is determined by taking the following steps—

Step 1 For each investor in the group whose applicable percentage for the purposes of section 401 is the percentage mentioned in subsection (4)(a) of that section, multiply the adjusted net group-interest expense of the group for the period by the investor's share in the group.

Step 2 For each investor in the group whose applicable percentage for the purposes of section 401 is the percentage mentioned in subsection (4)(b) of that section, multiply the qualifying net group-interest expense of the group for the period by the investor's share in the group.

Step 3 For each investor in the group whose applicable percentage for the purposes of section 401 is the percentage mentioned in subsection (4)(c) of that section, find the applicable net group-interest expense of the investor's worldwide group for the period (see subsections (4) to (8) of this section).

Step 4 Add together the amounts found under Steps 1, 2 and 3.

(4) For the purposes of this section, the "applicable net group-interest expense" of the investor's worldwide group for a period of account is so much of the qualifying net group-interest expense of the investor's worldwide group for the period as relates to loans to, or other financial arrangements with, members of the investor's worldwide group that are used to fund (directly or indirectly) loans to, or other financial arrangements with, members of the worldwide group mentioned in subsection (1).

(5) Subsection (6) applies where periods of account of the investor's worldwide group ("the investor's periods of account") are comprised in or overlap with (but are not coterminous with) the relevant period of account.

(6) The applicable net group-interest expense of the investor's worldwide group for the relevant period of account is the aggregate of so much of the applicable net group-interest expense of the investor's worldwide group for each of the investor's periods of account as is referable, on a just and reasonable basis, to the relevant period of account.

(7) Subsection (8) applies where—

(a) a loan is made to, or another financial arrangement is entered into with, a member of the investor's worldwide group, and

(b) the loan or other financial arrangement is—

(i) in part used to fund (directly or indirectly) loans to, or other financial arrangements with, members of the worldwide group mentioned in subsection (1), and

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(ii) in part used for other purposes.

(8) In determining the applicable net group-interest expense of the investor's worldwide group for any period, the amount of the qualifying net group-interest expense of the investor's worldwide group for the period that is brought into account, in respect of the loan or other financial arrangement mentioned in subsection (7)(a), is confined to such amount as is referable, on a just and reasonable basis, to the use mentioned in subsection (7)(b)(i).

(9) In this section—

"financial arrangements" does not include the holding of shares;

"the investor's worldwide group" has the same meaning as in section 401.

403 Calculations under sections 401 and 402: investor worldwide groups

(1) This section applies—

(a) in determining, under section 401, the group ratio percentage of the investor's worldwide group for a period of account;

(b) in determining, under section 402, the qualifying net group-interest expense of the investor's worldwide group for a period of account.

(2) Where the group ratio (blended) election specifies that a particular election under Schedule 7A ("the investor's election") is to be treated as having effect, or as not having effect, in relation to periods of account of the investor's worldwide group, the investor's election is to be so treated in determining the amounts mentioned in subsection (1).

(3) Where the group ratio (blended) election does not specify that a particular election under Schedule 7A ("the investor's election") is to be treated as having effect, or as not having effect, in relation to periods of account of the investor's worldwide group, the investor's election is to be treated as having effect in determining the amounts mentioned in subsection (1) only if it was in fact made in relation to the period of account in question by a reporting company of the investor's worldwide group.

(4) In this section "the investor's worldwide group" has the same meaning as in section 401.

404 Meaning of "investor", "related party investor" and investor's "share"

(1) An entity is an "investor" in a worldwide group if it has an interest in the ultimate parent of the group that entitles it to a proportion of the profits or losses of the group.

(2) An investor in a worldwide group is a "related party investor" of the group in relation to a period of account of the group if, throughout the period, it is a related party of the ultimate parent of the group.

(3) The "share" of an investor in a worldwide group, in relation to a period of account of the group, is the proportion (expressed as a percentage) of the profits or losses of the group that arise in the period to which the investor is entitled by virtue of the investor's interest in the group's ultimate parent.

(4) This section has effect for the purposes of this Part.

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CHAPTER 6

TAX-EBITDA

405 The aggregate tax-EBITDA of a worldwide group

For the purposes of this Part "the aggregate tax-EBITDA" of a worldwide group for a period of account of the group is—

(a) the total of the tax-EBITDAs for the period of each company that was a member of the group at any time during the period, or

(b) where the amount specified in paragraph (a) is negative, nil.

406 The tax-EBITDA of a company

(1) For the purposes of this Part the "tax-EBITDA" of a company for a period of account of the worldwide group is—

(a) where the company has only one relevant accounting period, the company's adjusted corporation tax earnings for that accounting period;

(b) where the company has more than one relevant accounting period, the total of the company's adjusted corporation tax earnings for each of those accounting periods.

(2) The company's "adjusted corporation tax earnings" for an accounting period is the total (which may be negative) of the amounts that meet condition A or B.

(3) Condition A is that the amount—

(a) is brought into account by the company in determining its taxable total profits of the period (within the meaning given by section 4(2) of CTA 2010), and

(b) is not an excluded amount for the purposes of this condition (see section 407).

(4) Condition B is that the amount—

(a) is not brought into account as mentioned in subsection (3)(a), but would have been so brought into account if the company had made profits, or more profits, of any description in the period, and

(b) is not an excluded amount for the purposes of this condition (see section 407).

(5) Subsection (7) applies if an amount—

(a) is brought into account as mentioned in subsection (3)(a), or

(b) is not brought into account as mentioned in subsection (4)(a),

in an accounting period which contains one or more disregarded periods.

(6) A "disregarded period" is any period falling within the accounting period—

(a) which does not fall within the period of account of the worldwide group, or

(b) throughout which the company is not a member of the group.

(7) Where this subsection applies, the amount mentioned in subsection (5) is reduced, for the purposes of subsection (2), by such amount (if any) as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in subsection (5).

(8) An amount may be reduced to nil under subsection (7).

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407 Amounts not brought into account in determining a company's tax-EBITDA

(1) An amount is an excluded amount for the purposes of conditions A and B in section 406 if it is any of the following—

(a) a tax-interest expense amount or a tax-interest income amount **[**F321(or an amount which would, apart from section 388, be a tax-interest income amount);**]**

(b) an allowance or charge under CAA 2001;

(c) an excluded relevant intangibles debit or an excluded relevant intangibles credit (see section 408);

(d) a loss that—

(i) is made by the company in an accounting period other than that mentioned in section 406(2), and

(ii) is not an allowable loss for the purposes of TCGA 1992;

(e) a deficit from the company's loan relationships for an accounting period other than that mentioned in section 406(2);

(f) expenses of management of the company that are referable to an accounting period other than that mentioned in section 406(2);

(g) a deduction under section 137 of CTA 2010 (group relief) or section 188CK of that Act (group relief for carried-forward losses) if and to the extent that it constitutes a loss of the worldwide group;

[F322(ga) a reduction under paragraph 37(3)(b) of Schedule 5 to FA 2019 (non-UK resident companies carrying on UK property businesses etc: unrelieved amounts);**]**

(h) a qualifying tax relief.

(2) For the purposes of subsection (1)(g) the deduction constitutes a "loss of the worldwide group" if and to the extent that it comprises surrenderable amounts that are referable to times at which the surrendering company was a member of the worldwide group.

(3) An amount is a qualifying tax relief for the purposes of subsection (1)(h) if it is any of the following—

(a) an R&D expenditure credit **[**F323under Chapter 1A of Part 13**]** of CTA 2009;

(b) a deduction under section 1044, 1063, 1068 or 1087 of CTA 2009 (additional relief for expenditure on research and development);

(c) an amount which is treated as a trading loss as a result of section 1092 of CTA 2009 (SMEs: deemed trading loss for pre-trading expenditure);

(d) a deduction under section 1147 or 1149 of CTA 2009 (relief for expenditure on contaminated or derelict land);

(e) a deduction under section 1199 of CTA 2009 (film tax relief);

(f) a deduction under section 1216CF of CTA 2009 (television tax relief);

(g) a deduction under section 1217CF of CTA 2009 (video games tax relief);

(h) a deduction under section 1217H of CTA 2009 (relief in relation to theatrical productions);

(i) a deduction under section 1217RD of CTA 2009 (orchestra tax relief);

(j) a deduction under section 1218ZCE of CTA 2009 (museums and galleries exhibition tax relief);

(k) a qualifying charitable donation (whether made in the accounting period mentioned in section 406(2) or an earlier one);

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(l) a deduction under section 357A of CTA 2010 (profits from patents etc chargeable at lower rate of corporation tax).

(4) An amount is an excluded amount for the purposes of condition B in section 406 if it is an allowable loss for the purposes of TCGA 1992.

Textual Amendments

F321 Words in s. 407(1)(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. 5(2)**

F322 S. 407(1)(ga) 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. 5(3)**

F323 Words in s. 407(3)(a) substituted (with effect in relation to accounting periods beginning on or after 1.4.2024) by Finance Act 2024 (c. 3), Sch. 1 paras. 14(4)(a), **16**; S.I. 2024/286, **reg. 2**

408 Excluded relevant intangibles debits and excluded relevant intangibles credits

(1) For the purposes of section 407 (and this section)—

(a) a debit is a "relevant intangibles debit" if it is brought into account under a provision of Part 8 of CTA 2009 (intangible fixed assets) that is listed in column 1 of the following table;

(b) a relevant intangibles debit is "excluded" to the extent indicated in the corresponding entry in column 2 of the table.

Provision	*Excluded debits*
section 729	excluded in full
section 731	excluded in full
section 732	excluded if and to the extent that its amount is determined by reference to an excluded intangibles credit
section 735	excluded in full
section 736	excluded in full
section 872	excluded in full
section 874	excluded in full

(2) For the purposes of section 407 (and this section)—

(a) a credit is a "relevant intangibles credit" if it is brought into account under a provision of Part 8 of CTA 2009 (intangible fixed assets) that is listed in column 1 of the following table;

(b) a relevant intangibles credit is "excluded" to the extent indicated in the corresponding entry in column 2 of the table.

Provision	*Excluded credits*
section 723	excluded if and to the extent that its amount is determined by reference to excluded intangible debits and excluded intangible credits

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section 725	excluded if and to the extent that its amount is determined by reference to an excluded intangibles debit
section 735	excluded if and to the extent that the cost of the asset in question exceeds its tax written-down value
section 872	excluded in full
section 874	excluded in full

(3) In the table in subsection (2)—

(a) "tax written-down value" has the same meaning as in Part 8 of CTA 2009 (see Chapter 5 of that Part);

(b) "the cost of the asset" has the same meaning as in section 736 of that Act.

409 Double taxation relief

(1) This section applies where—

(a) apart from this section, an amount of income ("the relevant amount") would meet condition A or B in section 406 in relation to a relevant accounting period of a company, and

(b) the amount of corporation tax chargeable in respect of the relevant amount is reduced under section 18(2) (entitlement to credit for foreign tax reduces UK tax by amount of the credit).

(2) The relevant amount is treated, for the purposes of section 406(2) (meaning of "adjusted corporation tax earnings") as not meeting the condition mentioned in subsection (1)(a) to the extent that it consists of notional untaxed income.

(3) For this purpose, the amount of the relevant amount that consists of "notional untaxed income" is—

A B

where—

A is the amount of the reduction mentioned in subsection (1)(b);

B is the rate of corporation tax payable by the company, before any credit under Part 2 (double taxation relief), on the company's profits for the relevant accounting period.

CHAPTER 7

GROUP-INTEREST AND GROUP-EBITDA

Group-interest

410 Net group-interest expense

(1) For the purposes of this Part the "net group-interest expense" of a worldwide group for a period of account of the group ("the relevant period of account") is—

A − B

where—

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A is the sum of the relevant expense amounts that are recognised in the financial statements of the group for the period as items of profit or loss;

B is the sum of the relevant income amounts that are recognised in the financial statements of the group for the period as items of profit or loss.

(2) Subsection (3) applies where—

(a) a relevant expense amount ("the capitalised expense") is brought into account in financial statements of the group (whether for the relevant period of account or any earlier period) in determining the carrying value of an asset,

(b) the asset is not a relevant asset, and

(c) in the financial statements of the group for the relevant period of account, any of the carrying value is written down.

(3) A in subsection (1) is treated as including so much of the amount written down as is attributable to the capitalised expense.

(4) Subsection (5) applies where—

(a) a relevant income amount ("the capitalised income") is brought into account in financial statements of the group (whether for the relevant period of account or any earlier period) in determining the carrying value of an asset,

(b) the asset is not a relevant asset, and

(c) in the financial statements of the group for the relevant period of account, any of the carrying value is written down.

(5) B in subsection (1) is treated as including the amount of the reduction in the amount written down that is attributable to the capitalised income.

[F324(5A) If, on the assumption that subsections (3) and (5) applied to relevant assets, an amount would, in accordance with subsection (3) or (5), have been treated as included in A or B in subsection (1)—

(a) as an amount attributable to the capitalised expense, or

(b) as an amount attributable to the capitalised income,

none of that amount is to be included in A or B in that subsection.**]**

(6) See—

section 411 for the definitions of "relevant expense amount" and "relevant income amount";

section 417(5) and (6) for the definition of "relevant asset";

section 420 for provision affecting amounts recognised in financial statements in respect of certain profits or losses arising from derivative contracts.

Textual Amendments

F324 S. 410(5A) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 5**

411 "Relevant expense amount" and "relevant income amount"

(1) In this Chapter "relevant expense amount" means (subject to subsection (3)) an amount in respect of any of the following—

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(a) interest payable under a loan relationship;

(b) expenses ancillary to a loan relationship **[**F325or related transaction**]**;

(c) losses arising from a loan relationship or a related transaction, other than—

(i) exchange losses, and

(ii) impairment losses;

(d) dividends payable in respect of preference shares accounted for as a financial liability;

(e) losses arising from a relevant derivative contract or a related transaction, other than—

(i) exchanges losses,

(ii) impairment losses, and

[F326(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);**]**

(f) expenses ancillary to a relevant derivative contract or related transaction;

(g) financing charges implicit in payments made under a finance lease;

(h) financing charges relating to debt factoring **[**F327or any similar transaction**]**;

(i) financing charges implicit in payments made under a service concession arrangement if and to the extent that the arrangement is accounted for as a financial liability;

[F328(j) debits that are brought into account under Part 5 of CTA 2009 as a result of section 481 of that Act (relevant non-lending relationships), or would be so brought into account if the company in question were within the charge to corporation tax, other than—

(i) exchange losses, or

(ii) impairment losses;**]**

(k) alternative finance return payable under alternative finance arrangements;

(l) manufactured interest payable;

(m) financing charges in respect of the advance under a debtor repo or debtor quasi-repo;

(n) financing charges so far as they are made up of amounts which—

(i) are treated as interest payable under a loan relationship under a relevant provision of Chapter 2 of Part 16 of CTA 2010 (finance arrangements), or

(ii) would be so treated if the company in question were within the charge to corporation tax.

(2) In this Chapter "relevant income amount" means (subject to subsection (3)) an amount in respect of any of the following—

(a) interest receivable under a loan relationship;

(b) profits arising from a loan relationship or a related transaction, other than—

(i) exchange gains, and

(ii) the reversal of impairment losses;

(c) dividends receivable in respect of preference shares accounted for as a financial asset;

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(d) gains arising from a relevant derivative contract or a related transaction, other than—

(i) exchange gains,

(ii) the reversal of impairment losses, and

[F329(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);**]**

(e) financing income implicit in amounts received under a finance lease;

(f) financing income relating to debt factoring **[**F330or any similar transaction**]**;

(g) financing income implicit in amounts received under a service concession arrangement if and to the extent that the arrangement is accounted for as a financial asset;

[F331(h) credits that are brought into account under Part 5 of CTA 2009 as a result of section 481 of that Act (relevant non-lending relationships), or would be so brought into account if the company in question were within the charge to corporation tax, other than—

(i) exchange gains, or

(ii) the reversal of impairment losses;**]**

(i) alternative finance return receivable under alternative finance arrangements;

(j) manufactured interest receivable;

(k) financing income in respect of the advance under a creditor repo or creditor quasi-repo;

(l) financing income so far as it is made up of amounts which—

(i) are treated as interest receivable under a loan relationship under a relevant provision of Chapter 2 of Part 16 of CTA 2010 (finance arrangements), or

(ii) would be so treated if the company in question were within the charge to corporation tax.

(3) In this Chapter—

(a) "relevant expense amount" does not include an amount payable under a pension scheme;

(b) "relevant income amount" does not include an amount receivable under a pension scheme.

F332(4) . . . . . .

Textual Amendments

F325 Words in s. 411(1)(b) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 20(2)(a)**, 23(1)

F326 S. 411(1)(e)(iii) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 4(2)**

F327 Words in s. 411(1)(h) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 20(2)(b)**, 23(1)

F328 S. 411(1)(j) 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. 6(2)**

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F329 S. 411(2)(d)(iii) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 4(3)**

F330 Words in s. 411(2)(f) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 20(3)**, 23(1)

F331 S. 411(2)(h) 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. 6(3)**

F332 S. 411(4) omitted (retrospectively) by virtue of Finance Act 2019 (c. 1), **Sch. 11 paras. 19**, 24

412 Section 411: interpretation

(1) For the purposes of section 411(1)(b), expenses are "ancillary" to a loan relationship **[**F333or related transaction**]** if and only if they are incurred directly—

(a) in bringing, or attempting to bring, the relationship into existence,

[F334(ab) in entering into or giving effect to, or attempting to enter into or give effect to, the related transaction,**]**

(b) in making payments under the loan relationship **[**F335or as a result of the related transaction**]**, or

(c) in taking steps to ensure the receipt of payments under the loan relationship **[**F336or in accordance with the related transaction**]**.

(2) For the purposes of section 411(1)(e) and (2)(d) a derivative contract is "relevant" if its underlying subject matter consists only of one or more of the following—

(a) interest rates;

(b) any index determined by reference to income or retail prices;

(c) currency;

(d) an asset or liability representing a loan relationship;

(e) any other underlying subject matter which is—

(i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or

(ii) of small value in comparison with the value of the underlying subject matter as a whole.

(3) Whether part of the underlying subject matter of a derivative contract is subordinate or of small value is to be determined for the purposes of subsection (2)(e) by reference to the time when the company enters into or acquires the contract.

[F337(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.**]**

(4) For the purposes of section 411(1)(f) expenses are "ancillary" to a relevant derivative contract or related transaction if and only if they are incurred directly—

(a) in bringing, or attempting to bring, the derivative contract into existence,

(b) in entering into or giving effect to, or attempting to enter into or give effect to, the related transaction,

(c) in making payments under the derivative contract or as a result of the related transaction, or

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(d) in taking steps to secure the receipt of payments under the derivative contract or in accordance with the related transaction.

(5) For the purposes of section 411(1)(n) and (2)(l), the following provisions of Chapter 2 of Part 16 of CTA 2010 are "relevant"—

(a) section 761(3) (type 1 finance arrangements: borrower a company);

(b) section 762(3) (type 1 finance arrangements: borrower a partnership);

(c) section 766(3) (type 2 finance arrangements);

(d) section 769(3) (type 3 finance arrangements).

(6) In section 411—

(a) in subsections **[**F338(1)(b) and (c)**]** and (2)(b), "related transaction", "exchange loss" and "exchange gain" have the same meaning as in Parts 5 and 6 of CTA 2009 (see sections 304 and 475 of that Act);

(b) in subsections **[**F339(1)(e) and (f)**]** and (2)(d), "related transaction", "exchange loss" and "exchange gain" have the same meaning as in Part 7 of that Act (see sections 596 and 705 of that Act).

(7) In section 411 and this section—

"alternative finance arrangements" has the same meaning as in Parts 5 and 6 of CTA 2009 (see section 501(2) of that Act);

"alternative finance return" has the same meaning as in Part 6 of CTA 2009 (see sections 511 to 513 of that Act);

"creditor quasi-repo" has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 544 of that Act);

"creditor repo" has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 543 of that Act);

"debtor quasi-repo" has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 549 of that Act);

"debtor repo" has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 548 of that Act);

"manufactured interest" has the same meaning as in Chapter 9 of Part 6 of CTA 2009 (see section 539(5) of that Act);

F340 …

"underlying subject matter" has the same meaning as in Part 7 of CTA 2009 (see section 583 of that Act).

Textual Amendments

F333 Words in s. 412(1) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 21(2)(a)**, 23(1)

F334 S. 412(1)(ab) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 21(2)(b)**, 23(1)

F335 Words in s. 412(1)(b) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 21(2)(c)**, 23(1)

F336 Words in s. 412(1)(c) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 21(2)(d)**, 23(1)

F337 S. 412(3A) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 5**

F338 Words in s. 412(6)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 21(3)(a)**, 23(1)

F339 Words in s. 412(6)(b) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 21(3)(b)**, 23(1)

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F340 Words in s. 412(7) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 7**

413 Adjusted net group-interest expense

(1) For the purposes of this Part the "adjusted net group-interest expense" of a worldwide group for a period of account of the group is (subject to subsection (2))—

$$A + B - C$$

where—

A is the net group-interest expense of the group for the period (see section 410);

B is the sum of any upward adjustments (see subsection (3));

C is the sum of any downward adjustments (see subsection (4)).

(2) Where the amount determined under subsection (1) is negative, the "adjusted net group-interest expense" of the group for the period is nil.

(3) In this section "upward adjustment" means any of the following amounts—

(a) a relevant expense amount that is brought into account in the financial statements of the group for the period in determining the carrying value of **[**F341a non-financial asset or non-financial liability**]**;

(b) an amount that **[**F342, in the case of a non-financial asset,**]** is included in the net group-interest expense of the group for the period by virtue of section 410(5) (capitalised income written off);

(c) a relevant expense amount that—

(i) in the financial statements of the group for the period is recognised in equity or shareholders' funds, and is not recognised as an item of profit or loss or as an item of other comprehensive income, and

(ii) is brought into account for the purposes of corporation tax by a member of the group under a relevant enactment, or would be so brought into account if the member were within the charge to corporation tax;

[F343(ca) an amount in respect of a loan relationship that is brought into account by a member of the group, for a relevant accounting period in relation to the period of account, under section 330ZA CTA 2009 (debits referable to times before UK property business etc carried on) so far as that amount has not been included in the adjusted net group-interest expense of the group for any earlier period of account;

(cb) an amount in respect of a relevant derivative contract that would be brought into account by a member of the group, for a relevant accounting period in relation to the period of account, under section 607ZA of CTA 2009, if an election under regulation 6A of the Disregard Regulations (as defined in section 421) had effect in relation to the contract, so far as the relevant amount has not been included in the adjusted net group-interest expense of the group for any earlier period of account;

(cc) a relevant income amount in respect of a loan relationship or a relevant derivative contract to which a member of the group is a party that—

(i) is recognised in the financial statements of the group for the period,

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(ii) is not brought into account by a member of the group, for a relevant accounting period in relation to the period of account, and

(iii) is expected to be brought into account, or (in the case of a relevant derivative contract) would, if an election under regulation 6A of the Disregard Regulations had effect in relation to the contract, be expected to be brought into account, by a member of the group, for another accounting period, under section 330ZA or section 607ZA of CTA 2009;**]**

[[F344](cd) an amount that is brought into account by a member of the group, for a relevant accounting period in relation to the period of account, under section 330(3) of CTA 2009 (debits in respect of pre-trading expenditure) in accordance with an election made under section 330(1)(b) of that Act, so far as that amount has not been included in the adjusted net group-interest expense of the group for any earlier period of account;**]**

(d) a relevant income amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, so far as it—

(i) is prevented from being brought into account for the purposes of corporation tax by a member of the group by section 322(2) **[**[F345], 323A, 358 or 359**]** of CTA 2009 [F346]..., or

(ii) would be so prevented if the member were within the charge to corporation tax.

(4) In this section "downward adjustment" means any of the following amounts—

(a) a relevant income amount that is brought into account in the financial statements of the group for the period in determining the carrying value of **[**[F347]a non-financial asset or non-financial liability**]**;

(b) an amount that **[**[F348], in the case of a non-financial asset,**]** is included in the net group-interest expense of the group for the period by virtue of section 410(3) (capitalised expense written off);

(c) a relevant income amount that—

(i) in the financial statements of the group for the period is recognised in equity or shareholders' funds, and is not recognised as an item of profit or loss or as an item of other comprehensive income, and

(ii) is brought into account for the purposes of corporation tax by a member of the group under a relevant enactment, or would be so brought into account if the member were within the charge to corporation tax;

[[F349](ca) a relevant expense amount, in respect of a loan relationship or a relevant derivative contract to which a member of the group is a party, that—

(i) is recognised in the financial statements of the group for the period,

(ii) is not brought into account by a member of the group, for a relevant accounting period in relation to the period of account, and

(iii) is expected to be brought into account, or (in the case of a relevant derivative contract) would, if an election under regulation 6A of the Disregard Regulations had effect in relation to the contract, be expected to be brought into account, by a member of the group, for another accounting period, under section 330ZA or section 607ZA of CTA 2009;**]**

[[F350](cb) an amount, in respect of a loan relationship to which a member of the group is a party, that—

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(i) is recognised in the financial statements of the group for the period, but

(ii) is prevented from being brought into account in accordance with an election made under section 330(1)(b) of CTA 2009 (debits in respect of pre-trading expenditure);**]**

(d) a relevant expense amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, so far as it—

(i) is prevented from being brought into account for the purposes of corporation tax by a member of the group by section 323A **[**F351or 354**]** of CTA 2009 F352..., or

(ii) would so prevented if the member were within the charge to corporation tax;

(e) a relevant expense amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, so far as—

(i) the amount represents a dividend payable in respect of preference shares, and

(ii) those shares are recognised as a liability in the financial statements of the group for the period.

[F353(5) For the purposes of subsections (3)(a) and (b) and (4)(a) and (b)—

(a) an asset is a "non-financial asset" if it is not a financial asset for accounting purposes or it is a share in a company,

(b) a liability is a "non-financial liability" if it is not a financial liability for accounting purposes or it is in respect of a share issued by a company, and

(c) references to amounts brought into account in determining the carrying value of a non-financial asset or non-financial liability do not include amounts so brought into account as a result of writing off any part of an amount which was itself so brought into account;

and in paragraphs (a) and (b) "share" has the meaning given by section 476(1) of CTA 2009.**]**

(6) In subsections (3)(c)(ii) and (4)(c)(ii), "relevant enactment" means—

(a) section 321 or 605 of CTA 2009 (credits and debits recognised in equity), or

[F354(b) section 320B of CTA 2009 (hybrid capital instruments: amounts recognised in equity).**]**

[F355(7) Subsection (8) applies, unless the reporting company elects otherwise, in relation to a period of account of a worldwide group—

(a) ending on or after 6 April 2020, and

(b) beginning before 1 April 2023.

(8) In relation to the period of account—

(a) no amount within any of paragraphs (ca) to (cc) of subsection (3) is to be treated as an "upward adjustment", and

(b) no amount within paragraph (ca) of subsection (4) is to be treated as a "downward adjustment".**]**

Textual Amendments

F341 Words in s. 413(3)(a) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 6(2)(a)**

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F342 Words in s. 413(3)(b) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 6(2)(b)**

F343 S. 413(3)(ca)-(cc) 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. 8(2)**

F344 S. 413(3)(cd) 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. 9(2)**

F345 Words in s. 413(3)(d)(i) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 8(2)(a)**

F346 Words in s. 413(3)(d)(i) omitted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 11 para. 8(2)(b)**

F347 Words in s. 413(4)(a) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 6(3)(a)**

F348 Words in s. 413(4)(b) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 6(3)(b)**

F349 S. 413(4)(ca) 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. 8(3)**

F350 S. 413(4)(cb) 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. 9(3)**

F351 Words in s. 413(4)(d)(i) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 8(3)(a)**

F352 Words in s. 413(4)(d)(i) omitted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 11 para. 8(3)(b)**

F353 S. 413(5) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 6(4)**

F354 S. 413(6)(b) substituted (with effect in accordance with Sch. 20 para. 10(b) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 20 para. 8(2)**

F355 S. 413(7)(8) 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. 8(4)**

414 Qualifying net group-interest expense

(1) For the purposes of this Part the "qualifying net group-interest expense" of a worldwide group for a period of account of the group is (subject to subsection (2))—

$$A - B$$

where

A is the adjusted net group-interest expense of the group for the period (see section 413);

B is the sum of any downward adjustments (see subsection (3)).

(2) Where the amount determined under subsection (1) is negative, "the qualifying net group-interest expense" of the group for the period is nil.

(3) In this section "downward adjustment" means a relevant expense amount that meets the condition in subsection (4), so far as it relates to—

(a) a transaction with, or a financial liability owed to, a person who, at any time during the period, is a related party of a member of the group,

(b) results-dependent securities, or

(c) **[**[F356]relevant**]** equity notes.

(4) The condition mentioned in subsection (3) is that the amount—

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(a) is recognised in the financial statements of the group for the period, as an item of profit and loss, and is not (and is not comprised in) a downward adjustment for the purposes of section 413 (adjusted net group-interest expense), or

(b) is (or is comprised in) an upward adjustment for the purposes of that section.

(5) In a case where—

(a) the person mentioned in subsection (3)(a) is not a related party of a member of the group during any part of the period of account, or

(b) during any part of the period of account, the financial liability mentioned in subsection (3)(a) is owed to a person who is not a related party of a member of the group,

the amount of the downward adjustment under subsection (3)(a) is to be reduced by such amount (if any) as is attributable, on a just and reasonable basis, to that part.

Textual Amendments

F356 Word in s. 414(3)(c) 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. 10**

Modifications etc. (not altering text)

C57 S. 414(3)(b) excluded by S.I. 2006/3296, reg. 22(2) (as inserted (29.12.2017) by The Corporate Interest Restriction (Consequential Amendments) Regulations 2017 (S.I. 2017/1227), regs. 1, **3(2)**)

C58 S. 414(3)(b) excluded by S.I. 2007/3402, reg. 12 (as inserted (29.12.2017) by The Corporate Interest Restriction (Consequential Amendments) Regulations 2017 (S.I. 2017/1227), regs. 1, **4(2)**)

415 Section 414: interpretation

(1) For the purposes of section 414 a person is treated as not being a related party of a member of the group at any time ("the relevant time") if at the relevant time—

(a) the person would (apart from this subsection) be a related party of the member by virtue only of section 466(2) (parties to loan relationship treated as related parties by virtue of financial assistance provided by a related party), and

[F357(b) either—

(i) the condition in subsection (1A) is met, or

(ii) any of the conditions in subsection (2) is met in relation to the guarantee, indemnity or other financial assistance in question.**]**

[The condition is that—

F358(1A) (a) the member in question is a company that has not been UK resident at any time before 29 October 2018,

(b) the financial assistance in question is provided before that date, and

(c) the financial assistance in question is in respect of a loan relationship, derivative contract or relevant arrangement or transaction (within the meaning of section 382(4)) to which the member in question is a party for the purposes of its UK property business.**]**

(2) The conditions are—

(a) that the financial assistance is provided before 1 April 2017;

(b) that the financial assistance is provided by a member of the group;

(c) that the financial assistance relates only to an undertaking in relation to—

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(i) shares in the ultimate parent of the group, or

(ii) loans to a member of the group;

(d) that the financial assistance is a non-financial guarantee.

(3) Financial assistance is "a non-financial guarantee" if—

(a) it guarantees the performance by any person of contractual obligations to provide goods or services to a member of the group,

(b) it is given by the person providing the goods or services or by 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.

(4) The reference in section 414(3)(b) to "results-dependent securities" is (subject to subsection (8)) to securities issued by an entity where the consideration given by the entity for the use of the principal secured depends (to any extent) on—

(a) the results of the entity's business, or

(b) the results of the business of any other entity that was a member of the group at any time during the period of account of the group.

In this subsection references to a business include part of a business.

(5) For the purposes of subsection (4) the consideration given by the entity for the use of the principal secured does not fall within paragraph (a) or (b) of that subsection merely because the terms of the security provide—

(a) for the consideration to be reduced if the results mentioned in that paragraph improve, or

(b) for the consideration to be increased if the results mentioned in that paragraph deteriorate.

(6) An amount does not fall within section 414(3)(b) so far as it is relevant alternative finance return (within the meaning given by section 1019(2) of CTA 2010).

[F359(7) For the purposes of section 414(3)(c), a "relevant equity note" is a security that—

(a) is an equity note within the meaning of section 1016 of CTA 2010, by reference to satisfying a test in subsection (2) of that section, and

(b) would satisfy that test if the "permitted period" for the purposes of that section were the period of 100 years beginning with the date of the security's issue.**]**

F360(8) . . . . . .

Textual Amendments

F357 S. 415(1)(b) substituted (6.4.2020) by Finance Act 2019 (c. 1), **Sch. 5 paras. 33(2)**, 35 (with Sch. 5 para. 36)

F358 S. 415(1A) inserted (6.4.2020) by Finance Act 2019 (c. 1), **Sch. 5 paras. 33(3)**, 35 (with Sch. 5 para. 36)

F359 S. 415(7) 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. 11**

F360 S. 415(8) omitted (with effect in accordance with Sch. 20 para. 10(b) of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 20 para. 8(3)**

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Group-EBITDA

416 Group-EBITDA

(1) For the purposes of this Part "the group-EBITDA" of a worldwide group for a period of account of the group ("the relevant period of account") is—

PBT + I + DA

where—

PBT is the group's profit before tax (which may be a negative amount) (see subsection (2));

I is the net group-interest expense of the group for the period (which may be a negative amount) (see section 410);

DA is the group's depreciation and amortisation adjustment (which may be a negative amount) (see subsection (3)).

(2) For the purposes of this Chapter a worldwide group's "profit before tax" is—

(a) the sum of the amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, in respect of income of any description other than tax income, less

(b) the sum of the amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, in respect of expenses of any description other than tax expense.

In this subsection "tax income" and "tax expense" have the meaning they have for accounting purposes.

F361(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 **[**F362under Chapter 1A of Part 13**]** of CTA 2009.**]**

(3) In this section the group's "depreciation and amortisation adjustment" means the sum of the following amounts (any of which may be negative)—

(a) the capital (expenditure) adjustment (see section 417);

(b) the capital (fair value movement) adjustment (see section 418);

(c) the capital (disposals) adjustment (see section 419).

(4) The following expressions have the same meaning in sections 417 to 419 as they have in this section—

"the relevant period of account";

"the group's profit before tax".

(5) For provision affecting amounts recognised in financial statements in respect of certain profits or losses arising from derivative contracts, see section 420.

Textual Amendments

F361 S. 416(2A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 6**, 23(1)

F362 Words in s. 416(2A) substituted (with effect in relation to accounting periods beginning on or after 1.4.2024) by Finance Act 2024 (c. 3), Sch. 1 paras. 14(4)(b), **16**; S.I. 2024/286, **reg. 2**

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417 The capital (expenditure) adjustment

(1) For the purposes of section 416, "the capital (expenditure) adjustment" is—

$$A - B - C$$

where—

A is the sum of the amounts (if any) in respect of relevant capital expenditure which are brought into account in determining the group's profit before tax;

B is the sum of the amounts (if any) in respect of relevant capital expenditure reversals which are brought into account in determining the group's profit before tax;

C is the sum of the amounts (if any) in respect of relevant capital income which are brought into account in determining the group's profit before tax.

(2) In this section "relevant capital expenditure" means—

(a) expenditure of a capital nature that relates to relevant assets (including any relevant expense amounts previously included in the carrying value of relevant assets) that is recognised in the relevant period of account by way of depreciation or amortisation, or as the result of an impairment review,

(b) expenditure of a capital nature that relates to relevant assets that is incurred and recognised in the relevant period of account, and

(c) amounts recognised in the relevant period of account by way of provision in respect of future expenditure of a capital nature that relates to relevant assets.

(3) In this section "relevant capital expenditure reversals" means the reversal in the relevant period of account of any relevant capital expenditure recognised in an earlier period of account.

(4) In this section "relevant capital income" means income of a capital nature that relates to relevant assets.

(5) In this Chapter "relevant asset" means an asset that is—

(a) plant, property and equipment,

(b) an investment property,

(c) an intangible asset,

(d) goodwill,

(e) shares in a company, or

(f) an interest in an entity which entitles the holder to a share of the profits of the entity.

(6) In subsection (5)—

(a) "plant, property and equipment" has the meaning it has for accounting purposes;

(b) "investment property" has the meaning it has for accounting purposes;

(c) "intangible asset" has the meaning it has for accounting purposes (and includes an internally-generated intangible asset);

(d) "goodwill" has the meaning it has for accounting purposes (and includes internally-generated goodwill);

(e) "entity" includes anything which is treated as an entity in the financial statements of the group (regardless of whether it has a legal personality as a body corporate).

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Section 712(2) and (3) of CTA 2009 ("intangible asset" includes intellectual property) applies for the purposes of paragraph (c).

(7) An amount does not fall within A in subsection (1) if it is brought into account in determining a profit or loss on the disposal of a relevant asset.

418 The capital (fair value movement) adjustment

(1) In section 416, "the capital (fair value movement) adjustment" means the sum of any relevant fair value movements.

(2) For the purposes of subsection (1) there is a "relevant fair value movement" where—

(a) the carrying value of a relevant asset is measured, for the purposes of the financial statements of the group, using fair value accounting, and

(b) an amount representing a change in the carrying value of the asset is brought into account in determining the group's profit before tax.

(3) The amount of the relevant fair value movement is the amount of the change mentioned in subsection (2)(b) and—

(a) is a positive amount where the change is a loss;

(b) is a negative amount where the change is a profit.

(4) References in this section to a change in the carrying value of a relevant asset do not include a change where the amount brought into account in respect of the change as mentioned in subsection (2)(b) is of a revenue nature.

419 The capital (disposals) adjustment

(1) For the purposes of section 416, "the capital (disposals) adjustment" is—

$$A - B + C$$

where—

A is the sum of the amounts (if any) that are brought into account in determining the group's profit before tax and that represent losses on disposals of relevant assets;

B is the sum of the amounts (if any) that are brought into account in determining the group's profit before tax and that represent profits on disposals of relevant assets;

C is the sum of any recalculated profit amounts (see subsections (2) to (8)).

(2) For the purposes of the definition of C in subsection (1) there is a "recalculated profit amount" where the following two conditions are met.

(3) The first condition is that an amount is brought into account in determining the group's profit before tax in respect of a profit or loss on the disposal of a relevant asset.

(4) The second condition is that—

(a) the relevant proceeds, exceeds

(b) the relevant cost.

(5) The amount of the recalculated profit amount is the amount of the excess mentioned in subsection (4).

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(6) In this section "the relevant proceeds" means the amount of income of a capital nature that is brought into account in determining the profit or loss mentioned in subsection (3).

(7) In this section "the relevant cost" means (subject to subsection (8)) the amount of expenditure of a capital nature that is brought into account in determining the profit or loss mentioned in subsection (3).

(8) For the purposes of subsection (7), any adjustment made to the amount brought into account as mentioned in that subsection is to be disregarded where the adjustment is in respect of amounts that—

(a) are otherwise recognised, in the financial statements of the group for the relevant period of account, as items of profit or loss, or

(b) were so recognised in the financial statements of the group for an earlier period.

(9) References in this section to a relevant asset include part of a relevant asset.

(10) References in this section to the disposal of a relevant asset do not include a disposal where the profit or loss (if any) on the disposal is of a revenue nature.

(11) The condition in subsection (3) is met even if no amount is brought into account as mentioned in that subsection if that is because no gain or loss accrued on the disposal; and subsections (6) to (8) apply accordingly.

Treatment of derivative contracts in financial statements of worldwide group

420 Derivative contracts subject to fair value accounting

(1) This section makes provision about the amounts recognised in a worldwide group's financial statements for a period of account ("the relevant period of account") in respect of derivative contracts.

(2) Subsection (3) applies where one or more excluded derivative contract amounts are recognised in the group's financial statements for the relevant period of account as items of profit or loss.

(3) The financial statements are treated for the purposes of this Part (apart from this section) as if the excluded derivative contract amounts were not recognised in the group's financial statements for the relevant period of account.

(4) In subsections (2) and (3) "excluded derivative contract amount" means an amount which would, on the relevant assumptions, be excluded from section 597(1) of CTA 2009 (amounts recognised in determining a company's profit or loss) as a result of a relevant provision of the Disregard Regulations.

(5) Subsection (6) applies where, on the relevant assumptions, one or more amounts ("replacement derivative contract amounts") would be brought into account by members of the group for the purposes of corporation tax in relevant accounting periods as a result of regulation 9 or 10 of the Disregard Regulations.

(6) The financial statements are treated for the purposes of this Part (apart from this section) as if the replacement derivative contract amounts were recognised in the group's financial statements for the relevant period of account.

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(7) Subsection (9) applies if an accounting period in which a replacement derivative contract amount would, on the relevant assumptions, be brought into account for the purposes of corporation tax contains one or more disregarded periods.

(8) A "disregarded period" is any period falling within the accounting period—

(a) which does not fall within the relevant period of account, or

(b) throughout which the company is not a member of the group.

(9) Where this subsection applies, the replacement derivative contract amount mentioned in subsection (7) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that subsection.

(10) An amount may be reduced to nil under subsection (9).

421 Derivative contracts subject to fair value accounting: interpretation

(1) In section 420 "the relevant assumptions" means the following assumptions—

(a) that all members of the group are within the charge to corporation tax;

(b) that elections under regulation 6A of the Disregard Regulations have effect in relation to each derivative contract of each member of the group;

(c) that paragraph (5) of regulation 7 of the Disregard Regulations is of no effect;

(d) that where—

(i) a member of the group ("member A") holds a derivative contract,

(ii) the group has a hedging relationship between that derivative contract (on the one hand), and an asset, liability, receipt or expense (on the other), and

(iii) the asset, liability, receipt or expense is held, or is expected to be received or incurred, by a member of the group other than member A,

the asset, liability, receipt or expense is held, or is expected to be received or incurred, by member A;

(e) that the financial statements of members of the group deal with derivative contracts and hedged items in the same way as they are dealt with in the group's financial statements.

(2) For the purposes of subsection (1)(d) the group has a "hedging relationship" between a derivative contract (on the one hand) and an asset, liability, receipt or expense (on the other) if, were those things held, received or incurred by a single company, the company would have a hedging relationship between them.

(3) Regulation 2(5) of the Disregard Regulations (hedging relationships of a company) applies for the purposes of this section.

(4) For the purposes of section 420 and this section—

(a) "the Disregard Regulations" means the Loan Relationship and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256);

(b) the following are "relevant provisions" of the Disregard Regulations—

(i) regulation 7 (fair value profits or losses arising from derivative contracts which are currency contracts);

(ii) regulation 8 (profits or losses arising from derivative contracts which are commodity contracts or debt contracts);

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(iii) regulation 9 (profits or losses arising from derivative contracts which are interest rate contracts).

Effect of group-EBITDA (chargeable gains) election

422 Group-EBITDA (chargeable gains) election

(1) Where a group-EBITDA (chargeable gains) election has effect in relation to a period of account of a worldwide group ("the relevant period of account"), this Chapter applies in relation to the period subject to this section.

(2) Section 419 (the capital (disposals) adjustment) has effect as if—
- (a) the definition of C in subsection (1) of that section did not apply, and
- (b) instead, C were defined for the purposes of that section as—
  - (i) the sum of any relevant gains, less
  - (ii) the sum of any relevant losses,

  or, where that is a negative amount, nil.

(3) For the purposes of this section, there is a "relevant gain" or "relevant loss" where condition A or B is met.

(4) Condition A is that a member of the group disposes of a relevant asset during the relevant period of account.

(5) Condition B is that—
- (a) a member of the group ceases to be a member of the group during the relevant period of account, and
- (b) the member held a relevant asset immediately before ceasing to be a member of the group.

(6) Where condition A is met, the amount of the relevant gain or relevant loss is the amount of the chargeable gain or allowable loss that would, on the assumptions in subsection (8), accrue to the member on the disposal.

(7) Where condition B is met, the amount of the relevant gain or relevant loss is the amount of the chargeable gain or allowable loss that would, on the assumptions in subsection (8), accrue to the member if the member—
- (a) disposed of the relevant asset immediately before ceasing to be a member of the group, and
- (b) received such consideration for that disposal as it is just and reasonable to attribute to it, having regard to the consideration received by the group for its interests in the member.

(8) The assumptions mentioned in subsections (6) and (7) are that—
- (a) all members of the group are within the charge to corporation tax;
- (b) Schedule 7AC to TCGA 1992 (exemptions for disposals by companies with substantial shareholdings) is of no effect;
- (c) Part 2 (double taxation relief) is of no effect.

(9) Where—
- (a) the sum of any relevant losses, exceeds
- (b) the sum of any relevant gains,

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the amount of the excess is treated as a relevant loss in relation to the period of account of the group immediately after the relevant period of account.

(10) In this section "relevant asset" does not include shares in (or other interests giving an entitlement to share in the profits of) a member of the group.

Effect of interest allowance (alternative calculation) election

423 Capitalised interest brought into account for tax purposes in accordance with GAAP

(1) Where an interest allowance (alternative calculation) election (see paragraph 16 of Schedule 7A) has effect in relation to a period of account of a worldwide group ("the relevant period of account"), this Chapter applies in relation to the period subject to this section.

(2) Section 413 (adjusted net group-interest expense of a worldwide group) has effect as if—

(a) subsections (3)(a) and (4)(a) (which relate to capitalised interest) did not apply in relation to a GAAP-taxable asset or liability, and

(b) subsections (3)(b) and (4)(b) (which relate to capitalised interest written off) did not apply in relation to a GAAP-taxable asset or liability.

[F363(2A) Section 413 has effect, in the case of a GAAP-taxable asset that is a relevant asset, as if—

(a) the definition of "upward adjustment" included so much of its carrying value written down in the group's financial statements for the relevant period of account as is attributable to a relevant expense amount brought into account in the group's financial statements in determining its carrying value, and

(b) the definition of "downward adjustment" included so much of the reduction of its carrying value written down in the group's financial statements for the relevant period of account as is attributable to a relevant income amount brought into account in the group's financial statements in determining its carrying value.

[F364(2AA) Section 413 has effect, in the case of a GAAP-taxable asset within subsection (2AB), as if—

(a) the definition of "upward adjustment" included so much of its carrying value as is attributable to a relevant expense amount (whether or not that amount is brought into account in the group's financial statements for the relevant period of account); and

(b) the definition of "downward adjustment" included so much of its carrying value as is attributable to a relevant income amount (whether or not that amount is brought into account in the group's financial statements for the relevant period of account).

(2AB) A GAAP-taxable asset is within this subsection if it is (or, under section 173 of TCGA 1992, is treated as being) appropriated, in a relevant accounting period in relation to a period of account, from trading stock to fixed assets.**]**

(2B) For the purposes of subsection (2A) it does not matter whether the relevant expense or income amount is brought into account in determining the asset's carrying value in the group's financial statements for the relevant period of account or an earlier period.**]**

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(3) **[**F365But subsections **[**F366(2)(b), (2A) and (2AA)**]** of this section are of no effect so far as**]** the adjusted net group-interest expense of the group for a period of account before the relevant period of account included any amount by virtue of section 413(3)(a) or (4)(a) in respect of the GAAP-taxable asset or liability.

(4) For the purposes of this section an asset or liability is "GAAP-taxable" if any profit or loss for corporation tax purposes in relation to the asset or liability falls to be calculated in accordance with generally accepted accounting practice **[**F367(and, for the purposes of this subsection, an asset is a GAAP-taxable asset even if an election under section 730 of CTA 2009 is, or could be, made in respect of it)**]**.

(5) For the purposes of this section, all members of the group are treated as within the charge to corporation tax.

Textual Amendments

F363 S. 423(2A)(2B) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 7(2)**

F364 S. 423(2AA)(2AB) 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. 12(2)**

F365 Words in s. 423(3) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 7(3)**

F366 Words in s. 423(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. 12(3)**

F367 Words in s. 423(4) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 7(4)**

424 Employers' pension contributions

(1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.

(2) The definition of "the group's profit before tax" in subsection (2) of section 416 has effect as if references to amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, did not include amounts so recognised in respect of employer pension contributions.

(3) The group's profit before tax, as defined in that section, is reduced by the total of the relief to which members of the group are entitled, by virtue of sections 196 to 200 of FA 2004, in respect of relevant employer pension contributions paid during the period.

(4) In this section—

(a) "employer pension contributions" means contributions paid by an employer under a registered pension scheme in respect of an individual;

(b) employer pension contributions are "relevant" if they are paid at a time at which the employer is a member of the group.

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[F368 424A Unpaid employees' remuneration

(1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.

(2) The definition of "the group's profit before tax" in section 416(2) has effect as if references to amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, excluded amounts so recognised in respect of employees' remuneration that are not paid before the end of the period of 9 months immediately following the end of the period of account.

(3) If—

(a) an amount is, as a result of subsection (2), excluded from the financial statements of the group for the period of account, and

(b) the amount is paid in a later period of account of the group in relation to which an interest allowance (alternative calculation) election has effect,

the definition of "the group's profit before tax" in section 416(2) has effect as if references to amounts that are recognised in the financial statements of the group for the later period of account, as items of profit or loss, included the amount that is paid in that later period.

(4) Section 1289 of CTA 2009 (unpaid remuneration: supplementary) applies for the purposes of this section as it applies for the purposes of section 1288 of that Act.**]**

Textual Amendments

F368 S. 424A inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 9**

425 Employee share acquisitions

(1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.

(2) The definition of "the group's profit before tax" in subsection (2) of section 416 has effect as if references to amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, did not include amounts so recognised in respect of employee share acquisition arrangements.

(3) The group's profit before tax, as defined in that section, is reduced by such amount as, on a just and reasonable basis, reflects the effect on the group in the period of—

(a) deductions allowed to members of the group under Part 11 of CTA 2009 (relief for particular employee share acquisition schemes) and amounts treated as received by members of the group under that Part, and

(b) relief given to members of the group under Part 12 of that Act (other relief for employee share acquisitions).

(4) In this section "employee share acquisition arrangements" means arrangements the corporation tax treatment of which is determined under Part 11 or 12 of CTA 2009.

(5) For the purposes of this section, all members of the group are treated as within the charge to corporation tax.

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426 Changes in accounting policy

(1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group ("the relevant period of account"), this Chapter applies in relation to the period subject to this section.

(2) The financial statements of the group for the relevant period of account are to be treated as subject to such adjustments as would be made to them under the change of accounting policy provisions if the group were a company that—

(a) was within the charge to corporation tax,

(b) held the assets and owed the liabilities recognised in the financial statements, to the extent that they are so recognised, and

(c) carried on the trades and other activities giving rise to amounts recognised in the financial statements as items of profit and loss.

(3) In this section "the change of accounting policy provisions" means **[**F369the following provisions as modified by subsection (4)**]**—

(a) Chapter 14 of Part 3 of CTA 2009 (trading profits);

[F370(ab) sections 261 and 262 of that Act (property profits);**]**

(b) sections 315 to 319 of that Act (loan relationships);

(c) sections 613 to 615 of that Act (derivative contracts);

(d) Chapter 15 of Part 8 of that Act (intangible fixed assets);

(e) the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271);

[F371(f) paragraphs 12 to 17 of Schedule 14 to FA 2019 (transitional provision following the repeal of section 53 of FA 2011) so far as they have effect in relation to adjustments under Chapter 14 of Part 3 of CTA 2009 or sections 261 and 262 of that Act.**]**

[F372(4) The provisions mentioned in subsection (3)—

(a) are to have effect for the purposes of this section as if their application were limited to cases where there is a change of accounting policy and as if any election had been made under the provisions, and

(b) are to have effect subject to any modifications necessary for the purposes of this section.**]**

Textual Amendments

F369 Words in s. 426(3) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 10(2)(a)**

F370 S. 426(3)(ab) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 10(2)(b)**

F371 S. 426(3)(f) inserted (with effect in accordance with Sch. 14 para. 18(2) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 14 para. 18(1)**

F372 S. 426(4) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 10(3)**

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Effect of interest allowance (non-consolidated investment) election

427 Group interest and group-EBITDA

(1) Where an interest allowance (non-consolidated investment) election (see paragraph 17 of Schedule 7A) has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.

(2) In this section and section 428 (which contains further interpretative provision)—

(a) "the principal worldwide group" means the worldwide group mentioned in subsection (1);

(b) "the relevant period of account" means the period of account mentioned in subsection (1).

(3) The financial statements of the principal worldwide group for the relevant period of account are treated as if—

(a) no relevant income amounts were recognised in them, as items of profit or loss, so far as they relate to financial liabilities owed to any member of the principal worldwide group by any member of an associated worldwide group, and

(b) no amounts were recognised in them, as items of profits or loss, in respect of any profit or loss attributable to an interest held by any member of the principal worldwide group in any member of an associated worldwide group

(4) The adjusted net group-interest expense of the principal worldwide group for the relevant period of account is treated as increased by the appropriate proportion of the adjusted net group-interest expense for the period of each associated worldwide group.

(5) The qualifying net group-interest expense of the principal worldwide group for the relevant period of account is treated as increased by the appropriate proportion of the qualifying net group-interest expense for the period of each associated worldwide group.

[F373(5A) Any increase to be made as a result of subsection (4) or (5) is to be made as part of a single calculation required by section 413(1) or 414(1) (so that the amount produced by that calculation is subject to section 413(2) or 414(2)).**]**

(6) The group-EBITDA of the principal worldwide group for the relevant period of account is treated as increased by the appropriate proportion of the group-EBITDA of each associated worldwide group for the period.

(7) In this section "the appropriate proportion", in relation to an associated worldwide group means the proportion of the profits or losses of the associated worldwide group arising in the relevant period of account to which the principal worldwide group is entitled.

Textual Amendments

F373 S. 427(5A) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 11**

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428 Section 427: associated worldwide groups

(1) This section has effect for the purposes of section 427 and this section.

(2) "Associated worldwide group" means the worldwide group of which a specified non-consolidated associate is the ultimate parent.

(3) Where (apart from this subsection) a specified non-consolidated associate does not fall within section 473(1)(a) (conditions for being the ultimate parent of a worldwide group), it is treated as if it did fall within that provision.

(4) Where (apart from this subsection) financial statements of an associated worldwide group are not drawn up in respect of the relevant period of account, IAS financial statements of the associated worldwide group are treated as having been drawn up in respect of that period.

(5) The associated worldwide group's financial statements for the relevant period of account are treated as if no relevant expense amounts were recognised in them, as items of profit or loss, so far as they relate to financial liabilities owed to any member of the principal worldwide group by any member of the associated worldwide group.

(6) The reference in section 427(6) to profits or losses of the associated worldwide group to which the principal worldwide group is entitled does not include any profits or losses that relate to times when the non-consolidated associate is a member of the principal worldwide group.

(7) Subsection (8) has effect in the application of this Part (for the purposes mentioned in subsection (1)) in relation to the financial statements of an associated worldwide group for the relevant period of account.

(8) The associated worldwide group is treated—

(a) as having made an interest allowance (alternative calculation) election if and only if such an election has effect in relation to the relevant period of account of the principal worldwide group, and

(b) as not having made any other election under this Part.

(9) In this section "specified" means specified in the interest allowance (non-consolidated investment) election.

429 Meaning of "non-consolidated associate"

(1) An entity is a "non-consolidated associate" of a worldwide group, in relation to a period of account of the group ("the relevant period of account") if condition A, B **[**[F374], C or D**]** is met.

(2) Condition A is that **[**[F375]the ultimate parent's interest in the entity**]** is accounted for in the financial statements of the group for the relevant period of account—

(a) as a joint venture or an associate, and

(b) using the gross equity method or the equity method.

(3) Condition B is that—

(a) the entity is a partnership, and

(b) an interest allowance (consolidated partnership) election has effect in relation to the relevant period of account.

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(4) Condition C is the entity is a non-consolidated subsidiary of the ultimate parent at any time during the relevant period of account.

[Condition D is that—

F376(4A) (a) the entity is—

(i) a partnership, or

(ii) a transparent entity (other than a partnership), and

(b) the ultimate parent's interest in the entity is accounted for in the financial statements of the group for the relevant period of account on the basis of fair value accounting.**]**

(5) In this section the following expressions have the meaning they have for accounting purposes—

"associate";

"equity method";

"gross equity method";

"joint venture".

[F377(6) For the purposes of this section—

(a) "entity" includes anything which may be treated as an entity for accounting purposes (regardless of whether it has a legal personality as a body corporate);

(b) an entity is "transparent" if—

(i) it is not chargeable to corporation tax or income tax as a person (ignoring any exemptions), or

(ii) 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).**]**

(7) This section has effect for the purposes of this Part.

Textual Amendments

F374 Words in s. 429(1) 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. 13(2)**

F375 Words in s. 429(2) 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. 13(3)**

F376 S. 429(4A) 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. 13(4)**

F377 S. 429(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. 13(5)**

Effect of interest allowance (consolidated partnerships) election

430 Interest allowance (consolidated partnerships) election

(1) Where an interest allowance (consolidated partnerships) election (see paragraph 18 of Schedule 7A) has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.

(2) The financial statements of the group for the period are treated as if—

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(a) no amounts were recognised in them, as items of profit or loss, in respect of any income or expenses of a specified consolidated partnership, and

(b) instead, each specified consolidated partnership were accounted for using the equity method.

(3) In subsection (2)(b) "the equity method" has the meaning it has for accounting purposes.

(4) In this Part "consolidated partnership", in relation to a period of account of a worldwide group, means a partnership in relation to which conditions A and B are met.

(5) Condition A is that, in the financial statements of the worldwide group for the period, the results of the partnership are consolidated with those of the ultimate parent as the results of a single economic entity.

(6) Condition B is that at no time during the period does the partnership have a subsidiary that is a company.

(7) In this section—

(a) "specified" means specified in the interest allowance (consolidated partnerships) election or elections;

(b) "subsidiary" has the meaning given by international accounting standards.

Interpretation

431 Interpretation of Chapter

In this Chapter the following expressions have the meaning they have for accounting purposes—

"item of profit or loss";

"item of other comprehensive income".

CHAPTER 8

PUBLIC INFRASTRUCTURE

Overview

432 Overview of Chapter

(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—

(a) a requirement designed to ensure that the company's income and assets are referable to activities in relation to public infrastructure assets, and

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(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"

(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)),

(c) it is fully taxed in the United Kingdom in the accounting period **[**[F378](see subsections (11) and (12))**]**, and

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(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,

[

F379(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—

(a) public infrastructure assets (see section 436(2) and (5)) in relation to the company that are provided by the company, or

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(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 **[**F380source 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.

F381(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 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

F378 Words in s. 433(1)(c) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 7(2)**, 23(1)

F379 S. 433(5)(ca)(cb) inserted (retrospectively) by Finance Act 2019 (c. 1), **Sch. 11 paras. 12**, 24

F380 Words in s. 433(11)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 7(3)**, 23(1)

F381 S. 433(12) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 7(4)**, 23(1)

434 Elections under section 433

(1) An election under section 433—

(a) must be made before **[**F382the 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—

(a) must be made before the beginning of the accounting period from which the revocation is to have effect, but

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(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,

[[F383](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,**]** 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

F382 Words in s. 434(1)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 8(2)**, 23(1)

F383 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

(1) Two or more companies which are members of the same worldwide group **[**[F384], 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—

[[F385](aa) must be made before the end of the earliest elected accounting period (see subsection (11));**]**

(a) has effect from a date specified in the election **[**[F386], 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 election has effect, notifying them of its withdrawal from the election from a date specified in the notice.

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(3) A date specified in **[**F387a 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.

[F388(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.

(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

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elected accounting period" is the relevant period that ends no later than each of the other relevant periods.**]**

Textual Amendments

F384 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)**

F385 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)**

F386 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)**

F387 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)**

F388 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"

(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 **[**F389(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—

[F390(a) the building or part is, or is to be, let on a short-term basis —

(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

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(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 F391(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 F392(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.

Textual Amendments

F389 Words in s. 436(2)(d) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 9(2)**, 23(1)

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F390 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)**

F391 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)**

F392 S. 436(10A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 9(3)**, 23(1)

437 Section 436: supplementary

(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

(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.

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(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

(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.

[F393(5A) For the purposes of subsection (4) a guarantee, indemnity or other financial assistance 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)) 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—

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(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

F393 S. 438(5A) inserted (6.4.2020) by Finance Act 2019 (c. 1), **Sch. 5 paras. 34**, 35 (with Sch. 5 para. 36)

[F394 438A Application of section 438: certain creditors treated as qualifying infrastructure companies

(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),

(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

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(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

F394 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:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

439 Exemption in respect of certain pre-13 May 2016 loan relationships

(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 **[**[F395],

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.

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(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

F395 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

(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

(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

(1) This section applies where a company is a qualifying infrastructure company throughout a relevant accounting period.

(2) In calculating—

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(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

(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.

[[F396](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."

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Textual Amendments

F396 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

(1) This section makes modifications of this Part in relation to an accounting period of a qualifying infrastructure company ("the joint venture company") **[**[F397]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—

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"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-EBIDTA 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

F397 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

(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—

(a) are qualifying infrastructure companies for the accounting period,

(b) are wholly-owned subsidiaries of the joint venture company throughout the accounting period, and

(c) 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

(1) If—

(a) the joint venture company makes an election under section 444 in relation to an accounting period,

(b) 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

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(c) the company mentioned in that section in that case is a 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

(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.

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(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.

[F398(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

F398 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

(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

(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

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(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.

CHAPTER 9

CASES INVOLVING PARTICULAR TYPES OF COMPANY OR BUSINESS

Banking companies

450 Banking companies

(1) This section applies in relation to a banking company carrying on a trade so far as the activities of the trade consist of or include dealing in financial instruments.

(2) For the purposes of section 382 an amount is treated as meeting condition A, B or C if it is a debit arising directly from dealing in financial instruments other than one in respect of an impairment loss.

(3) An amount—

(a) which is treated as meeting condition A, B or C for the purposes of section 382 as a result of subsection (2) of this section, and

(b) which, but for that subsection, would not be a tax-interest expense amount,

is to be left out of account, or brought into account, as a result of section 377(2) or 380(2) after the second but before the third kind of tax-interest expense amounts mentioned there.

(4) For the purposes of section 385 an amount is treated as meeting condition A, B, C or D if it is a credit arising directly from dealing in financial instruments other than one in respect of the reversal of an impairment loss.

(5) In determining a relevant expense amount under section 411 in the case of the company, that section has effect as if it also included a reference to losses arising directly from dealing in financial instruments other than impairment losses.

(6) In determining a relevant income amount under section 411 in the case of the company, that section has effect as if it also included gains arising directly from dealing in financial instruments other than the reversal of impairment losses.

(7) In this section—

"banking company" has the same meaning as in Part 7A of CTA 2010 (see sections 269B to 269BD), and

"financial instruments" includes—

(a) loan relationships,

(b) derivative contracts, and

(c) shares or other securities.

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Oil and gas

451 Oil and gas

(1) For the purposes of this Part any amount which is, or is taken into account in calculating—

(a) the ring fence income of a company within the meaning of section 275 of CTA 2010, or

(b) a company's aggregate gain or loss under section 197(3) of TCGA 1992,

is to be ignored.

(2) For the purpose of applying subsection (1) in relation to the financial statements of a worldwide group of which the company is a member such adjustments are to be made to those statements as are just and reasonable.

REITs

452 Real Estate Investment Trusts

(1) This section applies if a company (a "property rental business company")—

(a) is a company which has profits for an accounting period which are not charged to corporation tax as a result of section 534(1) or (2) of CTA 2010, or

(b) is a company to which gains accrue in an accounting period that are not chargeable gains as a result of section 535(1) or (5) **[**F399, or section 535A(2),**]** of CTA 2010.

(2) In this section "the residual business company" means the company which—

(a) so far as it carries on residual business, is treated, as a result of section 541 of CTA 2010, as a separate company distinct from the property rental business company, but

(b) ignoring that section, is in fact the same company as the property rental business company.

F400(2A) **[** In applying subsection (2) and giving effect to the remainder of this section, the company is treated, at all times in the accounting period, as carrying on a residual business within the charge to corporation tax (and, accordingly, amounts falling to be brought into account in the accounting period as a result of this section are within the charge to corporation tax).**]**

(3) In applying the provisions of this Part—

(a) the property rental business company and the residual business company are at all times to be regarded as separate members of the same worldwide group (despite the provisions of section 541(3) of CTA 2010), but

(b) in the case of the application of section 433 (qualifying infrastructure company), the property rental business company and the residual business company are to be regarded as being one company (and any election (or its revocation) is, therefore, regarded as made by each company).

(4) This Part has effect as if—

(a) section 534(1) and (2) of CTA 2010, and

(b) section 535(1) and (5) **[**F401, or section 535A(2),**]** of CTA 2010,

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do not apply in relation to the property rental business company for the accounting period **[**F402(and, accordingly, the profits mentioned in section 534(1) or (2) of CTA 2010 are not calculated for the purposes of this Part in accordance with section 599 of that Act)**]**.

[F403(4A) An amount charged on the residual business company as a result of section 543 of CTA 2010 (excessive property financing costs) is treated for the purposes of this Part as if it met condition A, B, C or D for the purposes of section 385 (tax-interest income amounts).**]**

[F404(5) The allocated disallowance for the property rental business company (if any) for the accounting period—

(a) is to be taken into account in calculating the profits of the property rental business for the purposes of section 530 of CTA 2010 (condition as to distribution of profits), but

(b) must be limited to such amount as secures that neither subsection (3)(b) nor subsection (5) of that section (distribution of profits not required if would result in unlawful distribution) applies.**]**

(6) This subsection—

(a) sets out steps to be taken in order to facilitate the operation of Chapter 2 (disallowance and reactivation of tax-interest expense amounts), and

(b) has effect in relation to an accounting period of the residual business company whether or not it has net tax-interest expense referable to that period.

If the residual business company does not have net tax-interest expense referable to that period, it is treated for the purposes of steps 1 to 4 in the rest of this subsection as if it had instead a nil amount of tax-interest expense referable to that period.

Step 1 Determine the maximum amount that could be the allocated disallowance for the property rental business company for the accounting period if subsection (5) were ignored and the maximum amount that could be the allocated disallowance for the residual business company for the accounting period (ignoring step 5). The sum of those maximum amounts is referred to in this subsection as "the total REIT expenses".

Step 2 Determine the amount (if any) that is the allocated disallowance for the property rental business for the accounting period, applying subsection (5) and all other rules in this Part. This amount is referred to in this subsection as "the actual disallowed amount".

Step 3 Deduct from the total REIT expenses the actual disallowed amount.

Step 4 Determine whether so much of the total REIT expenses as remains after step 3 exceeds the net tax-interest expense of the residual business company referable to the accounting period (ignoring step 5).

Step 5 If the application of step 4 produces an excess, the residual business company is required to bring into account in the accounting period matching tax-interest expense and income amounts in accordance with the following provisions of this section.

(7) The residual business company—

(a) must bring a tax-interest expense amount equal to the excess into account in the accounting period, and

(b) must bring a tax-interest income amount equal to the excess into account in the accounting period,

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but nothing in this subsection affects any calculation required under any other provision of this Part in relation to the accounting period of the residual business company.

(8) The bringing into account of a tax-interest expense amount under subsection (7) is subject to the operation of the other provisions of this Part (which may result in some or all of the amount not being brought into account).

(9) The tax-interest expense amount under subsection (7) must be matched in amount and nature to an amount comprised in the total REIT expenses.

Section 377(2) to (4) (which, subject to an election made by the company, set out the order in which amounts are left out of account) apply for the purposes of this subsection.

(10) The tax-interest expense or income amounts under subsection (7) are treated as being of the same nature as each other.

(11) An interest restriction return—

(a) must, in relation to any company carrying on residual business or property rental business, specify that fact, and

(b) must contain information about how the return has taken into account the effect of this section.

(12) Expressions which are used in this section and in Part 12 of CTA 2010 have the same meaning in this section as they have in that Part.

Textual Amendments

F399 Words in s. 452(1)(b) inserted (22.2.2024) by Finance Act 2024 (c. 3), **Sch. 7 para. 11(2)**

F400 S. 452(2A) inserted (retrospectively) by Finance Act 2021 (c. 26), **s. 38(2)**(3)

F401 Words in s. 452(4)(b) inserted (22.2.2024) by Finance Act 2024 (c. 3), **Sch. 7 para. 11(3)**

F402 Words in s. 452(4) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 14(2)**

F403 S. 452(4A) inserted (retrospectively) by Finance Act 2019 (c. 1), **Sch. 11 paras. 14(3)**, 24

F404 S. 452(5) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 14(4)**

Insurance companies etc

453 Insurance entities

(1) This section applies where—

(a) an insurance entity is a member of a worldwide group,

(b) the entity has a subsidiary ("S") which it holds as a portfolio investment, and

(c) apart from this section, S would be a member of the group.

(2) For the purposes of this Part—

(a) the group does not include S (or its subsidiaries), and

(b) accordingly, none of those entities is regarded as a consolidated subsidiary of any member of the group.

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(3) For the purposes of this section an insurance entity holds an interest in an entity as "a portfolio investment" if—

(a) the insurance entity holds the interest as an investment, and

(b) the insurance entity judges the value that the interest has to it wholly or mainly by reference to the market value of the interest.

(4) In this section—

"insurance entity" means—

(a) an insurance company,

(b) a friendly society within the meaning of Part 3 of FA 2012 (see section 172), or

(c) a body corporate which carries on underwriting business as a member of Lloyd's, and

"subsidiary" has the meaning given by international accounting standards.

454 Members of Lloyd's

In the case of a body corporate carrying on underwriting business as a member of Lloyd's—

(a) any reference in this Part to an amount being brought into account under Part 3 of CTA 2009 as a result of section 297 or 573 of that Act is to be read as a reference to its being brought into account under that Part as a result of section 219 of FA 1994, and

(b) any reference in this Part to a derivative contract is to be read as if subsection (3) of section 226 of FA 1994 (which provides that relevant contracts forming part of a premium trust fund are not derivative contracts) were omitted.

[F405 Investment managers

Textual Amendments

F405 S. 454A and cross-heading inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 8 paras. 12**, 23(1)

454A Investments held by investment managers

(1) This section applies where—

(a) an entity ("S") **[**F406 would, apart from this section, be 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.

[F407(1A) Except in a case within subsection (2), for the purposes of this Part—

(a) the group does not include S (or its subsidiaries), and

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(b) accordingly, none of those entities is regarded as a consolidated subsidiary of any member of the group.**]**

(2) **[**[F408]Where S is a partnership or another transparent entity, 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.**]**

Textual Amendments

F406 Words in s. 454A(1)(a) 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. 18(2)**

F407 S. 454A(1A) 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. 18(3)**

F408 Words in s. 454A(2) 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. 18(4)**

Shipping companies

455 Shipping companies subject to tonnage tax

(1) This section applies in relation to an accounting period of a tonnage tax company.

(2) The company's tonnage tax profits for the accounting period are treated as nil for the purpose of calculating the company's adjusted corporation tax earnings for the accounting period under section 406(2).

(3) In this section "tonnage tax company" and "tonnage tax profits" have the same meaning as in Schedule 22 to FA 2000 (see paragraphs 2 to 5).

Fair value accounting

456 Creditor relationships of companies determined on basis of fair value accounting

(1) A company may elect for all of its creditor relationships which are dealt with on the basis of fair value accounting ("fair-value creditor relationships") to be subject to the provision made by this section for all of its accounting periods.

(2) For the purpose of calculating under this Part—

(a) tax-interest expense amounts of the company, and

(b) tax-interest income amounts of the company,

the relevant loan relationship debits and relevant loan relationship credits in respect of the company's fair-value creditor relationships are instead to be determined for the accounting periods on an amortised cost basis of accounting.

(3) If—

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(a) a company has a hedging relationship between a relevant contract ("the hedging instrument") and the asset representing a loan relationship subject to the election, and

(b) the loan relationship is dealt with in the company's accounts on the basis of fair value accounting,

it is to be assumed in applying the amortised cost basis of accounting that the hedging instrument has where possible been designated for accounting purposes as a fair value hedge of the loan relationship.

(4) An election under this section—

(a) must be made before the end of 12 months from the end of the relevant accounting period,

(b) has effect for that accounting period and all subsequent accounting periods, and

(c) is irrevocable.

(5) For this purpose "relevant accounting period" means—

(a) the first accounting period in which the company has a fair-value creditor relationship, or

(b) if that accounting period has ended before 1 April 2017, the first accounting period in relation to which any provision of this Part applies.

(6) In this section "amortised cost basis of accounting", in relation to an accounting period, has the same meaning as in Part 5 of CTA 2009 (see section 313), but, in the case of creditor relationships relating to insurance activities, as if that basis of accounting required recognition only of—

(a) interest accrued for the period in respect of the creditor relationships, or

(b) if the creditor relationships arise as a result of section 490 of CTA 2009 (OEICs, unit trusts and offshore funds), amounts that can reasonably be regarded as equating to interest accrued for the period in respect of those relationships.

(7) In subsection (6) "creditor relationships relating to insurance activities" means creditor relationships which—

(a) are held by an insurance company, a friendly society within the meaning of Part 3 of FA 2012 (see section 172) or a body corporate which carries on underwriting business as a member of Lloyd's, or

(b) are held in connection with the regulation of underwriting business carried on by members of Lloyd's.

(8) The Commissioners may by regulations amend the definition of "amortised cost basis of accounting" in this section.

(9) Other expressions which are used in this section and in Part 5 of CTA 2009 have the same meaning in this section as they have in that Part.

457 Elections under section 456: deemed debits and credits

(1) This section applies if—

(a) as a result of an election under section 456, the tax-interest expense amounts of a company include notional debits for an accounting period,

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(b) the worldwide group of which the company is a member is subject to interest restrictions for a period of account, and

(c) the total disallowed amount for the period of account consists of or includes the notional debits.

(2) In order to facilitate the operation of Chapter 2 (disallowance and reactivation of tax-interest expense amounts)—

(a) the company must bring a debit equal to the amount of the notional debits into account in the accounting period, and

(b) the company must bring a credit equal to the amount of the notional debits into account in the accounting period,

but nothing in this subsection affects any calculation required under any other provision of this Part in relation to the accounting period of the company.

(3) The bringing into account of a debit under subsection (2)(a) is subject to the operation of the other provisions of this Part (which may result in some or all of the debit not being brought into account).

(4) The debits and credits under subsection (2) are of the same nature as the notional debits that give rise to them.

(5) For the purposes of this section a debit is a "notional debit" if the debit is created as a result of the determination required by the election or so far as the amount of the debit is increased as a result of that determination.

Exemption for tax-interest expense or income amounts

458 Co-operative and community benefit societies etc

(1) This section applies where—

(a) apart from this section, an amount would be a tax-interest expense amount or tax-interest income amount of a company as a result of meeting condition A in section 382 or 385 (loan relationships), and

(b) the amount meets that condition only because of section 499 of CTA 2009 (certain sums payable by co-operative and community benefit societies or UK agricultural or fishing co-operatives treated as interest under loan relationship).

(2) The amount is treated as not being a tax-interest expense amount or tax-interest income amount of the company.

459 Charities

(1) This section applies where—

(a) apart from this section, an amount would be a tax-interest expense amount of a company as a result of meeting condition A in section 382 (loan relationship debits),

(b) the creditor is a charity,

(c) the company is a wholly-owned subsidiary of the charity, and

(d) the charitable gift condition is met at all times during the accounting period in which the amount is (or apart from this Part would be) brought into account.

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(2) The amount is treated as not being a tax-interest expense amount of the company.

(3) For the purposes of this section the "charitable gift condition" is met at any time at which, were the company to make a donation to the charity at that time, it would be a qualifying charitable donation (see section 190 of CTA 2010).

(4) In this section—

"charity" has the same meaning as in Chapter 2 of Part 6 of CTA 2010 (see section 202 of that Act as read with Schedule 6 to FA 2010), and

"the creditor" means the person who is party to the loan relationship in question as creditor.

Leases

460 Long funding operating leases and finance leases

(1) In calculating a company's adjusted corporation tax earnings for an accounting period under section 406(2), each of the following amounts is to be ignored—

(a) the amount of a deduction under section 363 of CTA 2010 (lessor under long funding operating lease);

(b) the amount by which a deduction is reduced under section 379 of CTA 2010 (lessee under long funding operating lease);

(c) the capital component of the company's rental earnings under a finance lease which is not a long funding finance lease;

(d) the amount of depreciation in respect of any asset leased to the company under a finance lease which is not a long funding finance lease.

(2) The definition of "relevant capital expenditure" in section 417(2) includes the amount of depreciation in respect of any relevant asset leased under a finance lease for some or all of the relevant period of account to a company that is a member of the worldwide group in question.

(3) For the purposes of this section the capital component of a company's rental earnings under a finance lease is so much of those earnings as do not constitute tax-interest income amounts of the company.

(4) For the purposes of this section the amount of depreciation in respect of any asset leased to a company under a finance lease is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be shown as depreciation in respect of the asset in the applicable accounts.

(5) In this section "the applicable accounts" are—

(a) in a case within subsection (1)(d), the company's accounts for any period, and

(b) in a case within subsection (2), the financial statements of the worldwide group for the relevant period of account in question.

(6) In this section "long funding finance lease" means a finance lease which is a long funding lease (within the meaning of section 70G of CAA 2001).

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CHAPTER 10

ANTI-AVOIDANCE

461 Counteracting effect of avoidance arrangements

(1) Any tax advantage that would (in the absence of this section) arise from relevant avoidance arrangements is to be counteracted by the making of such adjustments as are just and reasonable.

(2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim or otherwise.

(3) For the purposes of this section arrangements are "relevant avoidance arrangements" if conditions A and B are met.

(4) Condition A is that the main purpose, or one of the main purposes, of the arrangements is to enable a company to obtain a tax advantage.

(5) Condition B is that the tax advantage is attributable (or partly attributable) to any company—

(a) not leaving tax-interest expense amounts out of account that it otherwise would have left out of account,

(b) leaving tax-interest expense amounts out of account that are lower than they otherwise would have been,

(c) leaving tax-interest expense amounts out of account in an accounting period other than that in which it otherwise would have left them out of account,

(d) bringing tax-interest expense amounts into account that it otherwise would not have brought into account,

(e) bringing tax-interest expense amounts into account that are higher than they otherwise would have been, or

(f) bringing tax-interest expense amounts into account in an accounting period other than that in which it otherwise would have brought them into account.

(6) In subsection (5)—

(a) references to leaving amounts out of account are to leaving them out of account under this Part;

(b) references to bringing amounts into account are to bringing them into account under this Part.

(7) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

"tax advantage" includes—

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) avoidance or reduction of a charge to tax or an assessment to tax,

(d) avoidance of a possible assessment to tax,

(e) deferral of a payment of tax or advancement of a repayment of tax, and

(f) avoidance of an obligation to deduct or account for tax.

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(8) For the purposes of the definition of "tax advantage" any reference to tax includes—

(a) any amount chargeable as if it were corporation tax or treated as if it were corporation tax, and

(b) diverted profits tax.

CHAPTER 11

INTERPRETATION ETC

Related parties

462 Expressions relating to "related parties": introduction

(1) Section 463 sets out the circumstances in which a person is a related party of another person for the purposes of this Part.

(2) That section—

(a) applies generally in relation to any amount, and

(b) is supplemented by sections 464 and 465 (which contain provisions that have effect for the purposes of that section).

(3) Sections 466 and 467 make provision for treating persons as if they were related parties of each other but only in relation to certain matters.

(4) Sections 468 to 472—

(a) make provision for treating persons as if they were not related parties of each other but only in relation to certain matters, and

(b) take priority over sections 466 and 467.

463 Whether a person is generally a "related party" of another

(1) For the purposes of this Part a person ("A") is a "related party" of another person ("B")—

(a) throughout any period for which A and B are consolidated for accounting purposes,

(b) on any day on which the participation condition is met in relation to them, or

(c) on any day on which the 25% investment condition is met in relation to them.

(2) A and B are consolidated for accounting purposes for a period if—

(a) their financial results for a period are required to be comprised in group accounts,

(b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or

(c) their financial results for a period are in fact comprised in group accounts.

(3) In subsection (2) "group accounts" means accounts prepared under—

(a) section 399 of the Companies Act 2006, or

(b) any corresponding provision of the law of a territory outside the United Kingdom.

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(4) The participation condition is met in relation to A and B ("the relevant parties") on a day if, within the period of 6 months beginning or ending with that day—

(a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or

(b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.

(5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in that subsection to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

(6) If one of the relevant parties is a securitisation company within the meaning of Chapter 4 of Part 13 of CTA 2010, the relevant parties are not to be regarded as related parties of each other as a result of subsection (4) merely by reference to the fact that—

(a) the securitisation company is held by a trustee of a settlement, and

(b) the other relevant party is a settlor in relation to that settlement.

(7) The 25% investment condition is met in relation to A and B if—

(a) one of them has a 25% investment in the other, or

(b) a third person has a 25% investment in each of them.

(8) Sections 464 and 465 apply for the purpose of determining whether a person has a "25% investment" in another person.

464 Meaning of "25% investment"

(1) A person ("P") has a 25% investment in another person ("C") if—

(a) P possesses or is entitled to acquire 25% or more of the voting power in C,

(b) in the event of a disposal of the whole of the equity in C, P would receive 25% or more of the proceeds,

(c) in the event that the income in respect of the equity in C were distributed among the equity holders in C, P would receive 25% or more of the amount so distributed, or

(d) in the event of a winding-up of C or in any other circumstances, P would receive 25% or more of C's assets which would then be available for distribution among the equity holders in C in respect of the equity in C.

(2) In this section references to the equity in C are to—

(a) the shares in C other than restricted preference shares, or

(b) loans to C other than normal commercial loans.

(3) For this purpose "shares in C" includes—

(a) stock, and

(b) any other interests of members in C.

(4) For the purposes of this section a person is an equity holder in C if the person possesses any of the equity in C.

(5) For the purposes of this section—

"normal commercial loan" means a loan which is a normal commercial loan for the purposes of section 158(1)(b) or 159(4)(b) of CTA 2010, and

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"restricted preference shares" means shares which are restricted preference shares for the purposes of section 160 of CTA 2010.

(6) In applying for the purposes of this section the definitions of "normal commercial loan" and "restricted preference shares" in a case where—

(a) C is not a company, or

(b) C is a company which does not have share capital,

sections 160(2) to (7) and 161 to 164 of CTA 2010 (and any other relevant provisions of that Act) have effect with the necessary modifications.

(7) In this section references to a person receiving any proceeds, amount or assets include—

(a) the direct or indirect receipt of the proceeds, amount or assets, and

(b) the direct or indirect application of the proceeds, amount or assets for the person's benefit,

and it does not matter whether the receipt or application is at the time of the disposal, distribution, winding-up or other circumstances or at a later time.

(8) If—

(a) there is a direct receipt or direct application of any proceeds, amount or assets by or for the benefit of a person ("A"), and

(b) another person ("B") directly or indirectly owns a percentage of the equity in A,

there is, for the purposes of subsection (7), an indirect receipt or indirect application of that percentage of the proceeds, amount or assets by or for the benefit of B.

(9) For this purpose the percentage of the equity in A directly or indirectly owned by B is to be determined by applying the rules in sections 1155 to 1157 of CTA 2010 with such modifications (if any) as may be necessary.

(10) Subsection (7) is not to result in a person being regarded as having a 25% investment in another person merely as a result of their being parties to a normal commercial loan.

(11) Any reference in this section, in the case of a person who is a member of a partnership, to the proceeds, amount or assets of the person includes the person's share of the proceeds, amount or assets of the partnership (apportioning those things between the partners on a just and reasonable basis).

Modifications etc. (not altering text)

C59 S. 464(2)-(11) applied by 2005 c. 5, s. 608U(3)(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 4**)

465 Attribution of rights and interests

(1) In determining for the purposes of section 464 the investment that a person ("P") has in another person, P is to be taken to have all of the rights and interests of—

(a) any person connected with P,

(b) any person who is a member of a partnership, or is connected with a person who is member of a partnership, of which P is a member, or

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(c) any person who is a member of a partnership, or is connected with a person who is a member of a partnership, of which a person connected with P is a member.

(2) For the purposes of subsection (1)—

(a) section 1122 of CTA 2010 ("connected" persons) applies but as if subsections (7) and (8) of that section were omitted, but

(b) a person is not to be regarded as connected with another person merely as a result of their being parties to a loan that is a normal commercial loan for the purposes of section 464.

(3) In determining for the purposes of section 464 the investment that a person ("P") has in another person ("U"), P is to be taken to have all of the rights and interests of a third person ("T") with whom P acts together in relation to U.

(4) For this purpose P "acts together" with T in relation to U if (and only if)—

(a) for the purpose of influencing the conduct of U's affairs—

(i) P is able to secure that T acts in accordance with P's wishes (or vice versa), or

(ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes (or vice versa),

(b) P and T are party to an arrangement that it is reasonable to conclude is designed to affect the value of any equity in U possessed by T, or

(c) the same person manages some or all of any equity in U possessed by P and T.

In paragraphs (b) and (c) references to equity in U are to be read in accordance with section 464.

(5) But P does not "act together" with T in relation to U under subsection (4)(c) if—

(a) the managing person does so as the operator of different collective investment schemes, and

(b) the management of the schemes is not coordinated for the purpose of influencing the conduct of U's affairs.

(6) For this purpose "collective investment scheme" and "operator" have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237).

(7) In determining for the purposes of section 464 the investment that a person ("P") has in another person ("U"), P is to be taken to have all of the rights and interests of one or more third persons with whom P has entered into a qualifying arrangement in relation to U.

(8) For this purpose P has entered into a qualifying arrangement with one or more third persons in relation to U if they are parties to an arrangement concerning U as a result of which, by reference to shares held, or to be held, by any one or more of them in U, they can reasonably be expected to act together—

(a) so as to exert greater influence in relation to U than any one of them would be able to exert if acting alone, or

(b) otherwise so as to be able to achieve an outcome in relation to U that, if attempted by any one of them acting alone, would be significantly more difficult to achieve.

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(9) For this purpose the reference to shares in U includes shares in U that may be held as a result of the exercise of any right or power and includes rights or interests in U that are of a similar character to shares.

(10) In this section "arrangement" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Modifications etc. (not altering text)

C60 S. 465 applied by 2005 c. 5, s. 608U(3)(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 4**)

466 Certain loan relationships etc to be treated as made between related parties

(1) This section—

(a) makes provision for treating a person ("D") who is not a related party of another person ("C") as if they were related parties of each other but only in respect of particular liabilities or transactions, and

(b) is expressed to apply in relation to loan relationships but also applies (with any necessary modifications) in relation to any other financial liability owed to, or any transaction with, C.

(2) If at any time—

(a) D is party to a loan relationship as debtor and C is party to the relationship as creditor, and

(b) another person ("G") who is a related party of D provides a guarantee, indemnity or other financial assistance in respect of the liability of D that represents the loan relationship,

D and C are treated for the purposes of this Part as if, in relation to the loan relationship concerned (and anything done under or for the purposes of it), they were related parties of each other at that time.

(3) Subsection (2) is subject to—

(a) section 415 (qualifying net group-interest expense), and

(b) section 438(3) (infrastructure: interest payable to third parties etc).

(4) If at any time—

(a) D is party to a loan relationship as debtor and C is party to the relationship as creditor, and

(b) another person ("G") who is a related party of D indirectly stands in the position of a creditor as respects the debt in question by reference to a series of loan relationships or other arrangements,

D and C are treated for the purposes of this Part as if, in relation to the loan relationship concerned (and anything done under or for the purposes of it), they were related parties of each other at that time.

(5) For the purposes of this section "arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

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467 Holdings of debt and equity in same proportions

(1) This section applies at any time where—

(a) persons have lent money to another person ("U"),

(b) the lenders also have shares or voting power in U,

(c) the amounts each of the lenders has lent stand in the same, or substantially the same, proportion as the shares or voting power in U that each of them has, and

(d) for the purposes of section 464 the lenders (taken together) have a 25% investment in U.

(2) The lenders are treated for the purposes of this Part as if, in relation to the loans (and anything done under or for the purposes of them), they were related parties of U at that time (so far as that would not otherwise be the case).

(3) If—

(a) some or all of the rights under the loan are transferred, and

(b) the transferred rights are held by, or for the benefit of, another person ("the transferee") at any time,

the transferee is treated for the purposes of this Part as if, in relation to the loan (and anything done under or for the purposes of it), the transferee were a related party of U at that time (so far as that would not otherwise be the case).

(4) This applies whether or not the transferee has any shares or voting power in U.

(5) For the purposes of this section references to shares in U include shares in U that may be held as a result of the exercise of any right or power and include rights or interests in U that are of a similar character to shares.

(6) This section applies (with any necessary modifications) in relation to any other financial liability owed to, or any transaction with, U as it applies to loans made to U.

468 Debts with same rights where unrelated parties hold more than 50%

(1) This section applies if—

(a) a person ("D") is party to a loan relationship as debtor in a period of account of a worldwide group of which it is a member,

(b) a person ("C") who is party to the loan relationship as creditor is a related party of D at any time in that period,

(c) there are persons ("the relevant creditors") other than C who are parties to the loan relationship, or are parties to other loan relationships entered into at the same time, as creditors but who are not related parties of D at any time in that period,

(d) at all times in that period the rights of the relevant creditors are rights in relation to at least 50% of the total amount of the money debt or debts in question, and

(e) at all times in that period C and the relevant creditors have the same rights in relation to the money debt or debts in question.

(2) D and C are treated for the purposes of this Part as if, in relation to the loan relationship concerned (and anything done under or for the purposes of it), they were not related parties of each other at any time in that period.

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(3) Persons are not to be regarded as having the same rights in relation to a money debt or debts at any time if—

(a) the terms or conditions on which any of the money is lent and which are in force at that time make different provision in relation to different persons or have, or are 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 debts differ, or will or may differ, from the rights of others in relation to any of the debts, 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 debts cannot reasonably be regarded as being, in substance, the same rights as others in relation any of the debts at that or any subsequent time.

(4) For the purposes of this section—

"arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"different persons" includes persons of a different class or description, and

"rights" includes powers.

469 Debt restructuring

(1) This section—

(a) makes provision for treating a person ("D") who is a related party of another person ("C") as if they were not related parties of each other but only in respect of particular liabilities or transactions, and

(b) is expressed to apply in relation to loan relationships but also applies (with any necessary modifications) in relation to any other financial liability owed to, or any transaction with, C.

(2) If—

(a) D is party to a loan relationship as debtor and C is party to the loan relationship as creditor,

(b) D subsequently becomes a related party of C in consequence of a relevant release of debt, and

(c) before D became a related party of C in consequence of the release none of the parties to the loan relationship had been related parties of each other,

D and C are treated for the purposes of this Part as if, in relation to the loan relationship (and anything done under or for the purposes of it), they were not related parties of each other at times on or after the release.

(3) There is a "relevant release of debt" at any time for the purposes of this section if—

(a) a liability to pay an amount under a person's debtor relationship is released under the arrangements,

(b) that person is D or a person who is a related party of D at that time, and

(c) immediately before the release, it is reasonable to conclude that, without the release and any arrangements of which the release forms part, there would be a material risk that, at some time within the next 12 months, D or the related party would be unable to pay its debts.

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(4) For the purposes of this section "debtor relationship" has the meaning given by section 302(6) of CTA 2009 (reading the references in that subsection to a company as references to a person).

470 Ordinary independent financing arrangements by banks and others

(1) This section applies where—

(a) at any time, a person ("C") is party to a loan relationship as creditor and the party to the loan relationship as debtor ("D") is a related party of C as a result of any circumstances, and

(b) the loan relationship is not one to which C is a party at that time directly or indirectly in consequence of, or otherwise in connection with, the existence of any of those circumstances.

(2) C and D are treated for the purposes of this Part as if, in relation to the loan relationship (and anything done under or for the purposes of it), they were not related parties of each other at that time.

471 Loans made by relevant public bodies

(1) This section applies at any time where—

(a) a relevant public body ("B") lends money to a person ("P"),

(b) B is a related party of P, and

(c) the realising of a profit is merely incidental to the making of the loan.

(2) B and P are treated for the purposes of this Part as if, in relation to the loan (and anything done under or for the purposes of it), they were not related parties of each other at that time.

472 Finance leases granted before 20 March 2017

(1) This section applies at any time where an asset is leased by a person ("A") to another ("B") under a lease which is granted before 20 March 2017 and which, in the case of B, is a finance lease.

(2) A and B are treated for the purposes of this Part as if, in relation to the lease (and anything done under or for the purposes of it), they were not related parties of each other at that time.

Determining the worldwide group

473 Meaning of "a worldwide group", "ultimate parent" etc

(1) In this Part "a worldwide group" means—

(a) any entity which—

(i) is a relevant entity (see section 474), and

(ii) meets the first or second non-consolidation condition (see subsections (2) and (3)), and

(b) each consolidated subsidiary (if any) of the entity mentioned in paragraph (a).

(2) The first non-consolidation condition is that the entity—

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(a) is a member of an IAS group, and
(b) is not a consolidated subsidiary of an entity that—
(i) is a relevant entity, and
(ii) itself meets the first non-consolidation condition.

(3) The second non-consolidation condition is that the entity is not a member of an IAS group.

(4) In this Part—
(a) references to "a member" of a worldwide group are to an entity mentioned in subsection (1)(a) or (b);
(b) references to "the ultimate parent" of a worldwide group are to the entity mentioned in subsection (1)(a);
(c) references to "a single-company worldwide group" are to a worldwide group whose only member is its ultimate parent;
(d) references to "a multi-company worldwide group" are to a worldwide group with two or more members.

(5) In this section "IAS group" means a group within the meaning given by international accounting standards.

474 Interpretation of section 473: "relevant entity"

(1) In section 473 "relevant entity" means—
(a) a company, or
(b) an entity the shares or other interests in which are listed on a recognised stock exchange and are sufficiently widely held.

(2) 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.

Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this subsection.

(3) The following are not relevant entities—
(a) the Crown,
(b) a Minister of the Crown,
(c) a government department,
(d) a Northern Ireland department, or
(e) a foreign sovereign power.

475 Meaning of "non-consolidated subsidiary" and "consolidated subsidiary"

(1) An entity ("X") is a "non-consolidated subsidiary" of another entity ("Y") at any time ("the relevant time") if—
(a) X is a subsidiary of Y at the relevant time, and
(b) if Y were required at the relevant time to measure its investment in X, it would be required to do so using fair value accounting [F409]....

(2) An entity ("X") is a "consolidated subsidiary" of another entity ("Y") at any time if, at that time, X is a subsidiary, but not a non-consolidated subsidiary, of Y.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F410(3) In this section "subsidiary" has the meaning given by international accounting standards.**]**

(4) For the purposes of this section, assume that all entities are subject to international accounting standards.

(5) This section has effect for the purposes of this Part.

Textual Amendments

F409 Words in s. 475(1)(b) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 19(2)**

F410 S. 475(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. 19(3)**

476 Continuity of identity of a worldwide group through time

(1) This section applies for the purpose of determining whether a group of entities that constitutes a worldwide group at any time ("Time 2") is the same worldwide group as a group of entities that constitutes a worldwide group at an earlier time ("Time 1").

(2) The group at Time 2 is the same worldwide group as the group at Time 1 if and only if the entity that is the ultimate parent of the group at Time 2—

(a) was the ultimate parent of the group at Time 1, and

(b) was the ultimate parent of a worldwide group at all times between Time 1 and Time 2.

477 Treatment of stapled entities

(1) This section applies where two or more entities—

(a) would, apart from this section, each be the ultimate parent of a worldwide group, and

(b) are stapled to each other.

(2) This Part has effect as if—

(a) the entities were consolidated subsidiaries of another entity (the "deemed parent"), and

(b) the deemed parent fell within section 473(1)(a) (conditions for being the ultimate parent of a worldwide group).

(3) For the purpose of this section an entity ("entity A") is "stapled" to another entity ("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, dispose of or acquire shares or other interests in entity B.

478 Treatment of business combinations

(1) This section applies where two entities—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) would, apart from this section, each be the ultimate parent of a worldwide group, and

(b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.

(2) This Part has effect as if—

(a) the two entities were consolidated subsidiaries of another entity (the "deemed parent"), and

(b) the deemed parent fell within section 473(1)(a) (conditions for being the ultimate parent of a worldwide group).

(3) In this section "business combination" has the meaning given by international accounting standards.

Financial statements and periods of account

479 "Financial statements" of a worldwide group

(1) References in this Part to "financial statements" of a worldwide group for a period are (subject to subsection (2)) to consolidated financial statements of the worldwide group's ultimate parent and its subsidiaries in respect of the period.

(2) Where the worldwide group is at all times during the period a single-company worldwide group, the references are to financial statements of the ultimate parent in respect of the period.

(3) The basic rule is that the references mentioned in subsections (1) and (2) are to financial statements that are drawn up by or on behalf of the ultimate parent.

(4) But see—

(a) section 481 for provision under which, in specified circumstances, financial statements of a worldwide group are treated as having been drawn up in accordance with different accounting standards from those in accordance with which they are drawn up by or on behalf of the ultimate parent;

(b) section 482 for provision under which, in specified circumstances, financial statements of a worldwide group are treated as consolidating different subsidiaries from those consolidated in financial statements drawn up by or on behalf of the ultimate parent;

(c) section 483 for provision under which, in specified circumstances, financial statements of a worldwide group are treated as having been drawn up where the ultimate parent has drawn up consolidated financial statements covering more than one worldwide group;

(d) sections 484 to 486 for provision under which, where financial statements of a worldwide group are not drawn up by or on behalf of the ultimate parent, financial statements of the group are treated as having been drawn up.

(5) See also section 487 (under which financial statements drawn up by or on behalf of an entity, but for too long a period or too late, are ignored for the purposes of this Part).

480 "Period of account" of worldwide group

References in this Part to a "period of account" of a worldwide group are to—

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) a period in respect of which financial statements of the group are drawn up by or on behalf of the ultimate parent, or

(b) a period in respect of which financial statements of the group are treated as drawn up for the purposes of this section (whether under any of sections 481 to 485 or under any other enactment).

481 Actual financial statements not drawn up on acceptable principles

(1) This section applies where financial statements of a worldwide group for a period drawn up by or on behalf of the ultimate parent are not drawn up on acceptable principles.

(2) For the purposes of this Part (apart from this section)—

(a) the financial statements mentioned in subsection (1) are to be ignored, and

(b) IAS financial statements of the worldwide group are treated as having been drawn up in respect of the period.

(3) For the purposes of this Chapter financial statements are "drawn up on acceptable principles" only if condition A, B, C or D is met.

(4) Condition A is that the financial statements are IAS financial statements.

(5) Condition B is that the amounts recognised in the financial statements are not materially different from those that would be recognised in IAS financial statements of the worldwide group, if such statements were drawn up.

(6) Condition C is that the financial statements are drawn up in accordance with UK generally accepted accounting practice.

(7) Condition D is that the financial statements are drawn up in accordance with generally accepted accounting principles and practice of one of the following territories—

(a) Canada;

(b) China;

(c) India;

(d) Japan;

(e) South Korea;

(f) the United States of America.

(8) The Commissioners may by regulations amend this section so as to alter the circumstances in which financial statements are "drawn up on acceptable principles" for the purposes of this Chapter.

482 Actual financial statements drawn up on acceptable principles but consolidating wrong subsidiaries

(1) This section applies where financial statements of a worldwide group for a period drawn up by or on behalf of the ultimate parent are drawn up on acceptable principles but—

(a) do not consolidate one or more entities that are IAS subsidiaries, or

(b) consolidate one or more entities that are not IAS subsidiaries.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) In this section "IAS subsidiary", in relation to a period, means an entity which would be required to be consolidated with those of the ultimate parent in IAS financial statements of the group for the period.

(3) For the purposes of this Part (apart from this section)—

(a) the financial statements mentioned in subsection (1) are to be ignored, and

(b) consolidated financial statements of the ultimate parent and its IAS subsidiaries are treated as having been drawn up in respect of the period.

(4) The financial statements treated by subsection (3)(b) as drawn up are treated as drawn up in accordance with the same accounting principles and practice as the financial statements mentioned in subsection (1).

(5) In this section a reference to financial statements consolidating the results of an entity is to consolidating its results with those of the ultimate parent as the results of a single economic entity.

483 Actual financial statements covering more than one worldwide group

(1) This section applies where—

(a) consolidated financial statements of an entity and its subsidiaries are drawn up by or on behalf of the entity in respect of a period ("the actual period of account"), and

(b) the entity was the ultimate parent of a worldwide group for a part (but not all) of that period.

(2) For the purposes of this Part (apart from this section)—

(a) the financial statements mentioned in subsection (1)(a) are to be ignored, and

(b) consolidated financial statements of the entity and its IAS subsidiaries are treated as having been drawn up in respect of the part of the actual period of account mentioned in subsection (1)(b).

(3) The financial statements treated by subsection (2)(b) as drawn up are treated as drawn up—

(a) where the financial statements mentioned in subsection (1)(a) are drawn up on acceptable principles, in accordance with the same accounting principles and practice as those financial statements;

(b) otherwise, in accordance with international accounting standards.

(4) In this section "IAS subsidiary" has the same meaning as in section 482.

484 No actual financial statements: ultimate parent draws up financial statements

(1) Subsection (2) applies where—

(a) financial statements of the ultimate parent of a worldwide group are drawn up by or on behalf of the ultimate parent in respect of a period ("the relevant period"),

(b) consolidated financial statements of the ultimate parent and its subsidiaries are not drawn up by or on behalf of the ultimate parent in respect of the relevant period or any part of it, and

(c) the group was, at any time during the relevant period, a multi-company worldwide group.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) For the purposes of this Part (apart from this section) IAS financial statements of the worldwide group are treated as drawn up in respect of the relevant period.

(3) The ultimate parent may elect that subsection (2) is not to apply in relation to financial statements of the ultimate parent.

(4) An election under subsection (3)—

(a) has effect in relation to financial statements in respect of periods ending on or after such date as is specified in the election, and

(b) is irrevocable.

(5) The date specified in the election may not be before the day on which the election is made.

485 No actual financial statements: other cases

(1) In this section "accounts-free period" means (subject to subsection (2)) any period—

(a) which begins on or after 1 April 2017,

(b) throughout which a worldwide group exists, and

(c) in respect of no part of which are financial statements of the group—

(i) drawn up by or on behalf of the ultimate parent, or

(ii) treated as drawn up for the purposes of this section (whether under section 481, 482, 483 or 484 or any other enactment).

(2) A period is not an "accounts-free period" if it forms part of an accounts-free period.

(3) If an accounts-free period in relation to a worldwide group is 12 months or less, IAS financial statements of the worldwide group are treated for the purposes of this Part (apart from this section) as having been drawn up for the accounts-free period.

(4) If an accounts-free period in relation to a worldwide group is more than 12 months, IAS financial statements of the worldwide group are treated for the purposes of this Part (apart from this section) as having been drawn up for each of the following periods—

(a) the first period of 12 months falling within the accounts-free period;

(b) any subsequent period of 12 months falling within the accounts-free period;

(c) any period of less than 12 months which—

(i) begins immediately after the end of a period mentioned in paragraph (a) or (b), and

(ii) ends at the end of the accounts-free period.

486 Election altering period of account deemed under section 485

(1) This section applies where, disregarding this section, IAS financial statements of a worldwide group would be treated under section 485(4)(a) or (b) as drawn up for a period ("the default period of account") during an accounts-free period.

(2) The ultimate parent of the group may make an election under this section in relation to the default period of account.

(3) Where an election under this section is made, section 485 has effect as if subsection (4)(a) or (b) of that section—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) did not treat IAS financial statements of the group as having been drawn up for the default period of account;

(b) instead, treated IAS financial statements of the group as having been drawn up for the period—

(i) beginning with the day on which the default period of account begins ("the start day"), and

(ii) ending with such day after the start day as is specified in the election ("the end day").

(4) The end day must—

(a) fall within the accounts-free period, and

(b) not be later than the final day of the period of 18 months beginning with the start day.

(5) An election under this section—

(a) must be made before the end day, and

(b) is irrevocable.

(6) The fact that the ultimate parent of a worldwide group makes an election under this section in relation to a default period of account ("the earlier elected period") does not prevent it from making an election in relation to a later default period of account ("the later elected period").

(7) But where it does so, the end day in relation to the later elected period must be 3 years or more after the end day in relation to the earlier elected period.

(8) Where this section modifies section 485(4)(a) or (b) so that it treats IAS financial statements of the group as having been drawn up for the period mentioned in subsection (3)(b) of this section ("the elected period"), section 485(4)(b) and (c) apply in relation to any part of the accounts-free period following the end of the elected period.

(9) In this section "accounts-free period" has the same meaning as in section 485.

487 Actual financial statements ignored if for too long a period or too late

Financial statements drawn up by or on behalf of any entity are to be ignored for the purposes of this Part (apart from this section) if—

(a) the period in respect of which they are drawn up is more than 18 months, or

(b) they are drawn up after the end of the period of 30 months beginning with the beginning of the period in respect of which they are drawn up.

488 Meaning of "IAS financial statements"

(1) References in this Part to "IAS financial statements" of a worldwide group for a period are (subject to subsection (2)) to consolidated financial statements of the worldwide group's ultimate parent and its subsidiaries, drawn up in respect of the period in accordance with international accounting standards.

(2) If the worldwide group is at all times during the period a single-company worldwide group, the references are instead to financial statements of the ultimate parent, drawn up in respect of the period in accordance with international accounting standards.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

489 References to amounts recognised in financial statements

(1) References in this Part to an amount "recognised" in financial statements—

(a) include an amount comprised in an amount so recognised;

(b) 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 an amount is to be translated under subsection (1)(b) is the average rate of exchange for the period of account, calculated from daily spot rates.

(3) References in this Part to an amount recognised in financial statements "for a period" as an item of profit or loss include references to an amount that—

(a) was previously recognised as an item of other comprehensive income, and

(b) is transferred to become an item of profit or loss in determining the profit or loss for the period.

Other definitions

490 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 a worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

491 Meaning of "relevant public body"

(1) In this Part "relevant public body" means—

(a) the Crown,

(b) a Minister of the Crown,

(c) a government department,

(d) a Northern Ireland department,

(e) a foreign sovereign power,

(f) a designated educational establishment (within the meaning given by section 106 of CTA 2009),

(g) a health service body (within the meaning given by section 986 of CTA 2010),

(h) a local authority or local authority association,

(i) any other body that acts under any enactment for public purposes and not for its own profit, or

(j) any wholly-owned subsidiary of any body falling within any of the above paragraphs of this subsection.

(2) In this section "enactment" includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and

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(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

(3) The Commissioners may by regulations amend this section so as to alter the meaning of "relevant public body".

(4) The provision that may be made by the regulations does not include provision altering the meaning of "relevant public body" so that it includes a person who has no functions of a public nature.

492 Meaning of "UK group company"

In this Part "UK group company", in relation to any time during a period of account of a worldwide group, means a company—

(a) which is within the charge to corporation tax at that time, and

(b) which is a member of the group at that time.

493 Embedded derivatives

Sections 415 and 585 of CTA 2009 (loan relationships with embedded derivatives) apply for the purposes of this Part of this Act.

494 Other interpretation

(1) In this Part—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"fair value accounting" means a basis of accounting under which—

(a) assets and liabilities are measured in the company's balance sheet at their fair value, and

(b) changes in the fair value of assets and liabilities are recognised as items of profit or loss;

"fair value" has the meaning it has for accounting purposes;

[[F411]"finance lease", in relation to a company or a worldwide group, a lease which—

(a) in accordance with generally accepted accounting practice, falls (or would fall) to be treated, in the accounts of the company or the financial statements of the group, as a finance lease or loan, or

(b) is a right-of-use lease that would fall to be treated in those accounts or financial statements as a finance lease if the company or group were required to determine for accounting purposes whether the lease falls to be so treated;**]**

"interest restriction return" means a return submitted under any provision of Schedule 7A;

[[F412]"pension scheme" has the meaning given by section 150(1) of FA 2004;**]**

"reporting company" means a company which is for the time being appointed under any provision of Schedule 7A;

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"the return period", in relation to an interest restriction return of a worldwide group, means the period of account of the group to which the return relates;

[[F413]"right-of-use lease" means a lease in respect of which, under generally accepted accounting practice—

(a) a right-of-use asset falls (or would fall) at the commencement of the lease to be recognised for accounting purposes in the accounts of the lessee, or

(b) a right-of-use asset would fall to be so recognised but for the lessee granting a sublease of the leased asset,

and, in determining whether a lease falls within paragraph (a) or (b) at any time in an accounting period, it is to be assumed that the accounting policy applied in drawing up the lessee's accounts for the period also applied at the commencement of the lease;**]**

"service concession arrangement" has the meaning given by international accounting standards;

"wholly-owned subsidiary" has the meaning given by section 1159(2) of the Companies Act 2006.

(2) For the purposes of this Part a person who is not a company is regarded as being a party to a loan relationship if the person would be so regarded for the purposes of Part 5 of CTA 2009 if the person were a company.

[[F414](3) The definition of "insurance company" in section 65 of FA 2012 (which is applicable to this Part as a result of section 141(2) of that Act) has effect for the purposes of this Part as if, in subsection (2)(a), the reference to Part 4A of the Financial Services and Markets Act 2000 included a reference to the law of a territory outside the United Kingdom which is similar to or corresponds to that Part.**]**

Textual Amendments

F411 Words in s. 494(1) substituted (with effect in accordance with Sch. 14 para. 6 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 14 para. 5(a)**

F412 Words in s. 494(1) inserted (retrospectively) by Finance Act 2019 (c. 1), **Sch. 11 paras. 20**, 24

F413 Words in s. 494(1) inserted (with effect in accordance with Sch. 14 para. 6 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 14 para. 5(b)**

F414 S. 494(3) 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. 28(1)**

Regulations

495 Financial statements: different treatment by group or members

(1) The Commissioners may make regulations for the purpose of altering any calculation under Chapter 7 where—

(a) the financial statements of a worldwide group for a period include or omit an amount in respect of any matter, and

(b) any member of the group deals with that matter for tax or accounting purposes in a different way.

(2) The regulations—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) may make provision subject to an election or other specified circumstances, and

(b) may make provision having effect in relation to any period beginning before the regulations are made if the period begins at some time in the calendar year in which the regulations are made.

496 Parties to capital market arrangements

(1) The Commissioners may make regulations entitling—

(a) a UK group company which has a liability to corporation tax as a result of this Part and which is a party to a capital market arrangement, and

(b) another UK group company,

to make a joint election transferring the liability to the other UK group company.

(2) The regulations may include provision—

(a) specifying other conditions that must be met for an election to be made,

(b) requiring an election to be made on or before a particular time (for example, before the accounting period for which the liability arises),

(c) authorising or requiring an officer of Revenue and Customs (on the exercise of a discretion or otherwise) to accept or reject an election,

(d) authorising or requiring an officer of Revenue and Customs (on the exercise of a discretion or otherwise) to revoke an election previously in force and dealing with the effect of the revocation, and

(e) dealing with the effect of the transfer of the corporation tax liability on any other liabilities that relate to the transferred corporation tax liability.

(3) 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).

497 Change in accounting standards

(1) The Treasury may by regulations amend this Part to take account of a change in the way in which amounts are, or may be, presented or disclosed in financial statements where the change results from the issue, revocation, amendment or recognition of, or withdrawal of recognition from, an accounting standard by an accounting body.

(2) For this purpose—

"accounting standard" includes any statement of practice, guidance or other similar document, and

"accounting body" means—

(a) the International Accounting Standards Board (or successor body), or

(b) the Accounting Standards Board (or successor body).

(3) The regulations—

(a) may make provision subject to an election or other specified circumstances, and

(b) may make provision having effect in relation to any period beginning before the regulations are made if the change mentioned in subsection (1) is relevant to that period.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) A statutory instrument containing regulations which are capable of increasing the liability of a company to corporation tax may not be made unless a draft of the instrument is laid before, and approved by a resolution of, the House of Commons.

498 Regulations

Regulations 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.**]**

F415PART 11

GENERAL PROVISIONS

Textual Amendments

F415 Pt. 11: the existing Pt. 10 renumbered as Pt. 11 (except for ss. 375, 376 which are repealed) and the existing ss. 372-374, 377-382 renumbered as ss. 499-507 (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. 10(1)(2)(a)(3)** (with Sch. 5 paras. 27, 32-34)

Subordinate legislation

F416499 Orders and regulations

(1) Any power of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make any order or regulations under this Act is exercisable by statutory instrument.

(2) Any statutory instrument containing any order or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Act is subject to annulment in pursuance of a resolution of the House of Commons.

(3) Subsection (2) does not apply—

(a) in relation to regulations under section 7 (double taxation relief: general regulations),

(b) in relation to regulations under section 354(1) or 359(2) (offshore funds) if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons,

(c) in relation to an order under section 377(2) (transitional or saving provision in connection with coming into force of this Act), or

(d) if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations.

(4) Section 828 of ICTA (which includes provision about orders made before 1 April 2010 under provisions of the Corporation Tax Acts not contained in ICTA) does not apply in relation to an order made by the Treasury under this Act before 1 April 2010.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F416 S. 372 renumbered as s. 499 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(a)**

Interpretation

F417 500 Abbreviated references to Acts

In this Act—

"CAA 2001" means the Capital Allowances Act 2001,

"CTA 2009" means the Corporation Tax Act 2009,

"CTA 2010" means the Corporation Tax Act 2010,

"FA", followed by a year, means the Finance Act of that year,

"F(No.2)A", followed by a year, means the Finance (No. 2) Act of that year,

"ICTA" means the Income and Corporation Taxes Act 1988,

"ITA 2007" means the Income Tax Act 2007,

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003,

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005,

"TCGA 1992" means the Taxation of Chargeable Gains Act 1992, and

"TMA 1970" means the Taxes Management Act 1970.

Textual Amendments

F417 S. 373 renumbered as s. 500 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(b)**

Final provisions

F418 501 Minor and consequential amendments

Schedule 8 (minor and consequential amendments, including amendments for purposes connected with other tax law rewrite Acts) has effect.

Textual Amendments

F418 S. 374 renumbered as s. 501 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(c)**

Commencement Information

I1 S. 501 (previously s. 374) in force for specified purposes at Royal Assent and in force for further specified purposes at 1.4.2010, see s. 381(2)(d)

F419 502 Transitional provisions and savings

(1) Schedule 9 (transitional provisions and savings) has effect.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The Treasury may by order make such transitional or saving provision as the Treasury consider appropriate in connection with the coming into force of this Act.

(3) An order under this section may contain provision having retrospective effect.

Textual Amendments

F419 S. 377 renumbered as s. 502 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(d)**

Commencement Information

I2 S. 502 (previously s. 377) wholly in force at 1.4.2010; s. 502(2)(3) in force at Royal Assent and s. 502(1) in force at 1.4.2010, see s. 381(1)(2)(g)

F420 503 Repeals and revocations

(1) Schedule 10 (repeals and revocations, including of spent enactments and including repeals for purposes connected with other tax law rewrite Acts) has effect.

(2) If—

(a) CTA 2010 repeals or revokes a provision and the repeal or revocation is for corporation tax purposes only (see section 1181(2) of that Act), and

(b) this Act also repeals or revokes the provision,

the repeal or revocation of the provision by this Act is for all purposes other than corporation tax purposes.

Textual Amendments

F420 S. 378 renumbered as s. 503 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(e)**

F421 504 Index of defined expressions

(1) Schedule 11 (index of defined expressions that apply for purposes of Parts 2 to **[**F422 10**]**) has effect.

(2) That Schedule lists the places where some of the expressions used in Parts 2 to **[**F422 10**]** are defined or otherwise explained.

Textual Amendments

F421 S. 379 renumbered as s. 504 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(f)**

F422 Word in s. 504(1)(2) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(5)**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F423]505 Extent

(1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).

(2) An amendment, repeal or revocation contained in Schedule 7, 8 or 10 has the same extent as the provision amended, repealed or revoked.

Textual Amendments

F423 S. 380 renumbered as s. 505 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(g)**

[F424]506 Commencement

(1) This Act comes into force on 1 April 2010 and has effect—

(a) for corporation tax purposes, for accounting periods ending on or after that day,

(b) for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, and

(c) for petroleum revenue tax purposes, for chargeable periods beginning on or after 1 July 2010.

(2) Subsection (1) does not apply to the following provisions (which therefore come into force on the day on which this Act is passed)—

(a) section **[**[F425]499**]**,

(b) section **[**[F426]500**]**,

(c) the amendments in TCGA 1992 and ITA 2007 made by Part 13 of Schedule 8,

(d) section **[**[F427]501**]** so far as relating to those amendments,

[F428](e) . . . . . .

[F428](f) . . . . . .

(g) section **[**[F429]502(2) and (3)**]**,

(h) section **[**[F430]505**]**,

(i) this section, and

(j) section **[**[F431]507**]**.

Textual Amendments

F424 S. 381 renumbered as s. 506 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(h)**

F425 Word in s. 506(2)(a) (previously s. 381(2)(a)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(e)(i)**

F426 Word in s. 506(2)(b) (previously s. 381(2)(b)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(e)(ii)**

F427 Word in s. 506(2)(d) (previously s. 381(2)(d)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(e)(iii)**

F428 S. 506(2)(e)(f) (previously s. 381(2)(e)(f)) repealed (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(2)(b)**

F429 Words in s. 506(2)(g) (previously s. 381(2)(g)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(e)(iv)**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F430 Word in s. 506(2)(h) (previously s. 381(2)(h)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(e)(v)**

F431 Word in s. 506(2)(i) (previously s. 381(2)(i)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(4)(e)(vi)**

F432 507 Short title

This Act may be cited as the Taxation (International and Other Provisions) Act 2010.

Textual Amendments

F432 S. 382 renumbered as s. 507 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 10(3)(i)**

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

SCHEDULE 1

Section 364

OIL ACTIVITIES: NEW CHAPTER 16A OF PART 2 OF ITTOIA 2005

1 ITTOIA 2005 is amended as follows.

2 After section 225 insert—

"**CHAPTER 16A**

OIL ACTIVITIES

Basic definitions

225A Meaning of "oil extraction activities"

(1) In this Chapter "oil extraction activities" means activities within any of subsections (2) to (5) (but see also section 225M(6)).

(2) Activities of a person in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for that person.

(3) Activities of a person in extracting, or causing to be extracted for that person, oil at any place in the United Kingdom or a designated area under rights which—

(a) authorise the extraction, and

(b) are held by that person.

(4) Activities of a person in transporting, or causing to be transported for that person, oil extracted at any such place not on dry land under rights which—

(a) authorise the extraction, and

(b) are held by that person,

if the transportation meets condition A or B (see subsections (6) and (7)).

(5) Activities of a person in effecting, or causing to be effected for that person, the initial treatment or initial storage of oil won from any oil field under rights which—

(a) authorise its extraction, and

(b) are held by that person.

(6) Condition A is that the transportation is to the place where the oil is first landed in the United Kingdom.

(7) Condition B is that the transportation—

(a) is to the place in the United Kingdom, or

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(b) in the case of oil first landed in another country, is to the place in that or any other country (other than the United Kingdom),

at which the seller in a sale at arm's length could reasonably be expected to deliver it (or, if there is more than one such place, the one nearest to the place of extraction).

(8) The definition of "initial storage" in section 12(1) of OTA 1975 applies for the purposes of this section.

(9) But in its application for those purposes in relation to the person mentioned in subsection (5) and to oil won from any one oil field, that definition is to have effect as if the reference to the maximum daily production rate of oil for the field mentioned in that definition were to a share of that maximum daily production rate proportionate to that person's share of the oil won from that field.

(10) In this section "initial treatment" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

225B Meaning of "oil rights"

In this Chapter "oil rights" means—

(a) rights to oil to be extracted at any place in the United Kingdom or a designated area, or

(b) rights to interests in or to the benefit of such oil.

225C Meaning of "ring fence income"

In this Chapter "ring fence income" means income arising from oil extraction activities or oil rights.

225D Meaning of "ring fence trade"

In this Chapter "ring fence trade" means activities which—

(a) are within the definition of "oil-related activities" in section 16(2) (oil extraction and related activities), and

(b) constitute a separate trade (whether because of section 16(1) or otherwise).

225E Other definitions

In this Chapter—

"chargeable period" has the same meaning as in Part 1 of OTA 1975 (see section 1(3) of that Act),

"designated area" means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,

"oil" means any substance won or capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)), other than methane gas won in the course of operations for making and keeping mines safe,

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"oil field" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act),

"OTA 1975" means the Oil Taxation Act 1975, and

"participator" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

Oil valuation

225F Valuation where market value taken into account under section 2 of OTA 1975

(1) This section applies if a person disposes of oil in circumstances such that the market value of the oil—

(a) falls to be taken into account under section 2 of OTA 1975, otherwise than by virtue of paragraph 6 of Schedule 3 to that Act, in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or

(b) would so fall but for section 10 of that Act.

(2) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil—

(a) as so taken into account under section 2 of that Act, or

(b) as would have been so taken into account under that section but for section 10 of that Act.

225G Valuation where disposal not sale at arm's length

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that a person disposes of oil acquired by the person—

(a) in the course of oil extraction activities carried on by the person, or

(b) as a result of oil rights held by the person.

(3) Condition B is that the disposal is not a sale at arm's length (as defined in paragraph 1 of Schedule 3 to OTA 1975).

(4) Condition C is that section 225F does not apply in relation to the disposal.

(5) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil.

(6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.

(7) Those modifications are that—

(a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is disposed of as mentioned in this section, and

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(b) paragraph 2(4) is to be treated as omitted.

225H Valuation where excess of nominated proceeds

(1) This section applies if an excess of nominated proceeds for a chargeable period—

(a) is taken into account in calculating a person's profits under section 2(5)(e) of OTA 1975, or

(b) would have been so taken into account if the person were chargeable to tax under OTA 1975 in respect of an oil field.

(2) For income tax purposes, the amount of the excess is to be added to the consideration which the person is treated as having received in respect of oil disposed of by that person in the period.

225I Valuation where relevant appropriation but no disposal

(1) This section applies if conditions A and B are met.

(2) Condition A is that a person makes a relevant appropriation of oil without disposing of it.

(3) Condition B is that the person does so in circumstances such that the market value of the oil—

(a) falls to be taken into account under section 2 of OTA 1975 in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or

(b) would so fall but for section 10 of that Act.

(4) For income tax purposes, the person is to be treated as having, at the time of the appropriation—

(a) sold the oil in the course of the separate trade consisting of activities falling within the definition of "oil-related activities" in section 16(2) (oil extraction and related activities), and

(b) purchased it in the course of the separate trade consisting of activities not so falling.

(5) For income tax purposes, that sale and purchase is to be treated as having been at a price equal to the market value of the oil—

(a) as so taken into account under section 2 of OTA 1975, or

(b) as would have been so taken into account under that section but for section 10 of that Act.

(6) In this section "relevant appropriation" has the meaning given by section 12(1) of OTA 1975.

225J Valuation where appropriation to refining etc

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that a person appropriates oil acquired by the person—

(a) in the course of oil extraction activities carried on by the person, or

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(b) as a result of oil rights held by the person.

(3) Condition B is that the oil is appropriated to refining or to any use except the production purposes of an oil field (as defined in section 12(1) of OTA 1975).

(4) Condition C is that section 225I does not apply in relation to the appropriation.

(5) For income tax purposes—

(a) the person is to be treated as having, at the time of the appropriation, sold and purchased the oil as mentioned in section 225I(4)(a) and (b), and

(b) that sale and purchase is to be treated as having been at a price equal to the market value of the oil.

(6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.

(7) Those modifications are that—

(a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is appropriated as mentioned in this section,

(b) any reference in paragraphs 2 and 2A to oil being relevantly appropriated is to be read as a reference to its being appropriated as mentioned in this section, and

(c) paragraph 2(4) is to be treated as omitted.

Regional development grants

225K Reduction of expenditure by reference to regional development grant

(1) This section applies if conditions A and B are met.

(2) Condition A is that a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to OTA 1975 applies (transactions between connected persons or otherwise than at arm's length).

(3) Condition B is that the expenditure incurred by the other person mentioned in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph—

(a) has been or is to be met by a regional development grant, and

(b) falls (in whole or in part) to be taken into account under Part 2 or 6 of CAA 2001 (capital allowances relating to plant and machinery or research and development).

(4) Subsection (5) applies for the purposes of the charge to income tax on the income arising from the activities of the person mentioned in subsection (2) which are treated by section 16(1) (oil extraction and related activities) as a separate trade for those purposes.

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(5) The expenditure mentioned in subsection (2) is to be reduced by the amount of the regional development grant mentioned in subsection (3).

(6) In this section "regional development grant" means a grant falling within section 534(1) of CAA 2001 (Northern Ireland regional development grant).

225L Adjustment as a result of regional development grant

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that expenditure incurred by a person in relation to an asset in a tax year ("the initial period") has been or is to be met by a regional development grant.

(3) Condition B is that, despite the provisions of section 534(2) and (3) of CAA 2001 (Northern Ireland regional development grants) and section 225K of this Act, in determining that person's liability to income tax for the initial period, the whole or some part of that expenditure falls to be taken into account under Part 2 or 6 of CAA 2001.

(4) Condition C is that—

(a) expenditure on the asset becomes allowable under section 3 or 4 of OTA 1975 in a tax year (an "adjustment period") subsequent to the initial period, or

(b) the proportion of any such expenditure which is allowable in an adjustment period is different as compared with the initial period.

(5) There is to be redetermined for the purposes of subsections (7) and (8) the amount of the expenditure mentioned in subsection (2) which would have been taken into account as mentioned in subsection (3) if the circumstances mentioned in subsection (4) had existed in the initial period.

(6) According to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3), the difference is referred to in subsections (7) and (8) as the increase or the reduction in the allowance.

(7) If there is an increase in the allowance, an amount of capital expenditure equal to the increase is to be treated, for the purposes of Part 2 or 6 of CAA 2001, as having been incurred by the person concerned in the adjustment period on an extension of, or addition to, the asset mentioned in subsection (2).

(8) If there is a reduction in the allowance, the person concerned is to be treated, for the purpose of determining that person's liability to income tax, as having received in the adjustment period, as income of the trade in connection with which the expenditure mentioned in subsection (2) was incurred, a sum equal to the amount of the reduction in the allowance.

(9) In this section "regional development grant" has the meaning given by section 225K(6).

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Tariff receipts etc

225M Tariff receipts etc

(1) Subsection (5) applies to a sum which meets conditions A, B and C.

(2) Condition A is that the sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator in an oil field.

(3) Condition B is that the sum constitutes consideration in the nature of income rather than capital.

(4) Condition C is that the sum would not, but for subsection (5), be treated as mentioned in that subsection.

(5) The sum is to be treated as a receipt of the separate trade mentioned in section 16(1) (oil extraction and related activities).

(6) So far as they would not otherwise be so treated, the activities—

(a) of a participator in an oil field, or

(b) of a person connected with the participator,

in making available an asset in a way which gives rise to tariff receipts or tax-exempt tariffing receipts of the participator are to be treated for the purposes of this Chapter as oil extraction activities.

(7) In determining for the purposes of subsection (2) whether a sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator, no account may be taken of any sum which—

(a) is in fact received or receivable by a person connected with the participator, and

(b) constitutes a tariff receipt or tax-exempt tariffing receipt of the participator.

But in relation to the person by whom such a sum is actually received, subsection (2) has effect as if the person were a participator and as if condition A were met.

(8) References in this section to a person connected with a participator include a person with whom the person is associated, within the meaning of paragraph 11 of Schedule 2 to the Oil Taxation Act 1983, but section 878(5) of this Act (application of definition of "connected" persons) does not apply for the purposes of this section.

(9) In this section—

"tax-exempt tariffing receipt" has the meaning given by section 6A(2) of the Oil Taxation Act 1983, and

"tariff receipt" has the same meaning as in that Act.

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Abandonment guarantees

225N Expenditure on and under abandonment guarantees

(1) Subsection (2) applies if, as a result of section 3(1)(hh) of OTA 1975 (obtaining abandonment guarantee), expenditure incurred by a participator in an oil field is allowable (in whole or in part) for petroleum revenue tax purposes under section 3 of that Act.

(2) So far as that expenditure is so allowable, it is to be allowed as a deduction in calculating the participator's ring fence income.

(3) Subsection (4) applies if a payment is made by the guarantor under an abandonment guarantee.

(4) So far as any expenditure for which the relevant participator is liable is met, directly or indirectly, out of the payment, the expenditure is not to be regarded for income tax purposes as having been incurred by the relevant participator or any other participator in the oil field concerned.

(5) See also section 225P (payment under abandonment guarantee not immediately applied).

(6) In this Chapter—

"abandonment guarantee" has the same meaning as it has for the purposes of section 105 of FA 1991 (see section 104 of that Act), and

"the guarantor" and "the relevant participator" have the same meaning as in section 104 of that Act.

225O Relief for reimbursement expenditure under abandonment guarantees

(1) This section applies if—

(a) a payment ("the guarantee payment") is made by the guarantor under an abandonment guarantee,

(b) as a result of the making of the guarantee payment, the relevant participator becomes liable under the terms of the abandonment guarantee to pay any sum to the guarantor, and

(c) expenditure is incurred, or consideration in money's worth is given, by the relevant participator in or towards meeting that liability.

(2) In this section "reimbursement expenditure" means expenditure incurred as mentioned in subsection (1)(c) or consideration (or the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure is to be read accordingly.

(3) So much of any reimbursement expenditure as constitutes qualifying expenditure (see subsection (4)) is to be allowed as a deduction in calculating the relevant participator's ring fence income; and no part of the expenditure which is so allowed is to be otherwise deductible or allowable by way of relief for income tax purposes.

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(4) The amount of reimbursement expenditure incurred in any tax year by the relevant participator which constitutes qualifying expenditure is determined by the formula—

$$A \times \frac{B}{C}$$

where—
A is the reimbursement expenditure incurred in the tax year,
B is so much of the expenditure represented by the guarantee payment as, had it been incurred by the relevant participator, would have been taken into account (by way of capital allowance or a deduction) in calculating the relevant participator's ring fence income, and
C is the total of the sums which, at or before the end of the tax year, the relevant participator is or has become liable to pay to the guarantor as mentioned in subsection (1)(b).

But this is subject to subsection (5).

(5) In relation to the guarantee payment, the total of the reimbursement expenditure (whenever incurred) which constitutes qualifying expenditure may not exceed whichever is the less of B and C in subsection (4).

(6) Any limitation on qualifying expenditure under subsection (5) is to be applied to the expenditure of a later tax year in preference to an earlier one.

(7) For the purposes of this section, the expenditure represented by the guarantee payment is any expenditure—
- (a) for which the relevant participator is liable, and
- (b) which is met, directly or indirectly, out of the guarantee payment (and which, accordingly, because of section 225N(4) is not to be regarded as expenditure incurred by the relevant participator).

(8) See also—
- (a) section 225P (payment under abandonment guarantee not immediately applied), and
- (b) section 225Q which excludes amounts from subsection (1).

225P Payment under abandonment guarantee not immediately applied

(1) This section applies if—
- (a) a payment made by the guarantor under an abandonment guarantee is not immediately applied in meeting any expenditure,
- (b) the payment is for any period invested (either specifically or together with payments made by persons other than the guarantor) so as to be represented by, or by part of, the assets of a fund or account, and
- (c) at a subsequent time, any expenditure for which the relevant participator is liable is met out of the assets of the fund or account.

(2) The references in sections 225N(4) and 225O(7) to expenditure which is met, directly or indirectly, out of the payment are to be read as references to so much of the expenditure for which the relevant participator is liable as

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is met out of those assets of the fund or account which, at the subsequent time mentioned in subsection (1)(c), it is just and reasonable to attribute to the payment.

225Q Amounts excluded from section 225O(1)

(1) This section applies if—

(a) the whole of the guarantee payment mentioned in section 225O, or of the assets which under section 225P are attributed to the guarantee payment, is not applied in meeting liabilities of the relevant participator so mentioned which fall within section 104(1)(a) and (b) of FA 1991, and

(b) a sum representing the unapplied part of the guarantee payment or of those assets is repaid, directly or indirectly, to the guarantor so mentioned.

(2) Any liability of the relevant participator to repay that sum is to be excluded in determining the total liability of the relevant participator which falls within section 225O(1)(b).

(3) The repayment to the guarantor of that sum is not to be regarded as expenditure incurred by the relevant participator as mentioned in section 225O(1)(c).

Abandonment expenditure

225R Introduction to sections 225S and 225T

(1) Sections 225S and 225T apply if—

(a) paragraph 2A of Schedule 5 to OTA 1975 applies, or would apply if a claim under paragraph 2A(2) of that Schedule were made, and

(b) the default payment falls (in whole or part) to be attributed to the contributing participator under paragraph 2A(2) of that Schedule.

(2) In section 225S "the additional abandonment expenditure" means the amount which is attributed to the contributing participator as mentioned in subsection (1)(b) (whether representing the whole or only part of the default payment).

(3) In this Chapter "default payment", "the defaulter" and "contributing participator" have the same meaning as in paragraph 2A of Schedule 5 to OTA 1975.

225S Relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure

(1) Relief by way of capital allowance, or a deduction in calculating ring fence income, is to be available to the contributing participator in respect of the additional abandonment expenditure if any such relief or deduction would have been available to the defaulter if—

(a) the defaulter had incurred the additional abandonment expenditure, and

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(b) at the time that that expenditure was incurred the defaulter continued to carry on a ring fence trade.

(2) The basis of qualification for or entitlement to any relief or deduction which is available to the contributing participator under this section is to be determined on the assumption that the conditions in subsection (1)(a) and (b) are met.

(3) But, subject to subsection (2), any such relief or deduction is to be available in the same way as if the additional abandonment expenditure had been incurred by the contributing participator for the purposes of the ring fence trade carried on by the contributing participator.

225T Reimbursement by defaulter in respect of certain abandonment expenditure

(1) This section applies if expenditure is incurred, or consideration in money's worth is given, by the defaulter in reimbursing the contributing participator in respect of, or otherwise making good to the contributing participator, the whole or any part of the default payment.

(2) In this section "reimbursement expenditure" means expenditure incurred as mentioned in subsection (1) or consideration (or the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure is to be read accordingly.

(3) Reimbursement expenditure is to be allowed as a deduction in calculating the defaulter's ring fence income (but this is subject to subsection (6)).

(4) Reimbursement expenditure received by the contributing participator is to be treated as a receipt (in the nature of income) of the participator's ring fence trade for the relevant tax year (but this is subject to subsection (6)).

(5) Any additional assessment to income tax required in order to take account of the receipt of reimbursement expenditure by the contributing participator may be made at any time not later than 4 years after the end of the calendar year in which the reimbursement expenditure is so received.

(6) In relation to a particular default payment, reimbursement expenditure incurred at any time—

(a) is to be allowed as mentioned in subsection (3), and

(b) is to be taken into account as a result of subsection (4) in calculating the contributing participator's ring fence income,

only so far as, when aggregated with any reimbursement expenditure previously incurred in respect of that default payment, it does not exceed so much of the default payment as falls to be attributed to the contributing participator as mentioned in section 225R(1)(b).

(7) The incurring of reimbursement expenditure is not to be regarded, by virtue of section 532 of CAA 2001 (the general rule excluding contributions), as the meeting of the expenditure of the contributing participator in making the default payment.

(8) In subsection (4) "the relevant tax year" means—

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(a) the tax year in which the reimbursement expenditure is received by the contributing participator, or

(b) if the contributing participator's ring fence trade is permanently discontinued before the receipt of the reimbursement expenditure, the last tax year in which that trade was carried on.

Interest on repayment of APRT

225U Interest on repayment of APRT

(1) Subsection (2) applies if interest is paid to a participator under paragraph 10(4) of Schedule 19 to FA 1982 (interest on advance petroleum revenue tax which becomes repayable).

(2) The interest paid is to be disregarded in calculating the participator's income for income tax purposes."

SCHEDULE 2

Section 365

ALTERNATIVE FINANCE ARRANGEMENTS

PART 1

NEW PART 10A OF ITA 2007

1 ITA 2007 is amended as follows.

2 After Part 10 insert—

"**PART 10A**

ALTERNATIVE FINANCE ARRANGEMENTS

Introduction

Introduction

564A(1) This Part—

(a) contains provisions about the treatment as interest for certain income tax purposes of alternative finance return under alternative finance arrangements with financial institutions (see sections 564M to 564Q), and

(b) contains some special provisions about the treatment of investment bond arrangements (see sections 564R to 564U) and some other rules about alternative finance arrangements (see sections 564V to 564Y).

(2) In this Part "alternative finance arrangements" means—

(a) purchase and resale arrangements,

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(b) diminishing shared ownership arrangements,
(c) deposit arrangements,
(d) profit share agency arrangements, and
(e) investment bond arrangements.

(3) In this Part—
(a) "purchase and resale arrangements" means arrangements to which section 564C applies,
(b) "diminishing shared ownership arrangements" means arrangements to which section 564D applies,
(c) "deposit arrangements" means arrangements to which section 564E applies,
(d) "profit share agency arrangements" means arrangements to which section 564F applies, and
(e) "investment bond arrangements" means arrangements to which section 564G applies.

(4) For the meaning of "alternative finance return", see sections 564I to 564L.

(5) For the meaning of "financial institution", see section 564B.

(6) Also, see section 366 of TIOPA 2010 (power to extend this Part and other provisions to other arrangements by order)."

3 After section 564A insert—

"**564B Meaning of "financial institution"**

(1) In this Part "financial institution" means—
(a) a bank, as defined by section 991,
(b) a building society,
(c) a wholly-owned subsidiary—
(i) of a bank within paragraph (a), or
(ii) of a building society,
(d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,
(e) a bond-issuer, within the meaning of section 564G, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,
(f) a person authorised in a jurisdiction outside the United Kingdom—
(i) to receive deposits or other repayable funds from the public, and
(ii) to grant credits for its own account,
(g) an insurance company as defined in section 431(2) of ICTA, or
(h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in section 431(2) of ICTA.

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(2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society ("the parent") if it has no members except—

(a) the parent or persons acting on behalf of the parent, and

(b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries."

4 After section 564B insert—

"Arrangements that are alternative finance arrangements

564C Purchase and resale arrangements

(1) This section applies to arrangements if—

(a) they are entered into between two persons ("the first purchaser" and "the second purchaser"), one or both of whom are financial institutions, and

(b) under the arrangements—

(i) the first purchaser purchases an asset and sells it to the second purchaser,

(ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),

(iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,

(iv) the second purchase price exceeds the first purchase price, and

(v) the excess equates, in substance, to the return on an investment of money at interest.

(2) The circumstances are that—

(a) the first purchaser is a financial institution, and

(b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.

(3) In this section—

"the first purchase price" means the amount paid by the first purchaser in respect of the purchase, and

"the second purchase price" means the amount payable by the second purchaser in respect of the sale.

(4) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from this section and sections 564D to 564G)."

5 After section 564C insert—

"**564D Diminishing shared ownership arrangements**

(1) This section applies to arrangements if under them—

(a) a financial institution ("the first owner") acquires a beneficial interest in an asset,

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(b) another person ("the eventual owner") also acquires a beneficial interest in it,

(c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner's beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),

(d) the eventual owner is to acquire the first owner's beneficial interest (whether or not in stages) as a result of those payments,

(e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),

(f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and

(g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).

(2) For the purposes of subsection (1)(a) it does not matter if—

(a) the first owner acquires its beneficial interest from the eventual owner,

(b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or

(c) the first owner also has a legal interest in it.

(3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.

(4) The conditions are that—

(a) the grant is not to—

(i) the first owner,

(ii) a person controlled by the first owner, or

(iii) a person controlled by a person who also controls the first owner, and

(b) the grant is not required by the first owner or arrangements to which the first owner is a party.

(5) Subsection (1)(g) does not prevent the first owner from—

(a) having responsibility for any reduction in the asset's value, or

(b) having a share in a loss arising out of any such reduction.

(6) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from section 564C, this section and sections 564E to 564G)."

6 After section 564D insert—

"**564E Deposit arrangements**

(1) This section applies to arrangements if under them—

(a) a person ("the depositor") deposits money with a financial institution,

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(b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,

(c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,

(d) the payment is in proportion to the amount deposited by the depositor, and

(e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C and 564D, this section and sections 564F and 564G)."

7 After section 564E insert—

"**564F Profit share agency arrangements**

(1) This section applies to arrangements if under them—

(a) a person ("the principal") appoints an agent,

(b) one or both of the principal and agent is a financial institution,

(c) the agent uses money provided by the principal with a view to producing a profit,

(d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,

(e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and

(f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564E, this section and section 564G)."

8 After section 564F insert—

"**564G Investment bond arrangements**

(1) This section applies to arrangements if—

(a) they provide for one person ("the bond-holder") to pay a sum of money ("the capital") to another ("the bond-issuer"),

(b) they identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly ("the bond assets"),

(c) they specify a period at the end of which they cease to have effect ("the bond term"),

(d) the bond-issuer undertakes under the arrangements—

(i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,

(ii) to make a repayment of the capital ("the redemption payment") to the bond-holder during or at the end of the bond-term (whether or not in instalments), and

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(iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term ("additional payments"),

(e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,

(f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,

(g) the bond-holder is able to transfer the rights under the arrangements to another person (who becomes the bond-holder because of the transfer),

(h) the arrangements are a listed security on a recognised stock exchange, and

(i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer, or would be if the bond-issuer applied those standards.

(2) For the purposes of subsection (1)—

(a) the bond-issuer may acquire bond assets before or after the arrangements take effect,

(b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,

(c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but need not) be described as, or accompanied by a document described as, a declaration of trust,

(d) a reference to the management of assets includes a reference to disposal,

(e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,

(f) the amount of the additional payments may be—

(i) fixed at the beginning of the bond term,

(ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or

(iii) determined in some other way,

(g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,

(h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and

(i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.

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(3) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564F and this section)."

9 After section 564G insert—

"**564H Provision not at arm's length: exclusion of arrangements from sections 564C to 564G**

(1) Arrangements to which this section applies are not—

(a) purchase and resale arrangements,

(b) diminishing shared ownership arrangements,

(c) deposit arrangements,

(d) profit share agency arrangements, or

(e) investment bond arrangements.

(2) This section applies to arrangements if—

(a) apart from this section they would be alternative finance arrangements,

(b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,

(c) any person who is an affected person for the purposes of Part 4 of that Act ("the affected person") is entitled to—

(i) relevant return in relation to the arrangements, or

(ii) an amount representing relevant return in relation to them, and

(d) the affected person is not subject—

(i) to income tax or corporation tax, or

(ii) to any corresponding tax under the law of a territory outside the United Kingdom,

on the relevant return or the amount representing it.

(3) In this section "relevant return", in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements."

10 After section 564H insert—

"Meaning of "alternative finance return"

564I Purchase and resale arrangements

(1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Part.

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(2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.

(3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.

(4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).

(5) The assumptions are that—

(a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,

(b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,

(c) the instalment is a part repayment of the principal of the loan with interest, and

(d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.

(6) In this section expressions used in section 564C have the same meaning as in that section."

11 After section 564I insert—

"**564J Purchase and resale arrangements where return in foreign currency**

(1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—

(a) by or to a person other than a company, and

(b) otherwise than for the purposes of a trade, profession or vocation or a property business,

subsections (2) and (3) apply as respects that person.

(2) The amount of the excess referred to in section 564I(2) and (5)(b) and the appropriate amount for the purposes of section 564I(3) and (4) are to be calculated in that other currency.

(3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made."

12 After section 564J insert—

"**564K Diminishing shared ownership arrangements**

(1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Part, except so far as subsection (2) or (3) applies to them.

(2) This subsection applies to the payments so far as they amount to payments of the kind described in section 564D(1)(c) (payments to be made by the

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eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).

(3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.

(4) In this section "the eventual owner" has the same meaning as in section 564D."

13 After section 564K insert—

"**564L Other arrangements**

(1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 564E(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Part.

(2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 564F(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Part.

(3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Part, but subject to subsection (4).

(4) If any part of the additional payments in respect of investment bond arrangements equates in substance to discount, that part is not treated as alternative finance return for income tax purposes.

(5) In this section "additional payments" has the same meaning as in section 564G (see subsection (1)(d)(iii) of that section).

(6) For the treatment of the part of the additional payments to which subsection (4) applies, see section 564R (treatment of discount)."

14 After section 564L insert—

"Treatment of alternative finance return as interest etc

564M Treatment of alternative finance return as interest for ITTOIA 2005

(1) Alternative finance return is treated as interest for the purposes of ITTOIA 2005.

(2) References to interest in section 380 of that Act (funding bonds) include references to alternative finance return."

15 After section 564M insert—

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"**564N Alternative finance return under arrangements for trade or property business purposes**

(1) This section applies so far as a person is a party to alternative finance arrangements for the purposes of—

(a) a trade, profession or vocation carried on by that person, or

(b) a property business of that person.

(2) Alternative finance return paid by that person is treated as an expense of the trade, profession, vocation or business.

(3) In section 58 of ITTOIA 2005—

(a) references to a loan include references to alternative finance arrangements, and

(b) references to interest include references to alternative finance return."

16 After section 564N insert—

"**564O Relief for some alternative finance return under Chapter 1 of Part 8 etc**

(1) Chapter 1 of Part 8 of this Act (interest payments) has effect as if—

(a) purchase and resale arrangements involved the making of a loan, and

(b) alternative finance return were interest.

(2) Section 412 (information) has effect accordingly."

17 After section 564O insert—

"**564P Tax relief schemes and arrangements**

Section 809ZG (tax relief schemes and arrangements) applies to alternative finance return as it applies to interest."

18 After section 564P insert—

"**564Q Deduction of income tax at source under Part 15**

(1) Chapter 2 of Part 15 (deduction of income tax at source: deduction by deposit-takers and building societies), and Chapter 19 of that Part so far as it has effect for the purposes of Chapter 2 of that Part, have effect as if—

(a) relevant alternative finance arrangements were a deposit,

(b) for the purposes of section 866(2)(a) such arrangements were a deposit consisting of a loan, and

(c) alternative finance return payable under such arrangements were interest.

(2) For the purposes of subsection (1) alternative finance arrangements are relevant unless they are purchase and resale arrangements where the second purchaser is not a financial institution.

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(3) In subsection (2) "the second purchaser" has the same meaning as in section 564C.

(4) In Chapter 12 of Part 15 (funding bonds) references to interest include references to alternative finance return.

(5) Chapters 3 to 5 of Part 15, and Chapter 19 of that Part so far as it has effect for the purposes of those Chapters, apply to alternative finance return as they apply to interest."

19 After section 564Q insert—

"Special rules for investment bond arrangements

564R Treatment of discount

(1) This section applies if any part of the additional payments in respect of investment bond arrangements is excluded from being alternative finance return by section 564L(4) because it equates in substance to discount.

(2) That part is treated in accordance with section 381 of ITTOIA 2005 (discounts) unless subsection (3) applies.

(3) If the arrangements are deeply discounted securities for the purposes of Chapter 8 of Part 4 of that Act (profits from deeply discounted securities), that part is treated in accordance with that Chapter.

(4) In this section "additional payments" has the same meaning as in section 564G of this Act (see subsection (1)(d)(iii) of that section)."

20 After section 564R insert—

"**564S Treatment of bond-holder and bond-issuer**

(1) This section applies for the purposes of the Income Tax Acts and irrespective of the position for other purposes.

(2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.

(3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.

(4) Profits accruing to the bond-issuer in connection with the bond assets are profits of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).

(5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.

(6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.

(7) Expressions used in this section have the same meaning as in section 564G."

21 After section 564S insert—

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"**564T Treatment as securities**

(1) Investment bond arrangements are securities for the purposes of the Income Tax Acts (including Chapters 1 to 5 of Part 7 of ITEPA 2003).

(2) For those purposes—

(a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and

(b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.

(3) In subsection (2) "the redemption payment" has the same meaning as in section 564G (see subsection (1)(d)(ii) of that section)."

22 After section 564T insert—

"**564U Arrangements not unit trust scheme or offshore fund**

Investment bond arrangements are not—

(a) a unit trust scheme for the purposes of section 1007 of this Act, or

(b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to income tax."

23 After section 564U insert—

"Other rules

564V Exclusion of alternative finance return from consideration for sale of assets

(1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564C).

(2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564D).

(3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564G).

(4) Subsections (1) to (3) do not affect the operation of any provision of the Tax Acts or TCGA 1992 that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration."

24 After section 564V insert—

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"**564W Diminishing shared ownership arrangements not partnerships**

Diminishing shared ownership arrangements are not treated as a partnership for the purposes of the Income Tax Acts."

25 After section 564W insert—

"**564X Treatment of principal under profit share agency arrangements**

(1) The principal under profit share agency arrangements is not treated for the purposes of the Income Tax Acts as entitled to profits to which the agent is entitled in accordance with section 564F(1)(e).

(2) And the agent under such arrangements is treated for those purposes as entitled to those profits and the profits specified in section 564F(1)(d).

(3) In this section "the principal" and "the agent" are to be read in accordance with section 564F."

26 After section 564X insert—

"**564Y Provision not at arm's length: relevant return**

(1) This section applies if arrangements to which section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564G) applies would, but for that section, be alternative finance arrangements.

(2) A person paying relevant return under the arrangements is not entitled to—

(a) any deduction in respect of the relevant return in calculating profits or other income for income tax purposes, or

(b) any deduction in respect of the relevant return in calculating net income.

(3) In this section "relevant return" has the same meaning as in section 564H (see subsection (3) of that section)."

PART 2

NEW CHAPTER 4 OF PART 4 OF TCGA 1992

27 TCGA 1992 is amended as follows.

28 After Chapter 3 of Part 4 insert—

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"**CHAPTER 4**

ALTERNATIVE FINANCE ARRANGEMENTS

Introduction

Introduction

151H(1) This Chapter makes provision about the treatment of alternative finance arrangements with financial institutions and alternative finance return under such arrangements for the purposes of this Act (see sections 151T to 151Y).

(2) In this Chapter "alternative finance arrangements" means—

(a) purchase and resale arrangements,

(b) diminishing shared ownership arrangements,

(c) deposit arrangements,

(d) profit share agency arrangements, and

(e) investment bond arrangements.

(3) In this Chapter—

(a) "purchase and resale arrangements" means arrangements to which section 151J applies,

(b) "diminishing shared ownership arrangements" means arrangements to which section 151K applies,

(c) "deposit arrangements" means arrangements to which section 151L applies,

(d) "profit share agency arrangements" means arrangements to which section 151M applies, and

(e) "investment bond arrangements" means arrangements to which section 151N applies.

(4) For the meaning of "alternative finance return", see sections 151P to 151S.

(5) For the meaning of "financial institution", see section 151I.

(6) Also, see—

(a) section 366 of TIOPA 2010 (power to extend this Chapter and other provisions to other arrangements by order), and

(b) Schedule 61 to FA 2009 (alternative finance investment bonds) which makes further provision about the treatment of investment bond arrangements for the purposes of this Act."

29 After section 151H insert—

"**151I Meaning of "financial institution"**

(1) In this Chapter "financial institution" means—

(a) a bank, as defined by section 1120 of CTA 2010,

(b) a building society,

(c) a wholly-owned subsidiary—

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(i) of a bank within paragraph (a), or

(ii) of a building society,

(d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,

(e) a bond-issuer, within the meaning of section 151N, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,

(f) a person authorised in a jurisdiction outside the United Kingdom—

(i) to receive deposits or other repayable funds from the public, and

(ii) to grant credits for its own account,

(g) an insurance company as defined in section 431(2) of ICTA, or

(h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in section 431(2) of ICTA.

(2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society ("the parent") if it has no members except—

(a) the parent or persons acting on behalf of the parent, and

(b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries."

30 After section 151I insert—

"Arrangements that are alternative finance arrangements

151J Purchase and resale arrangements

(1) This section applies to arrangements if—

(a) they are entered into between two persons ("the first purchaser" and "the second purchaser"), one or both of whom are financial institutions, and

(b) under the arrangements—

(i) the first purchaser purchases an asset and sells it to the second purchaser,

(ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),

(iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,

(iv) the second purchase price exceeds the first purchase price, and

(v) the excess equates, in substance, to the return on an investment of money at interest.

(2) The circumstances are that—

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(a) the first purchaser is a financial institution, and

(b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.

(3) In this section—

"the first purchase price" means the amount paid by the first purchaser in respect of the purchase, and

"the second purchase price" means the amount payable by the second purchaser in respect of the sale.

(4) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from this section and sections 151K to 151N)."

31 After section 151J insert—

"**151K Diminishing shared ownership arrangements**

(1) This section applies to arrangements if under them—

(a) a financial institution ("the first owner") acquires a beneficial interest in an asset,

(b) another person ("the eventual owner") also acquires a beneficial interest in it,

(c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner's beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),

(d) the eventual owner is to acquire the first owner's beneficial interest (whether or not in stages) as a result of those payments,

(e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),

(f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and

(g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).

(2) For the purposes of subsection (1)(a) it does not matter if—

(a) the first owner acquires its beneficial interest from the eventual owner,

(b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or

(c) the first owner also has a legal interest in it.

(3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.

(4) The conditions are that—

(a) the grant is not to—

(i) the first owner,

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(ii) a person controlled by the first owner, or

(iii) a person controlled by a person who also controls the first owner, and

(b) the grant is not required by the first owner or arrangements to which the first owner is a party.

(5) Subsection (1)(g) does not prevent the first owner from—

(a) having responsibility for any reduction in the asset's value, or

(b) having a share in a loss arising out of any such reduction.

(6) Section 1124 of CTA 2010 (meaning of "control") applies for the purposes of this section.

(7) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from section 151J, this section and sections 151L to 151N)."

32 After section 151K insert—

"**151L Deposit arrangements**

(1) This section applies to arrangements if under them—

(a) a person ("the depositor") deposits money with a financial institution,

(b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,

(c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,

(d) the payment is in proportion to the amount deposited by the depositor, and

(e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J, 151K, this section and sections 151M and 151N)."

33 After section 151L insert—

"**151M Profit share agency arrangements**

(1) This section applies to arrangements if under them—

(a) a person ("the principal") appoints an agent,

(b) one or both of the principal and agent is a financial institution,

(c) the agent uses money provided by the principal with a view to producing a profit,

(d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,

(e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and

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(f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151L, this section and section 151N)."

34 After section 151M insert—

"**151N Investment bond arrangements**

(1) This section applies to arrangements if—

(a) they provide for one person ("the bond-holder") to pay a sum of money ("the capital") to another ("the bond-issuer"),

(b) they identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly ("the bond assets"),

(c) they specify a period at the end of which they cease to have effect ("the bond term"),

(d) the bond-issuer undertakes under the arrangements—

(i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,

(ii) to make a repayment of the capital ("the redemption payment") to the bond-holder during or at the end of the bond-term (whether or not in instalments), and

(iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term ("additional payments"),

(e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,

(f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,

(g) the bond-holder is able to transfer the rights under the arrangements to another person (who becomes the bond-holder because of the transfer),

(h) the arrangements are a listed security on a recognised stock exchange, and

(i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer, or would be if the bond-issuer applied those standards.

(2) For the purposes of subsection (1)—

(a) the bond-issuer may acquire bond assets before or after the arrangements take effect,

(b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,

(c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but

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need not) be described as, or accompanied by a document described as, a declaration of trust,

(d) a reference to the management of assets includes a reference to disposal,

(e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,

(f) the amount of the additional payments may be—

(i) fixed at the beginning of the bond term,

(ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or

(iii) determined in some other way,

(g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,

(h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and

(i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.

(3) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151M and this section)."

35 After section 151N insert—

"**151O Provision not at arm's length: exclusion of arrangements from sections 151J to 151N**

(1) Arrangements to which this section applies are not—

(a) purchase and resale arrangements,

(b) diminishing shared ownership arrangements,

(c) deposit arrangements,

(d) profit share agency arrangements, or

(e) investment bond arrangements.

(2) This section applies to arrangements if—

(a) apart from this section they would be alternative finance arrangements,

(b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,

(c) any person who is an affected person for the purposes of Part 4 of that Act ("the affected person") is entitled to—

(i) relevant return in relation to the arrangements, or

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(ii) an amount representing relevant return in relation to them, and

(d) the affected person is not subject—

(i) to income tax or corporation tax, or

(ii) to any corresponding tax under the law of a territory outside the United Kingdom,

on the relevant return or the amount representing it.

(3) In this section "relevant return", in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements."

36 After section 151O insert—

"Meaning of "alternative finance return"

151P Purchase and resale arrangements

(1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Chapter.

(2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.

(3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.

(4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).

(5) The assumptions are that—

(a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,

(b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,

(c) the instalment is a part repayment of the principal of the loan with interest, and

(d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.

(6) In this section expressions used in section 151J have the same meaning as in that section."

37 After section 151P insert—

"**151Q Purchase and resale arrangements where return in foreign currency**

(1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—

(a) by or to a person other than a company, and

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(b) otherwise than for the purposes of a trade, profession or vocation or a property business,

subsections (2) and (3) apply as respects that person.

(2) The amount of the excess referred to in section 151P(2) and (5)(b) and the appropriate amount for the purposes of section 151P(3) and (4) are to be calculated in that other currency.

(3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made."

38 After section 151Q insert—

"**151R Diminishing shared ownership arrangements**

(1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Chapter, except so far as subsection (2) or (3) applies to them.

(2) This subsection applies to the payments so far as they amount to payments of the kind described in section 151K(1)(c) (payments to be made by the eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).

(3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.

(4) In this section "the eventual owner" has the same meaning as in section 151K."

39 After section 151R insert—

"**151S Other arrangements**

(1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 151L(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Chapter.

(2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 151M(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Chapter.

(3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Chapter.

(4) In this section "additional payments" has the same meaning as in section 151N (see subsection (1)(d)(iii) of that section)."

40 After section 151S insert—

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"Special rules for investment bond arrangements

151T Investment bond arrangements are qualifying corporate bonds

(1) For the purposes of section 117, investment bond arrangements are a corporate bond, issued on the date on which the arrangements are entered into, if each of conditions A to D is met.

(2) Condition A is that the capital is expressed in sterling.

(3) Condition B is that the arrangements do not include provision for the redemption payment to be in a currency other than sterling.

(4) Condition C is that entitlement to the redemption payment is not capable of conversion (directly or indirectly) into an entitlement to the issue of securities apart from other arrangements to which section 151N applies.

(5) Condition D is that the additional payments are not determined wholly or partly by reference to the value of the bond assets.

(6) Section 117(2) applies for the purposes of this section as it applies for the purposes of section 117(1)."

41 After section 151T insert—

"**151U Treatment of bond-holder and bond-issuer**

(1) This section applies for the purposes of this Act and any other enactment about capital gains tax and irrespective of the position for other purposes.

(2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.

(3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.

(4) Gains accruing to the bond-issuer in connection with the bond assets are gains of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).

(5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.

(6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.

(7) Expressions used in this section have the same meaning as in section 151N."

42 After section 151U insert—

"**151V Treatment as securities**

(1) Investment bond arrangements are securities for the purposes of this Act and any other enactment about capital gains tax.

(2) For those purposes—

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(a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and

(b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.

(3) In subsection (2) "the redemption payment" has the same meaning as in section 151N (see subsection (1)(d)(ii) of that section)."

43 After section 151V insert—

"**151W Investment bond arrangements not unit trust scheme or offshore fund**

Investment bond arrangements are not—

(a) a unit trust scheme for the purposes of this Act, or

(b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to capital gains tax."

44 After section 151W insert—

"Other rules

151X Exclusion of some alternative finance return from sale consideration

(1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151J).

(2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151K).

(3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151N).

(4) Subsections (1) to (3) do not affect the operation of any provision of this Act or the Tax Acts that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration."

45 After section 151X insert—

"**151Y Diminishing shared ownership arrangements not partnerships**

Diminishing shared ownership arrangements are not treated as a partnership for capital gains tax purposes."

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PART 3

OTHER AMENDMENTS

Income and Corporation Taxes Act 1988 (c. 1)

46 ICTA is amended as follows.

47 After section 367 insert—

"**367A Alternative finance arrangements**

(1) Sections 353 and 365 have effect as if—

(a) purchase and resale arrangements involved the making of a loan, and

(b) alternative finance return were interest.

(2) Section 366 has effect accordingly.

(3) In this section—

"alternative finance return" has the meaning given in sections 564I to 564L of ITA 2007, and

"purchase and resale arrangements" means arrangements to which section 564C of ITA 2007 applies."

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

48 ITEPA 2003 is amended as follows.

49 After section 173 (loans to which Chapter 7 of Part 3 (taxable benefits: loans) applies) insert—

"**173A Alternative finance arrangements**

(1) For the purposes of this Chapter a reference to a loan includes a reference to arrangements—

(a) to which section 564C of ITA 2007 or section 503 of CTA 2009 (purchase and resale arrangements) applies (or would apply assuming one of the parties were a financial institution), or

(b) to which section 564D of ITA 2007 or section 504 of CTA 2009 (diminishing shared ownership arrangements) applies (or would apply on that assumption).

(2) In the application of this Chapter as a result of this section, a reference to interest is to be treated as including alternative finance return (or anything that would be such return on that assumption).

(3) In the application of this Chapter as a result of this section, a reference to the amount outstanding is to be taken—

(a) in the case of arrangements within subsection (1)(a), as a reference to the purchase price minus such part of the aggregate payments made as does not represent alternative finance return (or anything that would be such return on that assumption),

(b) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 applies, as a reference to the amount of

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the financial institution's original beneficial interest minus such part of the aggregate payments made as does not represent alternative finance return, and

(c) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 would apply assuming one of the parties were a financial institution, as a reference to the amount of that party's original beneficial interest minus such part of the aggregate payments made as does not represent anything that would be alternative finance return on that assumption.

(4) In this section—

"alternative finance return" has the meaning given in sections 564I to 564L of ITA 2007 or sections 511 to 513 of CTA 2009, and

"financial institution" has the meaning given in section 564B of ITA 2007 or section 502 of CTA 2009.

(5) This section does not apply to arrangements entered into before 22 March 2006."

Income Tax Act 2007 (c. 3)

50 ITA 2007 is amended as follows.

51 At the beginning of Chapter 7 of Part 7 (Community Investment Tax Relief: supplementary and general) insert—

"Alternative finance arrangements

Meaning of "loan" and "interest"

372A(1) In this Part and regulations made under Chapter 2 of this Part—

(a) references to a "loan" include references to alternative finance arrangements, and

(b) references to "interest" include references to alternative finance return.

(2) In subsection (1)—

"alternative finance arrangements" means arrangements to which any of the following applies—

(a) section 564C (purchase and resale arrangements),

(b) section 564E (deposit arrangements), and

(c) section 564F (profit share agency arrangements), and

"alternative finance return" has the meaning given by section 564I and 564L(1) and (2).

(3) Subsection (1) needs to be read with—

(a) section 372B, in the case of arrangements to which section 564C applies,

(b) section 372C, in the case of arrangements to which section 564E applies, and

(c) section 372D, in the case of arrangements to which section 564F applies."

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52 After section 372A insert—

"**372B Purchase and resale arrangements**

(1) This section applies if, under arrangements to which section 564C applies, a person ("the first purchaser") purchases an asset that is sold to another person ("the second purchaser").

(2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).

(3) The first purchaser is treated as making a loan to the second purchaser.

(4) The amount of the loan is treated as being equal to the first purchase price.

(5) If the arrangements provide that the first purchaser will transfer ownership of the asset to the second purchaser in instalments—

(a) references to the loan being drawn down over a period of time include references to the asset being transferred to the second purchaser in instalments,

(b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is transferred to the second purchaser, and

(c) references to the amount drawn down at a given date include references to the value of the instalments transferred at that date.

(6) In calculating the amount of capital outstanding on the loan, each payment of the second purchase price (or part of the second purchase price), as reduced by any amount of alternative finance return included within each payment, is treated as repayment of the loan capital.

(7) References to the beneficial owner of the loan include references to the person beneficially entitled to payment of the second purchase price.

(8) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive payment of the whole or any part of the outstanding second purchase price.

(9) If arrangements to which section 564C applies are, as a result of this section, qualifying investments under Chapter 3 of this Part, paragraph (f) of section 366(1) is to be ignored in relation to the arrangements concerned.

(10) In this section "the first purchase price" and "the second purchase price" have the same meaning as in section 564C."

53 After section 372B insert—

"**372C Deposit arrangements**

(1) This section applies if, under arrangements to which section 564E applies, a person ("the depositor") deposits money with a financial institution.

(2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).

(3) The depositor is treated as making a loan to the financial institution.

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(4) The amount of the loan is treated as being equal to the money deposited under the arrangements.

(5) If the arrangements provide that the depositor will deposit a sum of money with the financial institution in instalments—

(a) references to the loan being drawn down over a period of time include references to the depositor depositing a sum of money with the financial institution in instalments,

(b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is deposited with the financial institution, and

(c) references to the amount drawn down at a given date include references to the value of the instalments deposited with the financial institution at that date.

(6) The capital outstanding on the loan is treated as being equal to the balance of the repayable deposit.

(7) References to any repayment of the loan include references to any repayment of the deposit.

(8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the deposit.

(9) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the deposit.

(10) In this section "financial institution" has the same meaning as in Part 10A (see section 564B)."

54 After section 372C insert—

"**372D Profit share agency arrangements**

(1) This section applies if, under arrangements to which section 564F applies, a person ("the principal") appoints a financial institution as agent.

(2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).

(3) The principal is treated as making a loan to the agent.

(4) The amount of the loan is treated as being equal to the money provided by the principal to the agent under the arrangements.

(5) If the arrangements provide that the principal will provide a sum of money to the agent in instalments—

(a) references to the loan being drawn down over a period of time include references to the principal providing a sum of money to the agent in instalments,

(b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is provided to the agent, and

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(c) references to the amount drawn down at a given date include references to the value of the instalments provided to the agent at that date.

(6) The capital outstanding on the loan is treated as being equal to the balance of the repayable money provided to the agent.

(7) References to any repayment of the loan include references to any repayment of the money provided to the agent.

(8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the money provided to the agent.

(9) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the money provided to the agent.

(10) In subsection (1) "financial institution" has the same meaning as in Part 10A (see section 564B)."

55 In section 1005 (meaning of "recognised stock exchange" etc) after subsection (2) insert—

"(2A) An order under subsection (1) may designate a stock exchange for the purposes of this section in its application to section 564G of this Act, section 151N of TCGA 1992 and section 507 of CTA 2009 only."

SCHEDULE 3

Section 367

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

PART 1

NEW PART 11A OF ITA 2007

1 ITA 2007 is amended as follows.

2 After Part 11 insert—

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"**PART 11A**

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

CHAPTER 1

INTRODUCTION

Introduction

Overview of Part

614A(1) This Part makes provision for the purposes of income tax about the taxation of leasing arrangements.

(2) Chapter 2 makes provision in relation to certain arrangements involving the lease of assets where the conditions in section 614BC are or have been met, so far as the lease is not regarded as a long-funding lease for the purposes of Part 2 of CAA 2001 in accordance with Chapter 6A of that Part (see sections 614BB to 614BE).

(3) Chapter 3 makes provision in relation to arrangements involving the lease of assets that are not within Chapter 2, so far as the lease is not so regarded (see sections 614C and 614CB).

(4) The remaining provisions of this Chapter explain some expressions about rent for the purposes of this Part.

(5) Chapter 4 contains further provisions supplementing this Part, including more about its interpretation.

Meaning of expressions about rent

Normal rent

614AA(1) For the purposes of this Part, the "normal rent" in respect of a lease for a period of account of the lessor ("L") is the amount specified in subsection (2).

(2) That amount is the amount that L would, apart from this Part, bring into account as rent from the lease that arises to L in that period of account for the purpose of determining L's liability to income tax for the related tax year or years.

(3) For the meaning of "related tax year", see section 614DB(4).

Accountancy rental earnings

614AB(1) For the purposes of this Part, the "accountancy rental earnings" in respect of a lease for a period of account of the lessor ("L") is the greatest of the amounts specified in subsection (2).

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(2) Those amounts are—

(a) the rental earnings for that period in respect of the lease in L's case,

(b) the rental earnings for that period in respect of the lease in the case of a person connected with L, and

(c) the rental earnings for that period in respect of the lease for the purposes of consolidated group accounts of a group of companies of which L is a member.

(3) For the meaning of "the rental earnings", see section 614AC.

Rental earnings

614AC(1) In this Part "the rental earnings" for any period in respect of a lease of an asset in the case of any person or any consolidated group accounts is the amount specified in subsection (2).

(2) That amount is the amount that falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the gross return for that period on investment in respect of a finance lease or loan in respect of the leasing arrangements.

(3) For the meaning of "for accounting purposes", see section 614DG."

3 After section 614AC insert—

"**CHAPTER 2**

FINANCE LEASES WITH RETURN IN CAPITAL FORM

Introduction

614B Arrangements to which this Chapter applies

(1) This Chapter applies to arrangements involving the lease of an asset that meet conditions A and B.

(2) Condition A is that in accordance with generally accepted accounting practice the arrangements fall to be treated as a finance lease or loan.

(3) Condition B is that the effect of the arrangements is that some or all of the return on investment in respect of the finance lease or loan—

(a) is or may be in the form of a sum that is not rent, and

(b) would not, apart from this Part and Part 21 of CTA 2010, be wholly brought into account for tax purposes as rent from the lease of the asset.

(4) It does not matter—

(a) when the arrangements are or have been entered into, or

(b) whether they are or have been entered into by companies or other persons.

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614BA Purposes of this Chapter

(1) This section sets out the main purposes of this Chapter where there are any arrangements to which this Chapter applies.

(2) The first main purpose is to charge any person entitled to the lessor's interest under the lease of the asset to income tax on amounts of income determined as mentioned in subsections (3) and (4).

(3) The amounts referred to in subsection (2) are determined by reference to the amounts that fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the income return on and after 26 November 1996 on investment in respect of the finance lease or loan.

(4) The amounts referred to in subsection (2) are also determined taking into account the substance of the matter as a whole, including, in particular, the state of affairs—

(a) as between connected persons, or

(b) within a group of companies,

as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts.

(5) The second main purpose of this Chapter is, if the sum mentioned in section 614B(3)(a) that is not rent falls due, to recover by reference to that sum the whole or any part of the capital expenditure reliefs.

(6) In subsection (5) "the capital expenditure reliefs" means any reliefs, allowances or deductions that are or have been allowed or made in respect of capital expenditure incurred in respect of the leased asset.

Leases to which this Chapter applies

614BB Application of this Chapter

(1) This Chapter applies if—

(a) a lease of an asset is or has been granted, and

(b) the conditions in section 614BC are or have been met in relation to the lease at some time in a period of account of the current lessor.

(2) But this Chapter does not apply so far as, in relation to the current lessor, the lease falls to be regarded as a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) in accordance with Chapter 6A of that Part (interpretation of provisions about long funding leases) (see section 70G of that Act).

(3) If the conditions in section 614BC have been met at some time in a period of account of the person who was at that time the lessor, they are taken to continue to be met for the purposes of this Chapter unless and until one of the conditions in subsection (4) is met.

(4) The conditions are that—

(a) the asset ceases to be leased under the lease, or

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(b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons specified in subsection (5).

(5) Those persons are—

(a) the assignor,

(b) any person who was the lessor at some time before the assignment, and

(c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.

(6) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income, the reference in subsection (3) to the conditions in section 614BC having been met at that time includes a reference to the conditions in section 902 of CTA 2010 having been so met.

(7) Nothing in subsection (3) prevents this Chapter from applying again in relation to the lease where the lessor's interest is assigned if the conditions for its application are met after the assignment.

614BC The conditions referred to in section 614BB(1)

(1) This section sets out the conditions required by section 614BB(1) to be met for this Chapter to apply (conditions A to E).

(2) Condition A is that at the relevant time—

(a) the leasing arrangements fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a finance lease or a loan, and

(b) subsection (3) or (4) applies.

(3) This subsection applies if the lessor ("L"), or a person connected with L, falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the finance lessor in relation to the finance lease or loan.

(4) This subsection applies if the finance lease or loan falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as subsisting for the purposes of consolidated group accounts of a group of companies of which L is a member.

(5) Condition B is that, under the leasing arrangements, there is or may be payable to L, or to a person connected with L, a sum (a "major lump sum") that is not rent but falls for accounting purposes to be treated, in accordance with generally accepted accounting practice—

(a) as to part, as repayment of some or all of the investment in respect of a finance lease or loan, and

(b) as to part, as a return on investment in respect of a finance lease or loan.

(6) Condition C is that not all of that part of the sum that falls within subsection (5)(b) would, apart from this Chapter, fall to be brought into

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account for income tax purposes in tax years ending with the relevant tax year as the normal rent from the lease for periods of account of L.

(7) Condition D is that, in relation to L at the relevant time—

(a) the period of account of L in which the relevant time falls, or

(b) an earlier period of account of L during which L was the lessor,

is a period of account for which the accountancy rental earnings in respect of the lease exceed the normal rent for the period.

(8) Condition E is that at the relevant time—

(a) arrangements within section 614BE(1) exist, or

(b) paragraph (a) does not apply and circumstances within section 614BE(3) exist.

(9) Section 614BD supplements this section.

614BD Provisions supplementing section 614BC

(1) In section 614BC—

"the relevant tax year", in relation to a major lump sum, means—

(a) the tax year which is related to the period of account of the lessor ("L") in which the major lump sum is or may be payable in accordance with the leasing arrangements, or

(b) if there are two or more such tax years, the latest of them, and

"the relevant time" means the time as at which it must be determined for the purposes of section 614BB(1) or (3) whether the conditions in section 614BC are or, as the case may be, were met.

(2) For the meaning of a tax year being related to a period of account, see section 614DB(4).

(3) Subsection (4) applies for determining the normal rent for a period of account for the purpose of determining whether condition D in section 614BC is met as respects L unless subsection (5) applies.

(4) Rent that falls to be brought into account for income tax purposes as it falls due is treated—

(a) as accruing evenly throughout the period to which, in accordance with the terms of the lease, each payment falling due relates, and

(b) as falling due as it so accrues.

(5) This subsection applies if any such payment as is mentioned in subsection (4)(a) falls due more than 12 months after the time at which any of the rent to which that payment relates is treated as accruing under subsection (4)(a).

614BE The arrangements and circumstances referred to in section 614BC(8)

(1) The arrangements referred to in section 614BC(8)(a) are arrangements under which—

(a) the lessee or a person connected with the lessee may acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor, and

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(b) in connection with that acquisition, the lessor or a person connected with the lessor may receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.

(2) In this section "qualifying lump sum" means any sum that is not rent but at least part of which would fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a return on investment in respect of a finance lease or loan.

(3) The circumstances referred to in section 614BC(8)(b) are circumstances which make it more likely—

(a) that the events described in subsection (4) will occur, than

(b) that the event described in subsection (5) will occur.

(4) The events mentioned in subsection (3)(a) are—

(a) that the lessee or a person connected with the lessee will acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor, and

(b) that, in connection with that acquisition, the lessor or a person connected with the lessor will receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.

(5) The event mentioned in subsection (3)(b) is that, before any such acquisition as is mentioned in subsection (4) takes place, the leased asset or, as the case may be, the asset representing the leased asset, will have been acquired, in a sale on the open market, by an independent third party.

(6) In subsection (5) "independent third party" means a person who—

(a) is not the lessor or the lessee, and

(b) is not connected with either of them.

(7) For the meaning of an asset representing the leased asset, see section 614DD.

Current lessor taxed by reference to accountancy rental earnings

614BF Current lessor taxed by reference to accountancy rental earnings

(1) This section applies if, in the case of any period of account of the current lessor ("L")—

(a) this Chapter applies in relation to the lease, and

(b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period.

(2) For income tax purposes, L is treated as if in that period of account L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in subsection (1)(b)).

(3) Such rent from the lease of an asset is treated for income tax purposes—

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(a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased, and

(b) as if L had become entitled to it as it accrued.

Reduction of taxable rent by cumulative rental excesses

614BG Reduction of taxable rent by cumulative rental excesses: introduction

(1) This section and sections 614BH to 614BK provide for reductions of the taxable rent of a current lessor ("L") under a lease to which this Chapter applies.

(2) In this section and sections 614BH to 614BK "taxable rent", in relation to a period of account of L, means the amount that would, apart from those sections, be treated for income tax purposes as rent from the lease that arises to L in that period of account for the purpose of determining L's liability to tax for the related tax year or years.

(3) The reductions of taxable rent under sections 614BH to 614BK depend on there being—

(a) a cumulative accountancy rental excess for the period of account of L in question, or

(b) a cumulative normal rental excess for the period of account of L in question.

(4) For the meaning of "cumulative accountancy rental excess" and "cumulative normal rental excess", see sections 614BH and 614BJ respectively.

614BH Meaning of "accountancy rental excess" and "cumulative accountancy rental excess"

(1) For the purposes of this Chapter, there is an "accountancy rental excess" in relation to the lease for a period of account of the current lessor ("L") if the taxable rent in relation to the lease for the period is as a result of section 614BF (current lessor taxed by reference to accountancy rental earnings) an amount equal to the accountancy rental earnings.

(2) The amount of the accountancy rental excess for the period is equal to the difference between the accountancy rental earnings for the period and the normal rent for the period.

(3) But if the taxable rent for the period is reduced under section 614BK (reduction of taxable rent by the cumulative normal rental excess), there is only an accountancy rental excess for the period if—

(a) the accountancy rental earnings, reduced by an amount equal to the reduction under that section, exceed

(b) the normal rent.

(4) And in that case the amount of the accountancy rental excess for the period is equal to that excess.

(5) In this Chapter the "cumulative accountancy rental excess", in relation to the lease and a period of account of L, means so much of the total of the accountancy rental excesses for previous periods of account of L (as

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increased under section 614BM: recovery of bad debts following reduction under section 614BL) as has not been—

(a) set off under section 614BI (reduction of taxable rent by the cumulative accountancy rental excess) against the taxable rent for any such previous period,

(b) reduced under section 614BL (relief for bad debts: reduction of cumulative accountancy rental excess), or

(c) set off under section 37A of TCGA 1992 (consideration on disposal of certain leases) against the consideration for a disposal.

614BI Reduction of taxable rent by the cumulative accountancy rental excess

(1) This section applies if a period of account of the current lessor ("L") is one for which—

(a) the normal rent in relation to the lease exceeds the accountancy rental earnings, and

(b) there is a cumulative accountancy rental excess.

(2) The taxable rent for the period of account is reduced by setting against it the cumulative accountancy rental excess (but not so as to reduce that rent below the amount of the accountancy rental earnings).

(3) But see section 614BL(3) and (4) (under which the amount of the cumulative accountancy rental excess which may be set against the taxable rent is limited in some circumstances).

614BJ Meaning of "normal rental excess" and "cumulative normal rental excess"

(1) For the purposes of this Chapter, there is a "normal rental excess" in relation to a lease for any period of account of the current lessor ("L") throughout which the leasing arrangements fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a finance lease or loan if—

(a) the normal rent for the period, exceeds

(b) the accountancy rental earnings for the period.

(2) The amount of the normal rental excess for that period is equal to that excess.

(3) But if the taxable rent for the period is reduced under section 614BI (reduction of taxable rent by the cumulative accountancy rental excess), there is only a normal rental excess for the period if—

(a) the normal rent, reduced by an amount equal to the reduction under that section, exceeds

(b) the accountancy rental earnings.

(4) And in that case the amount of the normal rental excess for the period is equal to that excess.

(5) In this Chapter "cumulative normal rental excess", in relation to the lease and a period of account of L, means so much of the total of the normal rental excesses for previous periods of account of L (as increased

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under section 614BO: recovery of bad debts following reduction under section 614BN) as has not been—

(a) set off under section 614BK (reduction of taxable rent by the cumulative normal rental excess) against the taxable rent for any such previous period, or

(b) reduced under section 614BN (relief for bad debts: reduction of cumulative normal rental excess).

614BK Reduction of taxable rent by the cumulative normal rental excess

(1) This section applies if a period of account of the current lessor ("L") is one for which—

(a) the taxable rent in relation to the lease is as a result of section 614BF (current lessor taxed by reference to accountancy rental earnings) an amount equal to the accountancy rental earnings, and

(b) there is a cumulative normal rental excess.

(2) The taxable rent for the period of account is reduced by setting against it the cumulative normal rental excess (but not so as to reduce that rent below the amount of the normal rent).

(3) But see section 614BN(3) and (4) (under which the amount of the cumulative normal rental excess which may be set against the taxable rent is limited in some circumstances).

Relief for bad debts by reduction of cumulative rental excesses

614BL Relief for bad debts: reduction of cumulative accountancy rental excess

(1) This section applies if in relation to the lease for any period of account of the current lessor—

(a) there is a cumulative accountancy rental excess, and

(b) a bad debt deduction falls to be made in respect of rent from the lease.

(2) If for that period—

(a) the accountancy rental earnings in relation to the lease exceed the normal rent, and

(b) the amount of the bad debt deduction exceeds the amount of the accountancy rental earnings,

the cumulative accountancy rental excess for that period is reduced by the amount of the excess of that deduction over those earnings (but not so as to reduce the amount of that rental excess below nil).

(3) Subsections (4) and (5) apply if for that period the accountancy rental earnings in relation to the lease do not exceed the normal rent.

(4) The amount of the cumulative accountancy rental excess that may be set against the taxable rent for that period under section 614BI(2) (reduction of taxable rent by the cumulative accountancy rental excess) is limited to the amount (if any) by which the normal rent exceeds the bad debt deduction.

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(5) If for that period the bad debt deduction exceeds the normal rent, the cumulative accountancy rental excess for that period is reduced by the amount of that excess (but not so as to reduce the amount of that rental excess below nil).

(6) In this section—

"bad debt deduction", in relation to a period of account of the lessor, means the total of any sums falling within section 35(1)(a), (b) or (c) of ITTOIA 2005 in respect of amounts in respect of rents from the lease of the asset which are deductible as expenses for that period, and

"taxable rent" has the meaning given in section 614BG(2).

614BM Recovery of bad debts following reduction under section 614BL

(1) This section applies if in relation to the lease—

(a) the cumulative accountancy rental excess for any period of account of the current lessor ("L") has been reduced under section 614BL(2) or (5) because of a bad debt deduction,

(b) in a subsequent period of account of L, an amount ("the relevant credit") is recovered or credited in respect of the amount which constituted the bad debt deduction, and

(c) there is a cumulative accountancy rental excess for that subsequent period.

(2) The cumulative accountancy rental excess for the subsequent period is increased.

(3) If the relevant credit does not exceed the total of the reductions under section 614BL(2) or (5), the increase is by the relevant credit.

(4) Otherwise, the increase is limited to that total.

(5) In this section "bad debt deduction" has the meaning given in section 614BL(6).

614BN Relief for bad debts: reduction of cumulative normal rental excess

(1) This section applies if in relation to the lease for any period of account of the current lessor—

(a) there is a cumulative normal rental excess, and

(b) a bad debt deduction falls to be made in respect of rent from the lease.

(2) If for that period—

(a) the accountancy rental earnings in the case of the lease do not exceed the normal rent, and

(b) the amount of the bad debt deduction exceeds the amount of that rent,

the cumulative normal rental excess for that period is reduced by the amount of the excess of that deduction over that rent (but not so as to reduce the amount of that rental excess below nil).

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(3) Subsections (4) and (5) apply if for that period the accountancy rental earnings in relation to the lease exceed the normal rent.

(4) The amount of the cumulative normal rental excess that may be set against the taxable rent for that period under section 614BK (reduction of taxable rent by the cumulative normal rental excess) is limited to the amount (if any) by which the accountancy rental earnings exceed the bad debt deduction.

(5) If for that period the bad debt deduction exceeds the accountancy rental earnings, the cumulative normal rental excess for that period is reduced by the amount of the excess (but not so as to reduce the amount of that rental excess below nil).

(6) In this section, in relation to a period of account of the lessor—

"bad debt deduction" has the meaning given in section 614BL(6), and

"taxable rent" has the meaning given in section 614BG(2).

614BO Recovery of bad debts following reduction under section 614BN

(1) This section applies if in relation to the lease—

(a) the cumulative normal rental excess for any period of account of the current lessor ("L") has been reduced under section 614BN(2) or (5) as a result of a bad debt deduction,

(b) in a subsequent period of account of L, an amount ("the relevant credit") is recovered or credited in respect of the amount which constituted the bad debt deduction, and

(c) there is a cumulative normal rental excess for that subsequent period.

(2) The cumulative normal rental excess for the subsequent period is increased.

(3) If the relevant credit does not exceed the total of the reductions under section 614BN(2) or (5), the increase is by the relevant credit.

(4) Otherwise, the increase is limited to that total.

(5) In this section "bad debt deduction" has the meaning given in section 614BL(6).

Effect of disposals

614BP Effect of disposals of leases: general

(1) This section applies if the current lessor ("L") or a person connected with L disposes of—

(a) the lessor's interest under the lease,

(b) the leased asset, or

(c) an asset representing the leased asset (see section 614DD).

(2) This Part has effect as if immediately before the disposal a period of account of L ended and another began.

(3) If—

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(a) two or more disposals within subsection (1) are made at the same time, and

(b) there is any cumulative accountancy rental excess for any period of account of L in which the disposal occurs,

subsection (2) has effect in relation to those disposals as if they together constituted a single disposal.

(4) In this section "dispose" and "disposal" are to be read in accordance with TCGA 1992.

(5) In cases where there is any cumulative accountancy rental excess for L's period of account in which the disposal occurs, section 37A of that Act (consideration on disposal of certain leases) makes provision for the purposes of that Act about the reduction of the consideration for the disposal by that excess in determining if a gain has accrued.

614BQ Assignments on which neither a gain nor a loss accrues

(1) This section applies if—

(a) the current lessor ("L") assigns the lessor's interest under the lease, and

(b) the assignment is a disposal on which, as a result of any of the no gain/no loss provisions, neither a gain nor a loss accrues.

(2) This Part has effect as if—

(a) a period of account of L ("L's period") ended with the assignment, and

(b) a period of account of the assignee ("A's period") began with the assignment.

(3) Any cumulative accountancy rental excess for L's period becomes the cumulative accountancy rental excess for A's period.

(4) Any cumulative normal rental excess for L's period becomes the cumulative normal rental excess for A's period.

(5) If the assignee is a company subject to the charge to corporation tax on income, so far as this section relates to the assignee, it applies for the purposes of Part 21 of CTA 2010 as it would otherwise apply for the purposes of this Part.

(6) In this section "the no gain/no loss provisions" has the same meaning as in TCGA 1992 (see section 288(3A) of that Act).

Capital allowances: claw-back of major lump sum

614BR Effect of capital allowances: introduction

(1) This section and sections 614BS to 614BW apply if an occasion occurs on which a major lump sum falls to be paid in relation to the lease of the asset.

(2) In those sections the occasion is called "the relevant occasion".

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614BS Cases where expenditure taken into account under Part 2, 5 or 8 of CAA 2001

(1) This section applies if capital expenditure incurred by the current lessor ("L") in respect of the leased asset is or has been taken into account for the purposes of any allowance or charge under—

(a) Part 2 of CAA 2001 (plant and machinery allowances),

(b) Part 5 of that Act (mineral extraction allowances), or

(c) Part 8 of that Act (patent allowances).

(2) The Part of that Act in question ("the relevant Part") has effect as if the relevant occasion were an event ("the relevant event") as a result of which a disposal value is to be brought into account of an amount equal to the amount or value of the major lump sum (but subject to any applicable limiting provision).

(3) In this section "limiting provision" means a provision to the effect that the disposal value of the asset in question is not to exceed an amount ("the limit") described by reference to capital expenditure incurred in respect of the asset.

(4) Subsection (5) applies if—

(a) as a result of subsection (2), a disposal value ("the relevant disposal value") falls or has fallen to be brought into account by a person in respect of the leased asset for the purposes of the relevant Part, and

(b) a limiting provision has effect in the case of that Part.

(5) The limiting provision has effect (so far as it would not otherwise do so), in relation to the relevant disposal value and any simultaneous or later disposal value, as if—

(a) it did not limit any particular disposal value, but

(b) it limited the total amount of all the disposal values brought into account for the purposes of the relevant Part by L in respect of the leased asset.

(6) In subsection (5) "simultaneous or later disposal value" means any disposal value which falls to be brought into account by L in respect of the leased asset as a result of any event occurring at the same time as, or later than, the relevant event.

614BT Cases where expenditure taken into account under other provisions of CAA 2001

(1) This section applies if any allowance is or has been given in respect of capital expenditure incurred by the current lessor ("L") in respect of the leased asset under any provision of CAA 2001 other than—

(a) Part 2 of CAA 2001 (plant and machinery allowances),

(b) Part 5 of that Act (mineral extraction allowances), or

(c) Part 8 of that Act (patent allowances).

(2) The amount specified in subsection (3) is treated, in relation to L, as if it were a balancing charge to be made on L for the chargeable period in which the relevant occasion falls.

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(3) That amount is an amount equal to—

(a) the total of the allowances given as mentioned in subsection (1) (so far as not previously recovered or withdrawn), or

(b) if it is less, the amount or value of the major lump sum.

(4) In this section "chargeable period" has the meaning given by section 6 of CAA 2001.

614BU Capital allowances deductions: waste disposal and cemeteries

(1) This section applies if any deduction is or has been allowed to the current lessor ("L") in respect of capital expenditure incurred in connection with the leased asset as a result of—

(a) section 165 or 168 of ITTOIA 2005 (preparation and restoration expenditure in relation to waste disposal site), or

(b) section 170 of that Act (cemeteries and crematoria: deduction for capital expenditure).

(2) L is treated as if trading receipts arose to L from the trade in question on the relevant occasion.

(3) The amount of those receipts is equal to the lesser of—

(a) the amount or value of the major lump sum, and

(b) the deductions previously allowed.

614BV Capital allowances deductions: films and sound recordings

(1) This section applies if—

(a) any relevant deduction has been allowed to the current lessor ("L") in respect of expenditure incurred in connection with the leased asset, and

(b) the amount or value of the major lump sum exceeds so much of that sum as was treated as receipts of a revenue nature under section 134(2) of ITTOIA 2005 (disposal proceeds of original master version of film or sound recording treated as receipt of a revenue nature).

(2) In subsection (1) "relevant deduction" means any deduction as a result of—

(a) section 135 of ITTOIA 2005 (allocation of expenditure on master versions of films or sound recordings to periods), or

(b) section 138, 138A, 139 or 140 of that Act (relief for production or acquisition expenditure in respect of films).

(3) L is treated as if receipts of a revenue nature arose to L from the trade or business in question on the relevant occasion.

(4) The amount of those receipts is equal to the excess mentioned in subsection (1)(b).

614BW Contributors to capital expenditure

(1) This section applies if—

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(a) section 614BS or 614BT applies in relation to a leased asset,

(b) allowances are or have been made to a person ("the contributor") as a result of sections 537 to 542 of CAA 2001 (allowances in respect of contributions to capital expenditure), and

(c) those allowances are or were in respect of the contributor's contribution of a capital sum to expenditure on the provision of the leased asset.

(2) Section 614BS or, as the case may be, section 614BT has effect in relation to the contributor and those allowances as it has effect in relation to the current lessor and allowances in respect of capital expenditure incurred by the current lessor in respect of the leased asset.

Schemes to which this Chapter does not at first apply

614BX Pre-26 November 1996 schemes where this Chapter does not at first apply

(1) This section applies if—

(a) the lease of an asset forms part of a pre-26 November 1996 scheme, but

(b) the conditions in section 614BC become met after 26 November 1996.

(2) For the meaning of "forming part of a pre-26 November 1996 scheme", see section 614D.

(3) This Part has effect as if—

(a) a period of account ("period 1") of the current lessor ("L") ended immediately before the time at which those conditions become met,

(b) another period of account of L ("period 2") began immediately before that time and ended immediately after that time, and

(c) another period of account of L began immediately after that time.

(4) If, on the continuous application assumption (see subsection (9)), there would be an amount of cumulative accountancy rental excess for period 2, that amount is the cumulative accountancy rental excess for period 2.

(5) If subsection (4) applies, L is treated for income tax purposes as if in period 1 L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to that cumulative accountancy rental excess.

(6) The amount of rent mentioned in subsection (5)—

(a) is in addition to any other rent from the lease for period 1, and

(b) is left out of account for the purposes of section 614BF (current lessor taxed by reference to accountancy rental earnings).

(7) Rent within subsection (5) is treated for income tax purposes as if it had accrued and L had become entitled to it immediately before the end of period 1.

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(8) If, on the continuous application assumption, there would be an amount of cumulative normal rental excess for period 2, that amount is the cumulative normal rental excess for period 2.

(9) In this section "the continuous application assumption" means the assumption that this Chapter (other than this section) had applied in the case of the lease at all times on or after 26 November 1996.

(10) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income, the reference in subsection (9) to this Chapter (other than this section) includes a reference to Chapter 2 of Part 21 of CTA 2010 (other than section 923 of that Act).

614BY Post-25 November 1996 schemes to which Chapter 3 applied first

(1) This section applies if—

(a) the conditions in section 614BC become met in the case of the lease of the asset, and

(b) immediately before those conditions become met, Chapter 3 applied.

(2) Subsection (3) applies for the purpose of determining—

(a) the cumulative accountancy rental excess for any period of account ending after those conditions become met, or

(b) the cumulative normal rental excess for any such period.

(3) This Part has effect as if this Chapter had applied in relation to the lease at any time when Chapter 3 applied in relation to it.

(4) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income—

(a) the reference in subsection (1)(a) to the conditions in section 614BC becoming met at that time includes a reference to the conditions in section 902 of CTA 2010 becoming so met,

(b) the reference in subsection (1)(b) to Chapter 3 applying immediately before that time includes a reference to Chapter 3 of Part 21 of that Act so applying, and

(c) the reference in subsection (3) to Chapter 3 applying at that time includes a reference to Chapter 3 of that Part so applying."

4 After section 614BY insert—

"**CHAPTER 3**

OTHER FINANCE LEASES

Introduction

614C Introduction to Chapter

(1) This Chapter applies to arrangements involving the lease of an asset that—

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(a) fall to be treated, in accordance with generally accepted accounting practice, as a finance lease or loan, but

(b) are not arrangements to which Chapter 2 applies.

(2) It does not matter whether the arrangements are or have been entered into by companies or other persons.

614CA Purpose of this Chapter

(1) The main purpose of this Chapter where there are arrangements to which this Chapter applies is to charge a person entitled to the lessor's interest under the lease of the asset to income tax on amounts of income determined as mentioned in subsection (2).

(2) The amounts referred to in subsection (1) are determined by reference to the amounts that fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the income return on and after 26 November 1996 on investment in respect of the finance lease or loan.

(3) The amounts referred to in subsection (1) are also determined taking into account the substance of the matter as a whole, including, in particular, the state of affairs—

(a) as between connected persons, or

(b) within a group of companies,

as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts.

Leases to which this Chapter applies

614CB Leases to which this Chapter applies

(1) This Chapter applies if—

(a) a lease of an asset is or has been granted on or after 26 November 1996,

(b) the lease forms part of a post-25 November 1996 scheme,

(c) condition A in section 614BC is or has been met at some time on or after 26 November 1996 in relation to the lease in a period of account of the current lessor ("L"), and

(d) Chapter 2 does not apply in relation to the lease because of the other conditions in that section not all being, or having been, met as mentioned in section 614BB.

(2) For the meaning of "forming part of a post-25 November 1996 scheme", see section 614D.

(3) This Chapter does not apply so far as, in relation to L, the lease falls to be regarded as a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) in accordance with Chapter 6A of that Part (interpretation of provisions about long funding leases) (see section 70G of that Act).

(4) If condition A in section 614BC has been met at any time on or after 26 November 1996 in a period of account of the person who was at that time the

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lessor, it is taken to continue to be met unless and until one of the conditions in subsection (5) is met.

(5) The conditions are that—

(a) the asset ceases to be leased under the lease, or

(b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons specified in subsection (6).

(6) Those persons are—

(a) the assignor,

(b) any person who was the lessor at some time before the assignment, and

(c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.

(7) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income—

(a) the reference in subsection (4) to condition A in section 614BC having been met at that time includes a reference to condition A in section 902 of CTA 2010 having been so met, and

(b) the reference in subsection (1)(d) to the other conditions in section 614BC not having been met as mentioned in section 614BB includes a reference to the other conditions in section 902 of that Act not having been met as mentioned in section 901 of that Act.

(8) Nothing in subsection (4) prevents this Chapter from applying again in relation to the lease where the lessor's interest is assigned if the conditions for its application are met after the assignment.

Current lessor taxed by reference to accountancy rental earnings

614CC Current lessor taxed by reference to accountancy rental earnings

(1) This section applies if, in the case of any period of account of the current lessor ("L")—

(a) this Chapter applies in relation to the lease, and

(b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period.

(2) For income tax purposes, L is treated as if in that period of account L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in subsection (1)(b)).

(3) Such rent from the lease of an asset is treated for income tax purposes—

(a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased, and

(b) as if L had become entitled to it as it accrued.

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Application of provisions of Chapter 2 for purposes of this Chapter

614CD Application of provisions of Chapter 2 for purposes of this Chapter

Sections 614BG to 614BQ apply for the purposes of this Chapter as they apply for the purposes of Chapter 2, but taking the references in sections 614BH(1) and 614BK(1)(a) to section 614BF as references to section 614CC."

5 After section 614CD insert—

"**CHAPTER 4**

SUPPLEMENTARY PROVISIONS

614D Pre-26 November 1996 schemes and post-25 November 1996 schemes

(1) For the purposes of this Part, a lease of an asset—

(a) forms part of a pre-26 November 1996 scheme if (and only if) the conditions in subsection (2) or (3) are met, and

(b) in any other case, forms part of a post-25 November 1996 scheme.

(2) The conditions in this subsection are that—

(a) a contract in writing for the lease of the asset was made before 26 November 1996,

(b) either—

(i) the contract was unconditional, or

(ii) if the contract was conditional, the conditions were met before that date, and

(c) no terms remain to be agreed on or after that date.

(3) The conditions in this subsection are that—

(a) a contract in writing for the lease of the asset was made before 26 November 1996,

(b) the condition in subsection (2)(b) or (c) was not met in the case of the contract,

(c) either—

(i) the contract was unconditional, or

(ii) if the contract was conditional, the conditions were met before the end of the finalisation period or within such further period as the Commissioners for Her Majesty's Revenue and Customs may allow in the particular case,

(d) no terms remain to be agreed after the end of the finalisation period or such further period as those Commissioners may so allow, and

(e) the contract in its final form was not materially different from the contract as it stood when it was made before 26 November 1996.

(4) In subsection (3) "the finalisation period" means the period which ended with the later of—

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(a) 31 January 1997, and

(b) the end of the period of six months beginning with the day after that on which the contract was made as mentioned in subsection (3)(a).

614DA Time apportionment where periods of account do not coincide

(1) Subsection (2) applies if a period of account of the lessor ("L") does not coincide with a period of account of a person connected with L.

(2) Any amount which falls for the purposes of this Part to be found for L's period of account but by reference to the connected person is found by making such apportionments as may be necessary between two or more periods of account of the connected person.

(3) Subsection (4) applies if a period of account of L does not coincide with a period for which consolidated group accounts of a group of companies of which L is a member fall to be prepared.

(4) Any amount which falls for the purposes of this Part to be found for L's period of account but by reference to the consolidated group accounts is found by making such apportionments as may be necessary between two or more periods for which consolidated group accounts of the group fall to be prepared.

(5) Any apportionment under subsection (2) or (4) must be made in proportion to the number of days in the respective periods that fall within L's period of account.

614DB Periods of account and related periods of account and tax years

(1) In this Part "period of account" means a period for which accounts are made up.

(2) Except for the purposes of sections 614BB to 614BE and subsection (3), in this Part "period of account" does not include a period that begins before 26 November 1996.

(3) But this Part applies in relation to a period of account that begins before 26 November 1996 and ends on or after that date as if—

(a) so much of the period as falls before that date, and

(b) so much of the period as falls on or after that date,

were separate periods of account.

(4) For the purposes of this Part, a tax year is related to a period of account if the tax year consists of or includes the whole or any part of the period of account.

(5) For the purposes of this Part a period of account is related to a tax year if the tax year is related to the period of account.

614DC Connected persons

(1) For the purposes of this Part in its application as a result of any leasing arrangements, if a person ("A") is connected with another ("B") at some time during the relevant period A is treated as being connected with B throughout that period.

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(2) The relevant period is the period that—

(a) begins at the earliest time at which any of the arrangements were made, and

(b) ends when the current lessor finally ceases to have an interest in the asset or any arrangements relating to it.

614DD Assets which represent the leased asset

(1) For the purposes of this Part, the assets described in subsection (2) are treated as representing the leased asset.

(2) Those assets are—

(a) any asset derived from the leased asset or created out of it,

(b) any asset from which the leased asset was derived or out of which the leased asset was created,

(c) any asset derived from or created out of an asset within paragraph (b), and

(d) any asset that derives the whole or a substantial part of its value from the leased asset or an asset that itself represents the leased asset.

614DE Parent undertakings and consolidated group accounts

(1) This Part has effect in relation to a body corporate that—

(a) is a parent undertaking, but

(b) for accounting purposes is not required to prepare consolidated group accounts in accordance with generally accepted accounting practice,

as if it were so required.

(2) For the purposes of subsection (1) it does not matter where the body corporate is incorporated.

(3) In subsection (1) "parent undertaking" is to be read in accordance with section 1162 of the Companies Act 2006.

614DF Assessments and adjustments

All such assessments and adjustments must be made as are necessary to give effect to this Part.

614DG Interpretation

In this Part, unless the context otherwise requires—

"accountancy rental earnings" has the meaning given by section 614AB(1),

"accountancy rental excess" is to be read—

(a) for the purposes of Chapter 2, in accordance with section 614BH(1) to (4), and

(b) for the purposes of Chapter 3, in accordance with section 614BH(1) to (4) as it has effect as a result of section 614CD,

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"asset" means any form of property or rights,

"asset representing the leased asset" is to be read in accordance with section 614DD,

"cumulative accountancy rental excess" is to be read—

(a) for the purposes of Chapter 2, in accordance with section 614BH(5), and

(b) for the purposes of Chapter 3, in accordance with section 614BH(5) as it has effect as a result of section 614CD,

"cumulative normal rental excess" is to be read—

(a) for the purposes of Chapter 2, in accordance with section 614BJ(5), and

(b) for the purposes of Chapter 3, in accordance with section 614BJ(5) as it has effect as a result of section 614CD,

"the current lessor", in relation to a lease of an asset, means the person who is for the time being entitled to the lessor's interest under the lease,

"finance lessor" means a person who for accounting purposes is treated, in accordance with generally accepted accounting practice, as the person with—

(a) the grantor's interest in relation to a finance lease, or

(b) the lender's interest in relation to a loan,

"for accounting purposes" means for the purposes of—

(a) accounts of companies incorporated in any part of the United Kingdom, or

(b) consolidated group accounts for groups all the members of which are companies so incorporated,

"lease"—

(a) in relation to land, includes an underlease, sublease, tenancy or licence, and any agreement for a lease, underlease, sublease, tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined, and

(b) in relation to any form of property or right other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset,

and "rent" is to be read accordingly,

"the leasing arrangements", in relation to a lease of an asset, means—

(a) the lease,

(b) any arrangements relating to or connected with the lease, and

(c) any other arrangements of which the lease forms part,

and includes a reference to any of the leasing arrangements,

"the lessee", in relation to a lease of an asset, means (except in the expression "the lessee's interest under the lease") the person entitled to the lessee's interest under the lease,

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"the lessor", in relation to a lease of an asset, means (except in the expression "the lessor's interest under the lease") the person entitled to the lessor's interest under the lease,

"major lump sum" is to be read in accordance with section 614BC(5),

"normal rent" is to be read in accordance with section 614AA,

"normal rental excess" is to be read—

(a) for the purposes of Chapter 2, in accordance with section 614BJ(1) to (4), and

(b) for the purposes of Chapter 3, in accordance with section 614BJ(1) to (4) as it has effect as a result of section 614CD,

"period of account" is to be read in accordance with section 614DB(1) to (3),

"post-25 November 1996 scheme" is to be read in accordance with section 614D(1)(b),

"pre-26 November 1996 scheme" is to be read in accordance with section 614D(1)(a),

"related period of account" is to be read in accordance with section 614DB(5),

"related tax year" is to be read in accordance with section 614DB(4),

"the rental earnings", in relation to a lease of an asset and any period, has the meaning given by section 614AC, and

"sum" includes any money or money's worth (and "pay" and related expressions are to be read accordingly)."

PART 2

NEW SECTION 37A OF TCGA 1992

6 TCGA 1992 is amended as follows.

7 After section 37 insert—

"**37A Consideration on disposal of certain leases**

(1) This section applies if—

(a) a disposal occurs that is within section 614BP of ITA 2007 (including that section as it has effect as a result of section 614CD of that Act), and

(b) for the purposes of Chapter 2 or 3 of Part 11A of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.

(2) This section also applies if—

(a) a disposal occurs that is within section 915 of CTA 2010 (including that section as it has effect as a result of section 929 of that Act), and

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(b) for the purposes of Chapter 2 or 3 of Part 21 of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.

(3) In determining for the purposes of this Act the amount of any gain accruing to the person making the disposal, the consideration for the disposal is treated as reduced by setting against it that excess (but not so as to reduce the amount of that consideration below nil).

(4) Subsection (3) only affects section 37 so far as subsection (5) provides.

(5) Section 37 does not exclude any money or money's worth from the consideration for a disposal so far as it is represented by any such cumulative accountancy rental excess that, in accordance with subsection (3)—

(a) falls to be set against the consideration for the disposal, or

(b) has fallen to be set against the consideration for a previous disposal made by the person making the disposal in question or a person connected with that person.

(6) Subsections (7) to (9) apply if the disposal mentioned in subsection (1) or (2) is a part disposal of the asset in question.

(7) The cumulative accountancy rental excess mentioned in subsection (3) must be apportioned between—

(a) the property disposed of, and

(b) the property that remains undisposed of.

(8) That apportionment must be made in the same proportions as those in which the sums that under section 38(1)(a) or (b) are attributable to the asset fall to be apportioned under section 42.

(9) Only so much of the cumulative accountancy rental excess as is so apportioned to the property disposed of is set against the consideration for the part disposal in accordance with subsection (3).

(10) If subsection (3) applies in a case where two or more disposals within subsection (1) or (2) are made at the same time, the cumulative accountancy rental excess mentioned in subsection (3) must be apportioned, subject to subsections (7) to (9), between the disposals in such proportions as are just and reasonable.

(11) Section 614DC of ITA 2007 (connected persons) applies for the purposes of this section in its application as a result of any leasing arrangements (within the meaning of that section) as it applies for the purposes mentioned in that section."

SCHEDULE 4

Section 368

SALE AND LEASE-BACK ETC: NEW PART 12A OF ITA 2007

1 ITA 2007 is amended as follows.

2 After section 681 insert—

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"**PART 12A**

SALE AND LEASE-BACK ETC

CHAPTER 1

PAYMENTS CONNECTED WITH TRANSFERRED LAND

Overview

681A Overview

This Chapter provides that in certain circumstances where a transfer is made regarding land, and the transferor or an associate becomes liable to make a payment connected with the land, income tax relief for the payment is restricted.

Application of the Chapter

681AA Transferor or associate becomes liable for payment of rent

(1) Section 681AD has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a person associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and

(c) a deduction by way of relevant income tax relief (see section 681AC) is allowed for the payment.

(2) Section 681AE has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a person associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and

(c) a relevant deduction from earnings (see section 681AC) is allowed for the payment.

(3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—

(a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,

(b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and

(c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—

(a) is an owner before the transaction or transactions, and

(b) is not the sole owner afterwards.

(5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from—

(a) a lease, of the land or part of it, granted (at the time of the transfer or later) by the transferee to the transferor, or

(b) another transaction or series of transactions affecting the land or an estate or interest in it.

(6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.

(7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

681AB Transferor or associate becomes liable for payment other than rent

(1) Section 681AD has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a person associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and

(c) a deduction by way of relevant income tax relief (see section 681AC) is allowed for the payment.

(2) Section 681AE has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a person associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and

(c) a relevant deduction from earnings (see section 681AC) is allowed for the payment.

(3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—

(a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,

(b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and

(c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.

(4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—

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(a) is an owner before the transaction or transactions, and

(b) is not the sole owner afterwards.

(5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from a transaction or series of transactions affecting the land or an estate or interest in it.

(6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.

(7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

681AC Relevant income tax relief and relevant deduction from earnings

(1) For the purposes of this Chapter each of the following is a deduction by way of relevant income tax relief—

(a) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,

(b) a deduction in calculating the profits of a UK property business for income tax purposes, and

(c) a deduction in calculating any loss for which relief is given under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies.

(2) For the purposes of this Chapter each of the following is a relevant deduction from earnings—

(a) a deduction under section 336 of ITEPA 2003 (expenses), and

(b) a deduction from earnings in calculating losses in an employment for income tax purposes.

Relief: restriction and carrying forward

681AD Relevant income tax relief: deduction not to exceed commercial rent

(1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant income tax relief allowed in a relevant period—

(a) for the non-excluded element of the payment within section 681AA(1) or 681AB(1), or

(b) if there are two or more such payments, for the non-excluded elements of those payments.

(2) For the purposes of this section—

(a) in relation to a deduction within section 681AC(1)(a) "relevant period" means—

(i) a period of account of the trade, profession or vocation concerned, or

(ii) if no accounts of the trade, profession or vocation are drawn up for a period, the basis period of a tax year,

(b) in relation to a deduction within section 681AC(1)(b) or (c) "relevant period" means—

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(i) a period of account of the business or person concerned, or

(ii) if no accounts of the business are drawn up for a period or the person does not draw up accounts for a period, a tax year, and

(c) the non-excluded element of a payment is the element of the payment not excluded under section 681AI (service charges etc).

(3) The rules are—

Rule 1 —meaning of amount E For any relevant period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

(a) the non-excluded element of the payment, or

(b) the non-excluded elements of the payments.

Rule 2 — calculations For every relevant period—

(a) calculate the total of amount E for the period and amount E for every previous relevant period ending on or after the date of the transfer mentioned in section 681AA(1)(a) or 681AB(1)(a),

(b) calculate the total of the deductions by way of relevant income tax relief for every previous relevant period ending on or after the date of that transfer, and

(c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

Rule 3 — meaning of post-spread period A relevant period is a post-spread period if for that relevant period, and every later relevant period, there are no payments within section 681AA(1) or 681AB(1).

Rule 4 — the deduction allowed in a relevant period If a relevant period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 681AJ or 681AK).

Rule 5 — relevant periods in which no deduction allowed If a relevant period is a post-spread period, no deduction is allowed for the period.

Certain deductions from earnings: restriction and carrying forward of relief

681AE Deduction from earnings not to exceed commercial rent

(1) Subsection (3) applies to the calculation of the relevant deduction from earnings allowed for the non-excluded element of the payment within section 681AA(2) or 681AB(2).

(2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 681AI (service charges etc).

(3) The deduction must not exceed the commercial rent for the period for which the payment is made (see section 681AJ or 681AK).

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681AF Carrying forward parts of payments

(1) This section applies if—

(a) section 681AE has effect, and

(b) conditions A and B are met.

(2) Condition A is that under section 681AE part of a payment which would otherwise be allowed as a relevant deduction from earnings is not allowed.

(3) Condition B is that one or more later payments are made, by the transferor or a person associated with the transferor, under—

(a) the lease (if section 681AE has effect because of section 681AA(2)), or

(b) the rentcharge or other transaction mentioned in section 681AB(2)(b) (if section 681AE has effect because of section 681AB(2)).

(4) The part of the payment mentioned in subsection (2) may be carried forward and treated for the purposes of a relevant deduction from earnings as if it were made—

(a) when the next of the later payments is made, and

(b) for the period for which that later payment is made.

(5) So far as a part of a payment carried forward under this section is not allowed as a relevant deduction from earnings, it may be carried forward again under this section.

681AG Aggregation and apportionment of payments

(1) This section applies for the purposes of section 681AE.

(2) If more than one payment is made for the same period, the payments must be taken together.

(3) If payments are made for periods which overlap—

(a) the payments must be apportioned, and

(b) the apportioned payments which belong to the common part of the overlapping periods must be taken together.

(4) References in subsections (2) and (3) to payments include references to parts of payments which under section 681AF are treated as if made later than they were made.

681AH Payments made for later periods

(1) This section applies for the purposes of sections 681AE to 681AG.

(2) For the purposes of this section the relevant year, in relation to a payment, is the year which begins with the date it is made.

(3) If a payment is made for a period all of which is after the relevant year, it must be treated as made for the relevant year.

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(4) If a payment is made for a period part of which is after the relevant year, it must be treated as if a corresponding part of it was made for the relevant year (and no part for a later period).

Interpretation etc

681AI Exclusion of service charges etc

(1) This section applies for the purposes of sections 681AD and 681AE.

(2) A payment must be excluded so far as it is in respect of any of the following—

(a) services,

(b) the use of relevant assets, and

(c) rates usually borne by the tenant.

(3) The amount excluded must be just and reasonable.

(4) If a lease or agreement contains provisions fixing the payments or parts of payments which are in respect of services or the use of assets, those provisions are not conclusive.

(5) A relevant asset is any description of property or rights other than land or an interest in land.

681AJ Commercial rent: comparison with rent under a lease

(1) Subsection (3) applies—

(a) for the purpose of making a comparison under rule 4 of section 681AD(3) if section 681AD has effect because of section 681AA(1), and

(b) for the purpose of making a comparison under section 681AE(3) if section 681AE has effect because of section 681AA(2).

(2) In this section "the actual lease" means the lease mentioned in section 681AA(1)(b) or (2)(b).

(3) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 681AA(1)(b) or (2)(b) is made, which—

(a) was negotiated in the open market when the actual lease was created,

(b) is of the same duration as the actual lease,

(c) is subject to the terms and conditions of the actual lease as respects liability for maintenance and repairs, and

(d) provides for rent payable at uniform intervals and at an appropriate rate.

(4) Rent is payable at an appropriate rate if—

(a) it is payable at a uniform rate, or

(b) in a case where the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for a year is never less than the amount payable for a previous year),

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it progresses by gradations proportionate to those provided by the actual lease.

681AK Commercial rent: comparison with payments other than rent

(1) Subsection (2) applies—

(a) for the purpose of making a comparison under rule 4 of section 681AD(3) if section 681AD has effect because of section 681AB(1), and

(b) for the purpose of making a comparison under section 681AE(3) if section 681AE has effect because of section 681AB(2).

(2) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 681AB(1)(b) or (2)(b) is made, which—

(a) was negotiated in the open market when the rentcharge or other transaction mentioned in section 681AB(1)(b) or (2)(b) was effected,

(b) is a tenant's repairing lease, and

(c) is of an appropriate duration.

(3) A tenant's repairing lease is a lease where the lessee is under an obligation to maintain and repair the whole (or substantially the whole) of the premises comprised in the lease.

(4) To see whether a lease is of an appropriate duration, take the period over which payments are to be made under the rentcharge or other transaction, and—

(a) if that period is 200 years or more (or the obligation to make the payments is perpetual) an appropriate duration is 200 years, or

(b) if that period is less than 200 years, an appropriate duration is the same duration as that period.

681AL Lease and rent

(1) This section applies for the purposes of this Chapter.

(2) A reference to a lease includes a reference to any of the following—

(a) an underlease, sublease, tenancy or licence, and

(b) an agreement for a lease, underlease, sublease, tenancy or licence, and

(c) in the case of land outside the United Kingdom, an interest corresponding to a lease (as defined here).

(3) A reference to rent includes a reference to any payment under a lease.

(4) A reference to rent under a lease includes a reference to expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under any of—

(a) sections 61 to 67 of ITTOIA 2005 (land occupied for trade purposes), and

(b) sections 292 to 297 of that Act (taxed leases).

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(5) Expenses within subsection (4) must be treated as having been paid as soon as they were incurred.

681AM Associated persons

(1) This section applies for the purposes of this Chapter.

(2) The following persons are associated with one another—

(a) the transferor in an affected transaction and the transferor in another affected transaction, if the two persons are acting in concert or if the two transactions are in any way reciprocal, and

(b) any person who is an associate of either of those associated transferors.

(3) Two or more bodies corporate are associated with one another if they participate in, or are incorporated for the purposes of, a scheme—

(a) for the reconstruction of any body or bodies corporate, or

(b) for the amalgamation of any two or more bodies corporate.

(4) Persons are associated with one another if they are associates as defined in section 681DL (relatives, settlements, persons controlling bodies, joint owners etc).

(5) In subsection (2) "affected transaction" means a transaction within—

(a) section 681AA(1) or (2) or 681AB(1) or (2), or

(b) section 835(1) or (2) or 836(1) or (2) of CTA 2010.

681AN Land outside the UK

In the case of land outside the United Kingdom, expressions in this Chapter relating to interests in land and their disposition must be taken to relate to corresponding interests and dispositions."

3 After section 681AN insert—

"**CHAPTER 2**

NEW LEASE OF LAND AFTER ASSIGNMENT OR SURRENDER

Overview

681B Overview

(1) This Chapter provides that in certain circumstances where a lease of land is assigned or surrendered and another lease is granted or assigned—

(a) consideration received for the assignment or surrender of the first lease is taxed as a receipt of a trade, profession or vocation or charged to income tax, and

(b) tax relief is allowed for rent under the other lease.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The Chapter provides that in certain circumstances where a lease is varied it is treated as surrendered and another lease is treated as granted.

Application of the Chapter

681BA New lease after assignment or surrender

(1) This Chapter has effect if each of conditions A to E is met.

(2) Condition A is that—

(a) a person ("L") is a lessee of land under a lease which has 50 years or less to run ("the original lease"), and

(b) L is entitled in respect of the rent under the original lease to a deduction by way of relevant income tax relief.

(3) Condition B is that—

(a) L assigns the original lease to another person or surrenders it to L's landlord, and

(b) the consideration for the assignment or surrender would not (apart from this Chapter) be taxable except as capital in L's hands.

(4) Condition C is that—

(a) another lease ("the new lease") is granted, or assigned, to L or a person linked to L, and

(b) the new lease is for a term of 15 years or less.

(5) Condition D is that the new lease—

(a) is of all or part of the land which was the subject of the original lease, or

(b) includes all or part of the land which was the subject of the original lease.

(6) Condition E is that neither L nor a person linked to L had, before 22 June 1971, a right enforceable at law or in equity to the grant of the new lease.

(7) If each of conditions A to D is met but condition E is not met, see the relevant provisions in Schedule 2 to CTA 2010 and Schedule 9 to TIOPA 2010.

Taxation of consideration

681BB Taxation of consideration

(1) An appropriate amount must be found under subsection (3) or (4) of—

(a) the consideration received by L for the assignment or surrender, or

(b) each instalment of the consideration (if it is paid in instalments).

(2) For the purposes of the Income Tax Acts the appropriate amount must be treated in accordance with subsections (6) to (8) and not as a capital receipt.

(3) If the term of the new lease is one year or less, the appropriate amount of the consideration or instalment is the whole of it.

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(4) If the term of the new lease is more than one year, the appropriate amount of the consideration or instalment is the proportion of it found by the formula—

$$\frac{16 - N}{15}$$

(5) In subsection (4) N is the term of the new lease expressed in years (taking part of a year as an appropriate proportion of a year).

(6) The way the appropriate amount must be treated depends on whether the following conditions are met—

(a) the consideration is received by L in the course of a trade, profession or vocation, and

(b) the rent payable by L, or a person linked to L, under the new lease is allowable as a deduction in calculating profits or losses of a trade, profession or vocation for tax purposes.

(7) If the conditions are met the appropriate amount must be treated as a receipt of the trade, profession or vocation mentioned in subsection (6)(a).

(8) If the conditions are not met the appropriate amount must be treated as an amount chargeable to income tax.

(9) If income tax is charged under subsection (8)—

(a) it must be charged on the proportion of the appropriate amount arising in the tax year,

(b) the person liable for the tax is L, and

(c) the amount charged must be treated for income tax purposes as an amount of income.

681BC Position where new lease does not include all original property

(1) This section applies for the purposes of section 681BB if the property which is the subject of the new lease does not include all the property which was the subject of the original lease.

(2) The consideration received by L must be treated as reduced to the portion of it found under subsection (3).

(3) The portion is that which is reasonably attributable to such part of the original property as—

(a) consists of the property which is the subject of the new lease, or

(b) is included in the property which is the subject of the new lease.

(4) The original property is the property which was the subject of the original lease.

Relief for rent under new lease

681BD Relief for rent under new lease

(1) This section applies if the rent under the new lease is payable by a person within the charge to income tax.

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(2) This section also applies if—

(a) Chapter 2 of Part 19 of CTA 2010 (provision for corporation tax corresponding to this Chapter) has effect, and

(b) the rent under the new lease is payable by a person within the charge to income tax.

(3) The provisions of ITTOIA 2005 providing for deductions or allowances by way of income tax relief in respect of payments of rent apply in relation to the rent under the new lease.

(4) In subsection (2), and in subsection (3) as applied by subsection (2), references to the new lease and rent are to be read as in Chapter 2 of Part 19 of CTA 2010.

New lease treated as ending

681BE New lease treated as ending

(1) Sections 681BF to 681BH treat the new lease as ending in certain circumstances for the purposes of this Chapter.

(2) If any of those provisions apply in a given case, and the new lease is treated as ending on different dates, it must be treated as ending on the earlier or earliest of them.

681BF Position where rent reduces

(1) If the rent for a relevant period exceeds the rent for the following comparable period, the term of the new lease must be treated as ending on the date when the relevant period ends.

(2) For the purposes of this section—

(a) a relevant period is a rental period of the new lease ending before its fifteenth anniversary,

(b) the following comparable period (in relation to a relevant period) is the rental period which is of the same duration as the relevant period and which begins on the day following the end of the relevant period,

(c) the rent for a period is the total rent payable under the new lease in respect of the period,

(d) a rental period is a period in respect of which a payment of rent is to be made, and

(e) the fifteenth anniversary of the new lease is the fifteenth anniversary of the date on which its term begins.

(3) For the purposes of this section—

(a) all rental periods of a quarter must be treated as being of the same duration, and

(b) all rental periods of a month must be treated as being of the same duration.

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681BG Position where lease may be ended

(1) This section applies if under the new lease the lessor, or L or a person linked to L, has power to end the lease before the end of the term for which it was granted.

(2) The term of the lease must be treated as ending on the earliest date with effect from which the lessor, or L or a person linked to L, could end the lease by exercising the power.

681BH Position where lease may be varied

(1) This section applies if under the new lease L, or a person linked to L, has power to vary, in a manner beneficial to L or a person linked to L, obligations under the lease that are obligations of L or a person linked to L.

(2) The term of the lease must be treated as ending on the earliest date with effect from which L, or a person linked to L, could vary the obligations by exercising the power.

681BI Lease treated as ending: rentcharge

(1) Subsection (2) applies if a rentcharge payable by L, or a person linked to L, is secured on all or part of the property subject to the new lease.

(2) For the purposes of sections 681BF to 681BH the rent payable under the new lease must be treated as equal to the sum of the rentcharge and the rent payable under the lease.

Lease varied to provide for increased rent

681BJ Lease varied to provide for increased rent

(1) This section applies if each of conditions A to D is met.

(2) Condition A is that—

(a) a person ("the lessee") is a lessee of land under a lease which has 50 years or less to run ("the original lease"), and

(b) the lessee is entitled in respect of the rent under the original lease to a deduction by way of relevant income tax relief.

(3) Condition B is that (by agreement with the landlord) the lessee varies the original lease.

(4) Condition C is that under the variation—

(a) the lessee agrees to pay a rent greater than that payable under the original lease, and

(b) the lessee agrees to pay the greater rent in return for a consideration which would not (apart from this Chapter) be taxable except as capital in the lessee's hands.

(5) Condition D is that under the variation the period during which the greater rent is to be paid ends 15 years or less after the date on which—

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(a) the consideration is paid to the lessee, or

(b) the last instalment of the consideration is paid to the lessee (if it is paid in instalments).

(6) If this section applies the lessee must be treated for the purposes of this Chapter—

(a) as having surrendered the original lease for the consideration mentioned in subsection (4)(b), and

(b) as having been granted a new lease for a term of 15 years or less but otherwise on the terms of the original lease varied as mentioned in subsection (3).

Interpretation

681BK Relevant income tax relief

For the purposes of this Chapter each of the following is a deduction by way of relevant income tax relief—

(a) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,

(b) a deduction in calculating the profits of a UK property business for income tax purposes,

(c) a deduction in calculating any loss for which relief is given under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies, and

(d) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes.

681BL Linked persons

(1) In this Chapter references to a person linked to L are to a person who is—

(a) a partner of L,

(b) an associate of L, or

(c) an associate of a partner of L.

(2) "Associate" must be read in accordance with section 681DL (relatives, settlements, persons controlling bodies, joint owners etc).

681BM Lease, lessee, lessor and rent

(1) This section applies for the purposes of this Chapter.

(2) "Lease" includes—

(a) an agreement for a lease, and

(b) any tenancy.

(3) "Lease" does not include a mortgage.

(4) A reference to a lessee or lessor—

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(a) is to be read in accordance with subsections (2) and (3), and
(b) includes a reference to the successors in title of a lessee or lessor.

(5) "Rent" includes a payment by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out; and "premises" here includes land.

(6) In the application of this section to Scotland "mortgage" means—
(a) a standard security, or
(b) a heritable security, as defined in the Conveyancing (Scotland) Act 1924, but including a security constituted by ex facie absolute disposition or assignation."

4 After section 681BM insert—

"**CHAPTER 3**

LEASED TRADING ASSETS

Overview

681C Overview

This Chapter provides that, in certain circumstances where a payment is made under a lease of a trading asset, income tax relief for the payment is restricted.

Application of the Chapter

681CA Professions and vocations

In this Chapter a reference to a trade includes a reference to a profession or vocation.

681CB Leased trading assets

(1) Section 681CC has effect if—
(a) condition A is met, and
(b) condition B or C is met.

(2) Condition A is that—
(a) a payment is made by a person under a lease of a relevant asset, and
(b) a deduction is allowed for the payment in calculating the profits of a trade for income tax purposes.

(3) Condition B is that—
(a) at a time before the lease's creation the asset was used for the purposes of the trade, and
(b) when it was so used it was owned by the person then carrying on the trade.

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(4) Condition C is that—

(a) at a time before the lease's creation the asset was used for the purposes of another trade,

(b) when it was so used it was owned by the person then carrying on the other trade, and

(c) when it was so used, or later, that person was carrying on the trade mentioned in subsection (2).

(5) The reference in subsection (2)(a) to a lease does not include a lease created on or before 14 April 1964.

(6) In this section references to a person carrying on a trade are to the person carrying on the trade for the time being.

Relief: restriction and carrying forward

681CC Tax deduction not to exceed commercial rent

(1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant income tax relief allowed in a relevant period—

(a) for the non-excluded element of the payment within section 681CB(2), or

(b) if there are two or more such payments, for the non-excluded elements of those payments.

(2) For the purposes of this section—

(a) "relevant period" means—

(i) a period of account of the trade, or

(ii) if no accounts of the trade are drawn up for a period, the basis period of a tax year, and

(b) the non-excluded element of a payment is the element of the payment not excluded under section 681CD (long funding finance leases).

(3) The rules are—

Rule 1 —meaning of amount E For any relevant period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

(a) the non-excluded element of the payment, or

(b) the non-excluded elements of the payments.

Rule 2 — calculations For every relevant period—

(a) calculate the total of amount E for the period and amount E for every previous relevant period ending on or after the date of the creation of the lease mentioned in section 681CB(2)(a),

(b) calculate the total of the deductions by way of relevant income tax relief for every previous relevant period ending on or after that date, and

(c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

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Rule 3 — meaning of post-spread period A relevant period is a post-spread period if for that relevant period, and every later relevant period, there are no payments within section 681CB(2).

Rule 4 — the deduction allowed in a relevant period If a relevant period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 681CE).

Rule 5— relevant periods in which no deduction allowed If a relevant period is a post-spread period, no deduction is allowed for the period.

681CD Long funding finance leases

(1) This section applies for the purposes of section 681CC.

(2) A payment must be excluded so far as, in the case of the lessee, it is to be regarded in accordance with Chapter 6A of Part 2 of CAA 2001 as a payment under a lease which is a long funding finance lease for the purposes of that Part.

681CE Commercial rent

(1) Subsection (3) applies for the purpose of making a comparison under rule 4 of section 681CC(3).

(2) In this section "the actual lease" means the lease mentioned in section 681CB(2)(a).

(3) The commercial rent is the rent which might at the relevant time be expected to be paid under a lease of the asset if—

(a) the lease were for the rest of the asset's expected normal working life,

(b) the rent were payable at uniform intervals and at a uniform rate, and

(c) the rent gave a reasonable return for the asset's market value at the relevant time, taking account of the actual lease's terms and conditions.

(4) The relevant time is the time when the actual lease was created.

(5) An asset's expected normal working life is the period which might be expected, when it is first put into use, to pass before it is finally put out of use as being unfit for further use.

(6) In applying subsection (5) it must be assumed that the asset will be used in the normal way, and to the normal extent, throughout the period.

(7) If the asset is used at the same time partly for the purposes of the trade mentioned in section 681CB(2)(b) and partly for other purposes, the commercial rent as defined in subsection (3) is to be determined by reference to what would be paid for such partial use.

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Interpretation

681CF Lease

(1) This section applies for the purposes of this Chapter.

(2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.

(3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

681CG Relevant asset

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land."

After section 681CG insert—

"**CHAPTER 4**

LEASED ASSETS: CAPITAL SUMS

Overview

681D Overview

This Chapter provides that in certain circumstances where a payment is made under a lease of an asset, and a capital sum is obtained in respect of an interest in the asset, income tax is charged on an amount not greater than the capital sum.

Application of the Chapter

681DA Application of the Chapter

This Chapter applies if—

(a) condition A is met (see section 681DB), and

(b) condition B, C, D or E is met (see section 681DC).

681DB Payment under lease

(1) Condition A is that—

(a) a payment is made under a lease of a relevant asset, and

(b) the payment is one for which a deduction by way of relevant tax relief is allowed.

(2) Condition A is not met if section 681CC (leased trading assets: tax deductions)—

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(a) applies to the payment, or

(b) would apply to it but for its being excluded under section 681CD (long funding finance leases).

(3) Condition A is not met if section 865 of CTA 2010 (provision for corporation tax corresponding to section 681CC)—

(a) applies to the payment, or

(b) would apply to it but for its being excluded under section 866 of that Act (long funding finance leases).

(4) The reference in subsection (1)(a) to a lease does not include a lease created on or before 14 April 1964.

681DC Sum obtained

(1) Condition B is that the person making the payment—

(a) obtains a capital sum in respect of the lessee's interest in the lease, and

(b) is within the charge to income tax.

(2) Condition C is that an associate of the person making the payment—

(a) obtains a capital sum by way of consideration in respect of the lessee's interest in the lease, and

(b) is within the charge to income tax.

(3) Condition D is that—

(a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,

(b) the associate obtains a capital sum in respect of the interest, and

(c) the associate is within the charge to income tax.

(4) Condition E is that—

(a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,

(b) an associate of that associate obtains a capital sum by way of consideration in respect of the interest, and

(c) the associate obtaining the sum is within the charge to income tax.

(5) Condition B, C, D or E may be met before, at or after the time when the payment is made.

(6) Condition B or C is not met if—

(a) the lease is a hire-purchase agreement for plant or machinery, and

(b) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.

(7) Condition D or E is not met if—

(a) the capital sum is obtained in respect of the lessee's interest in the lease,

(b) the lease is a hire-purchase agreement for plant or machinery, and

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(c) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.

Charge to income tax

681DD Charge to income tax

(1) The person obtaining the capital sum is charged to income tax, for the tax year in which the sum is obtained, on the amount given by subsection (2).

(2) That amount is—

(a) the amount of the payment for which a deduction by way of relevant tax relief is allowed, or

(b) the total amount of such payments (if more than one).

(3) But subsections (1) and (2) have effect subject to—

(a) subsections (4) to (7), and

(b) section 681DE(3) (hire-purchase agreements).

(4) The amount on which tax is charged under this section is not to exceed the capital sum obtained (but see section 681DE(4)).

(5) Subsection (6) applies if—

(a) income tax is charged under this section in respect of a capital sum, and

(b) a payment or part of a payment is taken into account in deciding the amount on which the tax is charged.

(6) The payment or part must be left out of account in deciding—

(a) whether income tax is to be charged under this section in respect of another capital sum, and

(b) the amount on which the tax is to be charged (if any is to be charged).

(7) The order in which subsections (5) and (6) are applied is the order in which capital sums are obtained.

(8) An amount on which income tax is charged under this section is treated for income tax purposes as an amount of income.

681DE Hire-purchase agreements

(1) This section applies if—

(a) the lease is a hire-purchase agreement (as defined in section 998A), and

(b) the capital sum is obtained in respect of the lessee's interest in the lease (whether it is obtained by the person making the payment or by an associate).

(2) Find the total of the following amounts—

(a) so much of any payment made under the lease by the person obtaining the capital sum as is not a payment for which a deduction by way of relevant tax relief is allowed, and

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(b) if the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.

(3) If the total of the amounts found under subsection (2) is equal to or greater than the capital sum, income tax is not charged under section 681DD in respect of the capital sum.

(4) If the total of those amounts is less than the capital sum, in applying section 681DD(4) that total must be deducted from the capital sum.

(5) If the capital sum is the consideration for part only of the lessee's interest in the lease—

(a) any amount found under subsection (2) (and still unallowed) must be reduced to a just and reasonable proportion of it, and

(b) in calculating that proportion account must be taken of the degree to which the payments mentioned in subsection (2) have contributed to the value of what is disposed of in return for the capital sum.

(6) Subsection (7) applies if—

(a) more than one capital sum is (or is treated as) obtained by the same person in respect of the lessee's interest in the lease, and

(b) in arriving at a total under subsection (2) a payment is taken into account in respect of one of the capital sums.

(7) So far as the payment is so taken into account it must not be taken into account in applying subsection (2) to another of the capital sums.

(8) The order in which subsections (6) and (7) are applied is the order in which capital sums are obtained.

(9) If the capital sum is obtained by the personal representatives of a deceased person, the reference in subsection (2)(a) to any payment made under the lease by the person obtaining the capital sum includes any payment made under the lease by the deceased.

681DF Adjustments where sum obtained before payment made

(1) This section applies if a capital sum is obtained as mentioned in section 681DC and later a payment is made as mentioned in section 681DB.

(2) Adjustments must be made if they are needed to give effect to a charge to income tax under section 681DD in respect of the capital sum.

(3) An adjustment may be made within the period ending with the fifth anniversary of the 31 January following the tax year in which the payment is made.

(4) Subsection (3) applies despite any time limit specified in the Income Tax Acts.

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Obtaining of sum

681DG Sum obtained in respect of interest

A reference in this Chapter to a sum obtained in respect of an interest in an asset (whether the lessee's interest in a lease of the asset or the lessor's interest or any other interest) includes a reference to—

(a) insurance money obtained in respect of the interest, and

(b) sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions disposing of it.

681DH Sum obtained in respect of lessee's interest

(1) This section applies to a reference in this Chapter to a sum obtained in respect of the lessee's interest in a lease of an asset.

(2) The reference includes a reference to sums representing the consideration in money or money's worth obtained on any of the following occasions—

(a) a surrender of the interest to the lessor,

(b) an assignment of the lease, and

(c) the creation of a sublease or another interest out of the lease.

(3) The reference also includes a reference to sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions under which the lessee's rights are merged in any way with the lessor's rights or with any other rights as respects the asset.

(4) Subsection (3) applies so far as the money or money's worth is attributable to the lessee's rights under the lease.

681DI Disposal of interest to associate

(1) This section applies for the purposes of this Chapter if a person disposes of an interest in an asset to a person who is the first person's associate (and the interest may be the lessee's interest in a lease of the asset or the lessor's interest or any other interest).

(2) The person disposing of the interest must be treated as obtaining in respect of it the greatest of—

(a) the sum in fact obtained by the person,

(b) the value of the interest in the open market, and

(c) the value of the interest to the person to whom it is in effect transferred.

(3) The disposal—

(a) may be direct or indirect, and

(b) may be effected by a transaction or series of transactions described in section 681DG(b) or 681DH(3).

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Apportionment

681DJ Apportionment of payments made and of sums obtained

(1) This section applies for the purposes of this Chapter.

(2) Subsection (3) applies if—

(a) a payment is made,

(b) it is one for which a deduction by way of relevant tax relief is allowed, and

(c) it is made by persons carrying on a trade or profession in partnership.

(3) The payment must be apportioned in a manner which is just and reasonable.

(4) Subsection (5) applies if—

(a) a sum is obtained in respect of an interest in an asset,

(b) the sum is obtained by persons carrying on a trade or profession in partnership, and

(c) the asset is and continues to be used for the purposes of the trade or profession.

(5) The sum must be apportioned between the partners in the shares in which they are entitled to the profits of the trade or profession at the time the sum is obtained.

(6) Subsection (7) applies if—

(a) a sum is obtained in respect of an interest in an asset, and

(b) the sum is obtained by persons jointly entitled to the interest.

(7) The sum must be apportioned according to their respective rights in the interest.

(8) Subsections (6) and (7) are subject to subsections (4) and (5).

681DK Manner of apportionment

(1) Subsections (2) and (3) apply if—

(a) a payment or sum is to be apportioned under section 681DJ or under section 880 of CTA 2010,

(b) at the time of the apportionment it appears that it is material to the liability to tax (whether income tax or corporation tax, and for whatever period) of two or more persons (in this section referred to collectively as "the set"),

(c) a question arises as to the manner in which the payment or sum is to be apportioned, and

(d) at the time of the apportionment, it appears that the apportionment is material to the income tax liability (for whatever period) of—

(i) a person, or some two or more persons, in the set, or

(ii) all the persons in the set.

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(2) For the purposes of income tax of the person or persons mentioned in subsection (1)(d), the question is to be determined in the same way as an appeal.

(3) All the persons in the set are entitled to be a party to the proceedings.

Interpretation

681DL Associates

(1) This section applies for the purposes of this Chapter.

(2) Persons are associates if they are associated with each other.

(3) The following are associated with each other—

(a) an individual and the individual's spouse or civil partner or relative,

(b) an individual and a spouse or civil partner of a relative of the individual,

(c) an individual and a relative of the individual's spouse or civil partner,

(d) an individual and a spouse or civil partner of a relative of the individual's spouse or civil partner.

(4) The following are associated with each other—

(a) a person as trustee of a settlement and an individual who (in relation to the settlement) is a settlor,

(b) a person as trustee of a settlement and a person associated with an individual who (in relation to the settlement) is a settlor.

(5) The following are associated with each other—

(a) a person and a body of persons of which the person has control,

(b) a person and a body of persons of which persons associated with the person have control,

(c) a person and a body of persons of which the person and persons associated with the person have control,

(d) two or more bodies of persons associated with the same person under paragraphs (a) to (c).

(6) In relation to a disposal by joint owners, the joint owners and any person associated with any of them are associated with each other.

(7) For the purposes of this section—

(a) a relative is a brother, sister, ancestor or lineal descendant,

(b) a body of persons includes a partnership, and

(c) "settlement" and "settlor" have the meanings given by section 620 of ITTOIA 2005.

681DM Capital sum

For the purposes of this Chapter a capital sum is any sum of money, or any money's worth, except so far as it or any part of it—

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(a) is to be treated for income tax purposes as a receipt to be taken into account in calculating the profits or losses of a trade, profession or vocation, or

(b) is (apart from this Chapter) chargeable to income tax under or by virtue of any provision to which section 1016 applies.

681DN Lease

(1) This section applies for the purposes of this Chapter.

(2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.

(3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

681DO Relevant asset

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.

681DP Relevant tax relief

For the purposes of this Chapter each of the following is a deduction by way of relevant tax relief—

(a) a deduction in calculating profits or losses of a trade for corporation tax purposes,

(b) a deduction in calculating any loss for which relief is given under section 91 of CTA 2010 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 of CTA 2010 applies (miscellaneous charges),

(c) a deduction under section 76 of ICTA (insurance companies),

(d) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business),

(e) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,

(f) a deduction in calculating any loss for which relief is allowed under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies, and

(g) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes."

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SCHEDULE 5

Section 369

FACTORING OF INCOME ETC: NEW CHAPTERS 5B AND 5C OF PART 13 OF ITA 2007

1 ITA 2007 is amended as follows.

2 After section 809AZG insert—

"CHAPTER 5B

FINANCE ARRANGEMENTS

Type 1 arrangements

809BZA Type 1 finance arrangement defined

(1) For the purposes of this Chapter an arrangement is a type 1 finance arrangement if conditions A and B are met.

(2) Condition A is that under the arrangement—

(a) a person ("the borrower") receives money or another asset ("the advance") from another person ("the lender"),

(b) the borrower or a person connected with the borrower makes a disposal of an asset ("the security") to or for the benefit of the lender or a person connected with the lender, and

(c) the lender or a person connected with the lender is entitled to payments in respect of the security.

(3) Condition B is that in accordance with generally accepted accounting practice—

(a) the borrower's accounts for the period in which the advance is received record a financial liability in respect of it, and

(b) the payments reduce the amount of the financial liability.

(4) If the borrower is a partnership the reference to the borrower's accounts includes a reference to the accounts of any member of the partnership.

(5) For the purposes of this section the borrower and the lender are not connected with one another.

809BZB Certain tax consequences not to have effect

(1) This section applies if a type 1 finance arrangement would have the relevant effect (ignoring this section).

(2) The arrangement is not to have that effect.

(3) The relevant effect is that—

(a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to income tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of the borrower

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or of a person connected with the borrower is not so brought into account, or

(c) the borrower or a person connected with the borrower becomes entitled to an income deduction.

(4) But if the borrower is a partnership the relevant effect is that—

(a) an amount of income on which a member of the partnership would otherwise have been charged to income tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of a member of the partnership is not so brought into account, or

(c) a member of the partnership becomes entitled to an income deduction.

(5) For the purposes of this section the borrower and the lender are not connected with one another.

(6) An income deduction is—

(a) a deduction in calculating income for income tax purposes, or

(b) a deduction from total income.

809BZC Payments treated as borrower's income

(1) This section applies if—

(a) a type 1 finance arrangement would not have the relevant effect (ignoring section 809BZB(2)),

(b) that arrangement would not have the corresponding corporation-tax effect (ignoring section 759(2) of CTA 2010), and

(c) the borrower is—

(i) within the charge to income tax, or

(ii) a partnership at least one member of which is within the charge to income tax.

(2) The payments mentioned in section 809BZA(2)(c) must be treated for income tax purposes as income of the borrower payable in respect of the security.

(3) Subsection (2) applies whether or not the payments are also the income of another person for tax purposes.

(4) Subsections (3) to (6) of section 809BZB (meaning of relevant effect) apply for the purposes of this section as for those of that.

(5) In subsection (1)(b) "the corresponding corporation-tax effect" means the relevant effect as defined by section 759(3) to (6) of CTA 2010 (provision for corporation tax corresponding to section 809BZB(3) to (6)).

809BZD Deemed interest if borrower is not a partnership

(1) This section applies if—

(a) there is a type 1 finance arrangement,

(b) the borrower is not a partnership,

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(c) the arrangement is prevented by section 809BZB from having the relevant effect in relation to the borrower, or section 809BZC applies to the borrower, and

(d) in accordance with generally accepted accounting practice the borrower's accounts record an amount as a finance charge in respect of the advance.

(2) For income tax purposes the borrower may treat the amount as interest payable on a loan.

(3) If an amount is treated as interest ("deemed interest") under subsection (2), to find out when it is paid—

(a) treat the payments mentioned in section 809BZA(2)(c) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

809BZE Deemed interest if borrower is a partnership

(1) This section applies if each of conditions A to C is met.

(2) Condition A is that—

(a) there is a type 1 finance arrangement, and

(b) the borrower is a partnership.

(3) Condition B is that—

(a) the arrangement is prevented by section 809BZB from having the relevant effect in relation to a person who is a member of the partnership, or

(b) section 809BZC applies to the partnership (in which event "the person" in subsections (4) and (5) means the person within the charge to income tax who is a member of the partnership).

(4) Condition C is that in accordance with generally accepted accounting practice the person's accounts, or the partnership's accounts, record an amount as a finance charge in respect of the advance.

(5) For income tax purposes the person may treat the amount as interest payable by the partnership on a loan.

(6) If an amount is treated as interest ("deemed interest") under subsection (5), to find out when it is paid—

(a) treat the payments mentioned in section 809BZA(2)(c) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid."

3 After section 809BZE insert—

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"Type 2 arrangements

809BZF Type 2 finance arrangement defined

(1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.

(2) Condition A is that—

(a) under the arrangement a person ("the transferor") makes a disposal of an asset ("the security") to a partnership,

(b) the transferor is a member of the partnership immediately after the disposal (whether or not a member immediately before it),

(c) under the arrangement the partnership receives money or another asset ("the advance") from another person ("the lender"),

(d) there is a relevant change in relation to the partnership (see section 809BZG), and

(e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

(3) Condition B is that in accordance with generally accepted accounting practice—

(a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and

(b) the payments reduce the amount of the financial liability.

(4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

809BZG Relevant change in relation to partnership

(1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.

(2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.

(3) Condition B is that—

(a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and

(b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.

(4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.

(5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—

(a) if it is condition A that is met, to the person who becomes a member of the partnership, and

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(b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

809BZH Certain tax consequences not to have effect

(1) This section applies if—

(a) there is a type 2 finance arrangement, and

(b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).

(2) In such a case—

(a) Part 9 of ITTOIA 2005 (partnerships) is to have effect in relation to the transferor as if the relevant change in relation to the partnership had not occurred, and

(b) accordingly the finance arrangement is not to have the relevant effect.

(3) The relevant effect is that—

(a) an amount of income on which the transferor would otherwise have been charged to income tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of the transferor is not so brought into account, or

(c) the transferor becomes entitled to an income deduction.

(4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 809BZF(2)(e) were payable to the partnership before the relevant change in relation to it occurred.

(5) An income deduction is—

(a) a deduction in calculating income for income tax purposes, or

(b) a deduction from total income.

809BZI Deemed interest

(1) This section applies if—

(a) there is a type 2 finance arrangement,

(b) the transferor is a person within the charge to income tax, and

(c) in accordance with generally accepted accounting practice the partnership's accounts record an amount as a finance charge in respect of the advance.

(2) For income tax purposes the transferor may treat the amount as interest payable by the transferor on a loan.

(3) The reference in subsection (1) to the partnership's accounts includes a reference to the transferor's accounts.

(4) If an amount is treated as interest ("deemed interest") under subsection (2), to find out when it is paid—

(a) treat the payments mentioned in section 809BZF(2)(e) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

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(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid."

4 After section 809BZI insert—

"Type 3 arrangements

809BZJ Type 3 finance arrangement defined

(1) For the purposes of this Chapter an arrangement is a type 3 finance arrangement if conditions A and B are met.

(2) Condition A is that—

(a) a partnership holds an asset ("the security") as a partnership asset at any time before the arrangement is made,

(b) under the arrangement the partnership receives money or another asset ("the advance") from another person ("the lender"),

(c) there is a relevant change in relation to the partnership (see section 809BZG), and

(d) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

(3) Condition B is that in accordance with generally accepted accounting practice—

(a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and

(b) the payments reduce the amount of the financial liability.

(4) The reference to the partnership's accounts includes a reference to the accounts of any person who is a member of the partnership immediately before the arrangement is made.

809BZK Certain tax consequences not to have effect

(1) This section applies if—

(a) there is a type 3 finance arrangement, and

(b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).

(2) The relevant effect is that—

(a) an amount of income on which a relevant member would otherwise have been charged to income tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of a relevant member is not so brought into account, or

(c) a relevant member becomes entitled to an income deduction.

(3) A relevant member is a person who—

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(a) was a member of the partnership immediately before the relevant change in relation to it occurred, and

(b) is not the lender.

(4) If this section applies—

(a) Part 9 of ITTOIA 2005 (partnerships) is to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and

(b) accordingly the finance arrangement is not to have the relevant effect.

(5) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 809BZJ(2)(d) were payable to the partnership before the relevant change in relation to it occurred.

(6) An income deduction is—

(a) a deduction in calculating income for income tax purposes, or

(b) a deduction from total income.

809BZL Deemed interest

(1) This section applies if—

(a) there is a type 3 finance arrangement,

(b) a relevant member is a person within the charge to income tax, and

(c) in accordance with generally accepted accounting practice the partnership's accounts record an amount as a finance charge in respect of the advance.

(2) For income tax purposes the relevant member may treat the amount as interest payable by the partnership on a loan.

(3) The reference in subsection (1) to the partnership's accounts includes a reference to the accounts of any relevant member.

(4) If an amount is treated as interest ("deemed interest") under subsection (2), to find out when it is paid—

(a) treat the payments mentioned in section 809BZJ(2)(d) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

(5) A relevant member is a person who—

(a) was a member of the partnership immediately before the relevant change in relation to it occurred, and

(b) is not the lender."

5 After section 809BZL insert—

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"Exceptions

809BZM Exceptions: preliminary

(1) Sections 809BZN to 809BZP make provision for finance arrangement codes not to apply in certain circumstances.

(2) For the purposes of those sections each of the following groups of provisions is a finance arrangement code—

(a) sections 809BZA to 809BZE (type 1 arrangements),

(b) sections 809BZF to 809BZI (type 2 arrangements), and

(c) sections 809BZJ to 809BZL (type 3 arrangements).

809BZN Exceptions

(1) A finance arrangement code does not apply if the whole of the advance under the arrangement—

(a) is charged to tax on a relevant person as an amount of income,

(b) is brought into account in calculating for tax purposes any income of a relevant person, or

(c) is brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

(2) Treat subsection (1)(c) as not met if—

(a) the receipt gives rise, or proceeds give rise, to a balancing charge, and

(b) the amount of the balancing charge is limited by any provision of CAA 2001.

(3) A finance arrangement code does not apply if at all times the whole of the advance under the arrangement—

(a) is a debtor relationship of a relevant person for the purposes of Part 5 of CTA 2009 (loan relationships), or

(b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

(4) In subsection (3) references to a debtor relationship do not include references to a relationship to which Chapter 2 of Part 6 of CTA 2009 applies (relevant non-lending relationships).

(5) A finance arrangement code does not apply so far as—

(a) section 263A of TCGA 1992 applies in relation to the arrangement (agreements for sale and repurchase of securities), or

(b) Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009 applies in relation to the arrangement (sale and repurchase of securities, and repos).

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(6) A finance arrangement code does not apply so far as Part 10A of this Act, Chapter 4 of Part 4 of TCGA 1992 or Chapter 6 of Part 6 of CTA 2009 has effect in relation to the arrangement (alternative finance arrangements).

(7) A finance arrangement code does not apply so far as the security is plant or machinery which is the subject of a sale and finance leaseback.

(8) For the purposes of subsection (7) apply section 221 of CAA 2001 to determine whether plant or machinery is the subject of a sale and finance leaseback.

(9) A finance arrangement code does not apply so far as sections 228B and 228C of CAA 2001 (finance leaseback) apply in relation to the arrangement.

(10) Section 809BZO defines a relevant person for the purposes of this section.

809BZO Exceptions: relevant person

(1) This section defines a relevant person for the purposes of section 809BZN.

(2) If (apart from sections 809BZN and 809BZP) sections 809BZA to 809BZE would apply, each of the following is a relevant person—

(a) the borrower, and

(b) a person connected with the borrower or (if the borrower is a partnership) a member of the partnership.

(3) If (apart from sections 809BZN and 809BZP) sections 809BZF to 809BZI would apply, the transferor is a relevant person.

(4) If (apart from sections 809BZN and 809BZP) sections 809BZJ to 809BZL would apply, a relevant member as there defined is a relevant person.

(5) For the purposes of subsection (2)(b) the persons connected with the borrower include any persons who under section 993 (meaning of "connected") are connected with the borrower.

809BZP Power to make further exceptions

(1) The Treasury may make regulations prescribing other circumstances in which a finance arrangement code is not to apply.

(2) The regulations may amend sections 809BZN and 809BZO.

(3) The power to make regulations includes—

(a) power to make provision that has effect in relation to times before the making of the regulations (but not times before 6 June 2006),

(b) power to make different provision for different cases or different purposes, and

(c) power to make incidental, supplemental, consequential and transitional provision and savings."

6 After section 809BZP insert—

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"Supplementary

809BZQ Accounts

(1) This section applies for the purposes of this Chapter.

(2) A reference to the accounts of a person includes (if the person is a company) a reference to the consolidated group accounts of a group of companies of which it is a member.

(3) In determining whether accounts record an amount as a financial liability in respect of an advance, assume that the period in which the advance is received ended immediately after the receipt of the advance.

(4) If a person does not draw up accounts in accordance with generally accepted accounting practice, assume that the person drew up the accounts in accordance with that practice.

809BZR Arrangements

A reference in this Chapter to an arrangement includes a reference to an agreement or understanding (whether or not legally enforceable).

809BZS Assets

(1) This section applies for the purposes of this Chapter.

(2) A reference to a person receiving an asset includes—

(a) a reference to the person obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it, and

(b) a reference to the discharge (in whole or part) of a liability of the person.

(3) A reference to a disposal of an asset includes a reference to anything constituting a disposal of it for the purposes of TCGA 1992.

(4) A reference to payments in respect of an asset includes—

(a) a reference to payments in respect of another asset substituted for it under the arrangement, and

(b) a reference to obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it."

7 After section 809BZS insert—

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"**CHAPTER 5C**

LOAN OR CREDIT TRANSACTIONS

809CZA Loan or credit transaction defined

(1) This section defines a loan or credit transaction for the purposes of sections 809CZB and 809CZC.

(2) A transaction is a loan or credit transaction if it is—

(a) effected with reference to the lending of money or the varying of the terms on which money is lent, or

(b) effected with a view to enabling or facilitating an arrangement concerning the lending of money or the varying of the terms on which money is lent.

(3) A transaction is a loan or credit transaction if it is—

(a) effected with reference to the giving of credit or the varying of the terms on which credit is given, or

(b) effected with a view to enabling or facilitating an arrangement concerning the giving of credit or the varying of the terms on which credit is given.

(4) Subsection (2) has effect whether the transaction is effected—

(a) between the lender and borrower,

(b) between either of them and a person connected with the other, or

(c) between a person connected with one and a person connected with the other.

(5) Subsection (3) has effect whether the transaction is effected—

(a) between the creditor and debtor,

(b) between either of them and a person connected with the other, or

(c) between a person connected with one and a person connected with the other.

809CZB Certain payments treated as yearly interest

(1) This section applies if a loan or credit transaction provides for a payment which is not interest but is—

(a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income, or

(b) an annuity or other annual payment which is from a source in the United Kingdom and chargeable to corporation tax under Chapter 5 of Part 10 of CTA 2009 (distributions from unauthorised unit trusts) or Chapter 7 of that Part (annual payments not otherwise charged).

(2) The payment must be treated for the purposes of the Income Tax Acts as if it were a payment of yearly interest (see, in particular, section 874).

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809CZC Tax charged on income transferred

(1) This section applies if—

(a) under a loan or credit transaction a person transfers income arising from property,

(b) the person is not, as a result of Chapter 5B (finance arrangements), chargeable to income tax on the income transferred, and

(c) the person is within the charge to income tax.

(2) In such a case—

(a) income tax is charged under this section,

(b) the tax is charged on an amount equal to the full amount of the income transferred,

(c) the tax is charged for the tax year in which the transfer takes place, and

(d) the person who transfers the income is liable for the tax.

(3) This section does not prejudice the liability of any other person to tax.

(4) For the purposes of this section a person transfers income if the person surrenders, waives or forgoes it.

(5) Subsection (6) applies for the purposes of this section if—

(a) credit is given for the purchase price of property, and

(b) the rights attaching to the property are such that the buyer's rights to income from the property are suspended or restricted during the life of the debt.

(6) The buyer must be treated as surrendering income of an amount equal to the income the buyer in effect forgoes by obtaining the credit.

(7) For the purposes of this section an amount of income payable subject to deduction of income tax must be taken as the amount before deduction of tax."

SCHEDULE 6

Section 370

UK Representatives of non-UK residents

PART 1

New Chapters 2B and 2C of Part 14 of ITA 2007

1 After section 835B of ITA 2007 (which is inserted by Schedule 7) insert—

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"**CHAPTER 2B**

UK REPRESENTATIVE OF NON-UK RESIDENT

Introduction

835C Overview of Chapter

(1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to income tax.

(2) For obligations and liabilities in relation to income tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2C."

2 After section 835C insert—

"**835D Income tax chargeable on company's income: application**

This Chapter does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee."

3 After section 835D insert—

"Branches and agencies

835E Branch or agency treated as UK representative

(1) This section applies if a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom.

(2) The branch or agency is the UK representative of the non-UK resident in relation to—

(a) the amount of any income from the trade, profession or vocation that arises (directly or indirectly) through or from the branch or agency, and

(b) the amount of any income from property or rights which are used by, or held by or for, the branch or agency.

(3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2C in relation to an amount within that subsection.

Rule 1 The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

Rule 2 The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

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Rule 3 If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

(4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 835F.

(5) This section needs to be read with sections 835G to 835K (which provide for descriptions of persons who are not to be regarded as the UK representative of a non-UK resident if certain conditions are met)."

4 After section 835E insert—

"**835F Trade or profession carried on in partnership**

(1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.

(2) The trade or profession carried on through the branch or agency is, for the purposes of section 835E and Chapter 2C, to be treated as including the notional trade or profession.

(3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—

(a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and

(b) any member of the partnership is resident in the United Kingdom.

(4) The notional trade or profession is, for the purposes of section 835E and Chapter 2C, to be treated as being a trade carried on in the United Kingdom through the partnership as such.

(5) In this section "the notional trade or profession" means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving."

5 After section 835F insert—

"Persons who are not UK representatives

835G Agents

(1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an agent in the United Kingdom.

(2) The agent is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) arising to the non-UK resident from—

(a) so much of the non-UK resident's business as relates to disregarded transactions, or

(b) property or rights which, as a result of disregarded transactions, are used by, or held by or for, the agent on behalf of the non-UK resident.

(3) "Disregarded transactions" are transactions—

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(a) carried out through the agent in the United Kingdom, and

(b) in respect of which the agent does not act in the course of carrying on a regular agency for the non-UK resident."

6 After section 835G insert—

"**835H Brokers**

(1) This section applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.

(2) The broker is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—

(a) the amount is transaction income in relation to a transaction carried out through the broker in the United Kingdom on behalf of the non-UK resident, and

(b) the independent broker conditions are met in relation to the transaction (see section 835L).

(3) In subsection (2) "transaction income", in relation to a transaction carried out through a broker in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5))."

7 After section 835H insert—

"**835I Investment managers**

(1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.

(2) The investment manager is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—

(a) the amount is transaction income in relation to an investment transaction carried out through the investment manager in the United Kingdom on behalf of the non-UK resident, and

(b) the independent investment manager conditions are met in relation to the investment transaction (see section 835M).

(3) In subsection (2) "transaction income", in relation to a transaction carried out through an investment manager in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5))."

8 After section 835I insert—

"**835J Persons acting under alternative finance arrangements**

(1) Subsection (2) applies if an amount within section 835E(2) arising to a non-UK resident consists of alternative finance return.

(2) Neither of the following is the UK representative of the non-UK resident in relation to the amount—

(a) the other party to the alternative finance arrangements,

(b) any other person acting for the non-UK resident in relation to the alternative finance arrangements.

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(3) In subsection (1) "alternative finance return" means alternative finance return within the application of section 564I, 564K or 564L(2) or (3).

(4) In subsection (2) the reference to "the alternative finance arrangements" is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) arises."

9 After section 835J insert—

"**835K Lloyd's agents**

(1) This section applies if—

(a) a non-UK resident ("X") is a member of Lloyd's, and

(b) an amount within section 835E(2) arises to X from X's underwriting business.

(2) A person who has been X's members' agent or the managing agent of the syndicate in question is not the UK representative of X in relation to the amount or to matters connected with the amount.

(3) For the purposes of this section—

(a) X is a member of Lloyd's if X is a member within the meaning of Chapter 3 of Part 2 of FA 1993, and

(b) "members' agent" and "managing agent" are to be construed in accordance with section 184 of that Act."

10 After section 835K insert—

"The independent broker conditions

835L The independent broker conditions

(1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if conditions A to D are met.

(2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.

(3) Condition B is that the transaction is carried out in the ordinary course of that business.

(4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.

(5) Condition D is that the broker does not fall (apart from this subsection) to be treated under this Chapter, or under Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that—

(a) are not included in transaction income in relation to the transaction (see section 835H(2) and (3)), and

(b) are chargeable to tax for the same tax year as that transaction income."

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11 After section 835L insert—

"The independent investment manager conditions

835M The independent investment manager conditions

(1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if conditions A to E are met.

(2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.

(3) Condition B is that the transaction is carried out in the ordinary course of that business.

(4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.

(5) Condition D is that the requirements of the 20% rule are met (see section 835N).

(6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business."

12 After section 835M insert—

"**835N Investment managers: the 20% rule**

(1) The requirements of the 20% rule are met if conditions A and B are met.

(2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.

(3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—

(a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and

(b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention."

13 After section 835N insert—

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"**835O Meaning of "qualifying period", "relevant disregarded income" and "beneficial entitlement"**

(1) This section applies for the purposes of this Chapter.

(2) A "qualifying period" means—

(a) the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, or

(b) a period of not more than 5 years comprising two or more tax years including that one.

(3) The "relevant disregarded income" of the non-UK resident for a qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from investment transactions—

(a) carried out by the investment manager on the non-UK resident's behalf, and

(b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.

(4) A person has a "beneficial entitlement" to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).

(5) The interests and rights referred to in subsection (4) are—

(a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or

(b) an interest in, or other rights in relation to, the non-UK resident."

14 After section 835O insert—

"**835P Treatment of transactions where 20% rule not met**

(1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.

(2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction, but only in relation to so much of the transaction income in relation to the transaction (see section 835I(2) and (3)) as does not represent an amount—

(a) which is relevant disregarded income of the non-UK resident, and

(b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement."

15 After section 835P insert—

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"**835Q Application of 20% rule to collective investment schemes**

(1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.

(2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).

(3) In applying this section make the following assumptions—

(a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company ("the assumed company") which is—

(i) constituted for the purposes of the scheme, and

(ii) non-UK resident, and

(b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.

(4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.

(5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 835N to 835P have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).

(6) The modifications are—

(a) for references to the non-UK resident substitute references to the assumed company, and

(b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for tax years comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—

(i) carried out by the investment manager, and

(ii) assumed to be carried out on behalf of the company.

(7) In this section—

"collective investment scheme" has the meaning given by section 235 of FISMA 2000, and

"participant", in relation to a collective investment scheme, is construed in accordance with that section."

16 After section 835Q insert—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"Supplementary

835R Supplementary provision

(1) For the purposes of this Chapter a person is to be regarded as carrying out a transaction on behalf of another if the person—

(a) undertakes the transaction, whether on behalf of or to the account of the other, or

(b) gives instructions for it to be so carried out by another.

(2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business."

17 After section 835R insert—

"**835S Interpretation of Chapter**

(1) This section applies for the purposes of this Chapter.

(2) "Branch or agency" means any factorship, agency, receivership, branch or management.

(3) "Investment manager" has the same meaning as in Chapter 1 (see section 827).

(4) "Investment transaction" means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(5) Provision made in regulations under subsection (4) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made."

18 After section 835S insert—

"**CHAPTER 2C**

INCOME TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

835T Introduction to Chapter

(1) This Chapter applies to the enactments relating to income tax so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.

(2) Those enactments have effect in accordance with section 835U in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 2B.

(3) In this section "enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978."

19 After section 835T insert—

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"**835U Obligations and liabilities of UK representative**

(1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.

(2) Subsection (3) applies if—

(a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or

(b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident's UK representative is subject by virtue of this section.

(3) The corresponding obligation or liability—

(a) of the non-UK resident (in a case within subsection (2)(a)), or

(b) of the UK representative (in a case within subsection (2)(b)),

is discharged.

(4) A non-UK resident is bound, as if they were the non-UK resident's own, by acts or omissions of the non-UK resident's UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.

(5) This section is subject to sections 835V and 835W."

20 After section 835U insert—

"**835V Exceptions: notices and information**

(1) An obligation or liability attaching to a non-UK resident ("X") by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 835U unless the notice or other document (or a copy of it) has been given to or served on the representative.

(2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 835U unless the representative has been notified of the request or demand.

(3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 835U in a case where the representative is X's independent agent.

(4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.

(5) For this purpose, the representative must act to the best of the representative's knowledge and belief after taking all reasonable steps to obtain the necessary information.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) An obligation of X to provide information is not discharged by virtue of section 835U in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.

(7) X is not bound by virtue of section 835U by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 835U unless—

(a) the mistake is the result of an act or omission of X, or

(b) the mistake is one to which X consented or in which X connived.

(8) In this section "information" includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs."

21 After section 835V insert—

"**835W Exceptions: criminal offences and penalties etc**

(1) A person is not by virtue of section 835U liable to be proceeded against for a criminal offence unless the person—

(a) committed the offence, or

(b) consented to or connived in its commission.

(2) An independent agent of a non-UK resident is not by virtue of section 835U liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.

(3) Condition A is that the act or omission is not—

(a) an act or omission of the independent agent, or

(b) an act or omission to which the agent consented or in which the agent connived.

(4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 835X(3) (after being indemnified for any other liabilities under section 835X)."

22 After section 835W insert—

"**835X Indemnities**

(1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 835U.

(2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 835U the agent has discharged or to which the agent is subject.

(3) The sums are those which—

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or

(b) are received by the independent agent on behalf of the non-UK resident."

23 After section 835X insert—

"**835Y Meaning of "independent agent"**

(1) In this Chapter "independent agent", in relation to a non-UK resident ("X"), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.

(2) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length."

PART 2

NEW PART 7A OF TCGA 1992

24 After section 271 of TCGA 1992 insert—

"**PART 7A**

UK REPRESENTATIVES OF NON-UK RESIDENTS

CHAPTER 1

TREATMENT OF BRANCH OR AGENCY AS UK REPRESENTATIVE OF NON-UK RESIDENT

Introduction

271A Overview of Chapter

(1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to capital gains tax.

(2) For obligations and liabilities in relation to capital gains tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2."

25 After section 271A insert—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"Branches and agencies

271B Branch or agency treated as UK representative

(1) This section applies if—

(a) a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom, and

(b) the branch or agency is to be treated under Chapter 2B of Part 14 of ITA 2007 as the UK representative of the non-UK resident in relation to amounts within section 835E(2) of that Act.

(2) The branch or agency is the UK representative of the non-UK resident in relation to amounts which, by reference to the branch or agency, are chargeable to capital gains tax under section 10 above.

(3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2 in relation to an amount within that subsection.

Rule 1 The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

Rule 2 The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

Rule 3 If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

(4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 271C."

26 After section 271B insert—

"**271C Trade or profession carried on in partnership**

(1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.

(2) The trade or profession carried on through the branch or agency is, for the purposes of section 271B and Chapter 2, to be treated as including the notional trade or profession.

(3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—

(a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and

(b) any member of the partnership is resident in the United Kingdom.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The notional trade or profession is, for the purposes of section 271B and Chapter 2, to be treated as being a trade carried on in the United Kingdom through the partnership as such.

(5) In this section "the notional trade or profession" means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving."

27 After section 271C insert—

"**271D Interpretation of Chapter**

In this Chapter—

"branch or agency" means any factorship, agency, receivership, branch or management, and

"non-UK resident" means a person who is not resident in the United Kingdom."

28 After section 271D insert—

"**CHAPTER 2**

CAPITAL GAINS TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

271E Introduction to Chapter

(1) This Chapter applies to the enactments contained in—

(a) this Act,

(b) the Tax Acts, and

(c) subordinate legislation made under this Act or the Tax Acts,

so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.

(2) Those enactments have effect in accordance with section 271F in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 1.

(3) In this section "subordinate legislation" has the same meaning as in the Interpretation Act 1978."

29 After section 271E insert—

"**271F Obligations and liabilities of UK representative**

(1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.

(2) Subsection (3) applies if—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or

(b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident's UK representative is subject by virtue of this section.

(3) The corresponding obligation or liability—

(a) of the non-UK resident (in a case within subsection (2)(a)), or

(b) of the UK representative (in a case within subsection (2)(b)),

is discharged.

(4) A non-UK resident is bound, as if they were the non-UK resident's own, by acts or omissions of the non-UK resident's UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.

(5) This section is subject to sections 271G and 271H."

30 After section 271F insert—

"**271G Exceptions: notices and information**

(1) An obligation or liability attaching to a non-UK resident ("X") by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 271F unless the notice or other document (or a copy of it) has been given to or served on the representative.

(2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 271F unless the representative has been notified of the request or demand.

(3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 271F in a case where the representative is X's independent agent.

(4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.

(5) For this purpose, the representative must act to the best of the representative's knowledge and belief after taking all reasonable steps to obtain the necessary information.

(6) An obligation of X to provide information is not discharged by virtue of section 271F in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.

(7) X is not bound by virtue of section 271F by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 271F unless—

(a) the mistake is the result of an act or omission of X, or

(b) the mistake is one to which X consented or in which X connived.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(8) In this section "information" includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs."

31 After section 271G insert—

"**271H Exceptions: criminal offences and penalties etc**

(1) A person is not by virtue of section 271F liable to be proceeded against for a criminal offence unless the person—

(a) committed the offence, or

(b) consented to or connived in its commission.

(2) An independent agent of a non-UK resident is not by virtue of section 271F liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.

(3) Condition A is that the act or omission is not—

(a) an act or omission of the independent agent, or

(b) an act or omission to which the agent consented or in which the agent connived.

(4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 271I(3) (after being indemnified for any other liabilities under section 271I)."

32 After section 271H insert—

"**271I Indemnities**

(1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 271F.

(2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 271F the agent has discharged or to which the agent is subject.

(3) The sums are those which—

(a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or

(b) are received by the independent agent on behalf of the non-UK resident."

33 After section 271I insert—

"**271J Meaning of "non-UK resident" and "independent agent"**

(1) In this Chapter "non-UK resident" means a person who is not resident in the United Kingdom.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) In this Chapter "independent agent", in relation to a non-UK resident ("X"), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.

(3) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length."

SCHEDULE 7

Section 371

MISCELLANEOUS RELOCATIONS

PART 1

RELOCATION OF SECTION 38 OF, AND SCHEDULE 15 TO, FA 1973

Taxes Management Act 1970 (c. 9)

1 TMA 1970 is amended as follows.

2 After Part 7 insert—

"**PART 7A**

HOLDERS OF LICENCES UNDER THE PETROLEUM ACT 1998

Licence-holders' liabilities for tax assessed on non-UK residents

Pre-conditions for serving secondary-liability notice

77B (1) Conditions A to E are the pre-conditions for the purposes of section 77C.

(2) Condition A is that tax is assessed on a person not resident in the United Kingdom.

(3) Condition B is that the tax is assessed in reliance on—

(a) section 276 of the 1992 Act,

(b) section 874 of ITTOIA 2005, or

(c) section 1313 of CTA 2009.

(4) Condition C is that the tax assessed is not tax under ITEPA 2003.

(5) Condition D is that—

(a) there is a licence to which the tax assessed is related (see section 77J for the meaning of tax related to a licence),

(b) there is more than one licence to which the tax assessed is related, or

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(c) there is a licence, or more than one licence, to which part of the tax assessed is related but in addition part of the tax assessed is not related to any licence.

(6) Condition E is that the tax is not paid in full within 30 days after it becomes due and payable.

(7) In this Part "licence" means a licence under Part 1 of the Petroleum Act 1998.

Secondary-liability notices

77C (1) If each of the pre-conditions (see section 77B) is met, an officer of Revenue and Customs may serve on the holder of the licence concerned, or on the holder of any of the licences concerned, a notice—

(a) that states particulars of the assessment,

(b) that states the amount remaining unpaid and the date when it became payable,

(c) that requires the holder to pay, within 30 days of the service of the notice, the amount for which the holder is liable, and

(d) that, if the amount for which the holder is liable is given by subsection (3) or section 77G(7), gives particulars of how the amount was determined.

(2) For the purposes of subsection (1), the amount for which the holder is liable is the amount remaining unpaid, together with any interest on it under sections 86 and 87A, but this is subject to subsection (3) and section 77G(7).

(3) In a case within section 77B(5)(b) or (c), the amount for which the holder of the licence is liable is given by—

$$\frac{16 - N}{15}$$

(4) In subsection (3)—

A is the amount remaining unpaid,

I is any interest due on that amount under sections 86 and 87A,

T is the total amount of the profits or chargeable gains in respect of which the assessment is made, and

L is so much of that total amount as is profits or chargeable gains related to the licence.

(5) The power under subsection (1) is subject to section 77E (certain pre-1974 cases).

(6) In this Part "secondary-liability notice" means a notice under subsection (1).

Payments under secondary-liability notices

77D (1) Any amount which a person is required to pay by a secondary-liability notice may be recovered from the person as if it were tax due and duly demanded from the person.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) If a person ("H") pays any amount which a secondary-liability notice requires H to pay, H may recover the amount from the person on whom the assessment concerned was made.

(3) A payment in pursuance of a secondary-liability notice is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.

Exception for certain pre-1974 cases

77E (1) Section 77C(1) does not give power to serve a secondary-liability notice on the holder of a licence if the profits arose, or the chargeable gains accrued, to the assessed person in consequence of a contract made by the holder before 23 March 1973.

(2) The exception under subsection (1) does not apply if—

(a) the assessed person is connected with the holder, or

(b) the contract was substantially varied on or after 23 March 1973.

(3) For the purposes of subsection (2), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010."

3 After section 77E insert—

"Exemption certificates

77F Issue, cancellation and effect of exemption certificates

(1) This section applies if there is a person ("T") who will or might become liable to tax which, if unpaid, could be recovered under this Part from a person ("H") who is the holder of a licence.

(2) If an officer of Revenue and Customs, on an application made by T, is satisfied that T will comply with any obligations imposed on T by the Taxes Acts, the officer may issue to H a certificate exempting H from section 77C with respect to any tax payable by T.

(3) If a certificate is issued to H under subsection (2), an officer of Revenue and Customs may, by notice in writing to H, cancel the certificate from the date specified in the notice.

(4) The date specified in a notice under subsection (3) may not be earlier than 30 days after the service of the notice.

(5) If a certificate is issued to H under subsection (2), section 77C does not apply to any tax payable by T which becomes due while the certificate is in force.

(6) If a certificate is issued to H under subsection (2) but is subsequently cancelled under subsection (3), section 77C also does not apply to any tax payable by T which—

(a) becomes due after the certificate is cancelled, but

(b) is in respect of profits arising, or chargeable gains accruing, while the certificate is in force.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

77G Liabilities for assessments made after exemption certificate cancelled

(1) Subsection (7) applies if—

(a) each of conditions A to C is met, and

(b) one of conditions D and E is met.

(2) Condition A is that, after the cancellation under section 77F(3) of a certificate issued under section 77F(2) to a person ("H") who is the holder of a licence, tax related to the licence is assessed on the applicant for the certificate.

(3) Condition B is that the tax is assessed in reliance on—

(a) section 276 of the 1992 Act,

(b) section 874 of ITTOIA 2005, or

(c) section 1313 of CTA 2009.

(4) Condition C is that the tax assessed is not tax under ITEPA 2003.

(5) Condition D is that—

(a) ignoring section 77F, H could be required by a secondary-liability notice to pay all of the tax remaining unpaid under the assessment, and

(b) the profits or chargeable gains in respect of which the assessment is made include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.

(6) Condition E is that—

(a) as a result of section 77C(3), but ignoring section 77F, H could be required by a secondary-liability notice to pay some, but not all, of the tax remaining unpaid under the assessment, and

(b) the profits or chargeable gains that are—

(i) ones in respect of which the assessment is made, and

(ii) related to the licence,

include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.

(7) If this subsection applies then, for the purposes of section 77C(1), the amount for which the holder of the licence is liable is the amount given by—

$$A \times \left(1 - \frac{CIF}{CIF + NIF}\right)$$

together with a corresponding proportion of any interest due under sections 86 and 87A on the amount remaining unpaid.

(8) In subsection (7)—

A is the amount that H could be required to pay as mentioned in paragraph (a) of whichever of conditions D and E is met ("the operative condition"),

CIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is in force, and

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

NIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is not in force."

4 After section 77G insert—

"Supplementary

77H Calculations under sections 77C(3) and 77G(7)

(1) Subsection (2) applies for the purposes of calculating any of the following amounts of profits or chargeable gains—

(a) L in a calculation under section 77C(3),

(b) CIF in a calculation under section 77G(7), and

(c) CIF + NIF in a calculation under section 77G(7) when it is condition E in section 77G that is met.

(2) The amount is to be calculated as if for the purposes of making a separate assessment in respect of those profits or chargeable gains on the person on whom the assessment was made.

(3) An officer of Revenue and Customs applying subsection (2) is to make all such allocations and apportionments of receipts, expenses, allowances and deductions taken into account, or made, for the purposes of the actual assessment as appear to the officer to be just and reasonable in the circumstances.

77I Information

(1) The holder of a licence must, if required to do so by a notice served on the holder by an officer of Revenue and Customs, give to the officer within the time specified by the notice (which is not to be less than 30 days) such particulars as may be required by the notice of—

(a) licence-related transactions (see subsection (2)),

(b) licence-related payments (see subsection (3)), or

(c) persons to whom licence-related payments have been paid or are payable.

(2) In subsection (1) "licence-related transaction" means a transaction in connection with activities authorised by the licence as a result of which any person is or might be liable to tax by virtue of—

(a) section 276 of the 1992 Act,

(b) section 874 of ITTOIA 2005, or

(c) section 1313 of CTA 2009.

(3) In subsection (1) "licence-related payment" means—

(a) earnings which constitute employment income (see section 7(2)(a) of ITEPA 2003),

(b) amounts which are treated as earnings and constitute employment income (see section 7(2)(b) of ITEPA 2003), or

(c) other payments,

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paid or payable in respect of duties or services performed in an area in which activities authorised by the licence may be carried on under the licence.

(4) If a notice under subsection (1) is served on the holder of a licence, the holder must take reasonable steps to obtain the information necessary to enable the holder to comply with the notice.

77J Meaning of "related to a licence" as respects tax, or profits or gains

(1) Subsections (2) and (3) apply for the purposes of this Part.

(2) An amount of tax is related to a licence if the tax is in respect of profits or chargeable gains related to the licence.

(3) Profits or chargeable gains are related to a licence if they are—

(a) profits from activities authorised by the licence,

(b) profits from activities carried on in connection with activities authorised by the licence, or

(c) profits from, or chargeable gains accruing on the disposal of, exploration or exploitation rights connected with—

(i) activities authorised by the licence, or

(ii) activities carried on in connection with activities authorised by the licence.

(4) In this section—

(a) "designated area" means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,

(b) "exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area,

(c) "exploration or exploitation rights" means rights to—

(i) assets to be produced by exploration or exploitation activities,

(ii) interests in such assets, or

(iii) the benefit of such assets,

(d) any reference to the disposal of exploration or exploitation rights includes a reference to the disposal of unlisted shares deriving their value, or the greater part of their value, directly or indirectly from such rights,

(e) "shares" includes—

(i) stock, and

(ii) securities not creating or evidencing a charge on assets,

(f) "unlisted shares" means shares that are not listed on a recognised stock exchange, and

(g) "recognised stock exchange" has the meaning given by section 1005(1) and (2) of ITA 2007.

77K Other definitions in Part 7A

(1) This section applies for the purposes of this Part.

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(2) "Licence" has the meaning given by section 77B(7).

(3) "Secondary-liability notice" has the meaning given by section 77C(6)."

5 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for paragraph 2 of Schedule 15 to FA 1973.

(3) After the entry for regulations under section 59E of TMA 1970 insert—

"Section 77I(1) of this Act."

Finance Act 1973 (c. 51)

6 FA 1973 is amended as follows.

7 Omit section 38 (which introduces and interprets Schedule 15).

8 Omit Schedule 15 (territorial extension of charge to tax: supplementary provisions).

Oil Taxation Act 1975 (c. 22)

9 The Oil Taxation Act 1975 is amended as follows.

10 In section 3(4) (expenditure not allowable under the section) for paragraph (f) (which refers to notices under paragraph 4 of Schedule 15 to FA 1973), and the "or" preceding it, substitute "or

(f) any payment made in pursuance of a notice under section 77C of the Taxes Management Act 1970 (notice requiring licence-holder to pay unpaid tax assessed on non-UK resident);".

PART 2

RELOCATION OF SECTION 24 OF FA 1974

Taxes Management Act 1970 (c. 9)

11 TMA 1970 is amended as follows.

12 In section 8 (personal return) after subsection (4) insert—

"(4A) Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc by person not resident in United Kingdom who perform their duties for UK clients).

(4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person."

13 After section 8 insert—

"**8ZA Interpretation of section 8(4A)**

(1) For the purposes of section 8(4A) of this Act, a person ("F") is within this section if each of conditions A to C is met.

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(2) Condition A is that F performs in the United Kingdom, for a continuous period of 30 days or more, duties of an office or employment.

(3) Condition B is that the office or employment is under or with a person who—

(a) is not resident in the United Kingdom, but

(b) is resident outside the United Kingdom.

(4) Condition C is that the duties are performed for the benefit of a person who—

(a) is resident in the United Kingdom, or

(b) carries on a trade, profession or vocation in the United Kingdom."

14 After section 15 insert—

"**15A Non-resident's staff are UK client's employees for section 15 purposes**

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that a person ("F") performs in the United Kingdom, for a continuous period of 30 days or more, duties of an office or employment.

(3) Condition B is that the office or employment is under or with a person who—

(a) is not resident in the United Kingdom, but

(b) is resident outside the United Kingdom.

(4) Condition C is that the duties are performed for the benefit of a person ("P") who—

(a) is resident in the United Kingdom, or

(b) carries on a trade, profession or vocation in the United Kingdom.

(5) Section 15 of this Act applies as if P were F's employer, but only so as to enable P to be required to make a return of F's name and place of residence."

Finance Act 1974 (c. 30)

15 FA 1974 is amended as follows.

16 Omit section 24 (returns of persons treated as employees).

PART 3

RELOCATION OF SECTION 42 OF ICTA

Taxes Management Act 1970 (c. 9)

17 TMA 1970 is amended as follows.

18 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for section 42 of ICTA.

(3) Before the entry for section 647 of ITTOIA 2005 insert—

"Section 302B of ITTOIA 2005."

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Income and Corporation Taxes Act 1988 (c. 1)

19 ICTA is amended as follows.

20 Omit section 42 (appeals against determinations under Chapter 4 of Part 3 of ITTOIA 2005).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

21 ITTOIA 2005 is amended as follows.

22 After section 302 insert—

"Determinations affecting liability of more than one person

302A Appeals against proposed determinations

(1) Subsection (2) applies if it appears to an officer of Revenue and Customs that—

(a) a determination is needed of an amount that is to be brought into account as a receipt under this Chapter in calculating the liability to tax of a person ("the first taxpayer"), and

(b) the determination may affect the liability to income tax, corporation tax or capital gains tax of other persons.

(2) The officer may give notice (a "provisional notice of determination") to the first taxpayer and the other persons of—

(a) the determination the officer proposes to make, and

(b) their rights under this section and section 302C.

(3) A person to whom a provisional notice of determination is given may object to the proposed determination by giving notice (a "notice of objection") to the officer.

(4) The notice of objection must be given within 30 days of the date on which the provisional notice of determination was given.

(5) If an officer gives provisional notices of determination and no person gives a notice of objection—

(a) a determination must be made by the officer as proposed in the provisional notices, and

(b) the determination is not to be called in question in any proceedings.

302B Section 302A: supplementary

(1) A provisional notice of determination under section 302A(2) may include a statement of the grounds on which the officer proposes to make the determination.

(2) Subsection (1) applies despite any obligation as to secrecy or other restriction on the disclosure of information.

(3) An officer of Revenue and Customs may by notice ("a preliminary notice") require any person to give any information that appears to the officer to

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be needed for deciding whether to give any person a provisional notice of determination under section 302A(2).

(4) The preliminary notice must state the time within which the information is to be given.

302C Determination by tribunal

(1) If a notice of objection is given under section 302A(3), the amount mentioned in section 302A(1) must be determined in the same way as an appeal.

(2) All persons to whom provisional notices of determination have been given under section 302A(2) may be a party to—

(a) any proceedings under subsection (1), and

(b) any appeal arising out of those proceedings.

(3) Those persons are bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings.

(4) Their successors in title are bound in the same way."

Corporation Tax Act 2009 (c. 4)

23 CTA 2009 is amended as follows.

24 In section 242(2) (determination by tribunal) for the words from "take part" to the end substitute "be a party to—

(a) any proceedings under subsection (1), and

(b) any appeal arising out of those proceedings."

PART 4

RELOCATION OF SECTION 84A OF ICTA

Income and Corporation Taxes Act 1988 (c. 1)

25 ICTA is amended as follows.

26 Omit section 84A (costs of establishing share option or profit sharing scheme: relief).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

27 ITTOIA 2005 is amended as follows.

28 In Chapter 5 of Part 2, after section 94 insert—

"SAYE option schemes, CSOP schemes

94A Costs of setting up SAYE option scheme or CSOP scheme

(1) This section applies if—

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(a) a company incurs expenses in setting up a scheme within subsection (2) that is approved by an officer of Revenue and Customs, and

(b) no employee or director acquires rights under the scheme before it is approved.

(2) The schemes within this subsection are—

(a) SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and

(b) CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).

The references in subsection (1) to a scheme being approved are to it being approved under Schedule 3 or 4 to ITEPA 2003 (as the case may be).

(3) A deduction for the expenses is to be made in calculating the profits of a trade carried on by the company.

(4) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred, for the purposes of subsection (3) the deduction is to be made for the period of account in which the approval is given."

29 In section 272(2) (profits of property business: application of trading income rules) at the appropriate place insert—

"section 94A	costs of setting up SAYE option scheme or CSOP scheme".

PART 5

RELOCATION OF SECTION 152 OF ICTA

Taxes Management Act 1970 (c. 9)

30 TMA 1970 is amended as follows.

31 (1) Amend section 48 (application of following provisions of Part 5) as follows.

(2) In subsection (2)(a) (application to appeals other than appeals against assessments) for "section 56" substitute " sections 54A to 54C and 56 ".

(3) In subsection (3) (meaning of "relevant provisions" for purpose of application to proceedings other than appeals) after "except sections 49A to 49I" insert " and 54A to 54C ".

32 After section 54 insert—

"**54A No questioning in appeal of amounts of certain social security income**

(1) Subsection (2) applies if an amount is notified under section 54B(1) and—

(a) no objection is made to the notification within 60 days after its date of issue, or such further period as may be allowed under section 54B(4) and (5), or

(b) an objection is made but is withdrawn by the objector by notice.

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(2) The amount is not to be questioned in any appeal against any assessment in respect of income including the amount.

(3) Subsection (4) applies if an amount is notified under section 54B(1) and—

(a) an objection is made to the notification within 60 days after its date of issue, or such further period as may be allowed under section 54B(4) and (5),

(b) the appropriate officer and the objector come to an agreement that the amount notified should be varied in a particular manner, and

(c) the officer confirms that agreement in writing.

(4) The amount, as varied, is not to be questioned in any appeal against any assessment in respect of income including that amount.

(5) Subsection (4) does not apply if, within 60 days from the date when the agreement was come to, the objector gives to the appropriate officer notice that the objector wishes to repudiate or resile from the agreement.

54B Notifications of taxable amounts of certain social security income

(1) The appropriate officer may by notice notify a person who is liable to pay any income tax charged on any unemployment benefit, jobseeker's allowance or income support—

(a) of the amount on which the tax is charged, or

(b) of an alteration in an amount previously notified under paragraph (a) or this paragraph.

(2) A notification under subsection (1) must—

(a) state its date of issue, and

(b) state that the person notified may object to the notification by notice given within 60 days after that date.

(3) A notification under subsection (1)(b) cancels the previous notification concerned.

(4) An objection to a notification under subsection (1) may be made later than 60 days after its date of issue if, on an application for the purpose—

(a) the appropriate officer is satisfied—

(i) that there was a reasonable excuse for not objecting before the end of the 60 days, and

(ii) that the application was made without unreasonable delay after the end of the 60 days, and

(b) the officer gives consent in writing.

(5) If the officer is not so satisfied, the officer is to refer the application for determination by the tribunal.

54C Interpretation of sections 54A and 54B: "appropriate officer" etc

(1) In sections 54A and 54B "the appropriate officer" means the appropriate officer—

(a) in Great Britain, of the Department for Work and Pensions, and

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(b) in Northern Ireland, of the Department for Social Development.

(2) Section 48(1)(a) (meaning of "appeal" in the following provisions of Part 5) does not apply for the purposes of sections 54A and 54B."

Income and Corporation Taxes Act 1988 (c. 1)

33 ICTA is amended as follows.

34 Omit section 152 (notification of taxable amount of certain benefits).

PART 6

RELOCATION OF SECTION 337A(2) OF ICTA

Income and Corporation Taxes Act 1988

35 ICTA is amended as follows.

36 Omit section 6(5) (signpost to Part 8 of the Act).

37 Omit section 337A(2) (in calculating a company's income, deductions in respect of interest to be made only under Part 5 of CTA 2009).

Corporation Tax Act 2009 (c. 4)

38 CTA 2009 is amended as follows.

39 After section 1301 insert—

"**1301A Restriction of deductions for interest**

In calculating a company's income from any source for corporation tax purposes, no deduction is allowed for interest otherwise than under Part 5 (loan relationships)."

PART 7

RELOCATION OF SECTION 475 OF ICTA

Income and Corporation Taxes Act 1988 (c. 1)

40 ICTA is amended as follows.

41 Omit section 475 (tax-free Treasury securities: exclusion of interest on borrowed money).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

42 ITTOIA 2005 is amended as follows.

43 Before section 155 (before the italic cross-heading) insert—

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Certain non-UK residents with interest on 3½% War Loan 1952 Or After

"154A(1) This section applies if—

(a) in any tax year a person who is not ordinarily resident in the United Kingdom carries on a trade there—

(i) consisting of banking or insurance, or

(ii) consisting wholly or partly of dealing in securities, and

(b) in calculating the profits of the trade for the tax year any amount is disregarded as a result of section 714 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½ % War Loan 1952 Or After was issued.

(2) Interest on money borrowed for the purposes of the trade is to be deducted in calculating the profits of the trade of that tax year only so far as it exceeds the ineligible amount.

(3) The ineligible amount is found as follows—

Step 1 Add together all sums borrowed for the purposes of the trade and still owing in the basis period for the tax year.

Step 2 If the person carrying on the trade is a company, deduct any sums carrying interest which is not deducted in calculating the profits of the trade (otherwise than because of subsection (2)).

Step 3 If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the trade in the basis period, deduct the excess from that amount.

Step 4 Calculate the average rate of interest in the basis period on money borrowed for the purposes of the trade.

Step 5 Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the basis period.

The result is the ineligible amount.

(4) If the person's holding of 3½% War Loan 1952 Or After has fluctuated during the basis period, the total cost for the purposes of Step 3 is taken to be—

$$C \times \frac{AH}{TH}$$

where—
C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the basis period,
AH is the average holding in that period, and
TH is the total of the initial holding (if any) and any holdings acquired during the basis period.

(5) In subsection (4) "initial holding" means the holding held by the person at the beginning of the basis period."

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PART 8

RELOCATION OF SECTION 700 OF ICTA

Income and Corporation Taxes Act 1988 (c. 1)

44 ICTA is amended as follows.

45 Omit section 700 (adjustments and information).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

46 ITTOIA 2005 is amended as follows.

47 After section 682 (assessments, adjustments and claims after the administration period) insert—

"**682A Statements relating to estate income**

(1) If a person within subsection (2) requests it in writing, a personal representative of a deceased person must provide the person with a statement showing—

(a) the amount treated as estate income arising from the person's interest in the whole or part of the deceased person's estate for which the person is liable to income tax for a tax year, and

(b) the amount of any tax at the applicable rate which any such amount is treated as having borne.

(2) A person is within this subsection if—

(a) the person has or has had an absolute or limited interest in the whole or part of the residue of the estate, or

(b) estate income has arisen to the person from a discretionary interest the person has or has had in the whole or part of the residue of the estate.

(3) A statement under subsection (1) must be in writing.

(4) The duty to comply with a request under this section is enforceable by the person who made it."

PART 9

RELOCATION OF SECTION 787 OF ICTA

Income and Corporation Taxes Act 1988 (c. 1)

48 ICTA is amended as follows.

49 Omit section 787 (restriction of relief for payments of interest).

Income Tax Act 2007 (c. 3)

50 ITA 2007 is amended as follows.

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51 In section 2(13) (overview of Part 13) after paragraph (h) (which is inserted by Schedule 8) insert—

"(i) leases of plant and machinery (Chapter 6), and

(j) tax relief for interest (Chapter 7)."

52 After section 809ZF (which is inserted by CTA 2010) insert—

"**CHAPTER 7**

AVOIDANCE INVOLVING OBTAINING TAX RELIEF FOR INTEREST

809ZG Tax relief schemes and arrangements

(1) Relief is not to be given under any provision of the Income Tax Acts to a person in respect of a payment of interest if a tax relief scheme has been effected, or tax relief arrangements have been made, in relation to the transaction under which the interest is paid.

(2) Subsection (1) applies whether the tax relief scheme is effected, or the tax relief arrangements are made, before or after the transaction.

(3) A scheme is a tax relief scheme in relation to a transaction for the purposes of subsection (1) if it is such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.

(4) Arrangements are tax relief arrangements in relation to a transaction for the purposes of subsection (1) if they are such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.

(5) In this section "relief" means relief by way of—

(a) deduction in calculating profits or gains, or

(b) deduction or set off against income."

PART 10

RELOCATION OF SECTIONS 130 TO 132 OF FA 1988

Taxes Management Act 1970 (c. 9)

53 TMA 1970 is amended as follows.

54 After section 109A insert—

"Companies ceasing to be UK resident

109B Provisions for securing payment by company of outstanding tax

(1) Each of conditions A to D must be met before a company ceases to be resident in the United Kingdom.

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(2) Condition A is that the company gives to the Commissioners for Her Majesty's Revenue and Customs notice of its intention to cease to be resident in the United Kingdom.

(3) Condition B is that the notice specifies the time ("the migration time") when the company intends to cease to be resident in the United Kingdom.

(4) Condition C is that the company gives to the Commissioners—

(a) a statement of the amount which, in its opinion, is the amount of the tax which is or will be payable by it in respect of periods beginning before the migration time, and

(b) particulars of the arrangements which it proposes to make for securing the payment of that tax.

(5) Condition D is that—

(a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the migration time, and

(b) those arrangements, as made by the company, are approved for the purposes of this subsection by the Commissioners.

(6) If any question arises as to the amount which, for the purposes of subsection (5), should be regarded as the amount of tax which is or will be payable by the company in respect of periods beginning before the migration time, that question is to be referred to the tribunal.

(7) A decision of the tribunal under subsection (6) is final, despite sections 11 and 13 of the TCEA 2007 (appeals from tribunal decisions).

(8) If any information furnished by the company for the purpose of securing the Commissioners' approval under subsection (5) does not fully and accurately disclose all facts and considerations material for the Commissioners' decision under that subsection, any resulting approval is void.

109C Penalty for company's failure to comply with section 109B

If a company ceases to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met, the company is liable to a penalty not exceeding the amount of tax—

(a) which is or will be payable by it in respect of periods beginning before that time, and

(b) which has not been paid at that time.

109D Penalty for other persons if company fails to comply with section 109B

(1) Subsection (5) applies if—

(a) condition E is met, and

(b) either of conditions F and G is met.

(2) Condition E is that in relation to a company ("the migrating company") any person ("P") does or is party to the doing of any act which to P's knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company

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ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met.

(3) Condition F is that P is—

(a) a director of the migrating company,

(b) a company which has control of the migrating company, or

(c) a director of a company which has control of the migrating company.

(4) Condition G is that the act mentioned in subsection (2) is a direction or instruction given—

(a) to persons within subsection (3), but

(b) otherwise than by way of advice given by a person acting in a professional capacity.

(5) If this subsection applies, P is liable to a penalty not exceeding the amount of tax—

(a) which is or will be payable by the migrating company in respect of periods beginning before the time mentioned in subsection (2), and

(b) which has not been paid at that time.

(6) Subsections (7) and (8) apply for the purposes of any proceedings against a person within subsection (3) for the recovery of a penalty under subsection (5).

(7) It is to be presumed that the person was party to every act of the migrating company unless the person proves that it was done without the person's consent or connivance.

(8) It is to be presumed, unless the contrary is proved, that any early-migration act was to the person's knowledge an early-migration act.

(9) In subsection (8) "early-migration act" means an act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met.

109E Liability of other persons for unpaid tax

(1) This section applies if—

(a) a company ("the migrating company") ceases to be resident in the United Kingdom at any time, and

(b) any tax which is payable by the company in respect of periods beginning before that time is not paid within 6 months from the time when it becomes payable.

(2) The Commissioners for Her Majesty's Revenue and Customs may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person within subsection (3) a notice—

(a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable, and

(b) requiring that person to pay that amount within 30 days of the service of the notice.

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(3) The persons within this subsection are—

(a) any company which is, or within the pre-migration year was, a member of the same group as the migrating company,

(b) any person who is, or within the pre-migration year was, a controlling director of the migrating company, and

(c) any person who is, or within the pre-migration year was, a controlling director of a company which has, or within the pre-migration year had, control over the migrating company.

(4) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due and duly demanded from the person.

(5) If a person ("P") pays any amount which a notice under this section requires P to pay, P may recover the amount from the migrating company.

(6) A payment in pursuance of a notice under this section is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.

(7) In this section—

"controlling director", in relation to a company, means a director of the company who has control of the company,

"group" has the meaning which would be given by section 170 of the 1992 Act if in that section for references to 75 per cent subsidiaries there were substituted references to 51 per cent subsidiaries, and

"pre-migration year" means the period of 12 months ending with the time when the migrating company ceases to be resident in the United Kingdom.

109F Interpretation of sections 109B to 109E

(1) In sections 109B to 109E, any reference to the tax payable by a company includes a reference to—

(a) any amount which the company is liable to pay under section 77C (territorial extension of charge to tax),

(b) any amount of tax which the company is liable to pay under regulations made under section 684 of ITEPA 2003 (PAYE),

(c) any amount which the company is liable to pay under sections 61 and 62(1)(a) of the Finance Act 2004 (sub-contractors in the construction industry),

(d) any income tax which the company is liable to pay in respect of payments within section 946 of ITA 2007 (collection of tax: deposit-takers, building societies and certain companies), and

(e) any amount representing income tax which the company is liable to pay under section 966 of ITA 2007 (entertainers and sportsmen).

(2) In sections 109B to 109E read in accordance with subsection (1), any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest—

(a) on the tax so payable, or

(b) on tax paid by the company in respect of such periods,

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which the company is liable to pay in respect of periods beginning before or after that time.

(3) In sections 109B to 109E "director", in relation to a company, is to be read in accordance with the following provisions—

(a) section 67(1) and (2) of ITEPA 2003, and

(b) section 452 of CTA 2010.

(4) In sections 109B to 109E, any reference to a person having control of a company is to be read in accordance with sections 450 and 451 of CTA 2010."

Finance Act 1988 (c. 39)

55 FA 1988 is amended as follows.

56 Omit sections 130 to 132 (company migration).

PART 11

RELOCATION OF SECTION 151 OF FA 1989

Taxes Management Act 1970 (c. 9)

57 TMA 1970 is amended as follows.

58 After section 30A insert—

"**30AA Assessing income tax on trustees and personal representatives**

(1) Income tax charged on income arising to trustees of a settlement may be assessed and charged on, and in the name of, any one or more of the assessable trustees.

(2) Income tax charged on income arising to the personal representatives of a deceased person may be assessed and charged on, and in the name of, any one or more of the assessable representatives.

(3) In subsection (1) "the assessable trustees" means—

(a) the trustees of the settlement in the tax year in which the income arises, and

(b) any subsequent trustees of the settlement.

(4) In subsection (2) "the assessable representatives" means—

(a) the persons who, in the tax year in which the income arises, are personal representatives of the deceased person, and

(b) any subsequent personal representatives of the deceased person."

Finance Act 1989 (c. 26)

59 FA 1989 is amended as follows.

60 Omit section 151 (assessment of trustees and personal representatives).

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Income Tax (Trading and Other Income) Act 2005 (c. 5)

61 ITTOIA 2005 is amended as follows.

62 In Schedule 2 (transitionals and savings etc) omit paragraph 91 (interpretation of section 151(2) of FA 1989).

PART 12

RELOCATION OF SCHEDULE 12 TO F(NO.2)A 1992 SO FAR AS APPLYING FOR INCOME TAX PURPOSES

Finance (No.2) Act 1992 (c. 48)

63 F(No.2)A 1992 is amended as follows.

64 Omit section 66 (which introduces Schedule 12).

65 Omit Schedule 12 (banks etc in compulsory liquidation).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

66 ITTOIA 2005 is amended as follows.

67 In section 369 (charge to tax on interest) after subsection (4) insert—

"(5) See also Chapter 3A of Part 14 of ITA 2007 (which provides for the receipts of certain types of company being wound up to be charged to income tax under that Chapter instead of under any other provision that would otherwise apply)."

Income Tax Act 2007 (c. 3)

68 ITA 2007 is amended as follows.

69 In section 2(14) (overview of Act: Part 14) after paragraph (c) insert ", and

(d) imposition of the charge to income tax on the receipts of certain types of company being wound up (Chapter 3A)."

70 In section 3(2) (overview of charges to income tax)—

(a) omit the "and" immediately before paragraph (e), and

(b) after paragraph (e) insert ", and

(f) Chapter 3A of Part 14 of this Act (banks etc in compulsory liquidation)."

71 After section 837 insert—

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"**CHAPTER 3A**

BANKS ETC IN COMPULSORY LIQUIDATION

837A Overview of Chapter

(1) This Chapter provides for the receipts of certain types of company being wound up to be charged to income tax.

(2) For provision charging the receipts of such companies to corporation tax, see Chapter 6 of Part 13 of CTA 2010.

837B Application of Chapter

(1) This Chapter applies if—

(a) a company is being or has been wound up by the court in the United Kingdom, and

(b) conditions A, B and C are met.

(2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as—

(a) a person of the kind mentioned in paragraph (b) of the definition of "bank" in section 991(2) (persons with permission under Part 4 of FISMA 2000 to accept deposits), or

(b) a permitted EEA credit institution.

(3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the "deposit-taking trade").

(4) Condition C is that the company is insolvent and—

(a) was so when the winding up proceedings started, or

(b) became so at any time in the period of 12 months following the day on which those proceedings started.

(5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of—

(a) the day on which the winding up proceedings started, and

(b) the day on which the company permanently ceased to carry on the deposit-taking trade.

(6) In subsection (2)(b) a "permitted EEA credit institution" means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institutions authorised by home state regulator) which has permission to accept deposits under paragraph 15 of that Schedule.

837C Charge to income tax on winding up receipts

(1) Winding up receipts arising from the deposit-taking trade are chargeable to income tax.

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(2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.

(3) A "winding up receipt" means (subject to subsection (4)) a sum received by the company or its liquidator after—

(a) the start of the winding up proceedings, or

(b) if later, the permanent cessation of the deposit-taking trade.

(4) The following are not winding up receipts—

(a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and

(b) a sum realised by the transfer of an asset required to be valued under section 173 of ITTOIA 2005 (valuation of trading stock on cessation).

837D Transfer of rights to payment

(1) This section applies if—

(a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and

(b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.

(2) If the transfer is at arm's length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.

(3) If the transfer is not at arm's length, this Chapter has effect as if the value of the right transferred as between parties at arm's length were a winding up receipt arising from the deposit-taking trade.

837E Allowable deductions

(1) In calculating the amount on which income tax is charged under this Chapter for a tax year, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to income tax under this Chapter.

(2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the tax year (but subject to subsections (4) and (5)).

(3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so—

(a) would have been deducted in calculating the profits of the trade for income or corporation tax purposes, or

(b) would have been deducted from or set off against the profits of the trade for income or corporation tax purposes.

(4) No deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.

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(5) A loss, expense or debit is only within subsection (3) if incurred—

(a) after the start of the winding up proceedings or, if later, the permanent cessation of the deposit-taking trade, or

(b) in the case of a loss, at or before the permanent cessation of the deposit-taking trade.

(6) No deduction for an amount is allowed under this section if the amount has already been allowed (whether under this section or under any other provision of the Tax Acts).

837F Election to carry back

(1) This section applies if a winding up receipt arising from the deposit-taking trade is received in a tax year beginning no later than 6 years after the company permanently ceased to carry on the trade.

(2) The company or its liquidator may elect that the income tax chargeable under this Chapter in respect of the receipt is to be charged as if the receipt has been received on the date of the cessation.

(3) The election must be made before the end of the period of two years beginning immediately after the end of the tax year in which the receipt is received.

(4) If an election is made under this section an assessment to income tax must be made accordingly (regardless of anything in the Income Tax Acts).

837G Relationship of Chapter with other income tax provisions

If a winding up receipt arising from the deposit-taking trade is chargeable to income tax under this Chapter it is not chargeable to income tax under any other provision.

837H Interpretation of Chapter

(1) This section applies for the purposes of this Chapter.

(2) There is the permanent cessation of a company's trade if—

(a) the company ceases to carry on the trade, or

(b) the company ceases to be within the charge to corporation tax in respect of the trade,

whether or not the trade is in fact ceased.

(3) A company is insolvent at any time if at that time—

(a) it is unable to pay its debts as they fall due, or

(b) the value of its assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(4) "Company" means—

(a) a company as defined in section 1(1) of the Companies Act 2006, or

(b) an unregistered company as defined in section 220 of the Insolvency Act 1986 or Article 184 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

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(5) For the meaning of "deposit-taking trade" and "winding up receipt", see sections 837B(3) and 837C(3) respectively."

72 In Schedule 4 (index of defined expressions) at the appropriate places insert—

"company (in Chapter 3A of Part 14)	section 837H(4)"
"deposit-taking trade (in Chapter 3A of Part 14)	section 837B(3)"
"winding up receipt (in Chapter 3A of Part 14)	section 837C(3)"

PART 13

RELOCATION OF SECTION 200 OF FA 1996 SO FAR AS APPLYING FOR INCOME TAX PURPOSES

Finance Act 1996 (c. 8)

73 FA 1996 is amended as follows.

74 (1) Amend section 200 (domicile for tax purposes of overseas electors) as follows.

(2) In subsection (1)(a) (determinations for purposes of inheritance tax, income tax or capital gains tax) omit ", income tax".

(3) In subsection (4)(a) (which refers to any of the taxes mentioned in subsection (1)(a)) for "any" substitute " either ".

Income Tax Act 2007 (c. 3)

75 ITA 2007 is amended as follows.

76 In section 2(14)(b) (overview of Act: reference to Chapter 2 of Part 14) for "(Chapter 2)" substitute " and domicile (Chapters 2 and 2A) ".

77 After section 835A insert—

"**CHAPTER 2A**

DOMICILE

835B Domicile for income tax purposes of overseas electors

(1) In determining for income tax purposes where a person is domiciled, disregard any relevant electoral action taken by the person (whether taken before, on or after the day on which TIOPA 2010 is passed).

(2) For the purposes of this section, relevant electoral action is taken by a person if—

(a) the person does anything with a view to, or in connection with, being registered as an overseas elector, or

(b) the person, when registered as an overseas elector, votes in any election at which the person is entitled to vote as a result of being registered as an overseas elector.

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(3) For the purposes of this section, a person is registered as an overseas elector if the person is—

(a) registered in any register of parliamentary electors in pursuance of such a declaration as is mentioned in section 1(1)(a) of the Representation of the People Act 1985 (extension of parliamentary franchise to certain non-resident British citizens), or

(b) registered under section 3 of that Act (certain non-resident peers entitled to vote at European Parliamentary elections).

(4) Subsection (1) does not prevent regard being had, in determining a person's domicile at any time, to any relevant electoral action taken by the person if—

(a) the person's domicile at that time is being determined for the purpose of ascertaining that or any other person's liability to income tax, and

(b) the person whose liability is being ascertained wishes regard to be had to that action.

(5) If a person's domicile is determined in accordance with any such wishes, that domicile is to be regarded as having been determined for the purpose only of ascertaining the liability concerned."

PART 14

RELOCATION OF SECTION 36 OF FA 1998 AND SECTION 111 OF FA 2009

Taxes Management Act 1970 (c. 9)

78 TMA 1970 is amended as follows.

79 In Part 5A (payment of tax) after section 59E insert—

"**59F Arrangements for paying tax on behalf of group members**

(1) An officer of Revenue and Customs may enter into arrangements for the specified purpose with some or all of the members of a group.

(2) For the purposes of subsection (1), arrangements entered into with some or all of the members of a group are for "the specified purpose" if they are arrangements for one of those members to discharge any liability of each of those members to pay corporation tax for the accounting periods to which the arrangements relate.

(3) For the purposes of this section, a company and all its 51% subsidiaries form a group and, if any of those subsidiaries has 51% subsidiaries, the group includes them and their 51% subsidiaries, and so on.

(4) Arrangements entered into under subsection (1)—

(a) may make provision in relation to cases where companies become or cease to be members of a group,

(b) may make provision in relation to the discharge of liability to pay interest or penalties,

(c) may make provision in relation to the discharge of liability to pay any amount within subsection (6),

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(d) may make provision for or in connection with the termination of the arrangements, and

(e) may make such supplementary, incidental, consequential or transitional provision as is necessary for the purposes of the arrangements.

(5) Arrangements entered into under subsection (1)—

(a) do not affect the liability to corporation tax, or to pay corporation tax, of any company to which the arrangements relate, and

(b) do not affect any other liability under the Tax Acts of any company to which the arrangements relate.

(6) The following amounts are within this subsection—

(a) an amount due from a company under section 455 of CTA 2010 (charge to tax in case of loan to participator in close company) as if it were an amount of corporation tax chargeable on the company, and

(b) a sum chargeable on a company under section 747(4)(a) of the principal Act (controlled foreign companies) as if it were an amount of corporation tax."

80 In Part 5A after section 59F insert—

"**59G Managed payment plans**

(1) This section applies if a person ("P") has entered into a managed payment plan in respect of—

(a) an amount on account of income tax which is to become payable in accordance with section 59A(2),

(b) an amount of income tax or capital gains tax which is to become payable in accordance with section 59B, or

(c) an amount of corporation tax which is to become payable in accordance with section 59D.

(2) P enters into a managed payment plan in respect of an amount if—

(a) P agrees to pay, and an officer of Revenue and Customs agrees to accept payment of, the amount by way of instalments,

(b) the instalments to be paid before the due date are balanced by the instalments to be paid after it (see section 59H), and

(c) the agreement meets such other requirements as may be specified in regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(3) But this section does not apply, in the case of an amount of corporation tax, if an arrangement under section 59F has been made in relation to the amount.

(4) If P pays all of the instalments in accordance with the plan, P is to be treated as having paid, on the due date, the total of those instalments.

(5) If P—

(a) pays one or more instalments in accordance with the plan, but

(b) fails to pay one or more later instalments in accordance with it,

P is to be treated as having paid, on the due date, the total of the instalments paid before the failure (but this is subject to subsection (6)).

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(6) If—

(a) subsection (5) applies in a case in which the first failure to pay an instalment occurs before the due date, and

(b) P would (in the absence of a managed payment plan) be entitled to be paid interest on any amount paid before that date,

then, despite that subsection, P is entitled to be paid that interest.

(7) If—

(a) subsection (5) applies,

(b) P makes one or more payments after the due date (whether or not in accordance with the plan), and

(c) an officer of Revenue and Customs gives P a notice specifying any or all of those payments,

P is not liable to a penalty or surcharge for failing to pay the amount of the specified payments on or before the due date.

(8) Regulations under this section may make different provision for different cases.

(9) In this section "the due date", in relation to an amount mentioned in subsection (1), means the date on which it becomes payable.

59H Balancing of instalments for the purposes of section 59G

(1) Subsection (2) applies for the purposes of section 59G(2)(b).

(2) The instalments to be paid before the due date are balanced by those to be paid after it if the time value of the instalments to be paid before that date is equal, or approximately equal, to the time value of the instalments to be paid after it.

(3) The time value of the instalments to be paid before the due date is the total of the time value of each of the instalments to be paid before that date (and the time value of the instalments to be paid after that date is to be read accordingly).

(4) The time value of an instalment is—

$$A \times T$$

where—
A is the amount of the instalment, and
T is the number of days before, or after, the due date that the instalment is to be paid.

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for the purpose of determining when an amount is approximately equal to another amount.

(6) Regulations under this section may make different provision for different cases."

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Finance Act 1998 (c. 36)

81 FA 1998 is amended as follows.

82 Omit section 36 (arrangements with respect to payment of corporation tax).

Finance Act 2009 (c. 10)

83 FA 2009 is amended as follows.

84 Omit section 111 (managed payment plans).

PART 15

RELOCATION OF SECTION 118 OF FA 1998

Taxes Management Act 1970 (c. 9)

85 TMA 1970 is amended as follows.

86 In Part 4, after section 43D (which is inserted by Schedule 8) insert—

"**43E Making of income tax claims by electronic communications etc**

(1) The Commissioners for Her Majesty's Revenue and Customs may, by publishing them in a manner the Commissioners consider appropriate, give any claims directions that the Commissioners consider appropriate.

(2) In subsection (1) "claims directions" means general directions for the purposes of income tax relating to—

(a) the circumstances in which, and

(b) the conditions subject to which,

claims by individuals under the Tax Acts may be made by the use of an electronic communications service or otherwise without producing a claim in writing.

(3) Directions under subsection (1)—

(a) may not relate to the making of a claim by an individual in the individual's capacity as a trustee, partner or personal representative, but

(b) subject to that, may relate to claims made by an individual through another person acting on the individual's behalf.

(4) Directions under subsection (1) may not relate to—

(a) the making of a claim to which Schedule 1B to this Act applies, or

(b) the making of a claim under any provision of the Capital Allowances Act 2001.

(5) Directions under subsection (1)—

(a) cannot modify any requirement imposed by or under any enactment as to the period within which any claim is to be made or as to the contents of any claim, but

(b) may include provision as to how any requirement as to the contents of a claim is to be met when the claim is not produced in writing.

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(6) Directions under subsection (1) may make different provision in relation to the making of claims of different descriptions.

(7) A direction under subsection (1) may revoke or vary any previous direction given under that subsection.

(8) In subsection (2) "electronic communications service" has the same meaning as in the Communications Act 2003 (see section 32 of that Act).

(9) In subsections (1) to (6), references to the making of a claim include references to any of the following—

(a) the making of an election,

(b) the giving of a notification or notice,

(c) the amendment of any return, claim, election, notification or notice, and

(d) the withdrawal of any claim, election, notification or notice,

and in those subsections "claim" is to be read accordingly.

(10) For the purposes of subsection (9)(c)—

(a) "return" includes any statement or declaration under the Income Tax Acts, and

(b) the definition of "return" given by section 118(1) of this Act does not apply.

43F Effect of directions under section 43E

(1) If directions under section 43E(1) are in force in relation to the making of claims of any description to the Commissioners for Her Majesty's Revenue and Customs, claims of that description may be made to the Commissioners in accordance with the directions.

(2) If directions under section 43E(1) are in force in relation to the making of claims of any description to an officer of Revenue and Customs, claims of that description may be made to an officer in accordance with the directions.

(3) Subsections (1) and (2) apply despite any enactment or subordinate legislation which requires claims of the description concerned to be made in writing or by notice.

(4) If directions under section 43E(1) are in force in relation to the making of claims of any description, claims of that description that are made without producing the claim in writing must be made in accordance with the directions.

(5) In subsection (3) "subordinate legislation" has the same meaning as in the Interpretation Act 1978.

(6) Section 43E(9) read with section 43E(10) (interpretation of references to making a claim, and meaning of "claim") applies for the purposes of subsections (1) to (4) (as well as for those of section 43E(1) to (6)).”

Finance Act 1998 (c. 36)

87 FA 1998 is amended as follows.

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88 Omit section 118 (claims for income tax purposes).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

89 ITTOIA 2005 is amended as follows.

90 (1) Amend section 878 (other definitions) as follows.

(2) In subsection (3) (claims and elections) for "section 118 of FA 1998" substitute " section 43E(1) of TMA 1970 ".

(3) In subsection (4) for "(in" substitute " more generally (but in ".

Income Tax Act 2007 (c. 3)

91 ITA 2007 is amended as follows.

92 In section 989 (interpretation of Income Tax Acts) in the definition of "notice" for "section 118 of FA 1998" substitute " section 43E(1) of TMA 1970 ".

93 (1) Amend section 1020 (claims and elections) as follows.

(2) In subsection (1) for "section 118 of FA 1998" substitute " section 43E(1) of TMA 1970 ".

(3) In subsection (2) for "(in" substitute " more generally (but in ".

PART 16

RELOCATION OF SECTION 144 OF FA 2000

Taxes Management Act 1970 (c. 9)

94 TMA 1970 is amended as follows.

95 After section 106 insert—

"Evasion

106A Offence of fraudulent evasion of income tax

(1) A person commits an offence if that person is knowingly concerned in the fraudulent evasion of income tax by that or any other person.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

(3) In the application of subsection (2)(a)—

(a) in England and Wales in relation to offences committed before the commencement of section 282(3) of the Criminal Justice Act 2003, and

(b) in Northern Ireland,

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for "12 months" substitute " 6 months ".

(4) This section does not apply to things done or omitted before 1st January 2001."

Finance Act 2000 (c. 17)

96 FA 2000 is amended as follows.

97 Omit section 144 (offence of fraudulent evasion of income tax).

Serious Organised Crime and Police Act 2005 (c. 15)

98 The Serious Organised Crime and Police Act 2005 is amended as follows.

99 In section 76(3)(n) (offence under section 144 of FA 2000 is one for which a financial reporting order may be made) for "section 144 of the Finance Act 2000 (c. 17)" substitute " section 106A of the Taxes Management Act 1970 ".

Serious Crime Act 2007 (c. 27)

100 The Serious Crime Act 2007 is amended as follows.

101 (1) Amend Schedule 1 as follows.

(2) In paragraph 8(3) (offence under section 144 of FA 2000 is a serious offence in England and Wales) for "section 144 of the Finance Act 2000 (c. 17)" substitute " section 106A of the Taxes Management Act 1970 ".

(3) In paragraph 24(3) (offence under section 144 of FA 2000 is a serious offence in Northern Ireland) for "section 144 of the Finance Act 2000 (c. 17)" substitute " section 106A of the Taxes Management Act 1970 ".

PART 17

RELOCATION OF SECTION 199 OF FA 2003

Taxes Management Act 1970 (c. 9)

102 TMA 1970 is amended as follows.

103 After section 18A insert—

"**18B Savings income: regulations about European and international aspects**

(1) The Treasury may make regulations for implementing and for dealing with matters arising out of or related to—

(a) any EU obligation created with a view to ensuring the effective taxation of savings income under the law of the United Kingdom and the laws of the other member States, and

(b) any arrangements made with a territory other than a member State with a view to ensuring the effective taxation of savings income under the law of the United Kingdom and the law of the other territory.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) In this section "savings income" means—

(a) interest, apart from interest of a prescribed description, or

(b) other sums of a prescribed description.

(3) The power to make regulations under this section is exercisable by statutory instrument.

(4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

18C Regulations under section 18B: provision about "paying agents"

(1) Regulations under section 18B may, in particular, require paying agents—

(a) to obtain and verify prescribed descriptions of information about the identity and residence of relevant payees to whom they make savings income payments, and

(b) to provide to the Commissioners for Her Majesty's Revenue and Customs, or an officer of Revenue and Customs, prescribed descriptions of information about relevant payees to whom they make savings income payments and about the savings income payments which they make to them.

(2) Regulations under section 18B may include provision for the inspection on behalf of the Commissioners of books, documents and other records of persons who are, or appear to an officer to be, paying agents.

(3) In this section "paying agents" means persons of a prescribed description who make savings income payments to other persons.

(4) In this section "relevant payees" means—

(a) persons of a prescribed description who are resident (within the meaning of regulations under section 18B) in a prescribed territory, and

(b) persons of any such other description as may be prescribed.

(5) For the purposes of this section, a person makes savings income payments to another person if the person—

(a) makes payments of savings income to the other person, or

(b) secures the payment of savings income for the other person.

(6) In this section "savings income" has the same meaning as in section 18B.

(7) The descriptions of persons who may be prescribed under subsection (3) include, in particular, public officers and government departments.

(8) The only territories which may be prescribed under subsection (4)(a) are—

(a) the other member States, and

(b) territories with which arrangements such as are mentioned in section 18B(1)(b) have been made.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

18D Content of regulations under section 18B: supplementary provision

(1) Regulations under section 18B may include provision for notices under such regulations to be combined with notices under sections 17 and 18.

(2) Regulations under section 18B may include provision about the time at or within which, and the manner in which, any requirement imposed by such regulations is to be complied with.

(3) Regulations under section 18B may include provision for penalties for failure to comply with requirements imposed by such regulations, including provision applying any provision of this Act about the determination of penalties or any other matter relating to penalties.

(4) Regulations under section 18B—

(a) may make different provision for different cases or descriptions of case, and

(b) may include incidental, supplemental, consequential and transitional provision and savings.

18E Interpretation of sections 18B to 18D: "prescribed" etc

(1) In sections 18B to 18D "prescribed" means prescribed by regulations under section 18B.

(2) The following provisions do not apply for the purposes of sections 18B to 18D—

(a) section 118 of this Act (interpretation), and

(b) section 18 of ITA 2007 (meaning of "savings income" in the Income Tax Acts)."

104 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for regulations under section 199 of the Finance Act 2003.

Finance Act 2003 (c. 14)

105 FA 2003 is amended as follows.

106 Omit section 199 (savings income: power to make regulations in connection with Community obligations and international arrangements).

PART 18

RELOCATION OF SECTION 61 OF F(NO.2)A 2005

Finance Act 1998 (c. 36)

107 FA 1998 is amended as follows.

108 (1) Amend Schedule 18 (company tax returns, assessments and related matters) as follows.

(2) After paragraph 87 insert—

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"**PART 10A**

SEs

Company ceasing to be UK resident on formation of SE by merger

87A (1) Sub-paragraph (2) applies if at any time a company ceases to be resident in the United Kingdom in the course of the formation of an SE by merger, whether or not the company continues to exist after the formation of the SE.

(2) The other Parts of this Schedule apply after that time, but in relation to liabilities accruing and matters arising before that time—

(a) as if the company were still resident in the United Kingdom, and

(b) if the company has ceased to exist, as if the SE were the company.

SE ceasing to be UK resident

87B (1) Sub-paragraph (2) applies if at any time an SE—

(a) transfers its registered office from the United Kingdom, and

(b) ceases to be resident in the United Kingdom.

(2) The other Parts of this Schedule apply after that time, but in relation to liabilities accruing and matters arising before that time, as if the SE were still resident in the United Kingdom.

Meaning of SE

87C In this Part "SE" means a European public limited-liability company (or Societas Europaea) within the meaning of Council Regulation (EC) No. 2157/2001 on the Statute for a European company."

(3) In the table in paragraph 98 (index of defined expressions) before the entry for "Self-assessment" insert—

"SE (in Part 10A)	paragraph 87C"

Finance (No. 2) Act 2005 (c. 22)

109 F(No.2) A 2005 is amended as follows.

110 Omit section 61 (continuity for transitional purposes in cases involving SEs).

PART 19

RELOCATION OF PARAGRAPH 13 OF SCHEDULE 13 TO FA 2007

Income Tax Act 2007 (c. 3)

111 ITA 2007 is amended as follows.

112 After section 925 insert—

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"Repos

925A Creditor repos

(1) Subsection (2) applies if a company ("the lender") has a creditor repo for the purposes of Chapter 10 of Part 6 of CTA 2009 (see section 543 of that Act).

(2) Sections 918 to 925 have effect in relation to the lender while the arrangement is in force as if—

(a) the lender paid the borrower amounts which are representative of the income payable on the securities that are initially sold,

(b) the payments were made under requirements of the arrangement, and

(c) the payments were made on the dates on which the income is payable.

(3) For the purposes of subsection (2), an arrangement is in force from the time when the securities are initially sold until the earlier of—

(a) the time when the subsequent sale of the securities, or similar securities, takes place, and

(b) the time when it becomes apparent that that sale will not take place.

925B Debtor repos

(1) Subsection (2) applies if a company ("the borrower") has a debtor repo for the purposes of Chapter 10 of Part 6 of CTA 2009 (see section 548 of that Act).

(2) The reverse charge provisions of this Chapter have effect in relation to the borrower while the arrangement is in force as if—

(a) the lender paid the borrower amounts which are representative of the income payable on the securities that are initially sold,

(b) the payments were made under requirements of the arrangement, and

(c) the payments were made on the dates on which the income is payable.

(3) In subsection (2) "the reverse charge provisions of this Chapter" means—

(a) regulations under section 918(4), and

(b) sections 920 and 923.

(4) For the purposes of subsection (2), an arrangement is in force from the time when the securities are initially sold until the earlier of—

(a) the time when the subsequent buying of the securities, or similar securities, takes place, and

(b) the time when it becomes apparent that that buying will not take place.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

925C Actual payments ignored if section 925A or 925B applies

If section 925A(2) or 925B(2) applies, any payment actually made under an arrangement which is representative of any income payable on any securities is to be treated for the purposes of sections 918 to 925 as if it had not been made.

925D Power to modify repo sections

(1) The Treasury may by regulations provide for all or any of the provisions of sections 925A to 925F to apply with modifications in relation to—

(a) cases to which section 925E (non-standard repo cases) applies, or

(b) cases involving redemption arrangements, or

(c) both of those cases.

(2) A case involves redemption arrangements if—

(a) arrangements, corresponding to those made in cases where a company has a repo, are made in relation to securities that are to be redeemed in the period after their sale, and

(b) the arrangements are such that a person (instead of having the right or obligation to buy those securities, or similar or other securities, at any subsequent time) has a right or obligation in respect of the benefits which will result from the redemption.

(3) The regulations may make incidental, supplemental, consequential and transitional provision and savings.

(4) In this section "modifications" includes exceptions and omissions.

(5) For the purposes of subsection (2)(a) and section 925E(1), a company has a repo if—

(a) for the purposes of Chapter 10 of Part 6 of CTA 2009—

(i) it has a creditor repo (see section 543 of that Act),

(ii) it has a creditor quasi-repo (see section 544 of that Act),

(iii) it has a debtor repo (see section 548 of that Act), or

(iv) it has a debtor quasi-repo (see section 549 of that Act), or

(b) as a result of section 547 of that Act, the company has a creditor repo for the purposes of section 546 of that Act.

925E Cases where section 925D applies: non-standard repos

(1) This section applies to a case if—

(a) a company has a repo,

(b) there has been a sale of the securities under the arrangement or arrangements by reference to which the company has the repo, and

(c) any of conditions A to C is met.

(2) Condition A is that those securities, or similar or other securities, are not subsequently bought under the arrangement or arrangements.

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(3) Condition B is that provision is made by or under an arrangement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the subsequent purchase, are to represent those initially sold.

(4) Condition C is that provision is made by or under an arrangement for securities to be treated as not so included.

(5) Section 925D(5) interprets references in subsection (1) to a company having a repo.

925F Interpretation of the repo sections

(1) This section applies for the purposes of sections 925A to 925E and this section.

(2) "Arrangement" includes any agreement or understanding (whether or not legally enforceable).

(3) It does not matter whether or not provision of any arrangement conferring a right or imposing an obligation on any person to buy any securities is subject to any conditions.

(4) "Securities" means shares, stock or other securities issued by—

(a) the government of the United Kingdom,

(b) any public or local authority in the United Kingdom,

(c) any UK resident company or other UK resident body,

(d) a government or public or local authority of a territory outside the United Kingdom, or

(e) any other body of persons not resident in the United Kingdom.

(5) Securities are similar if they give their holders—

(a) the same rights against the same persons as to capital, interest and dividends, and

(b) the same remedies to enforce those rights.

(6) Subsection (5) applies even if there is a difference in—

(a) the total nominal amounts of the securities,

(b) the form in which they are held, or

(c) the manner in which they can be transferred.

(7) If—

(a) a person ("A") buys securities (or has a right or obligation to buy securities), but

(b) the securities are (or are to be) held for the benefit of another person ("B"),

B (not A) is treated as buying (or having the right or obligation to buy) the securities.

(8) If—

(a) a person ("C") sells securities, but

(b) the proceeds of the sale are held for the benefit of another person ("D"),

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D (not C) is treated as selling the securities."

[F433]113 . . . . . .

Textual Amendments

F433 Sch. 7 para. 113 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, **Sch. 29 para. 48(3)**

Finance Act 2007 (c. 11)

114 FA 2007 is amended as follows.

115 In Schedule 13 (sale and repurchase of securities) omit paragraph 13 (application of Chapter 9 of Part 15 of ITA 2007).

[F434SCHEDULE 7A

Section 374

INTEREST RESTRICTION RETURNS

Textual Amendments

F434 Sch. 7A inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 2** (with Sch. 5 para. 28)

PART 1

THE REPORTING COMPANY

Appointment by a worldwide group of a reporting company

1 (1) A member of a worldwide group may, by notice to an officer of Revenue and Customs, appoint an eligible company to be the group's reporting company.

(2) The notice must specify the first period of account of the group ("the specified period of account") in relation to which the appointment is to have effect.

(3) An appointment under this paragraph has effect in relation to—

(a) the specified period of account, and

(b) subsequent periods of account of the group.

(4) The notice is of no effect unless—

(a) it is given during the period of [F435]12 months] beginning with the end of the specified period of account,

(b) it is authorised by at least 50% of eligible companies, and

(c) it is accompanied by a statement containing the required information.

(5) For this purpose "the required information" means—

(a) a list of the eligible companies that have authorised the notice, and

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(b) a statement that the listed companies constitute at least 50% of eligible companies.

(6) The notice may be accompanied by a statement that such of the companies listed under sub-paragraph (5)(a) as are specified in the statement do not wish to be consenting companies in relation to returns submitted by the reporting company.

For provision as to the effect of a statement under this subparagraph, see paragraph 11.

(7) For the purposes of this paragraph a company is "eligible" if and only if the company —

(a) was a UK group company at a time during the specified period of account, and

(b) was not dormant throughout that period.

Textual Amendments

F435 Words in Sch. 7A para. 1(4)(a) substituted (12.2.2019) by Finance Act 2019 (c. 1), **Sch. 11 para. 15(a)**

Revocation by worldwide group of appointment under paragraph 1

2 (1) A member of a worldwide group may, by notice to an officer of Revenue and Customs, revoke an appointment previously made under paragraph 1.

(2) The notice must specify the first period of account of the group ("the specified period of account") in relation to which the appointment is to be revoked.

(3) An appointment that is revoked under this paragraph ceases to have effect in relation to—

(a) the specified period of account, and

(b) subsequent periods of account of the group.

(4) The notice is of no effect unless—

(a) it is given during the period of **[**F436 12 months**]** beginning with the end of the specified period of account,

(b) it is authorised by at least 50% of eligible companies, and

(c) it is accompanied by a statement containing the required information.

(5) For this purpose "the required information" means—

(a) a list of the eligible companies that have authorised the notice, and

(b) a statement that the listed companies constitute at least 50% of eligible companies.

(6) The revocation of an appointment does not prevent the making of a further appointment under paragraph 1 (whether at the same time as the revocation, or later).

(7) For the purposes of this paragraph a company is "eligible" if and only if the company —

(a) was a UK group company at a time during the specified period of account, and

(b) was not dormant throughout that period.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F436 Words in Sch. 7A para. 2(4)(a) substituted (12.2.2019) by Finance Act 2019 (c. 1), **Sch. 11 para. 15(b)**

Regulations supplementing paragraphs 1 and 2

3 The Commissioners may by regulations make further provision about an appointment under paragraph 1 or the revocation of such an appointment under paragraph 2, including in particular provision—

(a) about the form and manner in which an appointment or revocation may be made;

(b) requiring a person to give information to an officer of Revenue and Customs in connection with the making of an appointment or revocation;

(c) prohibiting a company from being appointed unless it meets conditions specified in the regulations;

(d) about the time from which an appointment or revocation has effect;

(e) providing that an appointment or revocation is of no effect, or (in the case of an appointment) ceases to have effect, if a requirement under the regulations is not met.

Appointment of reporting company by Revenue and Customs

4 (1) This paragraph applies where—

(a) no appointment of a reporting company under paragraph 1 has effect in relation to a period of account of a worldwide group ("the relevant period of account"), and

(b) as a result of sub-paragraph (4)(a) of that paragraph, an appointment of a reporting company under that paragraph that has effect in relation to the relevant period of account is no longer possible.

(2) An officer of Revenue and Customs may, by notice to an eligible company, appoint it to be the group's reporting company.

(3) The notice must specify the relevant period of account (whether by specifying the dates on which it begins and ends or, if the officer does not have that information, by reference to a date or dates).

(4) The appointment has effect in relation to the relevant period of account.

(5) The appointment may be made—

(a) at any time before the end of the period of **[**F437**]**4 years**]** beginning with the end of the relevant period of account, or

(b) at any time after the end of that period if, at that time, an amount stated in the company tax return of a UK group company for a relevant accounting period can be altered.

(6) Paragraph 88(3) to (5) of Schedule 18 to FA 1998 (meaning of "can no longer be altered") applies for the purposes of this paragraph.

(7) For the purposes of this paragraph a company is "eligible" if and only if the company —

(a) was a UK group company at a time during the relevant period of account, and

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(b) was not dormant throughout that period.

Textual Amendments

F437 Words in Sch. 7A para. 4(5)(a) 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. 20**

Appointment by officer of Revenue and Customs of replacement reporting company

5 (1) This paragraph applies where—

(a) an appointment of a reporting company under paragraph 1 or 4 or this paragraph has effect in relation to a period of account of a worldwide group ("the relevant period of account"), and

(b) condition A or B is met.

(2) Condition A is that an officer of Revenue and Customs considers that the reporting company mentioned in sub-paragraph (1)(a) has not complied with, or will not comply with, a requirement under or by virtue of this Schedule.

(3) Condition B is that the reporting company mentioned in sub-paragraph (1)(a) has agreed that an officer of Revenue of Customs may exercise the power in this paragraph.

(4) An officer of Revenue and Customs may, by notice—

(a) revoke the appointment of the reporting company mentioned in sub-paragraph (1)(a), and

(b) appoint in its place an eligible company to be the reporting company of the group.

(5) The notice must—

(a) be given to each of the companies mentioned in sub-paragraph (4), and

(b) specify the relevant period of account (whether by specifying the dates on which it begins and ends or, if the officer does not have that information, by reference to a date or dates).

(6) Where the power in sub-paragraph (4) is exercised—

(a) the appointment that is revoked ceases to have effect in relation to—

(i) the relevant period of account, and

(ii) subsequent periods of account of the group;

(b) the appointment of the replacement has effect in relation to the relevant period of account.

(7) For the purposes of this paragraph a company is "eligible" if and only if the company —

(a) was a UK group company at a time during the relevant period of account, and

(b) was not dormant throughout that period.

Obligation of reporting company to notify group members of its status

6 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group ("the relevant period of account").

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(2) The reporting company must, as soon as reasonably practicable after the relevant time, notify each relevant company that it is the group's reporting company in relation to the relevant period of account.

(3) In sub-paragraph (2) "the relevant time" means—

(a) if the relevant period of account is the first period of account in relation to which the appointment has effect, the time of the appointment;

(b) otherwise, the end of the period of 6 months beginning with the end of the relevant period of account.

(4) Sub-paragraph (2) does not require the reporting company to notify a relevant company if the reporting company notified that company under that sub-paragraph in relation to an earlier period of account.

(5) The duty to comply with sub-paragraph (2) is enforceable by the company required to be notified under that sub-paragraph.

(6) For the purposes of this paragraph a company is "relevant" if and only if the company meets condition A or B.

(7) Condition A is that the company—

(a) was a UK group company at a time during the relevant period of account, and

(b) was not dormant throughout that period.

(8) Condition B is that the company is the ultimate parent of the worldwide group.

Obligation of reporting company to submit interest restriction return

7 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

(2) If the reporting company was appointed under paragraph 1 or 4, it must submit a return for the period of account to an officer of Revenue and Customs.

(3) If the reporting company was appointed under paragraph 5, it must submit a return for the period of account to an officer of Revenue and Customs unless a return for the period has already been submitted under sub-paragraph (2) or this sub-paragraph.

(4) A return submitted under this paragraph must be received by an officer of Revenue and Customs before the filing date in relation to the period of account.

(5) In this Part of this Act "the filing date", in relation to a period of account of a worldwide group, means—

(a) the end of the period of 12 months beginning with the end of the period of account, or

[[F438](b) if an appointment of a reporting company under paragraph 4 or 5 has effect in relation to the period of account, the end of the period of 3 months beginning with the day on which the appointment was made,**]**

[[F439]whichever is the later**]**.

[For an extension of the filing date in the case of a takeover, see paragraph 7A.**]**

[F440](5A)

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) A return submitted under this paragraph is of no effect unless it is received by an officer of Revenue and Customs before—

(a) the end of the period of 36 months beginning with the end of the period of account, or

(b) if later, the end of the period of 3 months beginning with the day on which the reporting company was appointed.

This is subject to paragraph 57.

Textual Amendments

F438 Sch. 7A para. 7(5)(b) substituted (12.2.2019) by Finance Act 2019 (c. 1), **Sch. 11 para. 16(a)**

F439 Words in Sch. 7A para. 7(5) inserted (12.2.2019) by Finance Act 2019 (c. 1), **Sch. 11 para. 16(b)**

F440 Sch. 7A para. 7(5A) inserted (with effect in accordance with Sch. 11 para. 25 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 17(1)**

[
F441 7A (1) This paragraph applies if—

(a) a period of account ("the affected period") of a worldwide group ("the old group") ends solely as a result of the ultimate parent of the old group becoming a member of a different worldwide group, and

(b) the time at which that happens is within 12 months of the beginning of the affected period.

(2) For the purposes of this Part of this Act the filing date in relation to the affected period of the old group is whichever is the later of—

(a) the date given by paragraph 7(5), and

(b) the end of the period of 24 months beginning with the affected period.**]**

Textual Amendments

F441 Sch. 7A para. 7A inserted (with effect in accordance with Sch. 11 para. 25 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 17(2)**

Revised interest restriction return

8 (1) This paragraph applies where—

(a) the appointment of a reporting company has effect in relation to a period of account of a worldwide group, and

(b) a return ("the previous interest restriction return") was submitted under paragraph 7, or this paragraph, for the period of account.

(2) The reporting company may submit a revised interest restriction return for the period of account to an officer of Revenue and Customs.

(3) A revised interest restriction return submitted under sub-paragraph (2) is of no effect unless it is received by an officer of Revenue and Customs before—

(a) the end of the period of 36 months beginning with the end of the period of account, or

(b) if later, the end of the period of 3 months beginning with the day on which the reporting company was appointed.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

This is subject to paragraphs 9 and 57.

[F442(4) Where any of the figures contained in the previous interest restriction return have become incorrect (whether or not as a result of a member of the group amending, or being treated as amending, its company tax return), the reporting company must submit a revised interest restriction return (for the purpose of correcting those figures) to an officer of Revenue and Customs.**]**

[F443(5) A revised interest restriction return submitted under sub-paragraph (4) is of no effect unless it is received by an officer of Revenue and Customs before the end of—

(a) the period of 3 months beginning with the relevant day, or

(b) in a case where sub-paragraph (5B) applies, such longer period as an officer of Revenue and Customs may allow.

(5A) For the purposes of sub-paragraph (5), the "relevant day" is—

(a) where the figures contained in the previous interest restriction return have become incorrect as the result of a member of the group amending, or being treated as amending, an amount stated in its company tax return, the first day on which that amount can no longer be altered (within the meaning of paragraph 88(3) to (5) of Schedule 18 to FA 1998);

(b) in any other case, the day on which the figures contained in the previous interest restriction return were found to have become incorrect.

(5B) This sub-paragraph applies where an officer of Revenue and Customs considers that, as a result of an enquiry into a company tax return of another member of the group, the reporting company may subsequently be required to submit another revised interest restriction return under sub-paragraph (4).

(5C) A revised interest restriction return submitted under sub-paragraph (4) may differ from the previous return only so far as the differences are in consequence of the correction referred to in that sub-paragraph.**]**

(6) A return submitted under this paragraph—

(a) must indicate the respects in which it differs from the previous return, and

(b) supersedes the previous return.

Textual Amendments

F442 Sch. 7A para. 8(4) 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. 21(2)**

F443 Sch. 7A para. 8(5)-(5C) substituted for Sch. 7Apara. 8(5) (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. 21(3)**

Extended period for submission of full return ***[****F444****for period where no restriction]***

Textual Amendments

F444 Words in Sch. 7A para. 9 cross-heading substituted (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 14(4)**

9 (1) This paragraph applies where—

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(a) a reporting company has submitted an [F445]... interest restriction return for a period of account of a worldwide group in accordance with this Schedule, and

(b) the worldwide group is not subject to interest restrictions in the return period.

(2) Despite the passing of the time limit in paragraph 8(3), **[**[F446]an interest restriction return**]** for the period of account submitted under paragraph 8 **[**[F447]which is a full interest restriction return**]** has effect if it is received before the end of the period of 60 months beginning with the end of the period of account.

Textual Amendments

F445 Word in Sch. 7A para. 9(1)(a) omitted (15.3.2018) by virtue of Finance Act 2018 (c. 3), **Sch. 8 para. 14(2)**

F446 Words in Sch. 7A para. 9(2) substituted (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 14(3)(a)**

F447 Words in Sch. 7A para. 9(2) inserted (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 14(3)(b)**

Meaning of "consenting company" and "non-consenting company"

10 (1) This paragraph makes provision for the purposes of this Part of this Act about whether a company is a "consenting company" in relation to an interest restriction return submitted by a reporting company.

(2) The company is a "consenting company" in relation to the return if, before the return is submitted—

(a) it has notified the appropriate persons that it wishes to be a consenting company in relation to interest restriction returns submitted by the reporting company, and

(b) it has not notified the appropriate persons that it no longer wishes to be a consenting company in relation to such returns.

(3) In sub-paragraph (2) "the appropriate persons" means—

(a) an officer of Revenue and Customs, and

(b) the reporting company in relation to the period of account.

(4) The company is a "non-consenting company", in relation to the return, if it is not a consenting company in relation to the return.

Company authorising reporting company appointment treated as consenting company

11 (1) This paragraph applies where a company—

(a) is listed in a statement under sub-paragraph (4)(c) of paragraph 1 (list of companies authorising appointment of reporting company), and

(b) is not included in a statement under sub-paragraph (6) of that paragraph (companies authorising appointment of reporting company but not wishing to be consenting companies).

(2) The company is treated as having given, at the time of the appointment, a notice under paragraph 10(2)(a) in relation to interest restriction returns submitted by the reporting company.

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(3) Sub-paragraph (2) does not prevent the company, at any time after the appointment, from giving a notice under paragraph 10(2)(b) in relation to interest restriction returns submitted by the reporting company.

PART 2

CONTENTS OF INTEREST RESTRICTION RETURN

Elections

12 (1) An election to which this paragraph applies must be made in an interest restriction return for the period of account (or, as the case may be, the first period of account) to which the election relates.

(2) If an election to which this paragraph applies is capable of being revoked, the revocation must be made in an interest restriction return for the period of account (or, as the case may be, the first period of account) to which the revocation relates.

(3) This paragraph applies to the following elections—

(a) a group ratio election (see paragraph 13);

(b) a group ratio (blended) election (see paragraph 14);

(c) a group-EBITDA (chargeable gains) election (see paragraph 15);

(d) an interest allowance (alternative calculation) election (see paragraph 16);

(e) an interest allowance (non-consolidated investment) election (see paragraph 17);

(f) an interest allowance (consolidated partnerships) election (see paragraph 18);

(g) an abbreviated return election (see paragraph 19).

Modifications etc. (not altering text)
C61 Sch. 7A para. 12(2) applied (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 23(3)**

Group ratio election

13 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

(2) The reporting company may—

(a) elect that the interest allowance of the group is to be calculated using the group ratio method, or

(b) revoke an election previously made.

(3) An election or revocation under this paragraph has effect in relation to the period of account.

(4) An election under this paragraph is referred to in this Part of this Act as a "group ratio election".

(5) For provision as to the effect of a group ratio election, see section 396.

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Group ratio (blended) election

14 (1) This paragraph applies where—

(a) the appointment of a reporting company has effect in relation to a period of account of a worldwide group,

(b) the reporting company makes a group ratio election in respect of the period of account, and

(c) a related party investor in relation to the period of account is, throughout the period of account, a member of a worldwide group (an "investor worldwide group") other than that mentioned in paragraph (a).

(2) The reporting company may—

(a) elect that Chapter 5 of Part 10 (interest allowance) is to apply subject to the blended group ratio provisions, or

(b) revoke an election previously made.

(3) An election under this paragraph may—

(a) specify one or more investor worldwide groups,

(b) specify, in relation to any such group, one or more elections under this Schedule that are capable of being made in relation to a period of account by a reporting company of a worldwide group, and

(c) specify that the election is to be treated, for the purposes of the blended group ratio provisions, as having effect, or as not having effect, in relation to periods of account of the investor's worldwide group.

(4) Sub-paragraph (5) applies where—

(a) an election under this paragraph is made in relation to a period of account,

(b) an election under this paragraph was made in relation to any earlier period of account of the group,

(c) the election mentioned in paragraph (b) specified, under sub-paragraph (3)(c), that an election ("the investor's election") was to be treated as having effect in relation to periods of account of the investor's worldwide group, and

(d) the investor's election was an election which, if made by a reporting company of a worldwide group, would have been irrevocable.

(5) The election mentioned in sub-paragraph (4)(a) must specify, under sub-paragraph (3)(c), that the investor's election is to be treated as having effect in relation to periods of account of the investor's worldwide group.

(6) An election or revocation under this paragraph has effect in relation to the period of account.

(7) An election under this paragraph is referred to in this Part of this Act as a "group ratio (blended) election".

(8) In this paragraph "the blended group ratio provisions" means the provisions of sections 401 to 403.

Group-EBITDA (chargeable gains) election

15 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

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(2) The reporting company may elect that Chapter 7 of Part 10 (group-interest and group-EBITDA) is to apply subject to the chargeable gains provisions.

(3) An election under this paragraph—

(a) has effect in relation to the period of account and subsequent periods of account of the worldwide group, and

(b) is irrevocable.

(4) An election under this paragraph is referred to in this Part of this Act as a "group-EBITDA (chargeable gains) election".

(5) In this paragraph "the chargeable gains provisions" means the provisions of section 422.

Interest allowance (alternative calculation) election

16 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

(2) The reporting company may elect that Chapter 7 of Part 10 (group-interest and group-EBITDA) is to apply subject to the alternative calculation provisions.

(3) An election under this paragraph—

(a) has effect in relation to the period of account and subsequent periods of account of the worldwide group, and

(b) is irrevocable.

(4) An election under this paragraph is referred to in this Part of this Act as an "interest allowance (alternative calculation) election".

(5) In this paragraph "the alternative calculation provisions" means sections 423 to 426.

Interest allowance (non-consolidated investment) election

17 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

(2) The reporting company may—

(a) elect that Chapter 7 of Part 10 (group-interest and group-EBITDA) is to apply subject to the non-consolidated investment provisions, or

(b) revoke an election previously made.

(3) An election under this paragraph must specify, for the purposes of the non-consolidated investment provisions, one or more non-consolidated associates of the worldwide group.

(4) An election or revocation under this paragraph has effect in relation to the period of account.

(5) An election under this paragraph is referred to in this Part of this Act as an "interest allowance (non-consolidated investment) election".

(6) In this paragraph "the non-consolidated investment provisions" means sections 427 and 428.

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Interest allowance (consolidated partnerships) election

18 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

(2) The reporting company may elect that Chapter 7 of Part 10 (group-interest and group-EBITDA) is to apply subject to the consolidated partnership provisions.

(3) An election under this paragraph must specify, for the purposes of the consolidated partnership provisions, one or more consolidated partnerships of the worldwide group.

(4) Where an election under this paragraph has been made in relation to a worldwide group, a further election may be made specifying, for the purposes of the consolidated partnership provisions, one or more additional consolidated partnerships of the worldwide group.

(5) An election under this paragraph—

(a) has effect in relation to the period of account and subsequent periods of account of the worldwide group, and

(b) is irrevocable.

(6) An election under this paragraph is referred to in this Part of this Act as an "interest allowance (consolidated partnerships) election".

(7) In this paragraph "the consolidated partnership provisions" means the provisions of section 430.

Abbreviated return election

19 (1) This paragraph applies where the appointment of a reporting company has effect in relation to a period of account of a worldwide group.

(2) The reporting company may—

(a) elect to submit an abbreviated interest restriction return, or

(b) revoke an election previously made.

(3) An election or revocation under this paragraph has effect in relation to the period of account.

(4) An election under this paragraph is referred to in this Part of this Act as an "abbreviated return election".

(5) For provision as to the effect of an abbreviated return election, see—

paragraph 20 of this Schedule (which limits the required contents of the interest restriction return);

section 393 (which deprives the group of the use of the interest allowance for the return period, or any earlier period, in future periods of account).

Required contents of interest restriction return: full returns and abbreviated returns

20 (1) This paragraph makes provision about the contents of an interest restriction return submitted by the reporting company of a worldwide group.

(2) Sub-paragraph (3) applies if—

(a) the worldwide group is subject to interest restrictions in the return period, or

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(b) the worldwide group is not subject to interest restrictions in the return period, and no abbreviated return election has effect in relation to the period.

(3) The interest restriction return must—

(a) state the name and (where it has one) the Unique Taxpayer Reference of the ultimate parent of the worldwide group;

(b) specify the return period;

(c) state the names and Unique Taxpayer References (where they have them) of the companies that were UK group companies at any time during the return period, specifying in relation to each whether it is a consenting or a non-consenting company in relation to the return;

(d) contain a statement of calculations (see paragraph 21);

(e) if the group is subject to interest restrictions in the return period—

(i) contain a statement of that fact,

(ii) specify the total disallowed amount, and

(iii) contain a statement of allocated interest restrictions (see paragraph 22);

(f) if the group is subject to interest reactivations in the return period—

(i) contain a statement of that fact,

(ii) specify the interest reactivation cap,

(iii) contain a statement of allocated interest reactivations (see paragraph 25);

(g) contain a declaration by the person making the return that the return is, to the best of that person's knowledge, correct and complete.

(4) Sub-paragraph (5) applies if—

(a) the worldwide group is not subject to interest restrictions in the return period, and

(b) an abbreviated return election has effect in relation to the period.

(5) The interest restriction return must—

(a) state that the group is not subject to interest restrictions in the return period, and

(b) comply with paragraphs (a) to (c) and (g) of sub-paragraph (3).

[F448(5A) In addition to the matters required to be included in an interest restriction return in accordance with sub-paragraph (3) or (5), the return must include such other specified information as may reasonably be required for the purposes of this Part of this Act.

(5B) In sub-paragraph (5A) "specified" means specified in a notice published by Her Majesty's Revenue and Customs (and different information may be specified for different purposes).**]**

(6) If the ultimate parent of the worldwide group is a deemed parent by virtue of section 477 (stapled entities) or 478 (business combinations), the requirement in sub-paragraph (3)(a) is to state the name and (where it has one) Unique Taxpayer Reference of each of the entities mentioned in that paragraph.

(7) In this Part of this Act—

(a) a return prepared in accordance with sub-paragraph (3) is referred to as "a full interest restriction return";

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(b) a return prepared in accordance with sub-paragraph (5) is referred to as "an abbreviated interest restriction return".

Textual Amendments

F448 Sch. 7A para. 20(5A)(5B) inserted (with effect in accordance with Sch. 11 para. 26 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 18**

Statement of calculations

21 The statement of calculations required by paragraph 20(3)(d) to be included in a full interest restriction return must include the following information—

(a) for each company that was a UK group company at any time during the return period—

(i) the company's net tax-interest expense, or net tax-interest income, for the return period (see section 389);

(ii) the company's tax-EBITDA for the return period (see section 406);

(b) the aggregate net tax-interest expense, and aggregate net tax-interest income, of the group for the return period (see section 390);

(c) the interest capacity of the group for the return period (see section 392);

(d) the aggregate of interest allowances of the group for periods before the return period so far as they are available in the return period (see section 393);

(e) the interest allowance of the group for the return period (see section 396);

(f) the aggregate tax-EBITDA of the group for the return period (see section 405);

(g) where the interest allowance is calculated using the fixed ratio method and that allowance is given by section 397(1)(b), the adjusted net group-interest expense of the group for the return period (see section 413);

(h) where the interest allowance is calculated using the group ratio method—

(i) the group ratio percentage (see section 399 or 401);

(ii) the qualifying net group-interest expense of the group for the return period (see section 414);

(iii) the group-EBITDA of the group for the return period (see section 416).

Statement of allocated interest restrictions

22 (1) The statement of allocated interest restrictions required by paragraph 20(3)(e) to be included in a full interest restriction return must—

(a) list one or more companies that—

(i) were UK group companies at any time during the return period, and

(ii) had net tax-interest expense for the period,

(b) in relation to each company listed under paragraph (a), specify an amount, and

(c) show the total of the amounts specified under paragraph (b).

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(2) The amount specified under sub-paragraph (1)(b) in relation to a company is referred to in this Part of this Act as the "allocated disallowance" of the company for the return period.

(3) The allocated disallowance of a company for the return period—

(a) must not exceed the net tax-interest expense of the company for the return period,

(b) where the company is a non-consenting company in relation to the return, must not exceed the company's pro-rata share of the total disallowed amount (see paragraph 23), and

(c) must not be a negative amount.

(4) The sum of the allocated disallowances for the return period of the companies listed in the statement must equal the total disallowed amount.

(5) The statement must also specify an amount in relation to each relevant accounting period of each company listed in the statement.

(6) The amount specified under sub-paragraph (5) in relation to an accounting period of a company is referred to in this Part of this Act as the "allocated disallowance" of the company for the accounting period.

(7) In the case of a company that has only one relevant accounting period, the allocated disallowance of the company for that accounting period must be equal to the allocated disallowance of the company for the return period.

(8) In the case of a company that has more than one relevant accounting period, the allocated disallowance of the company for any of those accounting periods—

(a) must not exceed so much of the net tax-interest expense of the company for the return period as is referable to the accounting period,

(b) where the company is a non-consenting company in relation to the return, must not exceed the accounting period's pro-rata share of the total disallowed amount (see paragraph 24), and

(c) must not be a negative amount.

(9) The sum of the allocated disallowances of the company for its relevant accounting periods must be equal to the allocated disallowance of the company for the return period.

A company's pro-rata share of the total disallowed amount

23 (1) This paragraph—

(a) applies in relation to a worldwide group that is subject to interest restrictions in a period of account of the group, and

(b) allocates the total disallowed amount of the group in the period to companies that are UK group companies at any time during the period.

(2) The amount allocated to a company under this paragraph is referred to in this Part of this Act as the company's "pro-rata share" of the total disallowed amount.

(3) Sub-paragraph (4) applies in relation to a company that has net tax-interest expense for the period of account.

(4) The amount of the total disallowed amount that is allocated to the company is—

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A×BC

where—

A is the total disallowed amount;

B is the net tax-interest expense of the company for the period of account;

C is the sum of the net tax-interest expense for the period of account of each company that has net tax-interest expense for the period.

(5) Where this paragraph does not allocate any of the total disallowed amount to a company, the company's "pro-rata share" of the total disallowed amount is nil.

Accounting period's pro-rata share of the total disallowed amount

24 (1) This paragraph—

(a) applies in relation to a worldwide group that is subject to interest restrictions in a period of account of the group ("the relevant period of account"), and

(b) allocates the total disallowed amount of the group in the period of account to relevant accounting periods of companies that are UK group companies at any time during that period.

(2) The amount allocated to an accounting period under this paragraph is referred to in this Part of this Act as the accounting period's "pro-rata share" of the total disallowed amount.

(3) Sub-paragraph (4) applies where—

(a) a company's pro-rata share of the total disallowed amount is not nil, and

(b) the company has only one relevant accounting period.

(4) The amount of the total disallowed amount that is allocated to the accounting period is the company's pro-rata share of the total disallowed amount.

(5) Sub-paragraph (6) applies where—

(a) a company's pro-rata share of the total disallowed amount is not nil, and

(b) the company has more than one relevant accounting period.

(6) The amount of the total disallowed amount that is allocated to a relevant accounting period of the company is—

A×BC

where—

A is the company's pro-rata share of the total disallowed amount;

B is the net tax-interest expense of the company for the accounting period;

C is the sum of the net tax-interest expenses of the company for each relevant accounting period.

(7) Where this paragraph does not allocate any of the total disallowed amount to an accounting period of a company, the accounting period's "pro-rata share" of the total disallowed amount is nil.

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(8) For the purposes of this paragraph, the "net tax-interest expense" of a company for a relevant accounting period is—

(a) so much of the net tax-interest expense of the company for the relevant period of account as is referable to the accounting period, or

(b) if the amount determined under paragraph (a) is negative, nil.

Statement of allocated interest reactivations

25 (1) The statement of allocated interest reactivations required by paragraph 20(3)(f) to be included in a full interest restriction return must—

(a) list one or more companies that are UK group companies at any time during the return period,

(b) in relation to each company listed under paragraph (a), specify an amount, and

(c) show the total of the amounts specified under paragraph (b).

(2) The amount specified under sub-paragraph (1)(b) in relation to a company is referred to in this Part of this Act as the "allocated reactivation" of the company for the return period.

(3) The allocated reactivation of a company for the return period—

(a) must not exceed the amount available for reactivation of the company in the return period (see paragraph 26), and

(b) must not be a negative amount.

(4) The sum of the allocated reactivations for the return period of the companies listed in the statement must equal—

(a) the sum of the amounts available for reactivation of each company in the return period, or

(b) if lower, the interest reactivation cap of the worldwide group in the return period.

"Amount available for reactivation" of company in period of account of group

26 (1) This paragraph applies for the purposes of this Part of this Act.

(2) The "amount available for reactivation" of a company in a period of account of a worldwide group ("the relevant worldwide group") is—

(a) the amount determined under sub-paragraph (3), or

(b) if lower, the company's interest reactivation cap (see sub-paragraph (5)).

(3) The amount referred to in sub-paragraph (2)(a) is—

$$A+B-C+D-E$$

where—

A is the total of the disallowed tax-interest expense amounts (if any) that are brought forward to the specified accounting period from earlier accounting periods;

B is the total of the tax-interest expense amounts (if any) that the company is required to leave out of account in the specified accounting period as a result of the operation

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of this Part of this Act in relation to a period of account of the worldwide group before the period of account;

C is the total of the disallowed tax-interest expense amounts (if any) that the company is required to bring into account in the specified accounting period as a result of the operation of this Part of this Act in relation to a period of account of the worldwide group before the period of account;

D is the total of the tax-interest expense amounts (if any) that the company is required to leave out of account in the specified accounting period as a result of the operation of this Part of this Act in relation to a period of account of a worldwide group of which the company was a member before it became a member of the relevant worldwide group;

E is the total of the disallowed tax-interest expense amounts (if any) that the company is required to bring into account in the specified accounting period as a result of the operation of this Part of this Act in relation to a period of account of a worldwide group of which the company was a member before it became a member of the relevant worldwide group.

(4) In sub-paragraph (3) "the specified accounting period" means—

(a) the earliest relevant accounting period of the company, or

(b) where the company became a member of the relevant worldwide group during the period of account, the earliest relevant accounting period of the company in which it was a member of the group.

(5) For the purposes of sub-paragraph (2)(b) "the interest reactivation cap" of the company is—

$$A \times B$$

where—

A is the interest reactivation cap of the worldwide group in the period of account;

B is the proportion of the period of account in which the company is a UK group company.

Estimated information in statements

27 (1) This paragraph applies in relation to a statement under—

(a) paragraph 21 (statement of calculations),

(b) paragraph 22 (statement of allocated interest restrictions), or

(c) paragraph 25 (statement of allocated interest reactivations).

(2) Where any information is included in the statement that is (or is derived from) estimated information, the statement—

(a) must state that fact, and

(b) must identify the information in question.

(3) Where—

(a) estimated information (or information deriving from estimated information) is included in an interest restriction return for a period of account in reliance on this paragraph, and

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(b) a period of 36 months beginning with the end of that period of account has passed without the information becoming final,

the reporting company must give a notice to an officer of Revenue and Customs within the period of 30 days beginning with the end of that 36-month period.

(4) The notice—

(a) must identify the information in question that is not final, and

(b) must indicate when the reporting company expects the information to become final.

(5) If a company fails to comply with the duty under sub-paragraph (3), it is liable to a penalty of £500.

(6) An officer of Revenue and Customs may, in a particular case, treat a revised interest restriction submitted after the end of the applicable period under paragraph 8(3)(a) or (b) as having effect if—

(a) the revisions to the return are limited to those necessary to take account of information that has become final,

(b) the officer considers that it was not possible to make those revisions before the end of that period, and

(c) the reporting company has complied with the duty under sub-paragraph (3).

Correction of return by officer of Revenue and Customs

28 (1) An officer of Revenue and Customs may amend an interest restriction return submitted by a company so as to correct—

(a) obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise), and

(b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.

(2) A correction under this paragraph is made by notice to the company.

(3) A correction under this paragraph must not be made more than 9 months after the day on which the return was submitted.

(4) A correction under this paragraph is of no effect if the company—

(a) revises the return so as to reject the correction, or

(b) after the end of the period mentioned in paragraph 8(3)(a) or (b) but within 3 months from the date of the issue of the notice of correction, gives notice rejecting the correction.

(5) Notice under sub-paragraph (4)(b) must be given to the officer of Revenue and Customs by whom notice of the correction was given.

Penalty for failure to deliver return

29 (1) A company is liable to a penalty if the company—

(a) is required to submit an interest restriction return under paragraph 7 **[**F449, or a revised interest restriction return under paragraph 8(4),**]** for a period of account of a worldwide group, and

(b) fails to do so by the filing date in relation to the period F450....

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[F451(1A) In subsection (1)(b), the reference to the "filing date" in relation to a period of account is—

(a) in relation to an interest restriction return under paragraph 7, a reference to the filing date for the purposes of that paragraph (see paragraph 7(5) and (5A));

(b) in relation to a revised interest restriction return under paragraph 8(4), a reference to the end of the period within which the return may have effect (see paragraph 8(5)).**]**

(2) The penalty is—

(a) £500 if the return is delivered within 3 months after the filing date, and

(b) £1,000 in any other case.

(3) If a company becomes liable to a penalty under this paragraph, an officer of Revenue and Customs must—

(a) assess the penalty, and

(b) notify the company.

(4) The assessment must be made within the period of 12 months beginning with the filing date mentioned in sub-paragraph (1)(b).

(5) A company may, by notice, appeal against a decision of an officer of Revenue and Customs that a penalty is payable under this paragraph.

(6) Notice of appeal under this paragraph must be given—

(a) within 30 days after the penalty was notified to the company,

(b) to the officer of Revenue and Customs who notified the company.

(7) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with—

(a) the day on which the company was notified of the penalty, or

(b) if notice of appeal against the penalty is given, the day on which the appeal is finally determined or withdrawn.

Textual Amendments

F449 Words in Sch. 7A para. 29(1)(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. 22(2)(a)**

F450 Words in Sch. 7A para. 29(1)(b) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 22(2)(b)**

F451 Sch. 7A para. 29(1A) 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. 22(3)**

[F452 29A (1) Liability to a penalty under paragraph 29 does not arise if the company has a reasonable excuse for failing to submit the return by the filing date.

(2) If the company has a reasonable excuse for the failure but the excuse has ceased, the company is to be treated as having continued to have the excuse if the return is submitted without unreasonable delay after the excuse ceased.**]**

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Textual Amendments

F452 Sch. 7A para. 29A inserted (retrospectively) by Finance Act 2021 (c. 26), **s. 38(4)**(5)

Penalty for incorrect or uncorrected return

30 (1) A company is liable to a penalty if—

(a) the company (or a person acting on its behalf) submits an interest restriction return to an officer of Revenue and Customs for a period of account of a worldwide group,

(b) there is an inaccuracy in the return which meets condition A or B, and

(c) the inaccuracy is due to a failure by the company (or a person acting on its behalf) to take reasonable care (a "careless inaccuracy") or the company makes the inaccuracy deliberately (a "deliberate inaccuracy").

(2) An inaccuracy meets condition A if it consists of understating the total disallowed amount in the period of account of the group (including a case where no amount is specified in the return).

(3) An inaccuracy meets condition B if it consists of overstating the interest reactivation cap in the period of account of the group.

(4) A penalty payable under this paragraph is equal to the appropriate part of the notional tax.

(5) For the purposes of this Part of this Schedule—

"the appropriate part" means—

(a) in the case of a careless inaccuracy, 30%,

(b) in the case of a deliberate inaccuracy that is not concealed, 70%, and

(c) in the case of a deliberate inaccuracy that is concealed, 100%, and

"the notional tax" means the result produced by applying the average rate of the main corporation tax rate applicable in each of the days of the period of account to the total of the amount of the understatement referred to in condition A and the amount of the overstatement referred to in condition B.

(6) A company is not liable to a penalty under this paragraph in respect of anything done or omitted to be done by the company's agent if the company took reasonable care to avoid the inaccuracy.

Meaning of "deliberate inaccuracy that is concealed" and discovering inaccuracy after return submitted

31 (1) For the purposes of this Part of this Schedule a deliberate inaccuracy made by a company is concealed if the company makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

(2) An inaccuracy in an interest restriction return which was not a careless or deliberate inaccuracy made by a company (or a person acting on its behalf) when the return was submitted is taken to be a careless inaccuracy made by the company for the purposes of this Part of this Schedule if the company (or a person acting on its behalf)—

(a) discovers the inaccuracy at some later time, and

(b) does not take reasonable steps to inform an officer of Revenue and Customs.

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Inaccuracy in return attributable to another company

32 (1) A company ("C") is liable to a penalty if—

(a) another company submits an interest restriction return for a period of account of a worldwide group,

(b) there is an inaccuracy in the return which meets condition A or B in paragraph 30, and

(c) the inaccuracy was attributable to C deliberately supplying false information to the other company, or to C deliberately withholding information from the other company, with the intention of the return containing the inaccuracy.

(2) A penalty is payable under this paragraph in respect of an inaccuracy whether or not the other company is liable to a penalty under paragraph 30 in respect of the same inaccuracy.

(3) A penalty payable under this paragraph is equal to the notional tax.

Reductions in amount of penalty for disclosure or special circumstances

33 (1) If a company liable to a penalty under paragraph 30 or 32 in respect of an inaccuracy discloses the inaccuracy—

(a) the penalty must be reduced to one that reflects the quality of the disclosure (including its timing, nature and extent), but

(b) the penalty may not be reduced below the applicable minimum.

(2) In the case of a penalty under paragraph 30, the applicable minimum is—

(a) in the case of a careless inaccuracy, 0% of the notional tax if the disclosure is unprompted and 15% otherwise,

(b) in the case of a deliberate inaccuracy that is not concealed, 30% of the notional tax if the disclosure is unprompted and 45% otherwise, and

(c) in the case of a deliberate inaccuracy that is concealed, 40% of the notional tax if the disclosure is unprompted and 60% otherwise.

(3) In the case of a penalty under paragraph 32, the applicable minimum is 40% of the notional tax if the disclosure is unprompted and 60% otherwise.

(4) For the purposes of this paragraph—

(a) a person makes a disclosure of an inaccuracy by telling an officer of Revenue and Customs about it, giving an officer of Revenue and Customs reasonable help in quantifying it and allowing an officer of Revenue and Customs access to records to ensure that it is fully corrected, and

(b) a person makes an "unprompted" disclosure at any time if the person has no reason at that time to believe that an officer of Revenue and Customs have discovered, or are about to discover, the inaccuracy.

(5) If they think it right because of special circumstances, an officer of Revenue and Customs may—

(a) reduce a penalty under paragraph 30 or 32, or

(b) stay the penalty or agree a compromise in relation to proceedings for the penalty.

(6) The reference to special circumstances does not include an ability to pay but, subject to that, is taken to include, or exclude, such other circumstances as are prescribed by regulations made by the Commissioners.

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(7) The power to prescribe circumstances includes power to prescribe circumstances by reference to the notional tax and the extent to which the notional tax exceeds, or is likely to exceed, any actual loss of tax to the Crown.

Assessment, payment and enforcement of penalty

34 (1) If a person becomes liable to a penalty under paragraph 30 or 32, an officer of Revenue and Customs must—

(a) assess the penalty, and

(b) notify the person.

(2) The assessment must be made within the period of 12 months beginning with the day on which the inaccuracy is corrected.

(3) The penalty must be paid before the end of the period of 30 days beginning with—

(a) the day on which the person was notified of the penalty, or

(b) if notice of appeal against the penalty is given, the day on which the appeal is finally determined or withdrawn.

(4) An assessment may be enforced—

(a) as if it were an assessment to corporation tax (which, among other things, secures the application of Chapters 6 and 7 of Part 22 of CTA 2010 (corporation tax payable by non-UK resident companies: recovery from others)), and

(b) as if that assessment were also an assessment to corporation tax of any company which was a UK group company of the group at any time in the period of account in relation to which the interest restriction return contained an inaccuracy.

Right to appeal against penalty or its amount

35 A person may, by notice, appeal against—

(a) a decision of an officer of Revenue and Customs that a penalty under paragraph 30 or 32 is payable, or

(b) a decision of an officer of Revenue and Customs as to the amount of a penalty under paragraph 30 or 32.

Procedure on appeal

36 (1) Notice of an appeal under paragraph 35 must be given—

(a) within 30 days after the penalty was notified to the person,

(b) to an officer of Revenue and Customs.

(2) On an appeal notified to the tribunal against a decision that a penalty is payable, the tribunal may confirm or cancel the decision.

(3) On an appeal notified to the tribunal against the amount of a penalty, the tribunal may—

(a) confirm the decision, or

(b) substitute for the decision another decision that an officer of Revenue and Customs had power to make.

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(4) If the tribunal substitutes its decision for a decision of an officer of Revenue and Customs, the tribunal may rely on paragraph 33(5)—

(a) to the same extent as an officer of Revenue and Customs (which may mean applying the same percentage reduction as the officer to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that the decision in respect of the application of paragraph 33(5) was flawed.

(5) For this purpose "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(6) Subject to this Part of this Schedule, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to appeals against an assessment to corporation tax.

Payments between companies in respect of penalties

37 (1) This paragraph applies if—

(a) a company ("P") liable to a penalty under this Part of this Schedule has an agreement in relation to the penalty with one or more other companies within the charge to corporation tax, and

(b) as a result of the agreement, P receives a payment or payments in respect of the penalty that do not, in total, exceed the amount of the penalty.

(2) The payment—

(a) is not to be taken into account in calculating the profits for corporation tax purposes of either P or the company making the payment, and

(b) is not to be regarded as a distribution for corporation tax purposes.

PART 3

DUTY TO KEEP AND PRESERVE RECORDS

Duty to keep and preserve records

38 (1) A company which is a reporting company in relation to a period of account of a worldwide group must—

(a) keep such records as may be needed to enable it to submit a correct and complete interest restriction return for the period, and

(b) preserve those records in accordance with this paragraph.

(2) The records must be preserved until the end of the relevant day.

(3) In this paragraph "the relevant day" means—

(a) the sixth anniversary of the end of the period of account, or

(b) such earlier date as may be specified in writing by an officer of Revenue and Customs (and different days may be specified for different cases).

(4) If the company is required to submit an interest restriction return for the period before the end of the relevant day, the records must be preserved until any later date on which—

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(a) any enquiry into the return is complete, or

(b) if there is no enquiry, an officer of Revenue and Customs no longer has the power to enquire into the return (but, for this purpose, paragraph 42 is to be ignored).

(5) If the company is required to submit an interest restriction return for the period after the end of the relevant day and has in its possession at that time any records that may be needed to enable it to submit a correct and complete return, it is under a duty to preserve those records until the date on which—

(a) any enquiry into the return is complete, or

(b) if there is no enquiry, an officer of Revenue and Customs no longer has the power to enquire into the return (but, for this purpose, paragraph 42 is to be ignored).

(6) The duty under this paragraph to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by an officer of Revenue and Customs.

(7) The Commissioners may by regulations—

(a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and

(b) provide that those records include supporting documents so specified.

(8) The regulations may make provision by reference to things specified in a notice published by the Commissioners in accordance with the regulations (and not withdrawn by a subsequent notice).

Penalty for failure to keep and preserve records

39 (1) A company which fails to comply with paragraph 38 is liable to a penalty not exceeding £3,000.

(2) If a company becomes liable to a penalty under this paragraph, an officer of Revenue and Customs must—

(a) assess the penalty, and

(b) notify the company.

(3) The assessment must be made within the period of 12 months beginning with the day on which an officer of Revenue and Customs first becomes aware that the company has failed to comply with paragraph 38.

(4) A company may, by notice, appeal against a decision of an officer of Revenue and Customs that a penalty is payable under this paragraph.

(5) Notice of appeal under this paragraph must be given—

(a) within 30 days after the penalty was notified to the company,

(b) to the officer of Revenue and Customs who notified the company.

(6) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with—

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(a) the day on which the company was notified of the penalty, or

(b) if notice of appeal against the penalty is given, the day on which the appeal is finally determined or withdrawn.

PART 4

ENQUIRY INTO INTEREST RESTRICTION RETURN

Notice of enquiry

40 (1) An officer of Revenue and Customs may enquire into an interest restriction return submitted by a reporting company if the officer gives notice to the company of the officer's intention to do so ("notice of enquiry").

(2) The general rule is that an interest restriction return which has been the subject of one notice of enquiry may not be the subject of another.

(3) If a return ("the previous return") is superseded by an interest restriction return submitted under paragraph 8 ("the revised return"), notice of enquiry may be given in relation to the revised return even though notice of enquiry has been given in relation to the previous return.

(4) But see paragraph 43(5) for a limitation in certain circumstances on the scope of an enquiry into an interest restriction return submitted under paragraph 8.

(5) The power to give notice of enquiry into an interest restriction return for a period of account of a worldwide group does not restrict the power to give notice of enquiry into a company tax return of a company that is a member of the group at any time in that period.

(6) Accordingly, an amendment of the company's company tax return may be required as a result of an enquiry into the interest restriction return even though a closure notice has been given in respect of an enquiry into that company tax return.

(7) But see paragraph 43(2) for a limitation on the scope of an enquiry into an interest restriction return so far as affecting amounts in a company tax return.

Normal time limits for opening enquiry

41 (1) This paragraph applies where an interest restriction return is submitted by a reporting company for a period of account.

(2) Notice of enquiry may be given at any time before whichever is the latest of—

(a) the end of the period of 39 months beginning with the end of the period of account;

(b) F453... and

(c) the end of 31 January, 30 April, 31 July or 31 October next following the first anniversary of the day on which an officer of Revenue and Customs receives the **[**F454return or**]** revised return.

(3) If—

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(a) estimated information (or information deriving from estimated information) is included in an interest restriction return for a period of account in reliance on paragraph 27, and

(b) a period of 36 months beginning with the end of that period of account has passed without the information becoming final,

notice of enquiry may be given at any time up to and including the end of the period of 12 months beginning with the end of that 36-month period.

(4) This paragraph is subject to paragraph 42 (which allows notices of enquiry to be given after the time allowed by this paragraph or an enquiry previously closed to be re-opened).

Textual Amendments

F453 Sch. 7A para. 41(2)(b) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 23(a)**

F454 Words in Sch. 7A para. 41(2)(c) 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. 23(b)**

Extended time limits for opening enquiries: discovery of errors

42 (1) Notice of enquiry may be given later than the time allowed under paragraph 41, or a closed enquiry may be re-opened, if—

(a) an officer of Revenue and Customs discovers that an interest restriction return submitted to an officer of Revenue and Customs does not, or might not, comply with the requirements of paragraph 20(3) in any respect,

(b) there would be, or might be, an increase in tax payable by any company for any accounting period if the return had complied with those requirements in that respect,

(c) the discovery is made after the time allowed under paragraph 41 or after an enquiry into the return has been closed, and

(d) the officer could not, at the relevant time and by reference to the relevant information, have been reasonably expected to be aware of the respects in which the return might not comply with those requirements.

(2) For this purpose "the relevant time" means—

(a) in a case where no notice of enquiry has been given within the time allowed under paragraph 41, when an officer of Revenue and Customs ceased to be entitled to give a notice, or

(b) in a case where an enquiry has been closed, when the officer gave the closure notice.

(3) For this purpose "the relevant information" means information which—

(a) is contained in the interest restriction return in question or either of the two returns for the immediately preceding periods of account of the group,

(b) is contained in any documents, financial statements or other accounts or information produced or provided to an officer of Revenue or Customs for the purposes of an enquiry into the interest restriction return in question or either of the two returns for the immediately preceding periods of account of the group,

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(c) is information the existence of which, and the relevance of which as regards the situation mentioned in sub-paragraph (1)(b), could reasonably be expected to be inferred by an officer of Revenue and Customs from information falling with paragraph (a) or (b) of this sub-paragraph, or

(d) is information the existence of which, and the relevance of which as regards the situation mentioned in sub-paragraph (1)(b), are notified in writing to an officer of Revenue and Customs by the reporting company for the period of account or a person acting on its behalf.

(4) Notice of enquiry into an interest restriction return for a period of account may not be given, or a closed enquiry may not be re-opened, as a result of this paragraph more than the applicable number of years after the end of the period of account.

(5) The "applicable number of years" is—

(a) 20 years in a case involving deliberate non-compliance by the reporting company for the period of account or by a qualifying person,

(b) 6 years in a case involving careless non-compliance by the reporting company for the period of account or by a qualifying person, and

(c) 4 years in any other case.

(6) For this purpose "qualifying person" means—

(a) a person acting on behalf of the reporting company for the period of account, or

(b) a person who was a partner of the reporting company for the period of account at the relevant time.

(7) For the purposes of this paragraph an enquiry is "closed" when a closure notice is given in relation to the enquiry.

Scope of enquiry

43 (1) An enquiry into an interest restriction return extends to anything contained, or required to be contained, in the return (including any election included in the return).

(2) But the enquiry does not extend to an enquiry into an amount—

(a) which is contained, or required to be contained, in a company tax return of a UK group company, and

(b) which is taken into account in any calculation required for the purposes of the interest restriction return.

(3) Sub-paragraph (2) does not affect—

(a) any question as to whether or not, as a result of this Part of this Act, the amount falls to be left out of account, or to be brought into account, in any accounting period of the company, or

(b) the way in which, by reference to that amount and other matters, any provision of this Part of this Act has effect to determine whether or not the amount, or any other amount, is to be left out of, or brought into account, in any accounting period (whether of that company or another company).

(4) Nor does sub-paragraph (2) limit the operation of any provision of Part 4 of Schedule 18 to FA 1998 (determinations and assessments made by officers of Revenue and Customs).

(5) If—

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(a) at any time an enquiry into an interest restriction return ("the previous return") has been closed, and

(b) the previous return is subsequently superseded by an interest restriction return submitted under paragraph 8 ("the revised return"),

the enquiry into the revised return extends only to matters arising as a result of information that was not included in the previous return.

(6) For this purpose an enquiry is "closed" when a closure notice is given in relation to the enquiry.

Enquiry into return for wrong period or wrong group

44 (1) If it appears to an officer of Revenue and Customs that the period of account for which an interest restriction return has been submitted is or may be the wrong period, the power to enquire into the return includes power to enquire into the period for which the return ought to have been made.

(2) If sub-paragraph (1) applies, paragraph 41 (normal time limits for opening enquiry) has effect as if the return were one that had been submitted for the correct period of account.

(3) If it appears to an officer of Revenue and Customs that the worldwide group ("the relevant group") in relation to which an interest restriction return has been submitted—

(a) consists of, or may consist of, two or more worldwide groups,

(b) includes, or may include, entities that are members of a different worldwide group or groups, or

(c) does not include, or may not include, entities that should be members of the relevant group,

the power to enquire into the return includes power to enquire into the returns for the periods of account of the worldwide groups which ought to have been made.

Amendment of self-assessment during enquiry to prevent loss of tax

45 (1) If after notice of enquiry has been given into an interest restriction return but before the enquiry is completed, an officer of Revenue and Customs forms the opinion that—

(a) the amount stated in the self-assessment of a company as the amount of tax payable is insufficient,

(b) the deficiency is attributable to matters in relation to which the enquiry extends, and

(c) unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice to the company amend its self-assessment to make good the deficiency.

(2) In sub-paragraph (1) the reference to a company is to a company that was a member of the group at any time in the period of account for which the interest restriction return was submitted.

(3) An appeal may be brought, by notice, against an amendment of a company's self-assessment by an officer of Revenue and Customs under this paragraph.

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(4) Notice of appeal must be given—

(a) within 30 days after the amendment was notified to the company,

(b) to the officer of Revenue and Customs by whom the notice of amendment was given.

(5) None of the steps mentioned in section 49A(2)(a) to (c) of TMA 1970 (reviews of the matter or notification of appeal to tribunal) may be taken in relation to the appeal before the completion of the enquiry.

(6) In this paragraph "self-assessment" has the meaning given by paragraph 7 of Schedule 18 to FA 1998.

Revision of interest restriction return during enquiry

46 (1) This paragraph applies if a reporting company submits a revised interest restriction return at a time when an enquiry is in progress into the previous return.

(2) The submission of the revised return does not restrict the scope of the enquiry but the revisions may be taken into account (together with any matter arising) in the enquiry.

(3) So far as the revised return affects the tax payable by a company, it does not take effect until the enquiry is completed (and, accordingly, paragraph 70 has effect subject to this sub-paragraph).

(4) But sub-paragraph (3) does not affect any claim by the company under section 59DA of TMA 1970 (claim for repayment in advance of liability being established).

(5) The submission of a revised return whose effect is deferred under sub-paragraph (3) takes effect as follows—

(a) if the conclusions in the closure notice state either—

(i) that the revisions were not taken into account in the enquiry, or

(ii) that no revision of the revised return is required arising from the enquiry,

the revision takes effect on the completion of the enquiry, and

(b) in any other case, the revisions take effect as part of the steps required to be taken in order to give effect to the conclusions stated in the closure notice.

(6) For the purposes of this paragraph the period during which an enquiry into an interest restriction return is in progress is the whole of the period—

(a) beginning with the day on which an officer of Revenue and Customs gives notice of enquiry into the return, and

(b) ending with the day on which the enquiry is completed.

Completion of enquiry

47 (1) An enquiry into an interest restriction return submitted by a reporting company is completed when an officer of Revenue and Customs by notice (a "closure notice")—

(a) informs the company that the officer has completed the enquiry, and

(b) states the officer's conclusions.

(2) The closure notice takes effect when it is given.

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(3) If an officer of Revenue and Customs concludes that the return should have been made for one or more different periods of account of the group, the closure notice must designate the period of account (or periods of account) for which the return should have been made.

(4) If an officer of Revenue and Customs concludes that an interest restriction return in relation to a worldwide group should have been submitted—

(a) in relation to one or more different worldwide groups, or

(b) in relation to a different membership,

the closure notice must designate each period of account of a worldwide group for which an interest restriction return should have been made or for which an interest restriction return should have been submitted in relation to a different membership.

(5) If the officer concludes that the group in relation to which the return was submitted has a different membership, the designation under sub-paragraph (4) must also include details of the members of the group that the officer considers are UK group companies.

(6) If the officer concludes that the return should have been submitted in relation to one or more different worldwide groups, the designation under sub-paragraph (4) must also include—

(a) sufficient details to identify the different worldwide group or groups, and

(b) details of the members of the group that the officer considers are UK group companies.

(7) A designation by a closure notice of a period of account under this paragraph must specify the dates on which the period of account begins and ends.

(8) In this paragraph references to UK group companies, in relation to a period of account, do not include UK group companies that are dormant throughout the period.

Direction to complete enquiry

48 (1) An application may be made at any time to the tribunal for a direction that an officer of Revenue and Customs gives a closure notice in respect of an enquiry into an interest restriction return within a specified period.

(2) The application is to be made by the reporting company for the period of account of the group for which the return was submitted.

(3) The application is subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give a direction unless satisfied that an officer of Revenue and Customs has reasonable grounds for not giving a closure notice within a specified period.

Conclusions of enquiry

49 (1) This paragraph applies where a closure notice is given under paragraph 47 to a company by an officer.

(2) The closure notice must—

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(a) state that, in the officer's opinion, no steps are required to be taken by the company as a result of the enquiry, or

(b) state the steps that the company is required to take in order to give effect to the conclusions stated in the notice.

(3) The closure notice may (but need not) specify the allocated disallowance for particular companies specified in the notice.

(4) If—

(a) the return was made for the wrong period, and

(b) a period of account designated under paragraph 47(3) begins or ends at any time in that period,

the closure notice must require the company to take steps to make the return one appropriate to that designated period of account.

(5) If there is more than one designated period of account within sub-paragraph (4), the closure notice must require the company to submit an interest restriction return for each of those designated periods of account.

(6) If—

(a) a period of account of a worldwide group ("the relevant group") is designated under paragraph 47(4),

(b) the company is a member of the relevant group for that period of account, and

(c) condition A or B is met,

the closure notice must require the company to submit an interest restriction return for the designated period of account of the relevant group.

(7) Condition A is met if the UK group companies comprised in the relevant group were regarded as members of the worldwide group in relation to which the return was made.

(8) Condition B is met if—

(a) the relevant group includes UK group companies that were not regarded as members of the group in relation to which the return was made, and

(b) the ultimate parent of the relevant group is not the ultimate parent of a worldwide group in relation to which a reporting company has been appointed for a period of account that includes a time falling within the designated period of account of the relevant group.

(9) If sub-paragraph (6) applies in relation to two or more designated periods of account of a worldwide group (whether those periods are of the same or different groups), the closure notice must require the company to submit separate interest restriction returns for each of the designated periods of account.

(10) If, as a result of this paragraph, a closure notice requires a company to submit an interest restriction return for a period of account of a worldwide group, the company is treated for the purposes of this Part of this Act as if it had been appointed as the reporting company of the group in relation to the period.

(11) For this purpose it does not matter whether the return that was subject to the enquiry was submitted in relation to a different worldwide group.

(12) Sub-paragraph (10) is ignored in determining the period within which the return must be submitted (as to which, see instead paragraph 50(2)).

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Interest restriction returns to be submitted to an officer of Revenue and Customs

50 (1) If, as a result of a closure notice given under paragraph 47 (closure notice in respect of a return subject to enquiry), a company is required to submit one or more interest restriction returns, the return or returns must—

(a) be submitted to an officer of Revenue and Customs,

(b) give effect to the conclusions stated in the notice, and

(c) contain such consequential provision as the company considers appropriate.

(2) A return submitted in compliance with the closure notice is of no effect unless it is received by an officer of Revenue and Customs before the end of the period of 3 months beginning with the day on which the closure notice is given to the company.

(3) A return submitted in compliance with the closure notice—

(a) must indicate the respects in which it differs from the return that was the subject of the enquiry, and

(b) supersedes that return.

(4) For provision dealing with cases where no return is submitted before the end of the period mentioned in sub-paragraph (2), see paragraph 58.

Return in relation to a worldwide group: other entities part of another group

51 (1) This paragraph applies if—

(a) an enquiry has been made into an interest restriction return ("the original return") for a period of account of a worldwide group ("the original group"),

(b) a closure notice has been given in respect of the enquiry that designates a period of account of a worldwide group under paragraph 47(4) ("the new group"),

(c) the new group consists of both UK group companies that were not regarded as members of the original group and other UK group companies, and

(d) the ultimate parent of the new group is the ultimate parent of a worldwide group ("the existing group") in relation to which a reporting company has been appointed for a period of account that includes a time falling within the designated period of account of the new group.

(2) An officer of Revenue and Customs must give a notice to that company appointing it as the reporting company in relation to each designated period of account of the new group.

(3) The notice of appointment must be given within the period of 30 days beginning with the day on which the closure notice was given.

(4) If—

(a) an interest restriction return has been submitted for a period of account of the existing group, and

(b) that period of account begins or ends at any time in a designated period of account of the new group,

the return is to be treated as withdrawn.

(5) Accordingly—

(a) any notice of enquiry or closure notice in relation to the return is also to be treated as withdrawn,

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(b) any appeal in respect of any matter stated in a closure notice in relation to the return is treated as withdrawn, and

(c) any determination of any such appeal is treated as being of no effect.

(6) If—

(a) an interest restriction return for a period of account is treated as withdrawn as a result of sub-paragraph (4), and

(b) the period of account begins at any time before a designated period of account of the new group,

the notice under sub-paragraph (2) is also to be treated as if it constituted, on the day on which it is given, the appointment of the company in relation to a period of account of the existing group beginning with that time and ending immediately before the beginning of the designated period of account.

(7) If—

(a) enquiries are open at any time in relation to more than one interest restriction return, and

(b) this paragraph is capable of applying by reference to a closure notice to be given in respect of any one of those enquiries (so that a worldwide group could be either the original group or the existing group),

an officer of Revenue and Customs must select the company that, in the officer's opinion, ought to be the reporting company in relation to the new group.

(8) For this purpose an enquiry is "open" in relation to an interest restriction return if no closure notice has been given in relation to the enquiry.

Appeal against closure notice or notice under paragraph 51

52 (1) If a closure notice —

(a) is given to a company under paragraph 47, and

(b) contains a statement under paragraph 49(2)(b),

the company may appeal against the statement.

(2) If a notice is given to a company under paragraph 51, the company may appeal against the notice.

(3) Notice of appeal under this paragraph must be given—

(a) within 30 days after the notice was given to the company,

(b) to the officer of Revenue and Customs by whom the notice in question was given.

New groups without existing reporting company

53 (1) This paragraph applies if—

(a) a closure notice is given to a company under paragraph 47,

(b) a period of account of a worldwide group ("the new group") is designated under paragraph 47(4) in the closure notice,

(c) the company is not a member of the new group at any time in that period of account, and

(d) paragraph 51 does not apply.

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(2) An officer of Revenue and Customs may appoint a company to be the reporting company of the new group in relation to that period.

(3) The appointment—

(a) must be of a company that was a UK group company at any time during that period and was not dormant throughout that period, and

(b) must be made before the end of the period of 3 months beginning with the day on which the closure notice is given to the company.

Matters required to be done on a "just and reasonable" basis

54 (1) This paragraph applies if—

(a) anything is required to be done under any provision of this Part of this Act on a "just and reasonable" basis,

(b) in preparing an interest restriction return the reporting company adopts a particular basis for dealing with that thing, and

(c) notice of enquiry is given into the return.

(2) An officer of Revenue and Customs may determine that, in preparing the return, a different just and reasonable basis should have been adopted for dealing with that thing.

(3) A closure notice given in respect of the return must require the reporting company to whom the notice is given to revise the return to give effect to that determination.

(4) The officer's determination may be questioned on an appeal under paragraph 52 on the ground that the basis to be adopted is not just and reasonable (but not on any other ground).

References to a reporting company where replaced

55 (1) This paragraph applies where—

(a) the appointment of a reporting company has effect in relation to a period of account of a worldwide group, and

(b) another reporting company is appointed in place of that company and the appointment has effect in relation to that period of account.

(2) Any reference in this Part of this Schedule (however expressed) to the reporting company in relation to that period of account at any time is to the company which is the reporting company at that time in relation to that period of account.

PART 5

DETERMINATIONS BY OFFICERS OF REVENUE AND CUSTOMS

Power of Revenue and Customs to make determinations where no return filed etc

56 (1) This paragraph applies where—

(a) an officer of Revenue and Customs considers that a worldwide group was subject to interest restrictions in a period of account of the group ("the relevant period of account"),

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(b) **[**F455the filing date in relation to the relevant period of account has passed (see paragraph 7(5)),**]** and

(c) condition F456... B **[**F457, C or D**]** is met.

F458(2) . . . . . .

F459(3) . . . . . .

(4) Condition B is that—

(a) the appointment of a reporting company has effect in relation to the relevant period of account, and

(b) no interest restriction return has been submitted for the period.

(5) Condition C is that—

(a) the appointment of a reporting company has effect in relation to the relevant period of account,

(b) an interest restriction return has been submitted for the period, and

(c) the return does not comply with the requirements of paragraph 20(3) (for example by including inaccurate figures).

[Condition D is that—

F460(5A) (a) the appointment of a reporting company has effect in relation to the relevant period of account,

(b) the reporting company is required to submit a revised interest restriction return for the period under paragraph 8(4), and

(c) the time limit in paragraph 8(5) for the submission of the revised return has passed without the revised return being received by an officer of Revenue and Customs.**]**

(6) An officer of Revenue and Customs may determine, to the best of the officer's information and belief—

(a) a company's pro-rata share of the total disallowed amount of the group for the relevant period of account, and

(b) in relation to each relevant accounting period of the company, the accounting period's pro-rata share of the total disallowed amount.

(7) If, as a result of the determination, an accounting period's pro-rata share of the total disallowed amount is not nil, the company must leave out of account tax-interest expense amounts in that period that, in total, equal that pro-rata share.

(8) A notice of determination under this paragraph must be given to the company, and to the reporting company, stating the date on which the determination is made.

(9) No determination under this paragraph may be made**[**F461—

(a) in a case where Condition D is met, after the end of the period of 12 months beginning with the expiry of the time limit mentioned in paragraph 8(5), and

(b) in any other case,**]** after the end of the period of 3 years beginning with **[**F462the filing date referred to in sub-paragraph (1)(b)**]**.

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Textual Amendments

F455 Sch. 7A para. 56(1)(b) 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. 24(2)**

F456 Word in Sch. 7A para. 56(1)(c) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 24(3)(a)**

F457 Words in Sch. 7A para. 56(1)(c) 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. 24(3)(b)**

F458 Sch. 7A para. 56(2) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 24(4)**

F459 Sch. 7A para. 56(3) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 24(4)**

F460 Sch. 7A para. 56(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. 24(5)**

F461 Sch. 7A para. 56(9)(a)(b) 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. 24(6)(a)**

F462 Words in Sch. 7A para. 56(9) 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. 24(6)(b)**

Time limit: interest restriction return following determination under paragraph 56

57 (1) Sub-paragraph (2) applies where—

(a) a notice of determination under paragraph 56 is given to a company, and

(b) at the time the notice is given, no interest restriction return for the relevant period of account has been submitted under paragraph 7.

(2) Despite the passing of the time limit in paragraph 7(6), an interest restriction return for the relevant period of account submitted under paragraph 7 has effect if it is received before the end of the period of 12 months beginning with the date on which the notice is given.

(3) Sub-paragraph (4) applies where—

(a) a notice of determination under paragraph 56 is given to a company, and

(b) at the time the notice is given, an interest restriction return for the relevant period of account has been submitted under paragraph 7.

(4) Despite the passing of the time limit in paragraph 8(3), an interest restriction return for the relevant period of account submitted under paragraph 8 has effect if it is received before the end of the period of 12 months beginning with the date on which the notice is given.

(5) In this paragraph "the relevant period of account" means the period of account to which the determination in question relates.

Power of Revenue and Customs to make determinations following enquiry

58 (1) This paragraph applies where—

(a) as a result of a closure notice given under paragraph 47 (closure notice in respect of a return subject to enquiry), a company is required to submit an interest restriction return ("the return") in relation to a worldwide group,

(b) the worldwide group is subject to interest restrictions in the return period, and

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(c) condition A or B is met.

(2) Condition A is that the time limit in paragraph 50(2) for submission of the return has passed without the return being received by an officer of Revenue and Customs.

(3) Condition B is that—

(a) the return has been received by an officer of Revenue and Customs before the time limit in paragraph 50(2), and

(b) the officer considers that the return does not comply with the requirements of the closure notice.

(4) An officer of Revenue and Customs may determine, to the best of the officer's information and belief—

(a) a company's pro-rata share of the total disallowed amount of the group for the period of account in question, and

(b) in relation to each relevant accounting period of the company, the accounting period's pro-rata share of the total disallowed amount.

(5) If, as a result of the determination, an accounting period's pro-rata share of the total disallowed amount is not nil, the company must leave out of account tax-interest expense amounts in that period that, in total, equal that pro-rata share.

(6) A notice of determination under this paragraph must be given to the company, and to the reporting company, stating the date on which the determination is made.

(7) No determination under this paragraph may be made after the end of the period of 3 months beginning with the end of the period mentioned in paragraph 50(2).

Appeal against determination under paragraph 58

59 (1) If a notice of determination under paragraph 58 is given to a company, the company may appeal against the notice.

(2) The only ground on which an appeal under this paragraph may be brought is that the determination is inconsistent with the requirements of the closure notice to which it relates.

(3) Notice of appeal under this paragraph must be given—

(a) within 30 days after the notice of determination was given to the company,

(b) to the officer of Revenue and Customs by whom the notice of determination was given.

PART 6

INFORMATION POWERS EXERCISABLE BY MEMBERS OF GROUP

Provision of information to and by the reporting company

60 (1) The reporting company in relation to a period of account of a worldwide group may, by notice, require a company that was a UK group company at any time during the period to provide it with information that it needs for the purpose of exercising functions under or by virtue of this Part of this Act.

(2) A notice under sub-paragraph (1) must specify the information to be provided.

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(3) The duty to comply with a notice under sub-paragraph (1) is enforceable by the reporting company.

(4) As soon as reasonably practicable after submitting an interest restriction return to an officer of Revenue and Customs under any provision of this Schedule, the reporting company must send a copy of it to each company that was a UK group company at any time during the period of account.

(5) If a reporting company receives a closure notice under paragraph 47, the reporting company must, as soon as reasonably practicable, send a copy of the notice to every company that was a UK group company at any time during the period of account that was subject to the enquiry.

(6) The duty to comply with sub-paragraph (4) or (5) is enforceable by any person to whom the duty is owed.

Provision of information between members of group where no reporting company appointed

61 (1) This paragraph applies where condition A or B is met in relation to a period of account of a worldwide group.

(2) Condition A is that—

(a) no appointment of a reporting company has effect in relation to the period of account, and

(b) as a result of sub-paragraph (4)(a) of paragraph 1, an appointment of a reporting company under that paragraph that has effect in relation to the relevant period of account is no longer possible.

(3) Condition B is that—

(a) an appointment of a reporting company has effect in relation to the period of account,

(b) a full interest restriction return has not been submitted in accordance with this Part for the period, and

(c) the filing date in relation to the period has passed (see paragraph 7(5)).

(4) A company that was a UK group company at any time during the period of account may, by notice, require any other such company to provide it with information that it needs for the purpose of determining whether, or the extent to which, it is required to leave tax-interest expense amounts out of account, or bring them into account, under this Part of this Act.

(5) A notice under sub-paragraph (4) must specify the information to be provided.

(6) The duty to comply with a notice under sub-paragraph (4) is enforceable by the company that gives the notice.

PART 7

INFORMATION POWERS EXERCISABLE BY OFFICERS OF REVENUE AND CUSTOMS

Power to obtain information and documents from members of worldwide group

62 (1) An officer of Revenue and Customs may, by notice, require a group member—

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(a) to provide information, or

(b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking an interest restriction return for, or exercising any of the powers under this Part of this Act in relation to, a period of account of a worldwide group.

(2) For the purposes of this Part of this Schedule a person is a "group member" if, in the opinion of an officer of Revenue and Customs, the person is or might be a member of the worldwide group at any time in the period of account.

(3) A group member may (subject to the operation of any provision of Part 4 of Schedule 36 to FA 2008 as applied by paragraph 66(1) of this Schedule) be required to provide information, or produce a document, that relates to one or more other group companies.

(4) A notice under this paragraph may be given to a person even if the person is not within the charge to corporation tax or income tax.

(5) A notice under this paragraph may specify or describe the information or documents to be provided or produced.

Power to obtain information and documents from third parties

63 (1) An officer of Revenue and Customs may, by notice, require a third party—

(a) to provide information, or

(b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking an interest restriction return for, or exercising any of the powers under this Part of this Act in relation to, a period of account of a worldwide group.

(2) A person is a "third party" if the person is not a group member at any time in the period of account.

(3) A notice may not be given under this paragraph unless—

(a) a company which is a UK group company of the group at any time in the period of account agrees to the giving of the notice, or

(b) on an application made by an officer of Revenue and Customs, the tribunal approves the giving of the notice.

(4) The tribunal may not approve the giving of a notice to a third party unless—

(a) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so, and

(b) either the requirements of sub-paragraph (5) are met or the tribunal is satisfied that it is appropriate to dispense with meeting those requirements because to meet them might prejudice the assessment or collection of tax.

(5) The requirements in this sub-paragraph are met if—

(a) the third party has been told that the information or documents referred to in the notice are required,

(b) the third party has been given a reasonable opportunity to make representations to an officer of Revenue and Customs,

(c) the tribunal has been given a summary of any representations made by the third party, and

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(d) a company which is a UK group company of the group at any time in the period of account has been given a summary of the reasons why the information and documents are required.

(6) Sub-paragraph (5)(d) does not apply if an officer of Revenue and Customs has insufficient information to identify a company mentioned in that paragraph.

(7) No notice of the application for the approval of the tribunal needs to be given to the third party by an officer of Revenue and Customs.

(8) A notice under this paragraph to the third party must give details of the worldwide group unless—

(a) the notice is approved by the tribunal, and

(b) the tribunal is satisfied that no details should be given because to do so might seriously prejudice the assessment or collection of tax.

(9) An officer of Revenue and Customs must give a copy of a notice under this paragraph to a company which is a UK group company of the group at any time in the period of account unless—

(a) the tribunal has approved the notice and is satisfied that no copy should be given because to do so might prejudice the assessment or collection of tax, or

(b) an officer of Revenue and Customs has insufficient information to identify such a company.

(10) A decision of the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

(11) A notice under this paragraph—

(a) may specify or describe the information or documents to be provided or produced, and

(b) if given with the approval of the tribunal, must state that fact.

Notices following submitted interest restriction returns

64 (1) The general rule is that, if an interest restriction return for a period of account of a worldwide group has been received by an officer of Revenue and Customs, a notice under paragraph 62 or 63 may not be given in relation to the period of the account of the group.

(2) But the general rule does not apply if—

(a) a notice of enquiry has been given in respect of the return, and

(b) the enquiry has not been completed.

Appeals

65 (1) A group member may appeal against a notice under paragraph 62.

(2) A person to whom a notice is given under paragraph 63 in a case where the tribunal has not approved the giving of the notice may appeal against the notice on the ground that it would be unduly onerous to comply with it.

(3) No appeal may be made under this paragraph in relation to a requirement to provide any information, or produce any documents, that forms part of the statutory records

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of any company which is a UK group company of the group at any time in the period of account.

(4) "Statutory records" has the same meaning given by paragraph 62 of Schedule 36 to FA 2008.

(5) In this Part of this Schedule references to an appeal against a notice include an appeal against a requirement of the notice.

Application of provisions of Schedule 36 to FA 2008

66 (1) The following provisions of Schedule 36 to FA 2008 (information and inspection powers) apply in relation to notices under paragraph 62 or 63—

(a) paragraph 7 (complying with notices),
(b) paragraph 8 (producing copies of documents),
(c) paragraph 15 (power to copy documents),
(d) paragraph 16 (power to remove documents),
(e) paragraph 18 (documents not in person's possession or power),
(f) paragraph 19 (types of information),
(g) paragraph 20 (old documents),
(h) paragraph 23 (privileged communications),
(i) paragraphs 24 to 27 (auditors and tax advisers),
(j) every paragraph contained in Part 7 (penalties),
(k) every paragraph contained in Part 8 (offence), and
(l) paragraph 56 (application of provisions of TMA 1970).

(2) Paragraph 32 of Schedule 36 to FA 2008 (procedure on appeals) applies in relation to an appeal under this Part of this Schedule against a notice under this Part of this Schedule.

References to checking an interest restriction return etc

67 (1) For the purposes of this Part of this Schedule references to checking an interest restriction return include—

(a) determining whether or not an interest restriction return should be submitted for a period of account of a worldwide group,
(b) determining whether or not a worldwide group is, or may be, subject to interest restrictions in a period of account, (and, if so, determining the total disallowed amount of the group),
(c) determining the membership of a worldwide group (or determining the members that are UK group companies), and
(d) determining any other question that is relevant to the operation of this Part of this Schedule in relation to an interest restriction return or anything required to be included in it.

(2) For the purposes of this Part of this Schedule references to a worldwide group include one that an officer of Revenue and Customs suspects may exist.

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PART 8

COMPANY TAX RETURNS

Elections under section 375, 377 or 380

68 The following elections (or their revocation) must be made by a company in its company tax return (whether as originally made or by amendment) for the accounting period to which the election (or revocation) relates—

(a) an election under section 375 (a non-consenting company leaving pro-rata share of total disallowed amount out of account),

(b) an election under section 377 (a company specifying tax-interest expense amounts to be left out of account), and

(c) an election under section 380 (a company specifying tax-interest expense amounts to be brought into account).

Amendments to take account of operation of this Part of this Act (including elections)

69 (1) A company may amend its company tax return for an accounting period so as to make (or revoke) an election under section 375 at any time before—

(a) the filing date in relation to the period of account of the worldwide group to which the interest restriction return in question relates (see paragraph 7(5)), or

(b) if later, the end of the period of 3 months beginning with the day on which the interest restriction return in question is received by an officer of Revenue and Customs.

(2) A company that amends its company tax return for an accounting period as mentioned in sub-paragraph (1) must, before the time limit specified in that sub-paragraph, also amend the return to take account of the election (or revocation).

(3) If—

(a) a company is required by section 376 to leave an amount out of account in an accounting period, and

(b) the company has already delivered a company tax return for the period,

the company must amend its company tax return to take account of the requirement.

(4) The amendment must be made before the end of the period of 3 months beginning with the day after the relevant date (within the meaning of section 376).

(5) A company may amend its company tax return for an accounting period so as to make (or revoke) an election under section 377 or 380 at any time before—

(a) the end of the period of 36 months beginning with the day after the end of the accounting period, or

(b) if later, the end of the period of 3 months beginning with the day on which a relevant interest restriction return was received by an officer of Revenue and Customs.

(6) A company that amends its company tax return for an accounting period as mentioned in sub-paragraph (5) must, before the time limit specified in that sub-paragraph, also amend the return to take account of the election (or revocation).

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) In sub-paragraph (5) "a relevant interest restriction return" means an interest restriction return for a period of account in relation to which the accounting period is a relevant accounting period.

(8) The time limit for amending a company tax return given by paragraph 15(4) of Schedule 18 to FA 1998 is subject to the time limits given by this paragraph.

[F463 Other cases where company must amend its return etc]

Textual Amendments

F463 Sch. 7A para. 70 cross-heading substituted (with effect in accordance with Sch. 8 para. 25 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 15(4)**

70 (1) If—

(a) a company has delivered a company tax return for an accounting period, but

(b) as a result of the submission of an interest restriction return, information contained in the company tax return is incorrect (for example, there is a change in the amount of profits on which corporation tax is chargeable),

the company **[**F464 must amend**]** its company tax return for the accounting period so as to correct the information.

[The amendment must be made before whichever is the later of—

F465 (1A) (a) the end of the period of 3 months beginning with the day on which the interest restriction return was submitted, or

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

(2) If—

(a) a notice of determination under paragraph 56 or 58 is given to a company in relation to an accounting period, and

(b) the company has already delivered a company tax return for the period,

the company is treated as having amended its company tax return to take account of the determination.

Textual Amendments

F464 Words in Sch. 7A para. 70(1) substituted (with effect in accordance with Sch. 8 para. 25 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 15(2)**

F465 Sch. 7A para. 70(1A) inserted (with effect in accordance with Sch. 8 para. 25 of the amending Act) by Finance Act 2018 (c. 3), **Sch. 8 para. 15(3)**

[F466 Failure to comply with a requirement to amend company tax return

Textual Amendments

F466 Sch. 7A para. 70A and cross-heading inserted (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 16** (with Sch. 8 para. 26)

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

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(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).**]**

Regulations for purposes of ***[****F467 paragraph 70(2)****]*** *etc*

Textual Amendments

F467 Words in Sch. 7A para. 71 cross-heading substituted (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 17(3)**

71 (1) The Commissioners may by regulations—

(a) make provision generally for the purposes of **[**F468paragraph 70(2)**]**, and

(b) make provision for other cases where a company is to be treated as having amended its company tax return.

(2) The provision that may be made by the regulations includes provision—

(a) permitting or requiring the company to deliver an amended company tax return for the accounting period;

(b) specifying amendments that may or must be made in the return;

(c) specifying a time limit for the delivery of the return that is later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company).

Textual Amendments

F468 Words in Sch. 7A para. 71(1)(a) substituted (15.3.2018) by Finance Act 2018 (c. 3), **Sch. 8 para. 17(2)**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Consequential claims to company tax returns

72 (1) This paragraph applies if—

(a) a company amends, or is treated as amending, its company tax return for an accounting period in consequence of a closure notice given in respect of an interest restriction return under paragraph 47 or a notice of determination given to the company under paragraph [F469]... 58, and

(b) the amendment has the effect of increasing the amount of corporation tax payable by the company for the accounting period.

(2) Any qualifying claim may be made or given within the period of one year beginning with the day on which the company receives a copy of the closure notice under paragraph 60(5) or the notice of determination.

(3) Any qualifying claim previously made which is not irrevocable—

(a) may be revoked or varied within that one-year period, and

(b) if it is revoked or varied, must be done so in the same manner as it was made and by or with the consent of the same person or persons who made or consented to it (or, if a person has died, by or with the consent of the person's personal representatives).

(4) For the purposes of this paragraph a claim is a "qualifying" claim if its making, revocation or variation has the effect of reducing the liability of the company to corporation tax for the accounting period (whether or not it also reduces the liability to tax of the company for other periods).

(5) But a claim is not a "qualifying" claim if—

(a) the making, revocation or variation of the claim would alter the liability to tax of any person other than the company, or

(b) the making, revocation or variation of the claim is such that, if it were to be made, revoked or varied, the total of the reductions in liability to tax of the company would exceed the additional liability to corporation tax resulting from the amendment.

(6) If a qualifying claim is made, revoked or varied as a result of this paragraph, all such adjustments must be made as are required to take account of the effect of taking that action on the liability of the company to tax for any period.

(7) The adjustments may be made by way of discharge or repayment of tax or the making of amendments, assessments or otherwise.

(8) The provisions of TMA 1970 relating to appeals against decisions on claims apply with any necessary modifications to a decision on the revocation or variation of a claim as a result of this paragraph.

(9) In this paragraph (except in sub-paragraph (8)) "claim" includes an election, an application and a notice, and references to making a claim are to be read accordingly.

(10) In this paragraph "tax" (except in the expression "corporation tax") includes income tax and capital gains tax.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F469 Words in Sch. 7A para. 72(1)(a) omitted (with effect in accordance with Sch. 3 para. 30-36 of the amending Act) by virtue of Finance (No. 2) Act 2023 (c. 30), **Sch. 3 para. 25**

Meaning of "company tax return"

73 In this Schedule "company tax return" has the meaning given by paragraph 3 of Schedule 18 to FA 1998.

PART 9

SUPPLEMENTARY

Double jeopardy

74 A person is not liable to a penalty under any provision of this Schedule in respect of anything in respect of which the person has been convicted of an offence.

Notice of appeal

75 Notice of an appeal under this Schedule must specify the grounds of appeal.

Conclusiveness of amounts stated in interest restriction return

76 (1) This paragraph applies to an amount stated in an interest restriction return submitted under paragraph 7 or 8 ("the interest restriction return"), other than an amount that is also stated in a company tax return.

(2) If the amount can no longer be altered, it is taken to be conclusively determined for the purposes of the Corporation Tax Acts.

(3) An amount is regarded as one that can no longer be altered if—

(a) the interest restriction return has not been superseded by a subsequent interest restriction return;

(b) the applicable time limit has passed;

(c) any enquiry into the interest restriction return has been completed;

(d) if the closure notice in relation to an enquiry into the interest restriction return contained a statement under paragraph 49(2)(b), the period within which an appeal against the statement may be brought has ended; and

(e) if such an appeal is brought, the appeal has been finally determined.

(4) For the purposes of sub-paragraph (3) the "applicable time limit" means the time limit in paragraph 8(3) or, in a case where paragraph 57(2) or (4) applies and imposes a later time limit for submission of the interest restriction return, that later time limit.

(5) Nothing in this paragraph affects—

(a) the power under paragraph 42 (extended time limits for opening enquiries: discovery of errors), or

(b) any power to make a determination under paragraph 56 or 58 (determinations by officers of Revenue and Customs).**]**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULE 8

Section 374

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

DOUBLE TAXATION RELIEF

Taxes Management Act 1970 (c. 9)

1 TMA 1970 is amended as follows.

2 In section 9A(4)(c) (scope of enquiries) for "section 804ZA of the principal Act (schemes and arrangements designed to increase relief)" substitute " section 81(2) of TIOPA 2010 (notice to counteract scheme or arrangement designed to increase double taxation relief) ".

3 (1) Amend section 12B (records to be kept for purposes of returns) as follows.

(2) In subsection (4A)(c) (records of foreign tax: not sufficient to preserve the information in them) for sub-paragraph (ii) substitute—

"(ii) which would have been payable under the law of a territory outside the United Kingdom ("territory F") but for a development relief."

(3) After subsection (4A) insert—

"(4B) In subsection (4A)(c) "development relief" means a relief—

(a) given under the law of territory F with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in arrangements that have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom)."

4 In section 24 (power to obtain information about income from securities) after subsection (3) insert—

"(3ZA) If—

(a) a person beneficially entitled to income from any securities is resident in a territory outside the United Kingdom, and

(b) there are double taxation arrangements with respect to income tax or corporation tax which relate to that territory,

subsection (3) does not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.

(3ZB) In subsection (3ZA) "double taxation arrangements" means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom)."

5 In section 29(7A) (discovery assessments: relaxation of pre-conditions) for "section 804ZA of the principal Act" substitute " section 81(2) of TIOPA 2010 (notice to counteract scheme or arrangement designed to increase double taxation relief) ".

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

6 In section 43C(5) (meaning of consequential claim) for "or 43A" substitute " , 43A or 43D(6) ".

7 In Part 4, after section 43C insert—

"**43D Claims for double taxation relief in relation to petroleum revenue tax**

(1) This section has effect in relation to a claim for relief under sections 2 to 6 of TIOPA 2010 in relation to petroleum revenue tax.

(2) The claim shall be for an amount which is quantified at the time when the claim is made.

(3) If, after the claim has been made, the claimant discovers that an error or mistake has been made in the claim, the claimant may make a supplementary claim within the time allowed for making the original claim.

(4) Schedule 1A to this Act applies as respects the claim, but as if the reference in paragraph 2A(4) to a year of assessment included a reference to a chargeable period.

(5) The claim may not be made more than 4 years after the end of the chargeable period to which it relates, but this is subject to any provision of the Taxes Acts prescribing a longer or shorter period.

(6) If the claim or a supplementary claim could not have been allowed but for the making of an assessment to petroleum revenue tax after the end of the chargeable period to which the claim relates, the claim or supplementary claim may be made at any time before the end of the chargeable period following that in which the assessment is made.

(7) In this section "chargeable period" has the same meaning as in the Oil Taxation Act 1975 (see section 1(3) and (4) of that Act, under which a period that is a chargeable period ends with 30 June or 31 December and, apart from the first chargeable period in relation to an oil field, is a period of 6 months)."

Income and Corporation Taxes Act 1988 (c. 1)

8 ICTA is amended as follows.

F470 9 . . . . . .

Textual Amendments

F470 Sch. 8 para. 9 repealed (with effect in accordance with s. 26(3) of the amending Act) by Finance Act 2012 (c. 14), **s. 26(2)(e)**; S.I. 2015/1999, art. 2

10 In section 750(3)(b) (disregard of certain double taxation relief) for "Part XVIII" substitute " Part 2 of TIOPA 2010 (double taxation relief) ".

11 In section 751(6)(a) ("creditable tax" includes amounts of double taxation relief) for "Part XVIII" substitute " Part 2 of TIOPA 2010 (double taxation relief) ".

12 In section 755A(4A)(b) (dividend paid by controlled foreign company to company carrying on life assurance business) for "subsection (4) of section 804B of this Act" substitute " subsection (5) of section 97 of TIOPA 2010 ".

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13 Omit section 788 (giving effect to double taxation arrangements).

14 Omit section 789 (conversion of references to the profits tax in arrangements given effect under old law).

15 Omit section 790 (unilateral relief).

16 Omit section 791 (power to make regulations giving effect to section 788 and double taxation arrangements).

17 Omit sections 792 to 798C (which contain rules about double taxation relief by way of credit).

18 Omit sections 799 and 801 to 801B (double taxation relief: dividends).

19 Omit sections 803 to 804E and 804G to 806 (further rules about credit relief).

20 (1) Amend section 806A as follows.

(2) In subsection (2)—

(a) in paragraph (c) for "section 801A" substitute " section 67(6) of TIOPA 2010 ",

(b) in paragraph (c) for "subsection (1)(b) of that section" substitute " section 67(3) of that Act ",

(c) in paragraph (d) for "section 803" substitute " section 70(2) of TIOPA 2010 ",

(d) in paragraph (d) for "subsection (1)(b) of that section" substitute " section 70(1)(d) of that Act ", and

(e) in paragraph (e) for "section 811" substitute " section 112 of TIOPA 2010 ".

(3) In subsection (4)(a) for "section 797" substitute " section 42(2) of TIOPA 2010 ".

(4) In subsection (5)—

(a) for "section 799(1)" substitute " section 57(1) of TIOPA 2010 ",

(b) for "section 801(2) or (3)" substitute " section 65(4) of TIOPA 2010 ", and

(c) for "subsection (2) or (3) of section 801" substitute " section 65(4) of TIOPA 2010 ".

21 (1) Amend section 806B as follows.

(2) In subsection (2)(b) for "section 797" substitute " section 42 of TIOPA 2010 ".

(3) In subsection (3)(b) for "section 799(1)" substitute " section 57(1) of TIOPA 2010 ".

(4) In subsection (4)—

(a) in paragraph (a) for "section 799(1)" substitute " section 57(1) of TIOPA 2010 ",

(b) in paragraph (b) for "section 799(1A)" substitute " Step 3 in section 58(1) of TIOPA 2010 ",

(c) in paragraph (b) for "M%" substitute " M ", and

(d) in paragraph (b)(ii) for "U" substitute " PA ".

(5) In subsection (5)—

(a) for "subsection (2) or (3) of section 801" substitute " section 65(4) of TIOPA 2010 ",

(b) in each of paragraphs (a), (b)(ii) and (c)(ii) for "subsection (2) or (3), as the case may be, of section 801" substitute " section 65(4) of TIOPA 2010 ",

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(c) for "section 799(1A)" substitute " Step 3 in section 58(1) of TIOPA 2010 ",

(d) for "M%" substitute " M ", and

(e) for "U" substitute " PA ".

(6) In subsection (7)(b) for "section 799(1)" substitute " section 59 of TIOPA 2010 ".

(7) In subsection (10)—

(a) in the definition of "lower level dividend" for "section 801(2) or (3)" substitute " section 65(4) of TIOPA 2010 ",

(b) in paragraph (a) of the definition of "the relevant tax" for "section 799(1)" substitute " section 57(1) of TIOPA 2010 ", and

(c) in paragraph (b) of that definition for "section 801(2) or (3)" substitute " section 65(4) of TIOPA 2010 ".

22 In section 806C(3) and (4) for "this Part" substitute " Part 2 of TIOPA 2010 ".

23 In section 806D(3), (4) and (5) for "this Part" substitute " Part 2 of TIOPA 2010 ".

24 In section 806F(1) and (2) for "this Part" substitute " Part 2 of TIOPA 2010 ".

25 (1) Amend section 806J (interpretation of sections 806A to 806J) as follows.

(2) In subsection (5)(b) for "subsection (6)(b) of section 790" substitute " section 15 or 16 of TIOPA 2010 ".

(3) In subsection (5) for "subsection (10) of that section" substitute " section 12(3) of TIOPA 2010 ".

(4) For subsection (6) substitute—

"(6) For the purposes of the foreign dividend provisions of this Chapter a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the first-mentioned company."

(5) In subsection (7) in the definition of "the mixer cap" for "section 799(1)" substitute " Step 6 in section 58(1) of TIOPA 2010 ".

26 Omit sections 806L and 806M (unrelieved foreign tax).

27 Omit sections 807 and 807A (provision, in connection with relief, about accrued income profits and about loan relationships).

28 Omit sections 807B to 807G (provisions related to the Mergers Directive).

29 Omit sections 808A to 809 and 811 (provision, in connection with relief, about interest, royalties and discretionary trusts, and for deductions where no credit allowed).

F471 30 . . . . . .

Textual Amendments

F471 Sch. 8 paras. 30, 31 repealed (31.1.2013) by Statute Law (Repeals) Act 2013 (c. 2), s. 3(2), **Sch. 1 Pt. 10** Group 1

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F471 31 . . . . . .

Textual Amendments

F471 Sch. 8 paras. 30, 31 repealed (31.1.2013) by Statute Law (Repeals) Act 2013 (c. 2), s. 3(2), **Sch. 1 Pt. 10** Group 1

32 Omit sections 815A to 815B and 816 (provision, in connection with relief, about transfer of non-UK trades, about foreign enterprises and about cases presented under arrangements, and provision about the Arbitration Convention and about disclosure of information).

33 In section 828(4) (orders and regulations not subject to annulment) omit "791".

F472 34 . . . . . .

Textual Amendments

F472 Sch. 8 para. 34 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 247(x)**

35 (1) Amend Schedule 26 (reliefs against liability for tax in respect of chargeable profits of controlled foreign companies) as follows.

(2) In paragraph 3(5)(b) for "Part XVIII" substitute " Part 2 of TIOPA 2010 ".

(3) In paragraph 4(2) for "Part XVIII" substitute " Part 2 of TIOPA 2010 (double taxation relief) ".

(4) In paragraph 4(4) for "section 796 or section 797" substitute " section 36, 40, 41 or 42 of TIOPA 2010 ".

(5) In paragraph 5(1) for paragraphs (a) and (b) substitute—

"(a) arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom), or

(b) unilateral relief arrangements for a territory outside the United Kingdom (as defined by section 8 of that Act),".

(6) In paragraph 5(1) for "Part XVIII" substitute " Part 2 of TIOPA 2010 ".

(7) In paragraph 5(2) for "section 795(2)(b)" substitute " section 31(2)(b) and (3) of TIOPA 2010 ".

(8) In paragraph 6(1)(c) for "Part XVIII" substitute " Part 2 of TIOPA 2010 ".

36 Omit Schedule 28AB (prescribed schemes and arrangements for purposes of section 804ZA).

Finance Act 1989 (c. 26)

37 FA 1989 is amended as follows.

F473 38 . . . . . .

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F473 Sch. 8 para. 38 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(5)**

39 In section 182A(6) (double taxation: disclosure of information: interpretation) for "section 815B(4) of the Taxes Act 1988" substitute " section 126 of the Taxation (International and Other Provisions) Act 2010 ".

Taxation of Chargeable Gains Act 1992 (c. 12)

40 TCGA 1992 is amended as follows.

41 In section 10(4) (persons exempt under Part 18 of ICTA) for "Part XVIII of the Taxes Act (double taxation relief agreements)" substitute " Part 2 of TIOPA 2010 (double taxation relief) ".

42 In section 10B(3) (companies exempt under Part 18 of ICTA) for "Part 18 of the Taxes Act (double taxation relief agreements)" substitute " Part 2 of TIOPA 2010 (double taxation relief) ".

43 In section 59(2)(b) (arrangements giving relief for partnership gains) for "falling within section 788 of the Taxes Act" substitute " that have effect under section 2(1) of TIOPA 2010 ".

44 In sections 140H(3), 140I(3) and 140J(3) (gains on which tax would have been charged but for the Mergers Directive)—

(a) for "Part 18 of the Taxes Act" substitute " Part 2 of TIOPA 2010 ", and

(b) for "arrangements having effect by virtue of section 788 of that Act (bilateral relief)" substitute " double taxation relief arrangements ".

45 Omit section 277 (application to capital gains tax of provisions about double taxation relief).

46 Omit section 278 (deduction for foreign gains tax in respect of which double taxation relief by way of credit against UK tax not allowed).

47 In section 288(1) (interpretation) for the definition of "double taxation relief arrangements" substitute—

""double taxation relief arrangements"—

(a) in relation to a company means arrangements that have effect under section 2(1) of TIOPA 2010 except so far as they have effect in relation to petroleum revenue tax, and

(b) in relation to any other person means arrangements that have effect under section 2(1) of TIOPA 2010 but only so far as they have effect in relation to capital gains tax;".

Finance Act 1993 (c. 34)

48 FA 1993 is amended as follows.

49 Omit section 194 (application to petroleum revenue tax of provisions about double taxation relief).

50 In section 195(3) (interpretation of Part 3) omit ", other than section 194,".

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Finance (No. 2) Act 1997 (c. 58)

F474 51 . . . . . .

Textual Amendments

F474 Sch. 8 para. 51 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(5)**

F475 52 . . . . . .

Textual Amendments

F475 Sch. 8 para. 52 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(5)**

Finance Act 1998 (c. 36)

53 FA 1998 is amended as follows.

54 (1) Amend Schedule 18 (company tax returns etc) as follows.

(2) In paragraph 8(1) (calculation of tax payable)—

(a) in paragraph 2 of the Second step for "section 788 or 790 of that Act" substitute " under sections 2 and 6 of TIOPA 2010 or under section 18(1)(b) and (2) of that Act ", and

(b) in paragraph 3 of that step for "that Act" substitute " the Taxes Act 1988 ".

(3) In paragraph 22(3)(c) (records of foreign tax: not sufficient to preserve the information in them) for sub-paragraph (ii) substitute—

"(ii) which would have been payable under the law of a territory outside the United Kingdom ("territory F") but for a development relief."

(4) In paragraph 22 after sub-paragraph (3) insert—

"(4) In sub-paragraph (3)(c) "development relief" means a relief—

(a) given under the law of territory F with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom)."

Finance Act 2000 (c. 17)

55 FA 2000 is amended as follows.

56 (1) Amend Schedule 22 (tonnage tax) as follows.

(2) For paragraph 57(2)(a) ("relief" includes double taxation relief) substitute—

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"(a) sections 2 and 6 of the Taxation (International and Other Provisions) Act 2010 (double taxation relief by agreement with territories outside the United Kingdom),

(aa) section 18(1)(b) and (2) of that Act (unilateral relief from double taxation), or".

Capital Allowances Act 2001 (c. 2)

57 CAA 2001 is amended as follows.

58 In section 105(4) (meaning of "double taxation arrangements") for the words from "specified" to the end substitute " which have effect under section 2(1) of the Taxation (International and Other Provisions) Act 2010 (double taxation relief by agreement with territories outside the United Kingdom) ".

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

59 ITEPA 2003 is amended as follows.

60 In section 643(6) in the definition of "double taxation relief arrangements" for the words from "specified" to the end substitute " which have effect under section 2(1) of TIOPA 2010; ".

Finance Act 2004 (c. 12)

61 FA 2004 is amended as follows.

62 In Chapter 7 of Part 3 (special withholding tax) omit—

(a) sections 107 to 111,

(b) sections 113 and 114, and

(c) section 115(4).

63 In section 189(3) (treatment of relevant UK earnings) for "by virtue of section 788 of ICTA" substitute " under section 2(1) of the Taxation (International and Other Provisions) Act 2010 ".

64 In Schedule 34 (non-UK pensions schemes: application of certain charges) in paragraph 20 (meaning of "double tax arrangements") for "by virtue of section 788 of ICTA" substitute " under section 2(1) of the Taxation (International and Other Provisions) Act 2010 ".

Income Tax (Trading and Other Income) Act 2005 (c. 5)

65 ITTOIA 2005 is amended as follows.

F476 66 . . . . . .

Textual Amendments

F476 Sch. 8 para. 66 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(5)**

F477 67 . . . . . .

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Textual Amendments

F477 Sch. 8 para. 67 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 68(5)**

68 In section 763(3) (priority of double taxation arrangements) for "section 788 of ICTA" substitute " section 2(1) of TIOPA 2010 ".

69 (1) Section 764 (application of ICTA provisions about special relationships) is amended as follows.

(2) In subsection (1), and in the title, for "ICTA" substitute " TIOPA 2010 ".

(3) In subsection (1) for "special relationship provision" substitute " special relationship rule ".

(4) In subsection (2) for "subsections (2) to (4) of section 808A of ICTA" substitute " section 131(3), (5) and (6) of TIOPA 2010 ".

(5) In subsection (3) for "subsections (2) to (7) and (9) of section 808B of ICTA" substitute " sections 132(3) to (5), (7) and (8) and 133 of TIOPA 2010 ".

70 In section 858(1)(b) (resident partners and double taxation agreements) for "section 788 of ICTA" substitute " section 2(1) of TIOPA 2010 ".

Income Tax Act 2007 (c. 3)

71 ITA 2007 is amended as follows.

72 In section 1(2)(a) (example of income tax provisions located outside ITA 2007) for "Part 18 of ICTA" substitute " Part 2 of TIOPA 2010 ".

73 (1) Amend section 26(1)(b) (provisions referred to at Step 6 of the calculation in section 23) as follows.

(2) Omit the entries for sections 788 and 790 of ICTA.

(3) Omit "and" before the entry for sections 677 and 678 of ITTOIA 2005.

(4) After that entry insert—

> "sections 2 and 6 of TIOPA 2010 (double taxation relief: relief by agreement), and
>
> section 18(1)(b) and (2) of TIOPA 2010 (relief for foreign tax where no double taxation arrangements)."

74 In section 27(6) (tax reductions for individuals by way of double taxation relief)—

(a) in paragraph (a) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ", and

(b) in paragraph (b) for "section 790(1) of ICTA" substitute " section 18(1)(b) and (2) of TIOPA 2010 ".

75 In section 28(4) (tax reductions for non-individuals by way of double taxation relief)—

(a) in paragraph (a) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ", and

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(b) in paragraph (b) for "section 790(1) of ICTA" substitute " section 18(1)(b) and (2) of TIOPA 2010 ".

76 (1) Amend section 29 (tax reductions: supplementary) as follows.

(2) In subsection (4)(a) for "section 796(1), (2) and (3) of ICTA" substitute " sections 36(1) to (5) and (7) and 41 of TIOPA 2010 ".

(3) In subsection (5) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ".

77 (1) Amend section 32 (liabilities not dealt with in calculation under section 23) as follows.

(2) Omit the entry for section 804(5B)(a) of ICTA.

(3) Omit the word "and" before the entry for section 682(4) of ITTOIA 2005.

(4) After that entry insert ", and

under section 24(4) of TIOPA 2010 (recovery of excess credit for overseas tax)."

78 (1) Amend section 53 (transfer of unused relief: general) as follows.

(2) In subsection (2) (tax reductions by way of double taxation relief)—

(a) in paragraph (a) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ", and

(b) in paragraph (b) for "section 790(1) of ICTA" substitute " section 18(1)(b) and (2) of TIOPA 2010 ".

(3) In subsection (5) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ".

79 (1) In section 424(2) (gift aid: charge to tax: interpretation) amend paragraph (b) of the definition of "amount C" as follows.

(2) In sub-paragraph (i) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ".

(3) In sub-paragraph (ii) for "section 790(1) of ICTA" substitute " section 18(1)(b) and (2) of TIOPA 2010 ".

80 (1) Amend section 425 ("total amount of income tax" in sections 423 and 424) as follows.

(2) In subsection (4) (tax reductions to be ignored)—

(a) in paragraph (b) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ", and

(b) in paragraph (c) for "section 790(1) of ICTA" substitute " section 18(1)(b) and (2) of TIOPA 2010 ".

(3) In subsection (6) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ".

81 In section 527(2) omit paragraph (b) (subsection (1) does not apply to income chargeable to tax under section 804 of ICTA).

F478 82 . . . . . .

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Textual Amendments

F478 Sch. 8 para. 82 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, **Sch. 29 para. 48(4)**

83 In section 828C(4) (entitlement to double taxation relief)—

(a) in paragraph (a) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ", and

(b) in paragraph (b) for "section 790(1)" substitute " section 18(1)(b) and (2) ".

84 In section 849(1) (interaction between Part 15 of ITA 2007 and regulations under section 791 of ICTA) for "section 791 of ICTA (double taxation relief: power to make regulations for carrying out section 788)" substitute " section 7 of TIOPA 2010 (double taxation arrangements: general regulations) ".

85 In section 1023 (meaning in Act of "double taxation arrangements") for "section 788 of ICTA" substitute " section 2(1) of TIOPA 2010 ".

86 In section 1026—

(a) after paragraph (e) insert " or ", and

(b) omit paragraph (g) ("non-qualifying income" in section 1025 includes deemed receipts under section 804(5B) of ICTA) and the "or" preceding it.

Finance Act 2008 (c. 9)

87 FA 2008 is amended as follows.

88 In Schedule 17 in paragraph 10(3) after paragraph (c) insert " and ".

Corporation Tax Act 2009 (c. 4)

89 CTA 2009 is amended as follows.

90 In section 464(3)—

(a) in paragraph (f) for "section 795(4) of ICTA" substitute " section 31(5) of TIOPA 2010 ", and

(b) in paragraph (g) for "section 811(3) of ICTA" substitute " section 112(5) of TIOPA 2010 ".

91 In section 486(2) for "section 811 of ICTA" substitute " section 112 of TIOPA 2010 ".

92 In section 550(7) (meaning of "double taxation relief") for "Part 18 of ICTA" substitute " Part 2 of TIOPA 2010 ".

93 In section 697(3)(a) (exceptions to section 696) for "because of section 788 of ICTA" substitute " under section 2(1) of TIOPA 2010 ".

94 In section 782(1)(a) (intangible fixed assets transferred in the course of certain transfers of a business)—

(a) for "section 807B(2)(b)(iii) of ICTA" substitute " section 116(2)(b)(iii) of TIOPA 2010 ", and

(b) for "section 807C" substitute " section 117 ".

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95 In section 793(3)(b) (when election under section 792 may be made) for "arrangements under Part 18 of ICTA" substitute " arrangements that have effect under section 2(1) of TIOPA 2010 ".

96 In section 827(7) (no claim under section if claim made under section 807B(6) of ICTA)—

(a) for "section 807B(6) of ICTA" substitute " section 116(6) of TIOPA 2010 ", and

(b) for "section 807C" substitute " section 117 ".

97 In section 906(3)—

(a) omit "and" after paragraph (a), and

(b) after paragraph (b) insert ", and

(c) section 112(5) of TIOPA 2010 (deduction for foreign tax where no credit available)."

98 For section 931C(1)(a) (which refers to arrangements to which section 788 of ICTA applies) substitute—

"(a) arrangements made in relation to the territory have effect under section 2(1) of TIOPA 2010 ("double taxation relief arrangements"), and".

99 In section 931H(5) for "Part 18 of ICTA" substitute " Part 2 of TIOPA 2010 ".

100 In section 931J(7) for "Part 18 of ICTA" substitute " Part 2 of TIOPA 2010 ".

101 In section 1266(1)(b) (resident partners and double taxation agreements) for "section 788 of ICTA" substitute " section 2(1) of TIOPA 2010 ".

Finance Act 2009 (c. 10)

102 FA 2009 is amended as follows.

103 In section 56(1) (tax in respect of MEPs' pay) for "Part 18 of ICTA (double tax" substitute " Part 2 of TIOPA 2010 (double taxation ".

104 In Schedule 16 in paragraph 7(2)(a) (purposes for which straddling accounting periods are split) after "Chapter 4 of Part 17, and Part 18, of ICTA" insert " and Part 2 of TIOPA 2010 ".

105 In Schedule 35 in paragraph 2(4)(b) for "section 788 of ICTA" substitute " sections 2 and 6 of TIOPA 2010 ".

PART 2

TRANSFER PRICING AND ADVANCE PRICING AGREEMENTS

Taxes Management Act 1970 (c. 9)

106 TMA 1970 is amended as follows.

107 In section 9A(4)(b) (scope of enquiries) for "paragraph 5C of Schedule 28AA to the principal Act" substitute " section 168(1) of TIOPA 2010 ".

108 (1) Amend the second column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for section 86(4) of FA 1999.

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(3) At the appropriate place insert—

"Section 228 of TIOPA 2010."

Income and Corporation Taxes Act 1988 (c. 1)

109 ICTA is amended as follows.

110 Omit section 770A (which introduces Schedule 28AA).

111 Omit Schedule 28AA (transfer pricing).

Finance Act 1998 (c. 36)

112 FA 1998 is amended as follows.

113 Omit section 110 (determinations requiring the sanction of the Commissioners for Her Majesty's Revenue and Customs).

114 Omit section 111 (duty to give notice to persons who may be able to make or amend a claim under paragraph 6 of Schedule 28AA or who may have rights to be heard in appeals under that Schedule).

Finance Act 1999 (c. 16)

115 FA 1999 is amended as follows.

116 Omit section 85 (advance pricing agreements).

117 Omit section 86(1) to (8) and (10) (provisions supplementary to section 85).

118 Omit section 87 (effect of advance pricing agreements on non-parties).

Finance Act 2000 (c. 17)

119 (1) Schedule 22 to FA 2000 (tonnage tax) is amended as follows.

(2) In paragraph 58(1) for the words after paragraph (b) substitute—

"Part 4 of the Taxation (International and Other Provisions) Act 2010 (transactions not at arm's length) has effect with the omission of sections 174 to 184, 187 to 189 and 191 to 196 (elimination of double counting etc)."

(3) In paragraph 58(2) for "Schedule 28AA" substitute " Part 4 of the Taxation (International and Other Provisions) Act 2010 ".

(4) In paragraph 59(1) for "Schedule 28AA to the Taxes Act 1988" substitute " Part 4 of the Taxation (International and Other Provisions) Act 2010 ".

(5) For paragraph 59(2) substitute—

"(2) As applied by sub-paragraph (1), Part 4 of the Taxation (International and Other Provisions) Act 2010 has effect with the omission of sections 174 to 184, 187 to 189 and 191 to 196 (elimination of double counting etc)."

(6) In paragraph 59(3) for "Schedule 28AA" substitute " Part 4 of the Taxation (International and Other Provisions) Act 2010 ".

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(7) In paragraph 60(2) for "Schedule 28AA" substitute " Part 4 of the Taxation (International and Other Provisions) Act 2010 ".

Income Tax (Trading and Other Income) Act 2005 (c. 5)

120 ITTOIA 2005 is amended as follows.

121 (1) Amend section 172F (transfer pricing rules to take precedence over sections 172D and 172E) as follows.

(2) In subsection (1)(a) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(3) In subsection (1)(b) for "that Schedule" substitute " that Part ".

(4) In subsection (2) for "Schedule 28AA to ICTA without falling to be adjusted under that Schedule" substitute " Part 4 of TIOPA 2010 without falling to be adjusted under that Part ".

(5) For subsection (2)(a) and (b) substitute—

"(a) the condition in section 147(1)(a) of TIOPA 2010 is met, and

(aa) the participation condition is met (see subsection (2B)), but

(b) either—

(i) one of the conditions in section 147(1)(c) and (d) of TIOPA 2010 is not met, or

(ii) one of the exceptions mentioned in subsection (2A) applies."

(6) After subsection (2) insert—

"(2A) The exceptions are those in—

(a) section 447(5) of CTA 2009 (exchange gains or losses from loan relationships),

(b) section 694(8) of CTA 2009 (exchange gains or losses from derivative contracts),

(c) section 213 of TIOPA 2010 (saving for provisions relating to capital allowances), and

(d) section 214 of TIOPA 2010 (saving for provisions relating to chargeable gains).

(2B) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010."

122 In section 173(2) (trading stock not to be valued if paragraph 1(2) of Schedule 28AA to ICTA has effect) for "paragraph 1(2) of Schedule 28AA to ICTA" substitute " section 147(3) or (5) of TIOPA 2010 ".

Corporation Tax Act 2009 (c. 4)

123 CTA 2009 is amended as follows.

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124 (1) Amend section 161 (transfer pricing rules take precedence over rules about disposals and acquisitions of trading stock not made in course of the trade concerned) as follows.

(2) In subsection (1)(a) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(3) In subsection (1)(b) for "that Schedule" substitute " that Part ".

(4) For subsection (2) substitute—

"(2) For the purposes of subsection (1)(b), the relevant consideration falls within Part 4 of TIOPA 2010 without falling to be adjusted under that Part if—

(a) the condition in section 147(1)(a) of TIOPA 2010 is met, and

(b) the participation condition is met (see subsection (3A)), but

(c) either—

(i) one of the conditions in section 147(1)(c) and (d) of TIOPA 2010 is not met, or

(ii) one of the exceptions mentioned in subsection (3) applies."

(5) In subsection (3) for paragraphs (c) and (d) substitute—

"(c) section 213 of TIOPA 2010 (saving for provisions relating to capital allowances), and

(d) section 214 of TIOPA 2010 (saving for provisions relating to chargeable gains)."

(6) After subsection (3) insert—

"(3A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(b) as it applies for the purposes of section 147(1)(b) of TIOPA 2010."

125 In section 162(2) (trading stock not to be valued if paragraph 1(2) of Schedule 28AA to ICTA has effect) for "paragraph 1(2) of Schedule 28AA to ICTA" substitute " section 147(3) or (5) of TIOPA 2010 ".

126 In section 340(7) (Schedule 28AA to ICTA does not apply to amounts accounted for under the section) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

127 In section 374(3)(a) (meaning of non-qualifying territory) for "paragraph 5E of Schedule 28AA to ICTA" substitute " section 173 of TIOPA 2010 ".

128 (1) Amend section 376(5) (interpretation of section 375) as follows.

(2) In the definition of "non-qualifying territory" for "paragraph 5E of Schedule 28AA to ICTA" substitute " section 173 of TIOPA 2010 ".

(3) In the definition of "small or medium-sized enterprise" for "paragraph 5D of that Schedule" substitute " section 172 of TIOPA 2010 ".

129 In section 377(3)(a) (meaning of non-qualifying territory) for "paragraph 5E of Schedule 28AA to ICTA" substitute " section 173 of TIOPA 2010 ".

130 In section 407(6)(a) (meaning of non-qualifying territory) for "paragraph 5E of Schedule 28AA to ICTA" substitute " section 173 of TIOPA 2010 ".

131 (1) Amend section 410(5) (interpretation of section) as follows.

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(2) In the definition of "non-qualifying territory" for "paragraph 5E of Schedule 28AA to ICTA" substitute " section 173 of TIOPA 2010 ".

(3) In the definition of "small or medium-sized enterprise" for "paragraph 5D of that Schedule" substitute " section 172 of TIOPA 2010 ".

132 In section 444(3) (section is subject to section 445) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

133 (1) Amend section 445 (disapplication of section 444 where Schedule 28AA to ICTA applies) as follows.

(2) In subsection (1) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(3) In each of paragraphs (a) and (b) of that subsection for "that Schedule" substitute " that Part ".

(4) In subsection (2)(a) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(5) In subsection (2)(b) for "that Schedule" substitute " that Part ".

(6) In subsection (3) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(7) For subsection (3)(a) substitute—

"(a) the condition in section 147(1)(a) of TIOPA 2010 is met,

(aa) the participation condition is met (see subsection (3A)), and".

(8) After subsection (3) insert—

"(3A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (3)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010."

(9) In subsection (4) for "Schedule 28AA to ICTA," substitute " Part 4 of TIOPA 2010, ".

(10) In subsection (5) for "Schedule 28AA to ICTA (see paragraph 1 of that Schedule)" substitute " Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act) ".

(11) In the title for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

134 (1) Amend section 446 (bringing into account adjustments made under Schedule 28AA to ICTA) as follows.

(2) In each of subsections (1), (2), (4) and (6), and in the title, for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

135 (1) Amend section 447 (exchange gains and losses on debtor relationships: loans disregarded under Schedule 28AA to ICTA) as follows.

(2) In subsection (1)(c) for "paragraph 1 of Schedule 28AA to ICTA" substitute " section 147(3) or (5) of TIOPA 2010 ".

(3) In subsection (5) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(4) In subsection (7) for "Schedule 28AA to ICTA (see paragraph 1 of that Schedule)" substitute " Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act) ".

(5) In the title for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

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136 In section 452(1)(a) and (3)(a) (exchange gains and losses where loan not on arm's length terms) for "paragraph 6D(2) of Schedule 28AA to ICTA" substitute " section 192(1) of TIOPA 2010 ".

137 In section 455(5) (section does not apply if paragraph 1(2) of Schedule 28AA to ICTA has effect) for "paragraph 1(2) of Schedule 28AA to ICTA" substitute " section 147(3) or (5) of TIOPA 2010 ".

138 In section 464(3)(a) (which refers to and describes section 445(2)) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

139 In section 484(1) (non-lending relationships treated as loan relationships: meaning of "interest") for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

140 In section 508(2) (arrangements which are not alternative finance arrangements)—

(a) in paragraph (b) for "paragraph 1(2) of Schedule 28AA to ICTA" substitute " subsection (3) or (5) of section 147 of TIOPA 2010 ",

(b) in that paragraph for "in paragraph 1(2)(a) of that Schedule" substitute " in that subsection ", and

(c) in paragraph (c) for "that Schedule" substitute " Part 4 of TIOPA 2010 ".

141 In section 625(7) (Schedule 28AA to ICTA does not apply to amounts if credits or debits in respect of those amounts are determined under the section), for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

142 (1) Amend section 693 (bringing into account adjustments under Schedule 28AA to ICTA) as follows.

(2) In subsections (1), (2) and (4), and the title, for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

143 (1) Amend section 694 (exchange gains and losses where derivative contracts not on arm's length terms) as follows.

(2) In subsections (2), (4) and (8) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(3) In subsection (10) for "Schedule 28AA to ICTA (see paragraph 1 of that Schedule)" substitute " Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act) ".

144 In section 698(5) (section does not apply if paragraph 1(2) of Schedule 28AA to ICTA increases company's tax liability) for "paragraph 1(2) of Schedule 28AA to ICTA" substitute " section 147(3) or (5) of TIOPA 2010 ".

145 (1) In the provisions mentioned in sub-paragraph (2) (provisions which relate to intangible fixed assets and refer to matters being subject to adjustments under Schedule 28AA to ICTA) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(2) The provisions are—

section 721(3),
section 728(3),
section 729(4),
section 731(5),
section 736(7),
section 739(2),
section 740(4),

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section 742(3), and
section 743(3).

146 In section 775(3) (intangible fixed assets: transfers within a group) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

147 (1) Amend section 846 (intangible fixed assets: transfers not at arm's length) as follows.

(2) In subsection (1)(a) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

(3) In subsection (1)(b) for "that Schedule" substitute " that Part ".

(4) In subsection (2) for "within that Schedule" substitute " within that Part ".

(5) For subsection (2)(a) substitute—

"(a) the condition in section 147(1)(a) of TIOPA 2010 is met,
(aa) the participation condition is met (see subsection (2A)), and".

(6) After subsection (2) insert—

"(2A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010."

(7) In subsection (3) for the words after "meaning" substitute " as in that Part (see, respectively, sections 149 and 151 of TIOPA 2010) ".

148 In section 931P(4) (section does not apply if Schedule 28AA to ICTA applies) for "Schedule 28AA to ICTA" substitute " Part 4 of TIOPA 2010 ".

Finance Act 2009 (c. 10)

149 FA 2009 is amended as follows.

150 In Schedule 17 (international movement of capital) in paragraph 12(5) for "Paragraph 3 of Schedule 28AA to ICTA" substitute " Section 150 of TIOPA 2010 ".

PART 3

TAX ARBITRAGE

Finance (No. 2) Act 2005 (c. 22)

151 F(No.2)A 2005 is amended as follows.

152 Omit sections 24 to 28 (avoidance involving tax arbitrage).

153 Omit section 30 (interpretation of Chapter 4 of Part 2).

154 Omit section 31 (commencement of Chapter 4 of Part 2).

155 Omit Schedule 3 (qualifying schemes).

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PART 4

TAX TREATMENT OF FINANCING COSTS AND INCOME

Taxes Management Act 1970 (c. 9)

156 TMA 1970 is amended as follows.

157 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for regulations under Schedule 15 to FA 2009.

F479(3) . . . . . .

Textual Amendments

F479 Sch. 8 para. 157(3) repealed (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 3(2)**

Finance Act 2009

158 FA 2009 is amended as follows.

159 Omit section 35 (which introduces Schedule 15).

160 Omit paragraphs 1 to 94 and 97 to 99 of Schedule 15 (tax treatment of financing costs and income).

PART 5

OFFSHORE FUNDS

Inheritance Tax Act 1984 (c. 51)

161 The Inheritance Tax Act 1984 is amended as follows.

162 In section 174(1)(a) (income tax and unpaid inheritance tax) for "made under section 41(1) of the Finance Act 2008" substitute " under section 354(1) of the Taxation (International and Other Provisions) Act 2010 ".

Taxation of Chargeable Gains Act 1992 (c. 12)

163 TCGA 1992 is amended as follows.

164 In section 108(1)(c) (identification of relevant securities for corporation tax) for "made under section 41(1) of the Finance Act 2008" substitute " under section 354(1) of TIOPA 2010 ".

165 In section 212(1)(b) (annual deemed disposal of unit trusts etc) for "section 40A of the Finance Act 2008" substitute " section 355 of TIOPA 2010 ".

166 In Schedule 7AD (gains of insurance company from venture capital investment partnership) in paragraph 7(1) for "made under section 41(1) of the Finance Act 2008" substitute " under section 354(1) of TIOPA 2010 ".

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Income Tax (Trading and Other Income) Act 2005 (c. 5)

167 ITTOIA 2005 is amended as follows.

168 In section 378A(7) (offshore fund distributions) for "section 40A of FA 2008" substitute " section 354 of TIOPA 2010 (see sections 355 to 363 of that Act) ".

Finance Act 2008 (c. 9)

169 FA 2008 is amended as follows.

170 Omit sections 40A to 42A (offshore funds).

Corporation Tax Act 2009 (c. 4)

171 CTA 2009 is amended as follows.

172 In section 489 (meaning of "offshore fund etc")—

(a) for "Sections 40A to 40G of FA 2008" substitute " Sections 355 to 363 of TIOPA 2010 ", and

(b) for "sections 40A to 42A" substitute " Part 8 ".

Finance Act 2009 (c. 10)

173 FA 2009 is amended as follows.

174 Omit paragraph 6 of Schedule 22 (restriction on regulation-making power under section 41 of FA 2008).

PART 6

OIL ACTIVITIES

Finance Act 1980 (c. 48)

175 FA 1980 is amended as follows.

176 In section 107(7) (transmedian fields) for "Chapter V of Part XII of the Taxes Act 1988" substitute " Chapter 16A of Part 2 of the Income Tax (Trading and Other Income) Act 2005 ".

Finance Act 1982 (c. 39)

177 FA 1982 is amended as follows.

178 In section 134(1) (alternative valuation of ethane used for petrochemical purposes) for "Chapter V of Part XII of the Taxes Act 1988" substitute " Chapter 16A of Part 2 of the Income Tax (Trading and Other Income) Act 2005 ".

179 In Schedule 19 (supplementary provisions relating to advance petroleum revenue tax) omit paragraph 10(7).

Income and Corporation Taxes Act 1988 (c. 1)

180 ICTA is amended as follows.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

181 Omit section 493(1) to (6) (valuation of oil disposed of or appropriated in certain circumstances).

182 Omit section 495 (regional development grants).

183 Omit section 496 (tariff receipts and tax-exempt tariffing receipts).

184 Omit section 502(1) and (2) (interpretation of Chapter 5).

Finance Act 1991 (c. 31)

185 FA 1991 is amended as follows.

186 Omit sections 62 to 65 (abandonment guarantees and abandonment expenditure).

Finance Act 1999 (c. 16)

187 FA 1999 is amended as follows.

188 In section 98(7) (qualifying assets) for paragraphs (b) and (c) substitute—

"(ba) Chapter 16A of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (oil activities)."

Income Tax (Trading and Other Income) Act 2005 (c. 5)

189 ITTOIA 2005 is amended as follows.

190 In section 16(3) (oil extraction and related activities) for "section 502(1) of ICTA" substitute " sections 225A and 225B ".

191 In Part 2 of Schedule 4 (index of defined expressions) at the appropriate places insert—

"abandonment guarantee (in Chapter 16A of Part 2)	section 225N(6)"
"chargeable period (in Chapter 16A of Part 2)	section 225E"
"contributing participator (in Chapter 16A of Part 2)	section 225R(3)"
"the defaulter (in Chapter 16A of Part 2)	section 225R(3)"
"default payment (in Chapter 16A of Part 2)	section 225R(3)"
"designated area (in Chapter 16A of Part 2)	section 225E"
"the guarantor (in Chapter 16A of Part 2)	section 225N(6)"
"oil (in Chapter 16A of Part 2)	section 225E"
"oil extraction activities (in Chapter 16A of Part 2)	section 225A"
"oil field (in Chapter 16A of Part 2)	section 225E"
"oil rights (in Chapter 16A of Part 2)	section 225B"
"OTA 1975 (in Chapter 16A of Part 2)	section 225E"
"participator (in Chapter 16A of Part 2)	section 225E"
"the relevant participator (in Chapter 16A of Part 2)	section 225N(6)"
"ring fence income (in Chapter 16A of Part 2)	section 225C"

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"ring fence trade (in Chapter 16A of Part 2)	section 225D"

Income Tax Act 2007 (c. 3)

192 ITA 2007 is amended as follows.

193 In section 80(3) (ring fence income) for "same meaning as in Chapter 5 of Part 12 of ICTA (see section 502 of that Act)" substitute " meaning given by sections 225A and 225B of ITTOIA 2005 ".

PART 7

ALTERNATIVE FINANCE ARRANGEMENTS

Finance Act 1986 (c. 41)

194 FA 1986 is amended as follows.

195 In section 78(7)(d) (loan capital)—

(a) for "which fall within section 48A of the Finance Act 2005" substitute " to which section 564G of the Income Tax Act 2007 ", and

(b) after "bonds)" insert " applies ".

196 In section 79 (loan capital: new provisions)—

(a) in subsection (6), as it has effect by virtue of subsection (8A)(a) of that section, for "section 48A(1) of the Finance Act 2005", in both places, substitute " section 564G(1) of the Income Tax Act 2007 ", and

(b) in subsection (8A)(b) for "section 48A of the Finance Act 2005" substitute " section 564G of the Income Tax Act 2007 ".

197 In section 99(9A) (interpretation)—

(a) for "falling within section 48A of the Finance Act 2005" substitute " to which section 564G of the Income Tax Act 2007 ", and

(b) after "bonds)" insert " applies ".

Taxation of Chargeable Gains Act 1992 (c. 12)

198 TCGA 1992 is amended as follows.

199 In section 99(2) (application of Act to unit trust schemes) for "section 99A" substitute " sections 99A and 151W(a) ".

200 In section 117 (meaning of "qualifying corporate bond") for subsection (6D) substitute—

"(6D) Section 151T provides for arrangements to which section 151N (alternative finance arrangements: investment bond arrangements) applies also to be a corporate bond for the purposes of this section."

201 Omit section 151F (treatment of alternative finance arrangements).

202 In the Table in section 288(8) (interpretation), in the entry for "unit trust scheme" and "unit holder", for "and 99A" substitute " , 99A and 151W(a) ".

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

203 ITEPA 2003 is amended as follows.

204 In section 420(1) (meaning of securities etc) for paragraph (h) and the "and" immediately preceding it substitute "and

(h) arrangements to which section 564G of ITA 2007 (alternative finance arrangements: investment bond arrangements) applies."

Finance Act 2003 (c. 14)

205 FA 2003 is amended as follows.

206 In section 71A(8) (alternative property finance: land sold to a financial institution and leased to individual) for "section 46 of the Finance Act 2005" substitute " section 564B of the Income Tax Act 2007 ".

207 In section 72(7) (alternative property finance in Scotland: land sold to a financial institution and leased to individual) for "section 46 of the Finance Act 2005" substitute " section 564B of the Income Tax Act 2007 ".

208 In section 72A(8) (alternative property finance in Scotland: land sold to a financial institution and individual in common) for "section 46 of the Finance Act 2005" substitute " section 564B of the Income Tax Act 2007 ".

209 In section 73(5)(a) (alternative property finance: land sold to a financial institution and resold to individual) for "section 46 of the Finance Act 2005" substitute " section 564B of the Income Tax Act 2007 ".

210 In section 73C (alternative finance investment bonds) for "falling within section 48A of the Finance Act 2005 (alternative finance investment bonds)" substitute " to which section 564G of the Income Tax Act 2007 or section 151N of the Taxation of Chargeable Gains Act 1992 (investment bond arrangements) applies ".

Income Tax (Trading and Other Income) Act 2005 (c. 5)

211 ITTOIA 2005 is amended as follows.

212 In Part 2 of Schedule 4 (index of defined expressions) insert at the appropriate place—

"interest	section 564M of ITA 2007"

Finance Act 2005 (c. 7)

213 FA 2005 is amended as follows.

214 Omit sections 46 to 47A, 48(1), 48A, 48B(1) to (5) and (9) and 49 to 57 (alternative finance arrangements).

215 In Schedule 2 (alternative finance arrangements: further provisions) omit paragraphs 1, 8 and 10 to 13.

Finance Act 2006 (c. 25)

216 FA 2006 is amended as follows.

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217 Omit section 97 (beneficial loans to employees).

218 Omit section 98 (orders amending Chapter 5 of Part 2 of FA 2005).

Income Tax Act 2007 (c. 3)

219 ITA 2007 is amended as follows.

220 In section 2 (overview of Act) after subsection (10) insert—

"(10A) Part 10A is about alternative finance arrangements."

221 In section 383(6) (relief for interest payments)—

(a) for "section 51(2) of FA 2005" substitute " section 564O ", and

(b) for "falling within section 47 of that Act" substitute " to which section 564C applies ".

222 In section 849(4) (interaction with other Income Tax Acts provisions) for the words from the beginning to "make" substitute " Section 564Q (deduction of income tax at source under this Part) makes ".

223 In Schedule 4 (index of expressions defined in that Act) insert at the appropriate place—

"alternative finance arrangements (in Part 10A)	section 564A(2)"
"alternative finance return (in Part 10A)	sections 564I to 564L"

Corporation Tax Act 2009 (c. 4)

224 CTA 2009 is amended as follows.

225 Omit section 521 (power to extend Chapter 6 of Part 6 of CTA 2009 etc to other arrangements).

226 Omit section 1310(5) (orders and regulations).

Finance Act 2009 (c. 10)

227 FA 2009 is amended as follows.

228 In section 123 (alternative finance investment bonds) for "falling within section 48A of FA 2005 (alternative finance investment bonds)" substitute " to which section 564G of ITA 2007 or section 151N of TCGA 1992 (investment bond arrangements) applies ".

229 (1) Amend Schedule 61 (alternative finance investment bonds) as follows.

(2) In paragraph 1(1) (interpretation) in the definition of "alternative finance investment bond" for "within section 48A of FA 2005 (alternative finance investment bond: introduction)" substitute " to which section 564G of ITA 2007 or section 151N of TCGA 1992 (investment bond arrangements) applies ".

(3) For paragraph 2 (issue, transfer and redemption of rights under bond not to be treated as chargeable transaction) substitute—

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"2 Section 564S of ITA 2007 (treatment of bond-holder and bond-issuer) applies for the purposes of any enactment about stamp duty land tax as it applies for the purposes of the Income Tax Acts."

(4) In paragraph 4(1) for "section 48B(2) of FA 2005" substitute " section 564S of ITA 2007 ".

PART 8

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

Taxation of Chargeable Gains Act 1992 (c. 12)

230 The Taxation of Chargeable Gains Act 1992 is amended as follows.

231 In section 37 (consideration chargeable to tax on income) at the end of subsection (2) add—

"See also section 37A(4) and (5) (consideration on disposal of certain leases)."

Finance Act 1997 (c. 16)

232 (1) FA 1997 is amended as follows.

(2) Omit section 82 (finance leases and loans).

(3) In Schedule 12 (leasing arrangements: finance leases and loans) omit paragraphs 1 to 7, 9 to 17 and 20 to 30.

Capital Allowances Act 2001 (c. 2)

233 The Capital Allowances Act 2001 is amended as follows.

234 In section 60(1)(c) (meaning of "disposal receipt") for "paragraph 11" to "sum)" substitute " section 614BS of ITA 2007 ".

235 In section 420(b) (meaning of "disposal receipt") for "paragraph 11" to "sum)" substitute " section 614BS of ITA 2007 ".

236 In section 476(1)(b) (disposal value of patent rights) for "paragraph 11" to "sum)" substitute " section 614BS of ITA 2007 ".

Income Tax Act 2007 (c. 3)

237 The Income Tax Act 2007 is amended as follows.

238 In section 2 (overview of Act) after subsection (11) insert—

"(11A) Part 11A is about leasing arrangements involving finance leases or loans."

239 In Schedule 4 (index of defined expressions) at the appropriate places insert—

"accountancy rental earnings (in Part 11A)	section 614AB(1)"

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"accountancy rental excess (in Chapter 2 of Part 11A)	section 614BH(1) to (4)"
"accountancy rental excess (in Chapter 3 of Part 11A)	section 614BH(1) to (4), as it has effect as a result of section 614CD"
"asset (in Part 11A)	section 614DG"
"asset representing the leased asset (in Part 11A)	section 614DD"
"cumulative accountancy rental excess (in Chapter 2 of Part 11A)	section 614BH(5)"
"cumulative accountancy rental excess (in Chapter 3 of Part 11A)	section 614BH(5), as it has effect as a result of section 614CD"
"cumulative normal rental excess (in Chapter 2 of Part 11A)	section 614BJ(5)"
"cumulative normal rental excess (in Chapter 3 of Part 11A)	section 614BJ(5), as it has effect as a result of section 614CD"
"the current lessor (in Part 11A)	section 614DG"
"finance lessor (in Part 11A)	section 614DG"
"for accounting purposes (in Part 11A)	section 614DG"
"lease (in Part 11A)	section 614DG"
"the leasing arrangements (in Part 11A)	section 614DG"
"the lessee (in Part 11A)	section 614DG"
"the lessor (in Part 11A)	section 614DG"
"major lump sum (in Part 11A)	section 614BC(5)"
"normal rent (in Part 11A)	section 614AA"
"normal rental excess (in Chapter 2 of Part 11A)	section 614BJ(1) to (4)"
"normal rental excess (in Chapter 3 of Part 11A)	section 614BJ(1) to (4), as it has effect as a result of section 614CD"
"pay (in Part 11A)	section 614DG"
"period of account (in Part 11A)	section 614DB(1) to (3)"
"post-25 November 1996 scheme (in Part 11A)	section 614D(1)(b)"
"pre-26 November 1996 scheme (in Part 11A)	section 614D(1)(a)"
"related period of account (in Part 11A)	section 614DB(5)"
"related tax year (in Part 11A)	section 614DB(4)"
"rent (in Part 11A)	section 614DG"
"the rental earnings (in Part 11A)	section 614AC"
"sum (in Part 11A)	section 614DG"

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 9

SALE AND LEASE-BACK ETC

Income and Corporation Taxes Act 1988 (c. 1)

240 ICTA is amended as follows.

241 Omit section 24 (which has come to apply only for the interpretation of section 780 of ICTA).

242 Omit sections 779 to 785 (sale and lease-back etc).

Taxation of Chargeable Gains Act 1992 (c. 12)

243 TCGA 1992 is amended as follows.

244 In Schedule 8 (leases) in paragraph 9(2) (gain reduced by amount on which income tax charged by reference to a capital sum) for "section 785 of the Taxes Act" substitute " section 681DM of ITA 2007 ".

Broadcasting Act 1996 (c. 55)

245 The Broadcasting Act 1996 is amended as follows.

246 (1) Amend Schedule 7 (transfer schemes: taxation provisions) as follows.

(2) In paragraph 22(1) after "reliefs)" insert " , and sections 681AD and 681AE of the Income Tax Act 2007 (which make corresponding provision), ".

(3) In paragraph 22(2)—

(a) before "and" insert " or section 681AA or 681AB of the Income Tax Act 2007 ", and

(b) after the second occurrence of "2010" (which is inserted by CTA 2010) insert " or section 681AM of the Income Tax Act 2007 ".

(4) In paragraph 23(1) after "consideration)" insert " , and Chapter 2 of Part 12A of the Income Tax Act 2007 (which makes corresponding provision), ".

(5) In paragraph 23(3) before "and sub-paragraph (2)" insert " , or section 681BA of the Income Tax Act 2007, ".

(6) In paragraph 24(1) after "others)" insert " and Chapter 4 of Part 12A of the Income Tax Act 2007 (which makes corresponding provision), ".

(7) In paragraph 24(2) for "leases: special cases)" substitute " lease of trading asset), and section 681CC of the Income Tax Act 2007 (which makes corresponding provision), ".

(8) For paragraph 24(3) substitute—

"(3) In sub-paragraph (1)—

"lease" has the meaning given by section 884 of the Corporation Tax Act 2010 or section 681DN of the Income Tax Act 2007, and

"relevant asset" has the meaning given by section 885 of the Corporation Tax Act 2010 or section 681DO of the Income Tax Act 2007.

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(4) In sub-paragraph (2)—

"lease" has the meaning given by section 868 of the Corporation Tax Act 2010 or section 681CF of the Income Tax Act 2007, and

"relevant asset" has the meaning given by section 869 of the Corporation Tax Act 2010 or section 681CG of the Income Tax Act 2007."

Finance Act 1999 (c. 16)

247 FA 1999 is amended as follows.

248 In section 97(6), in the definition of "lease", for "sections 781 to 784 of the Taxes Act 1988" substitute " Chapter 3 of Part 19 of CTA 2010 (see section 868) ".

Greater London Authority Act 1999 (c. 29)

249 The Greater London Authority Act 1999 is amended as follows.

250 (1) Amend paragraph 13 of Schedule 33 (taxation provisions: public-private partnership agreements: sale and leasebacks) as follows.

(2) In sub-paragraph (1) before "shall" insert " , nor any of sections 681AD, 681AE and 681CC of the Income Tax Act 2007 (which make corresponding provision), ".

(3) In sub-paragraph (2) for "that Act" substitute " the Corporation Tax Act 2010 and Chapter 4 of Part 12A of the Income Tax Act 2007 ".

Transport Act 2000 (c. 38)

251 The Transport Act 2000 is amended as follows.

252 In paragraph 15 of Schedule 7 (transfer schemes: tax: leased assets)—

(a) in sub-paragraph (1) before "(assets" insert " or Chapter 4 of Part 12A of the Income Tax Act 2007 ", and

(b) in sub-paragraph (2) for "that Act" substitute " the Corporation Tax Act 2010 and section 681DI of the Income Tax Act 2007 ".

Income Tax (Trading and Other Income) Act 2005 (c. 5)

253 ITTOIA 2005 is amended as follows.

254 (1) Amend section 49 (car or motor cycle hire: supplementary) as follows.

(2) In subsection (2)(a) omit "(see subsection (3))".

(3) For subsections (3) to (5) substitute—

"(3) For this purpose "hire-purchase agreement" has the meaning given by section 998A of ITA 2007."

255 In section 100(4) (meaning of sale and lease-back arrangement) after "as is described in" insert " section 681AA(1) or (2), 681AB(1) or (2) or 681BA of ITA 2007 or ".

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Income Tax Act 2007 (c. 3)

256 ITA 2007 is amended as follows.

257 In section 2 (overview of Act) after subsection (12) insert—

"(12A) Part 12A is about sale and lease-back etc."

258 In section 989 at the appropriate place insert—

""hire-purchase agreement" is to be read in accordance with section 998A,".

259 After section 998 insert—

"**998A Meaning of "hire-purchase agreement"**

(1) This section applies for the purposes of the provisions of the Income Tax Acts which apply this section.

(2) A hire-purchase agreement is an agreement in whose case each of conditions A to C is met.

(3) Condition A is that under the agreement goods are bailed (or in Scotland hired) in return for periodical payments by the person to whom they are bailed (or hired).

(4) Condition B is that under the agreement the property in the goods will pass to the person to whom they are bailed (or hired) if the terms of the agreement are complied with and one or more of the following events occurs—

(a) the exercise of an option to purchase by that person,

(b) the doing of another specified act by any party to the agreement,

(c) the happening of another specified event.

(5) Condition C is that the agreement is not a conditional sale agreement.

(6) In subsection (5) "conditional sale agreement" means an agreement for the sale of goods under which—

(a) the purchase price or part of it is payable by instalments, and

(b) the property in the goods is to remain in the seller (even though they are to be in the possession of the buyer) until conditions specified in the agreement are met (whether as to the payment of instalments or otherwise)."

260 (1) Amend section 1016(2) (table of provisions to which section applies) as follows.

(2) In Part 2 of the table at the appropriate place insert—

"Section 681BB(8) and (9)	New lease after assignment or surrender"

(3) In Part 2 of the table at the appropriate place insert—

"Section 681DD	Leased assets: capital sums"

(4) In Part 3 of the table omit the entry for section 780(3A)(a) of ICTA.

(5) In Part 3 of the table omit the entry for section 781(1) of ICTA.

261 In Schedule 4 (index of defined expressions) at the appropriate places insert—

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"associated (in Chapter 1 of Part 12A)	section 681AM"
"associates (in Chapter 4 of Part 12A)	section 681DL"
"capital sum (in Chapter 4 of Part 12A)	section 681DM"
"deduction by way of relevant income tax relief (in Chapter 1 of Part 12A)	section 681AC(1)"
"deduction by way of relevant income tax relief (in Chapter 2 of Part 12A)	section 681BK"
"deduction by way of relevant tax relief (in Chapter 4 of Part 12A)	section 681DP"
"dispositions of interests in land outside the United Kingdom (in Chapter 1 of Part 12A)	section 681AN"
"interests in land outside the United Kingdom (in Chapter 1 of Part 12A)	section 681AN"
"lease (in Chapter 1 of Part 12A)	section 681AL(2)"
"lease (in Chapter 2 of Part 12A)	section 681BM(2), (3)"
"lease (in Chapter 3 of Part 12A)	section 681CF"
"lease (in Chapter 4 of Part 12A)	section 681DN"
"lessee (in Chapter 2 of Part 12A)	section 681BM(4)"
"lessor (in Chapter 2 of Part 12A)	section 681BM(4)"
"linked (in relation to a person) (in Chapter 2 of Part 12A)	section 681BL"
"relevant asset (in Chapter 3 of Part 12A)	section 681CG"
"relevant asset (in Chapter 4 of Part 12A)	section 681DO"
"relevant deduction from earnings (in Chapter 1 of Part 12A)	section 681AC(2)"
"rent (in Chapter 1 of Part 12A)	section 681AL(3), (4)"
"rent (in Chapter 2 of Part 12A)	section 681BM(5)"
"sum obtained in respect of an interest in an asset (in Chapter 4 of Part 12A)	section 681DG"
"sum obtained in respect of the lessee's interest in a lease of an asset (in Chapter 4 of Part 12A)	section 681DH".

Corporation Tax Act 2009 (c. 4)

262 CTA 2009 is amended as follows.

263 In section 97(4) (meaning of sale and lease-back arrangement) after "as is described in" insert " section 681AA(1) or (2) or 681AB(1) or (2) of ITA 2007 or ".

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PART 10

FACTORING OF INCOME ETC

Income and Corporation Taxes Act 1988 (c. 1)

264 ICTA is amended as follows.

265 Omit sections 774A to 774G (factoring of income receipts etc).

266 Omit section 786 (transactions associated with loans or credit).

Taxation of Chargeable Gains Act 1992 (c. 12)

267 TCGA 1992 is amended as follows.

268 (1) Amend section 263E (structured finance arrangements) as follows.

(2) In subsection (1)(a) for "section 774B of the Taxes Act" substitute " section 809BZB or 809BZC of ITA 2007 ".

(3) In subsection (6) in the definition of "the borrower" for "section 774A of the Taxes Act" substitute " the defining section ".

(4) In subsection (6) after the definition of "the borrower" insert—

""the defining section" in relation to a structured finance arrangement—

(a) means section 809BZA of ITA 2007 if it is section 809BZB or 809BZC of ITA 2007 that applies in relation to the arrangement, and

(b) means section 758 of CTA 2010 if it is section 759 or 760 of CTA 2010 that applies in relation to the arrangement,".

(5) In subsection (6) in the definition of "the lender" for "that section" substitute " the defining section ".

(6) In subsection (6) in the definition of "security" for "subsection (2)(c) and (d) of that section" substitute " subsection (2)(b) and (c) of the defining section ".

Income Tax (Trading and Other Income) Act 2005 (c. 5)

269 ITTOIA 2005 is amended as follows.

270 After section 281 insert—

"**281A Sums to which sections 277 to 281 do not apply**

(1) This section applies if a grant of a lease constitutes a disposal of an asset for the purposes of section 809BZA(2)(b) or 809BZF(2)(a) of ITA 2007 (disposals under finance arrangements).

(2) Sections 277 to 281 do not apply in relation to a premium paid in respect of the grant."

Income Tax Act 2007 (c. 3)

271 ITA 2007 is amended as follows.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

272 In section 2(13) (overview of Part 13) omit the "or" after paragraph (e), and after paragraph (f) insert—

"(g) finance arrangements (Chapter 5B),

(h) loan or credit transactions (Chapter 5C),".

273 For section 809AZE (transfers of income streams: exception for transfer by way of security) substitute—

"**809AZE Exception: transfer by way of security**

(1) This Chapter does not apply if—

(a) the consideration for the transfer is the advance under a type 1 finance arrangement, and

(b) the transferor is, or is a member of a partnership which is, the borrower in relation to the arrangement.

(2) This Chapter does not apply if—

(a) the consideration for the transfer is the advance under a type 2 finance arrangement or a type 3 finance arrangement, and

(b) the transferor is a member of the partnership which receives that advance under the arrangement.

(3) In this section—

"type 1 finance arrangement" has the meaning given for the purposes of Chapter 5B by section 809BZA,

"type 2 finance arrangement" has the meaning given for the purposes of Chapter 5B by section 809BZF, and

"type 3 finance arrangement" has the meaning given for the purposes of Chapter 5B by section 809BZJ."

274 (1) Amend section 1016(2) (table of provisions to which section applies) as follows.

(2) In Part 2 of the table at the appropriate place insert—

"Section 809CZC(2)	Income transferred under a loan or credit transaction"

(3) In Part 3 of the table omit the entry for section 786(5)(a) of ICTA.

275 In Schedule 4 (index of defined expressions) at the appropriate places insert—

"accounts (in Chapter 5B of Part 13)	section 809BZQ"
"arrangements (in Chapter 5B of Part 13)	section 809BZR"
"disposal of an asset (in Chapter 5B of Part 13)	section 809BZS(3)"
"payments in respect of an asset (in Chapter 5B of Part 13)	section 809BZS(4)"
"person involved in a relevant change (in Chapter 5B of Part 13)	section 809BZG(5)"
"person receiving an asset (in Chapter 5B of Part 13)	section 809BZS(2)"

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"relevant change in relation to a partnership (in Chapter 5B of Part 13)	section 809BZG"
"type 1 finance arrangement (in Chapter 5B of Part 13)	section 809BZA"
"type 2 finance arrangement (in Chapter 5B of Part 13)	section 809BZF"
"type 3 finance arrangement (in Chapter 5B of Part 13)	section 809BZJ".

PART 11

UK REPRESENTATIVES OF NON-UK RESIDENTS

Finance Act 1995 (c. 4)

276 FA 1995 is amended as follows.

277 Omit section 126 (UK representatives of non-residents).

278 Omit section 127 (persons not treated as UK representatives).

279 Omit Schedule 23 (obligations etc imposed on UK representatives).

Income Tax Act 2007 (c. 3)

280 ITA 2007 is amended as follows.

281 In section 2(14) (overview of Act)—

(a) omit the "and" immediately after paragraph (b), and

(b) after paragraph (b) insert—

"(ba) rules about UK representatives of non-UK residents (Chapters 2B and 2C),".

282 In section 813(2) (meaning of "disregarded income") for "section 126 of, and Schedule 23 to, FA 1995 (UK representatives of non-UK residents)" substitute " Chapter 2B ".

283 (1) Amend section 817 (independent broker conditions) as follows.

(2) In subsection (3) omit "by the broker".

(3) In subsection (5) for "section 126 of, and Schedule 23 to, FA 1995" substitute " Chapter 2B of this Part, or of Chapter 1 of Part 7A of TCGA 1992, ".

284 In section 824 (application of 20% rule to collective investment schemes) at the end of subsection (2) insert " (so far as the transaction is one in respect of which such amounts so arise or accrue) ".

285 (1) Amend section 1014(2) (orders and regulations to which section does not apply) as follows.

(2) Omit paragraph (ba).

(3) In paragraph (g)—

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(a) omit the word "and" at the end of sub-paragraph (iib), and

(b) after that sub-paragraph insert—

"(iic) section 835S(4) (meaning of "investment transaction"), and".

286 In Schedule 4 (index of defined expressions) at the appropriate places insert—

"beneficial entitlement (in Chapter 2B of Part 14)	section 835O(4)"
"branch or agency (in Chapter 2B of Part 14)	section 835S(2)"
"independent agent (in Chapter 2C of Part 14)	section 835Y"
"the independent broker conditions (in Chapter 2B of Part 14)	section 835L"
"the independent investment manager conditions (in Chapter 2B of Part 14)	section 835M"
"investment manager (in Chapter 2B of Part 14)	section 835S(3)"
"investment transaction (in Chapter 2B of Part 14)	section 835S(4)"
"qualifying period (in Chapter 2B of Part 14)	section 835O(2)"
"relevant disregarded income (in Chapter 2B of Part 14)	section 835O(3)"

PART 12

AMENDMENTS FOR PURPOSES CONNECTED WITH OTHER TAX LAW REWRITE ACTS

Solicitors (Northern Ireland) Order 1976 (S.I. 1976/582 (N.I. 12))

287 The Solicitors (Northern Ireland) Order 1976 is amended as follows.

288 In paragraph 38(3) of Schedule 1A for the words from the beginning to "1988" substitute " In sections 748(4), 749 and 771(5) and (6) of the Income Tax Act 2007 ".

Administration of Justice Act 1985 (c. 61)

289 The Administration of Justice Act 1985 is amended as follows.

290 In paragraph 36(3) of Schedule 2 for "749," substitute " 748(4), 749 and ".

Income and Corporation Taxes Act 1988 (c. 1)

291 ICTA is amended as follows.

292 Omit section 59(3) and (4) (person answerable for tax charged in accordance with section 12 of ITTOIA 2005 on profits of markets or fairs, or on tolls, fisheries or other profits not distrainable).

Broadcasting Act 1996 (c. 55)

293 The Broadcasting Act 1996 is amended as follows.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

294 (1) Amend paragraph 19 of Schedule 7 (no profit or loss by reason of a direct disposal transfer) as follows.

(2) For the words from the beginning of the paragraph to "accrue to the BBC" substitute " In determining for the purposes of Part 3 of the Corporation Tax Act 2009 the profits or losses of a trade or part of a trade carried on by the BBC wholly or partly in the United Kingdom, it is to be assumed that no profits or losses arise to the BBC ".

(3) In sub-paragraph (a) for "section 100 of the Taxes Act 1988" substitute " section 163 of the Corporation Tax Act 2009 ".

(4) In the italic heading preceding the paragraph for "Case I of Schedule D" substitute " Part 3 of the Corporation Tax Act 2009 ".

Greater London Authority Act 1999 (c. 29)

295 The Greater London Authority Act 1999 is amended as follows.

296 In paragraph 7 of Schedule 33 (taxation provisions: revenue nature of payments under public-private partnership agreements)—

(a) in sub-paragraph (a) for "Case I of Schedule D" substitute " Part 3 of the Corporation Tax Act 2009 ", and

(b) in sub-paragraph (b) for "Case I of Schedule D" substitute " Part 3 of the Corporation Tax Act 2009 ".

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

297 ITEPA 2003 is amended as follows.

298 In section 211(2) (which refers to section 215, which in turn now refers to section 776(1) of ITTOIA 2005 in place of section 331(1) of ICTA) for "section 331 of ICTA" substitute " section 776(1) of ITTOIA 2005 ".

299 In section 215 (which now refers to section 776(1) of ITTOIA 2005 in place of section 331(1) of ICTA) in the title for "section 331 of ICTA" substitute " section 776(1) of ITTOIA 2005 ".

300 In section 331(1) (Part 5 is to be read with section 835(3) and (4) of ICTA) for "section 835(3) and (4) of ICTA" substitute " section 25(1) to (3) of ITA 2007 ".

Finance Act 2004 (c. 12)

301 FA 2004 is amended as follows.

302 (1) Amend section 318 (interpretation of Part 7) as follows.

(2) In subsection (1)—

(a) after the definition of "arrangements" insert—

""company" has the meaning given by section 1121 of the Corporation Tax Act 2010;", and

(b) after the definition of "tax" insert—

""trade" includes every venture in the nature of trade."

(3) Omit subsection (2).

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Finance Act 2005 (c. 7)

303 FA 2005 is amended as follows.

304 Omit section 48B(6) to (8) (alternative finance arrangements: alternative finance investment bonds).

305 In Schedule 2 (alternative finance arrangements: further provisions) omit paragraph 9.

Income Tax Act 2007 (c. 3)

306 ITA 2007 is amended as follows.

307 In section 887(4) (industrial and provident society payments) for "section 486(7) of ICTA" substitute " section 500(2) of CTA 2009 ".

Corporation Tax Act 2009 (c. 4)

308 CTA 2009 is amended as follows.

309 Before section 1 insert—

Overview of the Corporation Tax Acts

"A1 (1) The main Acts relating to corporation tax are—

(a) this Act (which covers the ground described in section 1),

(b) CTA 2010 (which covers the ground described in section 1 of that Act), and

(c) TCGA 1992 (so far as relating to chargeable gains accruing to a company in respect of which the company is chargeable to corporation tax).

(2) Enactments relating to corporation tax are also contained in other Acts: see in particular—

(a) Chapter 1 of Part 12 of ICTA (insurance companies),

(b) Chapter 4 of Part 17 of that Act (controlled foreign companies),

(c) Schedule 18 to FA 1998 (company tax returns, assessments and related matters),

(d) Schedule 22 to FA 2000 (tonnage tax),

(e) CAA 2001 (allowances for capital expenditure),

(f) Part 2 of TIOPA 2010 (double taxation relief),

(g) Parts 4 and 5 of that Act (transfer pricing and advance pricing agreements),

(h) Part 6 of that Act (tax arbitrage),

(i) Part 7 of that Act (tax treatment of financing costs and income), and

(j) Part 8 of that Act (offshore funds).

(3) Schedule 1 to the Interpretation Act 1978 defines "the Corporation Tax Acts" as the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating to income tax)."

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

310 In section 39(2) (profits of mines, quarries and other concerns) for "clause" substitute " section ".

311 In section 1269 (interpretation of sections 1267 and 1268) in the title for "clauses" substitute " sections ".

312 In paragraph 75 of Schedule 2 (transitional provision and savings: investment bond arrangements) at the end insert—

"(5) So far as section 519(2) has effect for income tax or capital gains tax purposes in relation to the disposal after 6 April 2007 of investment bond arrangements (whenever entered into), it is treated as always having had effect."

PART 13

GENERAL

Taxes Management Act 1970 (c. 9)

313 TMA 1970 is amended as follows.

314 In section 118(1) after the definition of "the 1992 Act" insert—

""TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010,".

Income and Corporation Taxes Act 1988 (c. 1)

315 ICTA is amended as follows.

316 In section 831(3) (interpretation of ICTA) after the definition of "the Management Act" insert—

""TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010;".

Taxation of Chargeable Gains Act 1992 (c. 12)

317 TCGA 1992 is amended as follows.

318 (1) Amend section 287 (powers to make orders or regulations under enactments relating to the taxation of chargeable gains) as follows.

(2) In subsection (1) (powers to be exercisable by statutory instrument) for "subsection (2)" substitute " subsections (2) and (2A) ".

(3) After subsection (2) insert—

"(2A) Subsection (1) above shall not apply in relation to any power conferred by TIOPA 2010 (see instead section 372 of that Act)."

319 In section 288(1) (interpretation) after the definition of "the Taxes Act" insert—

""TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010;".

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Finance Act 1998 (c. 36)

320 FA 1998 is amended as follows.

321 (1) Amend Schedule 18 (company tax returns etc) as follows.

(2) In paragraph 25(1) (scope of enquiries) for the words from "a transfer pricing notice" to "arbitrage)" substitute " a notice within sub-paragraph (3) ".

(3) In paragraph 25 after sub-paragraph (2) insert—

"(3) A notice is within this sub-paragraph if it is—

(a) a notice under section 184G or 184H of the Taxation of Chargeable Gains Act 1992 (avoidance involving capital losses),

(b) a notice under section 81(2) of TIOPA 2010 (schemes and arrangements designed to increase relief),

(c) a transfer pricing notice under section 168(1) of TIOPA 2010 (provision not at arm's length: medium-sized enterprise), or

(d) a notice under section 232 or 249 of TIOPA 2010 (avoidance involving tax arbitrage)."

(4) In paragraph 42(2A) (disapplication of restrictions on power to make discovery assessment or determination) for the words after "return, a notice" substitute " within sub-paragraph (4). "

(5) In paragraph 42 after sub-paragraph (3) insert—

"(4) A notice is within this sub-paragraph if it is—

(a) a notice under section 184G or 184H of the Taxation of Chargeable Gains Act 1992 (avoidance involving capital losses),

(b) a notice under section 81(2) of TIOPA 2010 (schemes and arrangements designed to increase relief), or

(c) a notice under section 232 or 249 of TIOPA 2010 (avoidance involving tax arbitrage)."

(6) After paragraph 97 insert—

"Meaning of TIOPA 2010

97A In this Schedule "TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010."

(7) In the list in paragraph 98 after the entry for "tax payable" insert—

"TIOPA 2010	paragraph 97A".

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

322 ITEPA 2003 is amended as follows.

323 In Part 1 of Schedule 1 (abbreviations of Acts etc) after the entry for CTA 2010 (which is inserted by CTA 2010) insert—

"TIOPA 2010	The Taxation (International and Other Provisions) Act 2010".

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Income Tax (Trading and Other Income) Act 2005 (c. 5)

324 ITTOIA 2005 is amended as follows.

325 In Part 1 of Schedule 4 (abbreviations of Acts) after the entry for CTA 2010 (which is inserted by CTA 2010) insert—

"TIOPA 2010	The Taxation (International and Other Provisions) Act 2010"

Income Tax Act 2007 (c. 3)

326 ITA 2007 is amended as follows.

327 In section 1014(2) (orders and regulations under the Income Tax Acts to which the section does not apply) for "and" after paragraph (f) substitute—

"(fa) TIOPA 2010 (see instead section 372 of that Act), and".

328 In section 1017 (abbreviated references to Acts) for the "and" at the end of the definition of "TCGA 1992" substitute—

""TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010, and".

Corporation Tax Act 2009 (c. 4)

329 CTA 2009 is amended as follows.

330 In section 1312 (abbreviated references to Acts) after the definition of "TCGA 1992" insert—

""TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010,".

Finance Act 2009 (c. 10)

331 FA 2009 is amended as follows.

332 In section 126(1) (abbreviated references to Acts) after the entry for TCGA 1992 insert—

""TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010,".

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SCHEDULE 9

Section 377

TRANSITIONALS AND SAVINGS ETC

PART 1

GENERAL PROVISIONS

Continuity of the law: general

1 The repeal of provisions and their enactment in a rewritten form by this Act does not affect the continuity of the law.

2 Paragraph 1 does not apply to any change made by this Act in the effect of the law.

3 Any subordinate legislation or other thing which—

(a) has been made or done, or has effect as if made or done, under or for the purposes of a superseded enactment so far as it applied for relevant tax purposes, and

(b) is in force or effective immediately before the commencement of the corresponding rewritten provision,

has effect after that commencement as if made or done under or for the purposes of the rewritten provision.

4 (1) Any reference (express or implied) in this Act, another enactment or an instrument or document to a rewritten provision is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding superseded enactment had effect for relevant tax purposes, a reference to the superseded enactment so far as applying for those relevant tax purposes.

(2) Any reference (express or implied) in this Act, another enactment or an instrument or document to—

(a) things done under or for the purposes of a rewritten provision, or

(b) things falling to be done under or for the purposes of a rewritten provision,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding superseded enactment had effect for relevant tax purposes, a reference to things done or falling to be done under or for the purposes of the superseded enactment so far as applying for those relevant tax purposes.

5 (1) Any reference (express or implied) in any enactment, instrument or document to a superseded enactment in its application for relevant tax purposes is to be read, so far as is required for those relevant tax purposes, as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to the rewritten provision.

(2) Any reference (express or implied) in any enactment, instrument or document to—

(a) things done under or for the purposes of a superseded enactment in its application for relevant tax purposes, or

(b) things falling to be done under or for the purposes of a superseded enactment in its application for relevant tax purposes,

is to be read, so far as is required for those relevant tax purposes, as including, in relation to times, circumstances or purposes in relation to which any corresponding

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rewritten provision has effect, a reference to things done or falling to be done under or for the purposes of the rewritten provision.

6 Paragraphs 1 to 5 have effect instead of section 17(2) of the Interpretation Act 1978 (but are without prejudice to any other provision of that Act).

7 Paragraphs 4 and 5 apply only so far as the context permits.

General saving for old transitional provisions and savings

8 (1) The repeal by this Act of a transitional or saving provision relating to the coming into force of a provision rewritten in this Act does not affect the operation of the transitional or saving provision, so far as it is not specifically rewritten in this Act but remains capable of having effect in relation to the corresponding provision of this Act.

(2) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.

(3) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the operation of the saving so far as it is not specifically rewritten in this Act but remains capable of having effect.

Interpretation

9 (1) In this Part—

"enactment" includes subordinate legislation (within the meaning of the Interpretation Act 1978),

"relevant tax purposes" means, in relation to a superseded enactment, tax purposes for which the enactment has been rewritten by this Act, and

"superseded enactment" means an earlier enactment which has been rewritten by this Act for certain tax purposes (whether it applied only for those purposes or for those and other tax purposes).

(2) References in this Part to the repeal of a provision include references to its revocation and to its express or implied disapplication for particular tax purposes.

PART 2

CHANGES IN THE LAW

10 (1) This paragraph applies if, in the case of any person—

(a) a thing is done or an event occurs before 1 April 2010, and

(b) because of a change in the law made by this Act, the corporation tax consequences of that thing or event for the relevant period are different from what they would otherwise have been.

(2) This paragraph also applies if, in the case of any person—

(a) a thing is done or an event occurs before 6 April 2010, and

(b) because of a change in the law made by this Act, the income tax consequences of that thing or event for the relevant period are different from what they would otherwise have been.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) If the person so elects, this Act applies with such modifications as may be necessary to secure that the consequences for that tax for that period are the same as they would have been if the change in the law had not been made.

(4) In sub-paragraphs (1) and (2) "the relevant period" means—

(a) for corporation tax purposes, any accounting period beginning before and ending on or after 1 April 2010, and

(b) for income tax purposes, any period of account beginning before and ending on or after 6 April 2010.

(5) If this paragraph applies in the case of two or more persons in relation to the same thing or event, an election made under this paragraph by any one of those persons is of no effect unless a corresponding election is made by the other or each of the others.

(6) An election under this paragraph must be made—

(a) for corporation tax purposes, not later than 2 years after the end of the accounting period, and

(b) for income tax purposes, on or before the first anniversary of the 31 January following the tax year in which the period of account ends.

PART 3

DOUBLE TAXATION RELIEF

Conversion of references to the profits tax in old arrangements

11 (1) Sub-paragraph (2) applies to any arrangements—

(a) made in relation to the profits tax (which was abolished by section 46(3) of FA 1965), and

(b) specified in an Order in Council made—

(i) under section 347 of the Income Tax Act 1952, or

(ii) under any earlier enactment corresponding to that section.

(2) The arrangements have effect—

(a) in relation to corporation tax as they are expressed to have effect in relation to the profits tax (and not as they had effect in relation to income tax), and

(b) in relation to income to which the charge to corporation tax on income applies, and in relation to gains to which the charge to corporation tax on chargeable gains applies, as they are expressed to have effect in relation to profits chargeable to the profits tax,

but with the substitution of accounting periods for chargeable accounting periods.

(3) Sub-paragraph (2) applies subject to any contrary provision contained in arrangements—

(a) made after the passing of FA 1965 (which was passed on 5 August 1965), and

(b) specified in an Order in Council made—

(i) under section 347 of the Income Tax Act 1952, or

(ii) under any later enactment corresponding to that section.

(4) Sub-paragraph (2) applies despite section 18(5) of this Act.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Effect in relation to capital gains tax of arrangements given effect before introduction of that tax

12 Any arrangements specified in an Order in Council made under section 347 of the Income Tax Act 1952 before 5 August 1965, so far as they provide (in whatever terms) for relief from tax chargeable in the United Kingdom on capital gains, have effect in relation to capital gains tax.

Double taxation arrangements to which section 11(3) applies

13 Section 11(3) does not have effect in relation to arrangements made before 21 March 2000.

Unilateral relief for underlying tax on dividends

14 (1) Condition C in section 15 (credit for underlying tax on dividend paid to sub-10% associate) is not met if the reduction below the 10% limit took place before 1 April 1972.

(2) Condition C in section 16 (credit for underlying tax on dividend paid by exchanged associate) is not met if the exchange took place before 1 April 1972.

Time limits for claims for relief

15 (1) If article 10 of the 2009 Order applies—

(a) section 19(2)(a) (claims for relief under section 18(2) in relation to income tax or capital gains to be made by fourth anniversary of end of tax year) has effect at times before 1 April 2012 as if for "fourth anniversary of the end of" there were substituted " fifth anniversary of the 31 January next following ",

(b) section 19(3)(a) (claims for relief under section 18(2) in relation to corporation tax to be made within 4 years) has effect at times before 1 April 2012 as if for "4" there were substituted " 6 ",

(c) section 77(3)(a) (claims for relief under section 73(1) to be made within 4 years) has effect at times before 1 April 2012 as if for "four" there were substituted " 6 ", and

(d) section 43D(5) of TMA 1970 (which is inserted by Part 1 of Schedule 8 and is about claims for relief under sections 2 to 6 in relation to petroleum revenue tax) has effect at times before 1 April 2012 as if for "4 years after the end of" there were substituted " 5 years after the 31 January next following ".

(2) In sub-paragraph (1) "the 2009 Order" means the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (S.I. 2009/403).

Taking account of underlying tax

16 In relation to distributions paid before 1 July 2009, the amount of any income or gain is not to be increased under section 31(2)(b) by so much of any underlying tax within section 31(3)(a) as represents relievable underlying tax, within the meaning of sections 806A to 806J of ICTA, arising in respect of another dividend and treated as underlying tax under those sections.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Reduction in credit: payment by reference to foreign tax

17 Section 34 does not have effect in relation to payments made before 22 April 2009.

Credit against corporation tax on trade income: anti-avoidance

18 Section 45(2) has effect in relation to a credit for foreign tax only if the credit relates to—

(a) a payment of foreign tax on or after 22 April 2009, or

(b) income received on or after that date in respect of which foreign tax has been deducted at source.

Credit against corporation tax on trade income: banks

19 Section 49 has effect in relation to a credit for foreign tax only if the credit relates to—

(a) a payment of foreign tax on or after 22 April 2009, or

(b) income received on or after that date in respect of which foreign tax has been deducted at source.

Meaning of "relevant profits" in section 58

20 In relation to dividends paid before 1 July 2009, section 59 has effect with the following modifications—

(a) the omission of subsections (2) and (3),

(b) in subsection (4), the omission of "is not within subsection (3) but", and

(c) in subsection (5), the omission of "is not within subsection (3) and".

Conditions for relief for underlying tax paid by company lower in dividend-paying chain

21 Section 65(3)(a) applies with the omission of sub-paragraph (ii) if the dividend paid by the second company to the first company is paid before 22 April 2009.

Application of sections 109 and 110 in relation to pre-1 October 2007 cases

22 (1) Section 109 does not apply in the case of a debtor repo, within the meaning given by section 548 of CTA 2009, if the arrangement mentioned in that section of that Act came into force before 1 October 2007.

(2) Section 110 does not apply in the case of a stock lending arrangement, within the meaning given by section 263B of TCGA 1992, under which the lender transfers securities to the borrower otherwise than by way of sale before 1 October 2007.

(3) This Act has effect with the modifications set out in sub-paragraphs (4) and (5), but those modifications—

(a) do not apply in the case of a debtor repo, within the meaning given by section 548 of CTA 2009, if the arrangement mentioned in that section comes into force on or after 1 October 2007, and

(b) do not apply in the case of a stock lending arrangement, within the meaning given by section 263B of TCGA 1992, under which the lender transfers securities to the borrower otherwise than by way of sale on or after 1 October 2007.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) In section 108(3) for "section 109 or 110" substitute " section 109A ".

(5) For sections 109 and 110 substitute—

"**109A Repo or stock-lending cases in which no disregard under section 108**

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship as a result of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to the relationship, and

(b) that time is in the period for which those arrangements have effect.

(2) In this section "repo or stock-lending arrangements", in relation to a loan relationship, means (subject to subsection (3)) any arrangements consisting in or involving an agreement or series of agreements under which provision is made—

(a) for the transfer from one person ("A") to another of any rights under the relationship, and

(b) for A subsequently to be or become entitled, or required—

(i) to have the same or equivalent rights transferred to A, or

(ii) to have rights in respect of benefits accruing in respect of the relationship on redemption.

(3) Arrangements are not repo or stock-lending arrangements for the purposes of this section if they are excluded from section 730A of ICTA by section 730A(8) of ICTA.

(4) For the purposes of subsection (2) rights under a loan relationship are equivalent to rights under another loan relationship if they entitle the holder of an asset representing the relationship—

(a) to the same rights against the same persons as to capital, interest and dividends, and

(b) to the same remedies for the enforcement of those rights,

despite any difference in the total nominal amounts of the assets, in the form in which they are held or in the manner in which they can be transferred.

(5) In this section—

(a) "the initial transfer", in relation to any repo or stock-lending arrangements, is a reference to the transfer mentioned in subsection (2)(a), and

(b) a reference to the period for which repo or stock-lending arrangements have effect is a reference to the period from the making of the initial transfer until whichever is the earlier of the following—

(i) the discharge of the obligations arising by virtue of the entitlement or requirement mentioned in subsection (2)(b), or

(ii) the time when it becomes apparent that the discharge of those obligations will not take place."

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Income increased by amounts paid by reference to foreign tax for which deduction allowed

23 Section 112(3) does not have effect in relation to payments made before 22 April 2009.

Offshore fund treated after 1 December 2009 as distributing fund under repealed Chapter 5 of Part 17 of ICTA

24 In paragraph 5(4)(b) of Schedule 27 to ICTA (offshore funds: distributing funds) as it has effect as a result of paragraph 3 of Schedule 1 to the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), the reference to section 811 of ICTA is to be treated as a reference to section 112 of this Act.

Limited effect of amendments of sections 806A to 806J of ICTA

25 The amendments in sections 806A to 806J of ICTA that are made by Part 1 of Schedule 8 have effect only in relation to distributions paid before 1 July 2009.

Interpretative rules saved for the purposes of applying sections 806A to 806K of ICTA to distributions paid before 1 July 2009

26 (1) Despite their repeal by this Act, the saved rules have effect for the purposes of applying sections 806A to 806K of ICTA in relation to distributions paid—

(a) before 1st July 2009, but

(b) in accounting periods ending on or after 1st April 2010.

(2) In this paragraph "the saved rules" means the following provisions of ICTA—

(a) section 788(4),

(b) in section 788(5), the first two sentences,

(c) section 790(12), and

(d) section 792.

(3) The saved rules, so far as having effect as mentioned in sub-paragraph (1), have effect with the following modifications.

(4) Section 788(4) of ICTA has effect as if for "by virtue of this section" there were substituted " under section 2(1) of TIOPA 2010 ".

(5) In section 788(5) of ICTA the first sentence has effect as if for the words before "any amount of tax" there were substituted " For the purposes of Chapter 2 of this Part in its application to relief under sections 2 and 6 of TIOPA 2010, but subject to section 31(4) of TIOPA 2010, ".

(6) Section 790(12) of ICTA has effect as if for the words from the beginning to "unilateral relief," there were substituted " In Chapter 2 of this Part in its application to relief under section 18(1)(b) and (2) of TIOPA 2010, ".

(7) Section 792(1) of ICTA has effect as if—

(a) for "by virtue of section 788" (in both places) there were substituted " under section 2(1) of TIOPA 2010 ",

(b) for "Chapter 7 of Part 3 of the Finance Act 2004" there were substituted " Part 3 of TIOPA 2010 ", and

(c) for "section 790" there were substituted " section 18(1)(b) and (2) of TIOPA 2010 ".

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(8) Section 792 of ICTA has effect as if after subsection (3) there were (by way of relocation of provisions of section 790(3) of ICTA) inserted—

"(4) Any expression in this Chapter which imports a reference to relief under arrangements for the time being having effect under section 2(1) of TIOPA 2010 shall be deemed to import also a reference to unilateral relief."

Repealed references to Part 18 of ICTA saved for purposes of sections 806A to 806K of ICTA

27 (1) Sub-paragraph (2) has effect for the purposes of applying sections 806A to 806K of ICTA in relation to distributions paid—

(a) before 1st July 2009, but

(b) in accounting periods ending on or after 1st April 2010.

(2) The reference to Part 2 of this Act contained in each of the provisions mentioned in sub-paragraph (3) is to be treated as including a reference to Part 18 of ICTA.

(3) The provisions are—

(a) paragraph 4(2) of Schedule 26 to ICTA (controlled foreign companies: dividends), and

(b) sections 140H(3), 140I(3) and 140J(3) of TCGA 1992 (foreign tax not charged as a result of Mergers Directive to be treated as charged).

PART 4

TRANSFER PRICING

Transfer pricing: meaning of potential advantage

28 Section 155(6)(b) does not have effect in relation to distributions paid before 1 July 2009.

PART 5

ADVANCE PRICING AGREEMENTS

29 (1) An agreement made before 27 July 1999 cannot have effect as an advance pricing agreement for the purposes of Part 5.

(2) Section 218(1)(c) (agreement must contain declaration that it is made for the purposes of section 218) applies in relation to an agreement made before 1 April 2010 as if after "this section" there were inserted " or a declaration that it is made for the purposes of section 85 of FA 1999 ".

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 6

TAX AVOIDANCE (ARBITRAGE)

Arbitrage: contributions to capital of UK resident companies before 16 March 2005

30 Sections 249 to 254 (tax arbitrage: receipt notices) do not apply in relation to any contribution to the capital of a UK resident company made before 16 March 2005.

[F480]PART 7

TAX TREATMENT OF FINANCING COSTS AND INCOME

Textual Amendments

F480 Sch. 9 Pt. 7 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 11(1)(b)**

Periods of account in relation to which Part 7 does not have effect

31 . . . . . .

Exclusion of certain debits and credits

32 . . . . . .

PART 8

OFFSHORE FUNDS

Restriction on regulation-making power under section 354

33 (1) Regulations under section 354 may not make provision about the treatment of a person in respect of any rights in an affected offshore fund that are acquired by the person—

(a) before 1 December 2009, or

(b) in accordance with sub-paragraph (3).

(2) Sub-paragraph (1) is subject to paragraph 34.

(3) Rights are acquired by a person in accordance with this sub-paragraph if—

(a) the rights are acquired by the person in accordance with a legally enforceable agreement in writing that was entered into by the person before 30 April 2009,

(b) in the case of a conditional agreement, the conditions are satisfied before that date, and

(c) the agreement is not varied on or after that date.

(4) For the purposes of this paragraph rights of a person in a fund are rights in an affected offshore fund if—

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(a) the fund is an offshore fund within the meaning of section 354, but

(b) on the date on which the person acquired them, the fund was not an offshore fund within the meaning of Chapter 5 of Part 17 of ICTA.

34 Paragraph 33 does not prevent regulations under section 354 making—

(a) provision for a person to elect to be treated in accordance with the regulations in respect of rights referred to in that paragraph, or

(b) provision that does not increase the person's liability to tax in respect of such rights.

PART 9

OIL ACTIVITIES

Regional development grants

35 In relation to periods of account (within the meaning given by section 6 of CAA 2001) beginning before 6 April 2011—

(a) section 225K(3)(b) of ITTOIA 2005 has effect as if—

(i) " , 3 " were inserted after "Part 2", and

(ii) " , industrial buildings " were inserted after "machinery", and

(b) section 225L(3) and (7) of that Act have effect as if " , 3 " were inserted after "Part 2".

Reimbursement by defaulter in respect of certain abandonment expenditure

36 (1) If article 10 of the 2009 Order applies, section 225T(5) of ITTOIA 2005 has effect at times before 1 April 2012 as if for "4" there were substituted " 6 ".

(2) In sub-paragraph (1) "the 2009 Order" means the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (S.I. 2009/403).

PART 10

ALTERNATIVE FINANCE ARRANGEMENTS

Alternative finance arrangements entered into before certain dates etc

37 (1) The alternative finance provisions do not apply to purchase and resale arrangements entered into before 6 April 2005 or diminishing shared ownership arrangements entered into before the relevant date.

(2) If deposit arrangements, profit share agency arrangements or investment bond arrangements were entered into before the relevant date, the alternative finance provisions only apply if alternative finance return is payable under the arrangements on or after the relevant date and then—

(a) apply for the purposes of income tax in relation to payments of alternative finance return under the arrangements to a person other than a company on or after the relevant date (so far as relevant to the tax year 2010-11 and subsequent tax years), and

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(b) if a company is a party to the arrangements, apply in relation to the company in respect of the arrangements with effect from the relevant date (so far as relevant to those tax years or, as the case may be, any accounting period ending on or after 1 April 2010).

(3) Sub-paragraph (2) is subject to sub-paragraph (4).

(4) For the purposes of income tax and capital gains tax in relation to the disposal after 6 April 2007 of investment bond arrangements (whenever entered into), the relevant provisions are treated as always having had effect.

(5) An order made under section 1005 of ITA 2007 (recognised stock exchanges: designation) that includes such provision as is mentioned in section 1005(2A) may be expressed as respects that provision—

(a) to have had effect as from 1 April 2007 for the purposes of arrangements entered into on or after that date, and

(b) for the purposes mentioned in sub-paragraph (4) as always having had effect.

(6) In this paragraph—

"alternative finance provisions" means—

(a) section 367A of ICTA 1988,

(b) Chapter 4 of Part 4 of TCGA 1992, and

(c) Part 10A and section 1005(2A) of ITA 2007,

"alternative finance return" has the same meaning as in Chapter 4 of Part 4 of TCGA 1992 (see section 151S of that Act) or Chapter 10A of ITA 2007 (see section 564L of that Act),

"deposit arrangements", "diminishing shared ownership arrangements", "investment bond arrangements", "profit share agency arrangements" and "purchase and resale arrangements" have the same meaning as in Chapter 4 of Part 4 of TCGA 1992 (see section 151H(3) of that Act) or Chapter 10A of ITA 2007 (see section 564A(3) of that Act),

"the relevant date" means—

(a) in the case of deposit arrangements, 6 April 2005,

(b) in the case of diminishing shared ownership arrangements or profit share agency arrangements, for income tax purposes 6 April 2006, and

(c) in the case of investment bond arrangements, for corporation tax purposes 1 April 2007 and for income tax and capital gains tax purposes 6 April 2007, and

"the relevant provisions" means—

(a) for income tax purposes, sections 564G, 564L(3) to (5), and 564S to 564U of ITA 2007 and section 1005(2A) of that Act so far as it relates to section 564G of that Act, and

(b) for capital gains tax purposes, sections 151N, 151S(3) and (4) and 151T to 151W of TCGA 1992 and section 1005(2A) of ITA 2007 so far as it relates to section 151N of TCGA 1992.

Alternative finance arrangements not offshore funds

38 So far as Chapter 5 of Part 17 of ICTA continues to apply for any purpose, references to section 354 of this Act in section 151W(b) of TCGA 1992, section 564U(b) of

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ITA 2007 and section 519(4)(b) of CTA 2009 are to be read for that purpose as references to that Chapter.

Alternative finance arrangements entered into before 15 October 2009

39 (1) In relation to arrangements entered into before 15 October 2009, Part 10A of ITA 2007 (alternative finance arrangements) applies with the following modifications.

(2) In section 564B(1) (meaning of "financial institution")—

(a) in paragraph (e) for ", diminishing shared ownership arrangements or profit share agency arrangements" substitute " or diminishing shared ownership arrangements ",

(b) at the end of that paragraph insert " or ",

(c) omit paragraph (g) and "or" at the end of that paragraph, and

(d) omit paragraph (h).

(3) In section 564F(1) (profit share agency arrangements)—

(a) in paragraph (a) for "an agent" substitute " a financial institution as agent ", and

(b) omit paragraph (b).

40 (1) In relation to arrangements entered into before 15 October 2009, Chapter 4 of Part 4 of TCGA 1992 (alternative finance arrangements) applies with the following modifications.

(2) In section 151I(1) (meaning of "financial institution")—

(a) in paragraph (e) for ", diminishing shared ownership arrangements or profit share agency arrangements" substitute " or diminishing shared ownership arrangements ",

(b) at the end of that paragraph insert " or ",

(c) omit paragraph (g) and "or" at the end of that paragraph, and

(d) omit paragraph (h).

(3) In section 151M(1) (profit share agency arrangements)—

(a) in paragraph (a) for "an agent" substitute " a financial institution as agent ", and

(b) omit paragraph (b).

PART 11

SALE AND LEASE-BACK ETC

New lease of land after assignment or surrender: right to new lease existed pre-22 June 1971

41 (1) Sub-paragraphs (2) and (3) apply if—

(a) each of conditions A to D in section 681BA of ITA 2007, or each of conditions A to D in section 850 of CTA 2010, is met (new lease granted to, or to person linked with, lessee under assigned or surrendered lease),

(b) condition E in that section is not met (condition that no right to new lease existed before 22 June 1971), and

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(c) the rent under the new lease is payable by a person within the charge to income tax.

(2) No part of the rent paid under the new lease is to be treated as a payment of capital.

(3) The provisions of ITTOIA 2005 providing for deductions or allowances by way of income tax relief in respect of payments of rent apply in relation to the rent under the new lease.

(4) Section 681BM of ITA 2007 (meaning of "rent" etc) applies for the purposes of this paragraph.

PART 12

FACTORING OF INCOME ETC

Application of Chapter 5B of Part 13 of ITA 2007 (finance arrangements) to pre-6 June 2006 arrangements

42 Chapter 5B of Part 13 of ITA 2007 (which is inserted by Schedule 5 to this Act) has no effect in relation to an arrangement made before 6 June 2006 so far as section 43B or 43D of ICTA applies to the arrangement (sections 43B and 43D of ICTA contain provision about rent factoring: their repeal by paragraph 1 of Schedule 6 to FA 2006 does not apply in relation to pre-6 June 2006 transactions).

Application of section 809BZN of ITA 2007 (finance arrangements: exceptions)

43 (1) In relation to a transfer before 22 April 2009, section 809BZN of ITA 2007 (which is inserted by Schedule 5 to this Act) has effect as if after subsection (1) there were inserted—

"(1A) For the purposes of subsection (1) the effect of section 785A of ICTA (rent factoring of leases of plant or machinery) is to be disregarded."

(2) If the arrangement mentioned in section 809BZN of ITA 2007 came into force before 1 October 2007, subsection (5)(b) of that section applies as if for "Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009" there were substituted " paragraph 15 of Schedule 9 to FA 1996 ".

(3) Paragraph 14(6) of Schedule 13 to FA 2007 (when an arrangement is in force) applies for the purposes of sub-paragraph (2) of this paragraph as for those of that Schedule.

(4) In the case of plant or machinery which is the subject of a sale and finance leaseback (as defined in section 221 of CAA 2001) where the date of the transaction (within the meaning of that section) is before 9 October 2007, section 809BZN(8) of ITA 2007 has effect as if at the end there were inserted ", but in applying that section it is to be assumed that the words "and which are not a long funding lease in the case of the lessor" were omitted from section 219(1)(b) of that Act (meaning of "finance lease")".

(5) In relation to transactions referred to in section 228A(2)(a) of CAA 2001 (as substituted by paragraph 12 of Schedule 20 to FA 2008) and entered into before 9 October 2007, section 809BZN(9) of ITA 2007 has effect as if at the end there were inserted " with the modifications contained in section 228F of that Act ".

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Application of section 809CZC of ITA 2007 (income-transfer under loan or credit transaction)

44 In relation to a transfer before 22 April 2009, section 809CZC(4) of ITA 2007 (which is inserted by Schedule 5 to this Act) has effect as if—

(a) after "the person" there were inserted " assigns, " and

(b) after "it" there were inserted " (without a sale or transfer of the property) ".

PART 13

MISCELLANEOUS RELOCATIONS

Application of sections 925A to 925F of ITA 2007 (repos)

45 (1) Sections 925A to 925F and 926(1A) of ITA 2007 (which are inserted by Part 19 of Schedule 7 to this Act) do not have effect in relation to an arrangement that comes into force before 1 October 2007.

(2) Paragraph 14(6) of Schedule 13 to FA 2007 (when an arrangement is in force) applies for the purposes of sub-paragraph (1) of this paragraph as for those of that Schedule.

SCHEDULE 10

Section 378

REPEALS AND REVOCATIONS

PART 1

DOUBLE TAXATION RELIEF

Reference	***Extent of repeal or revocation***
Income and Corporation Taxes Act 1988 (c. 1)	Sections 788 to 799.
	Sections 801 to 801B.
	Sections 803 to 804E.
	Sections 804G to 806.
	Sections 806L to 807G.
	Sections 808A to 809.
	Section 811.
	Sections 815A to 815B.
	Section 816.
	In section 828(4), "791".
	In Schedule 19ABA, paragraphs 9 to 11.
	Schedule 28AB.
Finance Act 1990 (c. 29)	In Schedule 7, paragraph 5.

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Taxation of Chargeable Gains Act 1992 (c. 12)	Sections 277 and 278.
Finance (No. 2) Act 1992 (c. 48)	Section 50.
	Section 51(1) and (2).
	Section 52.
Finance Act 1993 (c. 34)	Section 194.
	In section 195(3), the words ", other than section 194,".
Finance Act 1994 (c. 9)	Section 217.
	In Schedule 8, paragraph 12.
Finance Act 1996 (c. 8)	In Schedule 14, paragraphs 41 to 47.
	In Schedule 20, paragraph 39.
	In Schedule 21, paragraphs 22 and 23.
Finance Act 1997 (c. 16)	Sections 90 and 91.
Finance Act 1998 (c. 36)	Section 82(2).
	Sections 106 and 107.
Finance Act 2000 (c. 17)	In Schedule 30, paragraphs 1, 2, 3, 4(1) to (12), 5 to 9, 11, 12, 15 to 17, 18(1), 20, 23 to 25, 27, 28 and 30.
Finance Act 2001 (c. 9)	In Schedule 27, paragraphs 1, 2 and 6.
Finance Act 2002 (c. 23)	In section 88— (a) subsection (1), (b) in subsection (2)(a), the references to sections 788(7)(a), 790(3), (5)(b), (10A)(d) and (10C), 792(1) and (3), 793A(1)(a) and (3), 795A(1)(b) and 815AA(1) of ICTA, and (c) subsection (2)(b), (c) and (f).
	In Schedule 25, paragraphs 54 and 55.
	In Schedule 27, paragraph 12(2) and (3).
	In Schedule 30, paragraph 5.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraph 103.
Finance Act 2003 (c. 14)	In section 153— (a) in subsection (1)(a), "790(6A)(b), 801(1A)(b), 804A(1)(a), 806L(1), (2), (4) and (5), 806M(2) to (5) and 815A(6)", and (b) in subsection (2)(a), "794(2)(bb),".
	Section 154.
	In Schedule 27, paragraph 1(3).
	In Schedule 33, paragraph 11.
Finance Act 2004 (c. 12)	Sections 107 to 115.

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	In Schedule 7, paragraph 7.
Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310)	In the Schedule, paragraph 34.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 321 to 323 and 325.
Finance Act 2005 (c. 7)	Section 85.
	Section 86(1) and (2)(a).
	Section 87.
	Section 88(3).
	Section 91(5).
	In Schedule 4, paragraph 7.
	Schedule 5.
Commissioners for Revenue and Customs Act 2005 (c. 11)	In Schedule 4, paragraph 37.
Finance (No. 2) Act 2005 (c. 22)	Section 43.
	Section 59(1).
Finance Act 2006 (c. 25)	Section 176.
	In Schedule 13, paragraph 24.
Income Tax Act 2007 (c. 3)	In section 26(1)(b)— (a) the entries for sections 788 and 790 of ICTA, and (b) the word "and" before the entry for sections 677 and 678 of ITTOIA 2005.
	In section 32— (a) the entry for section 804(5B)(a) of ICTA, and (b) the word "and" before the entry for section 682(4) of ITTOIA 2005.
	Section 527(2)(b).
	In section 1026, paragraph (g) and the "or" preceding it.
	In Schedule 1, paragraphs 192 to 196, 197(2), 198(2), (3), (4)(a) and (5) to (7), 199, 200(a) and 202(a).
Finance Act 2007 (c. 11)	Section 35.
	In Schedule 7, paragraphs 48 to 53.
	In Schedule 14, paragraph 10.
Income Tax Act 2007 (Amendment) (No. 3) Order 2007 (S.I. 2007/3506)	Article 3(5).
Finance Act 2008 (c. 9)	Section 57.
	Section 59.

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	In Schedule 17, in paragraph 10(3), paragraph (e) and the "and" preceding it.
	In Schedule 39, paragraphs 24 and 26.
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraph 422(3).
Corporation Tax Act 2009 (c. 4)	In section 906(3), the word "and" after paragraph (a).
	In Schedule 1, paragraphs 245, 246, 247(2), (3)(a) and (4) to (8), 248 to 251, 255 to 264 and 282(2) and (3).
Finance Act 2009 (c. 10)	Sections 57, 59 and 60.
	In Schedule 14, paragraph 8.
Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (S.I. 2009/2859)	Article 4(6).

PART 2

TRANSFER PRICING AND ADVANCE PRICING AGREEMENTS

Reference	*Extent of repeal or revocation*
Taxes Management Act 1970 (c. 9)	In the second column of the Table in section 98, the entry for section 86(4) of FA 1999.
Income and Corporation Taxes Act 1988 (c. 1)	Section 770A.
	Schedule 28AA.
Finance Act 1998 (c. 36)	Section 108(1) and (2).
	Sections 110 and 111.
	Schedule 16.
Finance Act 1999 (c. 16)	Sections 85 to 87.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 68.
Finance Act 2001 (c. 9)	In Schedule 29, paragraphs 35 and 38(1) to (3).
Finance Act 2002 (c. 23)	In Schedule 23, paragraph 21.
	In Schedule 27, paragraph 15.
Finance Act 2004 (c. 12)	Sections 30 to 32.
	Section 34(2) and (3).
	Sections 35 and 36.
	In Schedule 5, paragraphs 11 to 13.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 351 and 508.
Finance (No. 2) Act 2005 (c. 22)	In Schedule 8, paragraph 1.

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Finance Act 2006 (c. 25)	In Schedule 13, paragraph 26.
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraph 239.
Income Tax Act 2007 (Amendment) (No. 3) Order 2007 (S.I. 2007/3506)	Article 2(4).
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraphs 162(2) and (4) and 252.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraph 291(2) to (4), (5)(b), (6) and (8).
Finance Act 2009 (c. 10)	In Schedule 14, paragraph 14.
	In Schedule 15, paragraph 96.

PART 3

TAX ARBITRAGE

Reference	*Extent of repeal*
Finance (No. 2) Act 2005 (c. 22)	Sections 24 to 31 and Schedule 3.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 670 and 671.
Finance Act 2009 (c. 10)	In Schedule 24, paragraph 6.

PART 4

TAX TREATMENT OF FINANCING COSTS AND INCOME

Reference	*Extent of repeal*
Taxes Management Act 1970 (c. 9)	In the first column of the Table in section 98, the entry for regulations under Schedule 15 to FA 2009.
Finance Act 2009	Section 35.
	In Schedule 15, paragraphs 1 to 95 and 97 to 99.

PART 5

OFFSHORE FUNDS

Reference	*Extent of repeal*
Finance Act 2008 (c. 9)	Sections 40A to 42A.
Finance Act 2009	In section 44, the words from “Part 1” to “funds), and”.
	In Schedule 22, Part 1.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 6

OIL ACTIVITIES

Reference	*Extent of repeal*
Finance Act 1982 (c. 39)	In Schedule 19, paragraph 10(7).
Income and Corporation Taxes Act 1988 (c. 1)	Section 493(1) to (6).
	Sections 495 and 496.
	Section 502(1) and (2).
Finance Act 1990 (c. 29)	Section 62(3).
Finance Act 1991 (c. 31)	Sections 62 to 65.
Finance (No. 2) Act 1992 (c. 48)	Section 55.
Petroleum Act 1998 (c. 17)	In Schedule 4, paragraph 25.
Finance Act 1998 (c. 36)	Section 152(3).
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 42 and 73.
Finance Act 2004 (c. 12)	Section 285(7).
	In Schedule 37, paragraphs 10 and 11.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 192 to 194.
Finance Act 2006 (c. 25)	Section 151.
	In Schedule 18, paragraph 12(3)(b) and (7).
Finance Act 2008 (c. 9)	Section 104.
	In Schedule 27, paragraph 21.
	In Schedule 39, paragraph 27.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraph 356.

PART 7

ALTERNATIVE FINANCE ARRANGEMENTS

Reference	*Extent of repeal or revocation*
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 151F.
Finance Act 2005 (c. 7)	Sections 46 to 47A, 48(1), 48A, 48B(1) to (5) and (9) and 49 to 57.
	In Schedule 2, paragraphs 1, 8 and 10 to 13.
Finance Act 2006	Section 95(1) to (8) and (11).
	Sections 96 to 98.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Income Tax Act 2007 (c. 3)	In Schedule 1, paragraphs 597 to 599.
Finance Act 2007 (c. 11)	Section 53(1) to (10), (13) and (14).
	Section 54.
Employment Income (Meaning of Securities) Order 2007 (S.I. 2007/2130)	The whole Order.
Finance Act 2008	Section 156.
Alternative Finance Arrangements (Community Investment Tax Relief) Order 2008 (S.I. 2008/1821)	The whole Order.
Corporation Tax Act 2009	Section 521.
	Section 1310(5).
	In Schedule 1, paragraphs 649 to 661 and 683.
Finance Act 2009 (c. 10)	In Schedule 61, paragraph 27.

PART 8

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

Reference	*Extent of repeal*
Finance Act 1997 (c. 16)	Section 82.
	In Schedule 12, paragraphs 1 to 7, 9 to 17 and 20 to 30.
Finance Act 1998 (c. 36)	In Schedule 7, paragraph 12.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 98.
Finance Act 2002 (c. 23)	Section 103(4)(e).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraph 494.
Finance Act 2006 (c. 25)	In Schedule 9, paragraph 7.
Finance Act 2008 (c. 9)	In Schedule 2, paragraph 69(3).
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 447 and 448.

PART 9

SALE AND LEASE-BACK ETC

Reference	*Extent of repeal or revocation*
Income and Corporation Taxes Act 1988 (c. 1)	Section 24.
	Sections 779 to 785.
Finance Act 1996 (c. 8)	In Schedule 21, paragraph 21.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Finance Act 1998	In Schedule 7, in paragraph 1, the entries for provisions of sections 779, 780, 781, 782 and 785 of ICTA.
Capital Allowances Act 2001	In Schedule 2, paragraph 57.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraphs 101 and 102.
Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310)	In the Schedule, paragraphs 32 and 33.
Income Tax (Trading and Other Income) Act 2005	In section 49(2)(a), the words "(see subsection (3))". In Schedule 1, paragraphs 314 to 319.
Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229)	Regulation 98.
Finance Act 2006	In Schedule 9, paragraph 3.
Income Tax Act 2007 (c. 3)	In section 1016(2), in Part 3 of the table, the entries for sections 780(3A)(a) and 781(1) of ICTA. In Schedule 1, paragraphs 187 to 190.
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraph 156(2).
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 13(2)(a), 232(2) and (3)(b) and (d), 233, 234(3) and (4)(a) and (c) and 236.

PART 10

FACTORING OF INCOME ETC

Reference	*Extent of repeal*
Income and Corporation Taxes Act 1988 (c. 1)	Sections 774A to 774G. Section 786.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraph 320.
Finance Act 2006 (c. 25)	In Schedule 6, paragraphs 6 and 8.
Income Tax Act 2007 (c. 3)	In section 2(13)(e), the word "or" at the end. In section 1016(2), in Part 3 of the table, the entry for section 786(5)(a) of ICTA.
Finance Act 2007 (c. 11)	In Schedule 5, paragraphs 3 to 7 and 17(4). In Schedule 14, paragraph 9.
Corporation Tax Act 2009	In Schedule 1, paragraphs 226 to 229 and 241.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 11

UK REPRESENTATIVES OF NON-UK RESIDENTS

Reference	*Extent of repeal or revocation*
Finance Act 1995 (c. 4)	Sections 126 and 127.
	Schedule 23.
Finance Act 1998 (c. 36)	In Schedule 7, paragraph 10.
Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629)	Article 89.
Finance Act 2003 (c. 14)	In Schedule 27, paragraphs 4 and 5.
Income Tax (Trading and Other Income) Act 2005	In Schedule 1, paragraph 479.
Finance Act 2005 (c. 7)	Section 48(3).
Finance Act 2006	Section 95(10).
Income Tax Act 2007	In section 2(14), the word "and" immediately after paragraph (b).
	In section 817(3), the words "by the broker".
	In section 1014(2), paragraph (ba) and, in paragraph (g), the word "and" at the end of sub-paragraph (iib).
	In Schedule 1, paragraph 367.
Finance Act 2007	Section 53(11).
Finance Act 2008 (c. 9)	In Schedule 16, paragraphs 1, 2 and 11(1).
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraph 401(a).

PART 12

MISCELLANEOUS RELOCATIONS

Reference	*Extent of repeal or revocation*
Taxes Management Act 1970 (c. 9)	In the first column of the Table in section 98— (a) the entry for paragraph 2 of Schedule 15 to FA 1973, (b) the entry for section 42 of ICTA, and (c) the entry for regulations under section 199 of FA 2003.
Finance Act 1973 (c. 51)	Section 38.
	Schedule 15.
Finance Act 1974 (c. 30)	Section 24.

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Finance Act 1976 (c. 40)	In Schedule 9, paragraph 5.
Finance Act 1978 (c. 42)	Section 29(3).
Finance Act 1984 (c. 43)	Section 124.
Finance (No. 2) Act 1987 (c. 51)	Section 86(3)(b).
Income and Corporation Taxes Act 1988 (c. 1)	Section 6(5).
	Section 42.
	Section 84A.
	Section 152.
	Section 337A(2).
	Section 475.
	Section 700.
	Section 787.
	In Schedule 29, in the Table in paragraph 32, the entries relating to Schedule 15 to FA 1973.
Finance Act 1988 (c. 39)	Sections 130 to 132.
Finance Act 1989 (c. 26)	Section 151.
	Section 164(5)(b).
Finance Act 1991 (c. 31)	Section 42.
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule 10, paragraphs 3 and 16(6).
Finance (No. 2) Act 1992 (c. 48)	Section 66.
	Schedule 12.
Finance Act 1995 (c. 4)	In Schedule 18, paragraph 6.
Jobseekers Act 1995 (c. 18)	In Schedule 2, paragraph 13.
Finance Act 1996 (c. 8)	In section 200(1)(a), the words “, income tax”.
	In Schedule 14, paragraph 27.
	In Schedule 28, in paragraph 3— (a) in sub-paragraph (1), the words from “for subsection (1)” to the end, and (b) sub-paragraph (2).
	In Schedule 38, paragraph 1.
Petroleum Act 1998 (c. 17)	In Schedule 4, paragraph 5.
Finance Act 1998 (c. 36)	Section 36.
	Section 118.
	In Schedule 7— (a) in paragraph 1, the word “84A(2)(a),” and (b) in paragraph 8 the words from “and Schedule 12” to the end.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

	In Schedule 14, paragraphs 6 and 7(3) and, in paragraph 7(5), the words "Except as provided by the preceding provisions of this paragraph,".
Finance Act 2000 (c. 17)	Section 144.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 101.
Finance Act 2002 (c. 23)	Section 107.
Secretaries of State for Education and Skills and for Work and Pensions Order 2002 (S.I. 2002/1397)	In the Schedule, paragraph 6.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraphs 11, 23 and 144 to 147.
Finance Act 2003 (c. 14)	Section 199.
Communications Act 2003 (c. 21)	In Schedule 17, paragraph 152.
Finance Act 2004 (c. 12)	In Schedule 12, paragraph 12.
Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310)	In the Schedule, paragraph 4.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 24, 59, 291, 387 and 388. In Schedule 2, paragraph 91.
Finance (No. 2) Act 2005 (c. 22)	Section 61.
Finance Act 2006 (c. 25)	Section 71(2) and (3). In Schedule 13, paragraph 29.
Income Tax Act 2007 (c. 3)	In section 3(2), the word "and" immediately before paragraph (e). In Schedule 1, paragraph 275.
Finance Act 2007 (c. 11)	In Schedule 13, paragraph 13.
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraphs 133(3), 135(2) and 164.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 104(3)(a), 160(a), 209(c) and (d), 242(2), 311, 312, 389 and 390.
Finance Act 2009 (c. 10)	Section 111.

PART 13

REPEALS FOR PURPOSES CONNECTED WITH OTHER TAX LAW REWRITE ACTS

Reference	*Extent of repeal*
In relation to the repeal in F(No.2)A 1997, see paragraph 171 of Schedule 2 to ITA 2007.	

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Income and Corporation Taxes Act 1988 (c. 1)	Section 59(3) and (4).
Finance Act 1988 (c. 39)	In Schedule 3, paragraph 21.
Finance Act 1991 (c. 31)	In Schedule 11, paragraph 2(1) and (3).
Finance Act 1993 (c. 34)	Section 72.
	Section 107(2)(a).
	In Schedule 6, paragraph 10.
Finance Act 1994 (c. 9)	In Schedule 19, paragraph 37.
Finance (No. 2) Act 1997 (c. 58)	In Schedule 4, paragraph 21.
Finance Act 1998 (c. 36)	Section 27(1)(b).
	Section 79(2).
	Section 119.
	In Schedule 7— (a) in paragraph 1, the words "109A(2)(d), (4) and (4A),", the words "117(1), (3)(b) and (4),", the word "160(1C)(b),", the word "368(3),", the word "526(1)(b)," and the words "830(4) in the second place,", and (b) in paragraph 3, the words "and 112(1)".
Finance Act 1999 (c. 16)	In Schedule 4, paragraphs 1(2) and 3(3).
Finance Act 2000 (c. 17)	Section 78.
Regulation of Care (Scotland) Act 2001 (asp 8)	In Schedule 3, paragraph 14(d) and (e).
Finance Act 2004 (c. 12)	Section 318(2).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 35(3)(a) and (4) and 401.
Finance Act 2005 (c. 7)	Section 48B(6) to (8).
	In Schedule 2, paragraph 9.
Finance (No. 2) Act 2005 (c. 22)	In Schedule 8, paragraphs 2 and 3.

In relation to the repeal in F(No.2)A 1997, see paragraph 171 of Schedule 2 to ITA 2007.

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULE 11

Section 379

INDEX OF DEFINED EXPRESSIONS USED IN PARTS 2 TO 8

PART 1

DOUBLE TAXATION RELIEF: INDEX OF DEFINED EXPRESSIONS USED IN PARTS 2 AND 3

the arrangements (in Chapter 2 of Part 2)	section 21(1)
chargeable gain (in Part 2 so far as relating to capital gains tax)	section 105
double taxation arrangements (in Part 2)	section 2(4)
double taxation arrangements (in Part 3)	section 136(2)
foreign tax (in Chapter 2 of Part 2)	section 21(1)
[[F481]insurance company	section 65 of FA 2012 (as applied by section 141(2) of that Act)**]**
international arrangements (in Part 3)	section 136(3)
[[F481]long-term business	section 63 of FA 2012 (as applied by section 141(2) of that Act)**]**
the non-UK territory (in Chapter 2 of Part 2)	section 21(1)
the Savings Directive (in Part 3)	section 136(4)
savings income (in Part 3)	section 136(5)
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tax payable or chargeable (in Chapter 2 of Part 2)	sections 17(3) and 20(4)
tax payable or paid under the law of a territory outside the United Kingdom (in Chapter 2 of Part 2, except section 29, in its application to relief under unilateral relief arrangements)	section 8(2)
underlying tax (in Chapter 2 of Part 2)	section 21(1)
unilateral relief arrangements (in Part 2)	section 8(1)

Textual Amendments

F481 Words in Sch. 11 Pt. 1 inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 244**

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 2

TRANSFER PRICING: INDEX OF DEFINED EXPRESSIONS USED IN PART 4

the actual provision (in Part 4)	section 149
the advantaged person (in Chapter 4 of Part 4)	section 174(1)
the affected persons (in Part 4)	section 149(1), (2)
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PART 3

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advance pricing agreement (in Part 5)	section 218(1)
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***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F482 PART 4

TAX ARBITRAGE: INDEX OF DEFINED EXPRESSIONS USED IN PART 6

Textual Amendments

F482 Sch. 11 Pt. 4 omitted (with effect in accordance with Sch. 10 para. 22 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 10 para. 16**

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[F483 PART 4A

HYBRID AND OTHER MISMATCHES: INDEX OF DEFINED EXPRESSIONS USED IN PART 6A

Textual Amendments

F483 Sch. 11 Pt. 4A inserted (15.9.2016) by Finance Act 2016 (c. 24), **Sch. 10 para. 17**

arrangement (in Part 6A)	section 259NF
CFC and CFC charge (in Part 6A)	section 259B(4)
the Commissioners (in Part 6A)	section 259NF
control group (in Part 6A)	section 259NB
deduction period (in Chapter 10 of Part 6A)	section 259JA(5)(a)
dual resident company (in Chapter 10 of Part 6A)	section 259JA(3)
dual territory double deduction amount (in Chapter 10 of Part 6A)	section 259JA(5)
dual territory double deduction (in Chapter 11 of Part 6A)	section 259KB
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excessive PE deduction (in Chapter 11 of Part 6A)	section 259KB
financial instrument (in Part 6A)	section 259N
foreign CFC and foreign CFC charge (in Part 6A)	section 259B(4)
foreign deduction period (in Chapter 10 of Part 6A)	section 259JA(5)(b)
hybrid entity (in Part 6A)	section 259BE
hybrid entity deduction period (in Chapter 9 of Part 6A)	section 259IA(2)(a)

Changes to legislation: *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

hybrid entity double deduction amount (in Chapter 9 of Part 6A)	section 259IA(4)
hybrid or otherwise impermissible deduction/ non-inclusion mismatch (in Chapter 3 of Part 6A)	section 259CB
hybrid payee (in Chapter 7 of Part 6A)	section 259GA(3)
hybrid payee deduction/non-inclusion mismatch (in Chapter 7 of Part 6A)	section 259GB
hybrid payer (in Chapter 5 of Part 6A)	section 259EA(3)
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hybrid transfer deduction/non-inclusion mismatch (in Chapter 4 of Part 6A)	section 259DC
imported mismatch payment (in Chapter 11 of Part 6A)	section 259KA(2)
imported mismatch arrangement (in Chapter 11 of Part 6A)	section 259KA(2)
investor (in Part 6A)	section 259BE(4)
investor deduction period (in Chapter 9 of Part 6A)	section 259IA(2)(b)
investor jurisdiction (in Part 6A)	section 259BE(4)
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multinational company (in Chapter 6 of Part 6A)	section 259FA(3)
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multinational payee deduction/non-inclusion mismatch (in Chapter 8 of Part 6A)	section 259HB
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P (in Chapter 11 of Part 6A)	section 259KA(3)
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parent jurisdiction (in Chapter 10 of Part 6A)	section 259JA(4)(b)(ii)
payee (in Part 6A)	section 259BB(6)
payee jurisdiction (in Part 6A)	section 259BB(9)
payer (in Part 6A)	section 259BB(1)(a) or (2)

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

payment (in Part 6A)	section 259BB(1)
payment period (in Part 6A)	section 259BB(1)(b) or (2)
PE jurisdiction (in Chapter 8 of Part 6A)	section 259HA(4)(b)
PE jurisdiction (in Chapter 10 of Part 6A)	section 259JA(4)(a)
PE jurisdiction (in Chapter 11 of Part 6A)	section 259KB(3)(a)
permanent establishment (in Part 6A)	section 259BF
quasi-payment (in Part 6A)	section 259BB(2) to (5)
related (in Part 6A)	section 259NC
relevant deduction (in Part 6A)	section 259BB(1)(b) or (2)(a)
relevant investment fund (in Part 6A)	section 259NA
relevant mismatch (in Chapter 11 of Part 6A)	section 259KA(6)
relevant multinational company (in Chapter 10 of Part 6A)	section 259JA(4)
relevant PE period (in Chapter 6 of Part 6A)	section 259FA(4)
series of arrangements (in Chapter 11 of Part 6A)	section 259KA(5)
substitute payment (in Chapter 4 of Part 6A)	section 259DB(5)
tax (in Part 6A)	section 259B
taxable period (in Part 6A)	section 259NF
taxable profits (in Part 6A)	sections 259BC(2) and 259BD(5)
underlying instrument (in Chapter 4 of Part 6A)	section 259DB(3)
underlying return (in Chapter 4 of Part 6A)	section 259DB(5)(b)**]**

[F484]PART 5

TAX TREATMENT OF FINANCING COSTS AND INCOME: INDEX OF DEFINED EXPRESSIONS USED IN PART 7

Textual Amendments

F484 Sch. 11 Pt. 5 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 11(1)(c)**

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***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 6

OFFSHORE FUNDS: INDEX OF DEFINED EXPRESSIONS USED IN PART 8

participant (in Part 8)	section 362(1)
participation (in Part 8)	section 362(2)
part of umbrella arrangements (in Part 8)	section 363(2)
umbrella arrangements (in Part 8)	section 363(1)

[F485PART 7

CORPORATE INTEREST RESTRICTION: INDEX OF DEFINED EXPRESSIONS USED IN PART 10

Textual Amendments

F485 Sch. 11 Pt. 7 inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 24**

abbreviated interest restriction return (in Part 10)	paragraph 20 of Schedule 7A
abbreviated return election (in Part 10)	paragraph 19 of Schedule 7A
accounting period (in Part 10)	Chapter 2 of Part 2 of CTA 2009 (applied by section 1119 of CTA 2010)
adjusted net group-interest expense of a worldwide group (in Part 10)	section 413
aggregate net tax-interest expense of a worldwide group (in Part 10)	section 390
aggregate net tax-interest income of a worldwide group (in Part 10)	section 390
aggregate tax-EBITDA of a worldwide group (in Part 10)	section 405
allocated reactivation of company for period of account (in Part 10)	paragraph 25 of Schedule 7A
allowable loss (in Part 10)	TCGA 1992 (applied by section 1119 of CTA 2010)
associated (in Chapter 8 of Part 10)	section 449(2)
amount available for reactivation of company in period of account (in Part 10)	paragraph 26 of Schedule 7A
available, in relation to interest allowance (in Chapter 4 of Part 10)	section 393
balance sheet (in Chapter 8 of Part 10)	section 449(1)

***Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

chargeable gain (in Part 10)	TCGA 1992 (applied by section 1119 of CTA 2010)
the Commissioners (in Part 10)	section 494(1)
company (in Part 10)	section 1121 of CTA 2010
company tax return (in Schedule 7A)	paragraph 73 of Schedule 7A
consenting company (in Part 10)	paragraph 10 of Schedule 7A
consolidated partnership (in Part 10)	section 430
consolidated subsidiary of another entity (in Part 10)	section 475
derivative contract (in Part 10)	Part 7 of CTA 2009 (applied by section 1119 of CTA 2010)
disallowed, in relation to tax-interest expense amount (in Part 10)	section 378
drawn up on acceptable principles, in relation to financial statements (in Chapter 11 of Part 10)	section 481
fair value accounting (in Part 10)	section 494(1)
fair value (in Part 10)	section 494(1)
filing date, in relation to a period of account of a worldwide group (in Part 10)	paragraph 7(5) of Schedule 7A
finance lease (in Part 10)	section 494(1)
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for accounting purposes (in Part 10)	section 1127(4) of CTA 2010
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group-EBITDA (chargeable gains) election (in Part 10)	paragraph 15 of Schedule 7A
group ratio election (in Part 10)	paragraph 13 of Schedule 7A
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local authority (in Part 10)	section 1130 of CTA 2010
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party to a loan relationship (in Part 10)	section 494(2)
[[F487]pension scheme (in Part 10)	section 494(1)**]**
period of account of a worldwide group (in Part 10)	section 480
profit before tax, of a worldwide group (in Chapter 7 of Part 10)	section 416
pro-rata share of company (of total disallowed amount) (in Part 10)	paragraph 23 of Schedule 7A
pro-rata share of accounting period (of total disallowed amount) (in Part 10)	paragraph 24 of Schedule 7A
provision (in relation to a public infrastructure asset) (in Chapter 8 of Part 10)	section 436
public infrastructure asset (in Chapter 8 of Part 10)	section 436
qualifying charitable donation (in Part 10)	Part 6 of CTA 2010 (applied by section 1119 of CTA 2010)
qualifying infrastructure company (in Chapter 8 of Part 10)	section 433
qualifying infrastructure activity (in Chapter 8 of Part 10)	section 436
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recognised, in financial statements (in Part 10)	section 489
recognised stock exchange (in Part 10)	section 1137 of CTA 2010
registered pension scheme (in Part 10)	section 150(2) of FA 2004 (applied by section 1119 of CTA 2010)
related party (in Part 10)	sections 462 to 472
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relevant expense amount (in Chapter 7 of Part 10)	section 411
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subject to interest reactivations (in Part 10)	section 373
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UK property business (in Part 10)	Chapter 2 of Part 4 of CTA 2009 (applied by section 1119 of CTA 2010)
the UK sector of the continental shelf (in Chapter 8 of Part 10)	section 449(1)
the ultimate parent, of a worldwide group (in Part 10)	section 473(4)(b)
unexpired (in Chapter 4 of Part 10)	section 395
United Kingdom (in Part 10)	section 1170 of CTA 2010
used (in Chapter 4 of Part 10)	section 394
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wholly-owned subsidiary (in Part 10)	section 494(1)
a worldwide group (in Part 10)	section 473**]**

Textual Amendments

F486 Words in Sch. 11 Pt. 7 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. 28(2)**

F487 Words in Sch. 11 Pt. 7 inserted (retrospectively) by Finance Act 2019 (c. 1), **Sch. 11 paras. 21**, 24

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Changes and effects yet to be applied to :

- s. 94(3)(a) words inserted by 2017 c. 32 Sch. 14 para. 40
- s. 94(3)(b) words inserted by 2017 c. 32 Sch. 14 para. 40
- s. 95(8)(a) words inserted by 2017 c. 32 Sch. 14 para. 41
- s. 171(5) words inserted by 2017 c. 32 Sch. 14 para. 42
- s. 234(2) omitted by 2016 c. 24 Sch. 1 para. 68(4)