



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 4

#### TRANSFER PRICING

#### 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
  - (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.

**Changes to legislation:** There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Claim by affected person who is not advantaged. (See end of Document for details)

- (3) Provision about claims under this section is made by—
- [<sup>F1</sup>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

**F1** 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\(2\)](#)

#### [<sup>F2</sup>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.]

#### Textual Amendments

**F2** 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,

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- (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)—
  - (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).

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- (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).

**Changes to legislation:**

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