

# **TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4: Transfer pricing**

##### ***Chapter 3: Exemptions from basic rule***

###### **Overview**

342. This Chapter gives the exemptions from the basic transfer-pricing rule in section 147 for dormant companies and small and medium-sized enterprises.

###### ***Section 165: Exemption for dormant companies***

343. This section exempts dormant companies from the basic rule in section 147. It is based on paragraph 5A of Schedule 28AA to ICTA.

###### ***Section 166: Exemption for small and medium-sized enterprises***

344. This section exempts, with three exceptions, small and medium-sized enterprises (defined in section 172) from the basic rule in section 147. It is based on paragraph 5B(1) and (2) of Schedule 28AA to ICTA.

###### ***Section 167: Small and medium-sized enterprises: exceptions from exemption***

345. This section gives two of the exceptions to section 166: where there is an election that the exemption should not apply and where the other affected person is a resident of a non-qualifying territory. It is based on paragraph 5B of Schedule 28AA to ICTA.

###### ***Section 168: Medium-sized enterprises: exception from exemption: transfer pricing notice***

346. This section gives the third exception to the exemption in section 166. This is where the Commissioners for HMRC give a notice (a “transfer pricing notice”) to the potentially advantaged person that section 147 is to apply. It is based on paragraph 5C(1) of Schedule 28AA to ICTA.

347. “In question” in paragraph 5C(1)(a) of Schedule 28AA was not rewritten on the ground that it was unnecessary.

348. “The Board” in paragraph 5C(1)(b) (which meant the Commissioners of Inland Revenue) is rewritten as “the Commissioners for Her Majesty’s Revenue and Customs” in accordance with section 50(1) of CRCA.

***Section 169: Giving of transfer pricing notices***

349. This section gives details of transfer pricing notices given under section 168. It is based on paragraph 5C(2) to (4) and (12) of Schedule 28AA to ICTA.
350. “Officer of the Board” in paragraph 5C(4) and (6) is rewritten as “officer of Revenue and Customs” both here and in section 170 in accordance with section 50(2) of CRCA.

***Section 170: Appeals against transfer pricing notices***

351. This section enables a person receiving a transfer pricing notice to appeal within 30 days against the decision to give the notice. It is based on paragraph 5C(5) to (7) of Schedule 28AA to ICTA.

***Section 171: Tax returns where transfer pricing notice given***

352. This section allows the taxpayer to make amendments to his tax return following receipt of a transfer pricing notice under section 168. It is based on paragraph 5C(8) to (12) of Schedule 28AA to ICTA.
353. Paragraph 5C(8)(b) refers to the taxpayer appealing “against the notice” although paragraph 5C(5) states that appeals are against the decision *to give* the notice. In rewriting paragraph 5C(8)(b) subsection (1) has been made consistent with section 170(1).

***Section 172: Meaning of “small enterprise” and “medium-sized enterprise”***

354. This section defines “small enterprise” and “medium-sized enterprise” for purposes of Chapter 3. It is based on paragraph 5D of Schedule 28AA to ICTA.

***Section 173: Meaning of “qualifying territory” and “non-qualifying territory”***

355. This section defines “qualifying territory” and “non-qualifying territory” for the purposes of Chapter 3. It is based on paragraph 5E of Schedule 28AA to ICTA.