



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 7

#### TAX TREATMENT OF FINANCING COSTS AND INCOME

### CHAPTER 1

#### INTRODUCTION

#### 260 Introduction

- (1) Chapter 2 contains provision for determining whether this Part applies in relation to any particular period of account of the worldwide group.
- (2) Chapter 3 provides for the disallowance of certain financing expenses of relevant group companies arising in a period of account of the worldwide group to which this Part applies.

The total of the amounts disallowed is the amount by which the tested expense amount (defined in Chapter 8) exceeds the available amount (defined in Chapter 9).

- (3) Chapter 4 provides for the exemption from the charge to corporation tax of certain financing income of UK group companies where financing expenses of relevant group companies have been disallowed under Chapter 3.
- (4) Chapter 5 provides for the exemption from the charge to corporation tax of certain intra-group financing income of UK group companies where the paying company is denied a deduction for tax purposes otherwise than under this Part.
- (5) Chapter 6 contains rules connected with tax avoidance.
- (6) Chapter 7 defines a “financing expense amount” and “financing income amount” of a company for a period of account of the worldwide group, which are amounts that

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would, apart from this Part, be brought into account for the purposes of corporation tax.

- (7) Chapter 8 defines the “tested expense amount” and the “tested income amount” of the worldwide group for a period of account of the group, which are totals deriving from the financing expense amounts and financing income amounts of certain group companies.
- (8) Chapter 9 defines the “available amount” for a period of account of the worldwide group, which derives from certain financing costs disclosed in the group's consolidated financial statements.
- (9) Chapter 10 contains further interpretative [<sup>F1</sup>and supplementary] provisions.

#### Textual Amendments

- F1** Words in s. 260(9) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 2, 36\(1\)](#)

## CHAPTER 2

### APPLICATION OF PART

#### 261 Application of Part

- (1) This Part applies to any period of account of the worldwide group for which—
  - (a) the UK net debt of the group (see sections 262 and 263), exceeds
  - (b) 75% of the worldwide gross debt of the group (see section 264).
- (2) But a period of account that is within subsection (1) is not a period of account to which this Part applies if the worldwide group is a qualifying financial services group in that period (see section 266).
- (3) The Treasury may by order amend subsection (1)(b) by substituting a higher or lower percentage for the percentage for the time being specified there.
- (4) An order under subsection (3) 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.
- (5) An order under subsection (3) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

#### 262 UK net debt of worldwide group for period of account of worldwide group

- (1) [<sup>F2</sup>A reference in this Chapter] to the “UK net debt” of the worldwide group for a period of account of the group is to the sum of the net debt amounts of each company that was a relevant group company [<sup>F3</sup>or a group securitisation company] at any time during the period.
- (2) In this section “net debt amount”, in relation to a company, means the average of—
  - (a) the net debt of the company as at that company's start date, and
  - (b) the net debt of the company as at that company's end date.

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For the meaning of “net debt”, see section 263.

- (3) If the amount determined in accordance with subsection (2) is less than £3 million, the net debt amount of the company is nil.
- (4) If a company is dormant (within the meaning given by section 1169 of the Companies Act 2006) at all times in the period beginning with that company's start date and ending with that company's end date, the net debt amount of the company is nil.
- (5) The Treasury may by order amend subsection (3) by substituting a higher or lower amount for the amount for the time being specified there.
- (6) An order under subsection (5) 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.
- (7) An order under subsection (5) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.
- (8) In this Chapter—
  - (a) “the start date” of a company means the first day of the period of account of the worldwide group or, if later, the first day in the period on which the company was a relevant group company [<sup>F4</sup>or a group securitisation company], and
  - (b) “the end date” of a company means the last day of the period of account of the worldwide group or, if earlier, the last day in the period on which the company was a relevant group company [<sup>F5</sup>or a group securitisation company].

#### Textual Amendments

- F2** Words in s. 262(1) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(2\)\(a\)](#), 36(1)
- F3** Words in s. 262(1) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(2\)\(b\)](#), 36(1)
- F4** Words in s. 262(8)(a) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(3\)](#), 36(1)
- F5** Words in s. 262(8)(b) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(3\)](#), 36(1)

## 263 Net debt of a company

- (1) References in section 262 to the “net debt” of a company as at any date are to—
  - (a) the sum of the company's relevant liabilities as at that date, less
  - (b) the sum of the company's relevant assets as at that date.
- (2) The amount determined in accordance with subsection (1) may be a negative amount.
- [<sup>F6</sup>(3) For the purposes of this section, a company's “relevant liabilities” as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
  - (a) borrowing (whether short term or long term and including borrowing by way of overdraft),
  - (b) liabilities in respect of finance leases,
  - (c) arrangements not within paragraph (a) or (b) that—

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- (i) are financial liabilities,
    - (ii) produce for any person a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (d) such other matters as may be specified in regulations made by the Commissioners.
- (4) For the purposes of this section, a company's "relevant assets" as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
- (a) cash and cash equivalents,
  - (b) lending (whether short term or long term and including lending by way of overdraft),
  - (c) net investments, or net cash investments, in finance leases,
  - (d) securities issued by—
    - (i) the government of the United Kingdom or any territory outside the United Kingdom,
    - (ii) any public or local authority in the United Kingdom or any territory outside the United Kingdom, or
    - (iii) any company or other body of persons,
  - (e) arrangements not within paragraphs (b) to (d) that—
    - (i) are financial assets,
    - (ii) produce for the company a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (f) such other matters as may be specified in regulations made by the Commissioners.
- (5) But an amount disclosed in the balance sheet of a company in respect of—
- (a) the company's share capital, or
  - (b) shares or other equity interests in any other entity,
- is not a "relevant liability" or a "relevant asset" for the purposes of this section.
- (6) For the purposes of subsections (3) and (4) a return produced for a person by an arrangement in relation to any amount is "economically equivalent to interest" if (and only if)—
- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (7) In subsection (6)(c) "the relevant time" means the time when the company becomes party to the arrangement.
- (8) For the purposes of subsections (3) and (4) an arrangement is "short term" if it terminates, or its terms provide for it to terminate, within 12 months of its coming into force.

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(9) In this section the following expressions have the meaning for the time being given by generally accepted accounting practice—

- “cash”,
- “cash equivalent”,
- “equity interest”,
- “finance lease”,
- “financial asset”,
- “financial liability”,
- “net cash investment”, in relation to a finance lease, and
- “net investment”, in relation to a finance lease.]

#### Textual Amendments

- F6** S. 263(3)-(9) substituted for s. 263(3)-(5) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 4, 36\(1\)](#) (with [Sch. 5 para. 37](#))

## 264 Worldwide gross debt of worldwide group for period of account of the group

(1) [<sup>F7</sup>A reference in this Chapter] to the “worldwide gross debt” of the worldwide group for a period of account of the group is to the average of—

- (a) the sum of the relevant liabilities of the group as at the day before the first day of the period, and
- (b) the sum of the relevant liabilities of the group as at the last day of the period.

(2) For the purposes of this section, the “relevant liabilities” of the worldwide group as at any date are the amounts that are disclosed in the balance sheet of the group as at that date in respect of—

- [<sup>F8</sup>(a) borrowing (whether short term or long term and including borrowing by way of overdraft),
- (b) liabilities in respect of finance leases,
- (c) arrangements not within paragraph (a) or (b) that—
  - (i) are financial liabilities,
  - (ii) produce for any person a return in relation to any amount which is economically equivalent to interest, and
  - (iii) are not short term, or
- (d) such other matters as may be specified in regulations made by the Commissioners.]

[<sup>F9</sup>(3) But an amount disclosed in the balance sheet of the group in respect of the share capital of any member of the group is not a “relevant liability” for the purposes of this section.

(4) For the purposes of subsection (2) a return produced for a person by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—

- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
- (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
- (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it

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falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.

- (5) In subsection (4)(c) “the relevant time” means the time when any member of the group becomes party to the arrangement.
- (6) For the purposes of subsection (2) an arrangement is “short term” if it terminates, or its terms provide for it to terminate, within 12 months of its coming into force.
- (7) In this section the following expressions have the meaning for the time being given by the accounting standards in accordance with which the financial statements of the group are drawn up—
  - “finance lease”, and
  - “financial liability”.
- (8) For provision about references in this Part to financial statements of the worldwide group, and amounts disclosed in financial statements, see sections 346 to 349.]

#### Textual Amendments

- F7** Words in s. 264(1) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 5\(2\), 36\(1\)](#)
- F8** S. 264(2)(a)-(d) substituted for s. 264(a)-(c) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 5\(3\), 36\(1\)](#) (with [Sch. 5 para. 37](#))
- F9** S. 264(3)-(8) substituted for s. 264(3)(4) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 5\(4\), 36\(1\)](#) (with [Sch. 5 para. 37](#))

## 265 References to amounts disclosed in balance sheet of [<sup>F10</sup>a] company

- (1) This section applies for the purpose of construing references in section 263 to amounts disclosed in the balance sheet of a <sup>F11</sup>... company as at any date (“the relevant date”).
- (2) If the company—
  - (a) is not a foreign company, and
  - (b) does not draw up a balance sheet as at the relevant date,
 the references are to the amounts that would be disclosed in a balance sheet of the company as at that date, were one drawn up in accordance with generally accepted accounting practice.
- (3) If the company—
  - (a) is a foreign company, and
  - (b) draws up a balance sheet (“a UK permanent establishment balance sheet”) as at the relevant date in respect of the company's permanent establishment in the United Kingdom that treats the establishment as a distinct and separate enterprise,
 the references are to amounts in that balance sheet.
- (4) If the company—
  - (a) is a foreign company, and
  - (b) does not draw up a UK permanent establishment balance sheet as at the relevant date,

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the references are to the amounts that would be disclosed in a UK permanent establishment balance sheet as at that date, were one drawn up in accordance with generally accepted accounting practice.

- (5) For the purposes of this section, a <sup>F12</sup>... company is a “foreign company” if it is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

#### Textual Amendments

- F10** Word in s. 265 heading substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 6\(2\)](#), [36\(1\)](#)
- F11** Words in s. 265(1) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 6\(3\)](#), [36\(1\)](#)
- F12** Words in s. 265(5) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 6\(3\)](#), [36\(1\)](#)

### [<sup>F13</sup>265A Different accounting treatment used at company and group levels

- (1) This section applies where—
- for the purposes of the computation of the UK net debt of the worldwide group, the amount of a relevant liability of a company (“the company-level relevant liability”) is determined in accordance with section 263,
  - for the purposes of the computation of the worldwide gross debt of the group, the amount of a relevant liability of the worldwide group (“the group-level relevant liability”) is determined in accordance with section 264,
  - the company-level relevant liability is an amount in respect of the same matter as—
    - the group-level relevant liability, or
    - a liability comprised in the group-level relevant liability, and
  - the amount of the company-level relevant liability would not, apart from this section, be the same as the amount of the liability mentioned in paragraph (c) (i) or (ii).
- (2) For the purposes of the computation mentioned in subsection (1)(a), the amount of the company-level relevant liability is the amount of the liability mentioned in subsection (1)(c)(i) or (ii).]

#### Textual Amendments

- F13** S. 265A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 7](#), [36\(1\)](#)

### 266 Qualifying financial services groups

- (1) The worldwide group is a qualifying financial services group in a period of account if the trading income condition—
- is met in relation to that period, or
  - is not met in relation to that period, but only because of losses incurred by the group in respect of activities that are normally reported on a net basis

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in financial statements prepared in accordance with international accounting standards.

- (2) The trading income condition is met in relation to a period of account if—
- (a) all or substantially all of the UK trading income of the worldwide group for that period, or
  - (b) all or substantially all of the worldwide trading income of the worldwide group for that period,

is derived from qualifying activities (see section 267).

- (3) In this Chapter, in relation to a period of account of the worldwide group—
- “UK trading income” means the sum of the trading income for that period of each company that was a relevant group company [<sup>F14</sup>or a group securitisation company] at any time during that period (see section 271), and
- “worldwide trading income” means the trading income for that period of the worldwide group (see section 272).

#### Textual Amendments

**F14** Words in s. 266(3) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 8, 36\(1\)](#)

### 267 Qualifying activities

In this Chapter “qualifying activities” means—

- (a) lending activities and activities that are ancillary to lending activities (see section 268),
- (b) insurance activities and insurance-related activities (see section 269), and
- (c) relevant dealing in financial instruments (see section 270).

### 268 Lending activities and activities ancillary to lending activities

- (1) In this Chapter “lending activities” means any of the following activities—
- (a) acceptance of deposits or other repayable funds,
  - (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting),
  - (c) finance leasing (as lessor),
  - (d) issuing and administering means of payment,
  - (e) provision of guarantees or commitments to provide money,
  - (f) money transmission services,
  - (g) provision of alternative finance arrangements, and
  - (h) other activities carried out in connection with activities falling within any of paragraphs (a) to (g).
- (2) Activities that are ancillary to lending activities are not qualifying activities for the purposes of this Chapter if the income derived from the ancillary activities forms a significant part of the total of—
- (a) that income, and



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- (b) the income derived from lending activities of the worldwide group in the period of account.
- (3) In subsection (2) “income” means the gross income or net income that would be taken into account for the purposes of section 266 in calculating the UK or worldwide trading income of the worldwide group for the period of account.
- (4) The Commissioners may by order—
  - (a) amend subsection (1), and
  - (b) make other amendments of this section in consequence of any amendment of subsection (1).
- (5) In subsection (1)(h), and in the references to ancillary activities in this section and section 267(a), “activities” includes buying, holding, managing and selling assets.
- (6) In this section “alternative finance arrangements” has the same meaning as in Chapter 6 of Part 6 of CTA 2009.

## **269 Insurance activities and insurance-related activities**

- (1) In this Chapter “insurance activities” means—
  - (a) the effecting or carrying out of contracts of insurance by a regulated insurer, and
  - (b) investment business that arises directly from activities falling within paragraph (a).
- (2) In this Chapter “insurance-related activities” means—
  - (a) activities that are ancillary to insurance activities, and
  - (b) activities that—
    - (i) are of the same kind as activities carried out for the purposes of insurance activities,
    - (ii) are not actually carried out for those purposes, and
    - (iii) would not be carried out but for insurance activities being carried out.
- (3) Subsection (2) is subject to subsection (4).
- (4) Activities that fall within subsection (2)(a) or (b) (“the relevant activities”) are not insurance-related activities if the income derived from the relevant activities forms a significant part of the total of—
  - (a) that income, and
  - (b) the income derived from insurance activities of the worldwide group in the period of account.
- (5) In subsection (4) “income” means the gross income or net income that would be taken into account for the purposes of section 266 in calculating the UK or worldwide trading income of the worldwide group for the period of account.
- (6) In this section—
  - “activities” includes buying, holding, managing and selling assets,
  - “contract of insurance” has the same meaning as in Chapter 1 of Part 12 of ICTA, and
  - “regulated insurer” means a member of the worldwide group that—

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- (a) is authorised under the law of any territory to carry on insurance business, or
- (b) is a member of a body or organisation that is so authorised.

## 270 Relevant dealing in financial instruments

[<sup>F15</sup>(1) In this Chapter “financial instrument” means—

- (a) anything that is a financial instrument for any purpose of the FSA handbook, or
- (b) an instrument not within paragraph (a) that is an option, future or contract for differences.

(1A) In this section “option”, “future” and “contract for differences” have the same meaning as in Part 7 of CTA 2009 (see sections 580 to 582 of that Act).]

- (2) For the purposes of this Chapter, a dealing in a financial instrument is a “relevant dealing” if—
  - (a) it is a dealing other than in the capacity of a broker, and
  - (b) profits or losses on the dealing form part of the trading profits or losses of a business.
- (3) In this section “broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally.

### Textual Amendments

**F15** S. 270(1)(1A) substituted for s. 270(1) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 9, 36\(1\)](#)

## 271 UK trading income of the worldwide group

- (1) This section applies in relation to section 266 for calculating the UK trading income of the worldwide group for a period of account.
- (2) The trading income for that period of a <sup>F16</sup>... company is the aggregate of—
  - (a) the gross income calculated in accordance with subsection (3), and
  - (b) the net income calculated in accordance with subsection (4).
- (3) The income mentioned in subsection (2)(a) is the gross income—
  - (a) arising from the activities of the <sup>F17</sup>... company (other than net-basis activities), and
  - (b) accounted for as such under generally accepted accounting practice, without taking account of any deductions (whether for expenses or otherwise).
- (4) The income mentioned in subsection (2)(b) is the net income arising from the net-basis activities of the <sup>F18</sup>... company that—
  - (a) is accounted for as such under generally accepted accounting practice, or
  - (b) would be accounted for as such if income arising from such activities were accounted for under generally accepted accounting practice.
- (5) Subsections (3) and (4) are subject to subsection (6).

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- (6) If a proportion of an accounting period of a <sup>F19</sup>... company does not fall within the period of account of the worldwide group, the gross income or net income for that accounting period of the company is to be reduced, for the purposes of this section, by that proportion.
- (7) Gross income or net income is to be disregarded for the purposes of subsection (2) if the income arises in respect of an amount payable by another member of the worldwide group that is either a UK group company or a [<sup>F20</sup>group securitisation company].
- (8) In this section “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with generally accepted accounting practice.

#### Textual Amendments

- F16** Words in s. 271(2) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F17** Words in s. 271(3) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F18** Words in s. 271(4) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F19** Words in s. 271(6) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F20** Words in s. 271(7) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(3\)](#), 36(1)

## 272 Worldwide trading income of the worldwide group

- (1) This section applies in relation to section 266 for calculating the worldwide trading income of the worldwide group for a period of account.
- (2) The trading income for that period of the worldwide group is the aggregate of—
  - (a) the gross income calculated in accordance with subsection (3), and
  - (b) the net income calculated in accordance with subsection (4).
- (3) The income mentioned in subsection (2)(a) is the gross income—
  - (a) arising from the activities of the worldwide group (other than net-basis activities), and
  - (b) disclosed as such in the financial statements of the worldwide group, without taking account of any deductions (whether for expenses or otherwise).
- (4) The income mentioned in subsection (2)(b) is the net income arising from the net-basis activities of the worldwide group that—
  - (a) is accounted for as such under international accounting standards, or
  - (b) would be accounted for as such if income arising from such activities were accounted for under international accounting standards.
- (5) In this section “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with international accounting standards.

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- (6) For provision about references in this Part to financial statements of the worldwide group, and amounts disclosed in financial statements, see sections 346 to 349.

### 273 Foreign currency accounting

- (1) Subject to the following provisions of this section, references in this Chapter to an amount disclosed in a balance sheet of a <sup>F21</sup>... company, or of the worldwide group, as at any date are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent by reference to the spot rate of exchange for that date.
- (2) Subsection (3) applies in relation to a period of account of the worldwide group if all the amounts disclosed in balance sheets (whether of <sup>F22</sup>... companies, or of the worldwide group) that are relevant to a calculation under this Chapter in relation to that period are expressed in the same currency (“the relevant foreign currency”) and that currency is not sterling.
- (3) If this subsection applies—
- (a) references in this Part to an amount disclosed in a balance sheet of a <sup>F23</sup>... company, or of the worldwide group, are to that amount expressed in the relevant foreign currency, and
  - (b) for the purposes of determining under section 262 the net debt amount of a company, subsection (3) of that section is to have effect as if the reference to the amount for the time being specified there (“the section 262(3) amount”) were read as a reference to the relevant amount.
- (4) For this purpose “the relevant amount” means the average of—
- (a) the section 262(3) amount expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's start date, and
  - (b) the section 262(3) amount expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's end date.

#### Textual Amendments

**F21** Words in s. 273(1) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 11, 36\(1\)](#)

**F22** Words in s. 273(2) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 11, 36\(1\)](#)

**F23** Words in s. 273(3)(a) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 11, 36\(1\)](#)

#### [<sup>F24</sup>273A Meaning of “group securitisation company”

For the purposes of this Chapter, a company is a “group securitisation company” at any time during a period of account of the worldwide group if—

- (a) it is, at that time, a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010, and
- (b) its results are disclosed in the financial statements of the worldwide group for the period.]

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

#### Textual Amendments

**F24** S. 273A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 12, 36\(1\)](#)

## CHAPTER 3

### DISALLOWANCE OF DEDUCTIONS

#### **274 Application of Chapter and meaning of “total disallowed amount”**

- (1) This Chapter applies if, for a period of account of the worldwide group to which this Part applies (“the relevant period of account”)—
  - (a) the tested expense amount (see Chapter 8), exceeds
  - (b) the available amount (see Chapter 9).
- (2) In this Chapter “the total disallowed amount” means the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (1).

#### **275 Meaning of “company to which this Chapter applies”**

References in this Chapter to a company to which this Chapter applies are to a company that is a relevant group company at any time during the relevant period of account.

#### **[<sup>F25</sup>275A Meaning of “dual resident investing company”**

For the purposes of this Chapter, a company is a “dual resident investing company” in relation to the relevant period of account if that period, or any part of it, is a period in respect of which the company is prevented, because of section 109(2) of CTA 2010 (restriction on losses etc surrenderable by dual resident), from surrendering losses under Chapter 2 of Part 5 of that Act (group relief).]

#### Textual Amendments

**F25** S. 275A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 13, 36\(1\)](#)

#### **276 Appointment of authorised company for relevant period of account**

- (1) The companies to which this Chapter applies may appoint one of their number to exercise functions conferred under this Chapter on the reporting body in relation to the relevant period of account.
- (2) An appointment under this section is of no effect unless it is signed on behalf of each company to which this Chapter applies by the appropriate person.
- (3) The Commissioners may by regulations make further provision about an appointment under this section including, in particular, provision—
  - (a) about the form and manner in which an appointment may be made,

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*Status: Point in time view as at 01/04/2010.*

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- (b) about how an appointment may be revoked and the form and manner of such revocation,
  - (c) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
  - (d) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
  - (e) imposing time limits in relation to making or revoking an appointment,
  - (f) providing that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
  - (g) about cases where a company is not a relevant group company at all times during the relevant period of account.
- (4) In this section “the appropriate person”, in relation to a company, means—
- (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Part.
- (5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.

#### **277 Meaning of “the reporting body”**

In this Chapter “the reporting body” means—

- (a) if an appointment under section 276 has effect in relation to the relevant period of account, the company appointed under that section, and
- (b) if such an appointment does not have effect in relation to the relevant period of account, the companies to which this Chapter applies, acting jointly.

#### **278 Statement of allocated disallowances: submission**

- (1) The reporting body must submit a statement (a “statement of allocated disallowances”) in relation to the relevant period of account to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 12 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 280.

#### **279 Statement of allocated disallowances: submission of revised statement**

- (1) If the reporting body has submitted a statement of allocated disallowances under section 278 or this section, it may submit a revised statement to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 36 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 280.

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*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

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- (4) A statement submitted under this section—
  - (a) must indicate the respects in which it differs from the previous statement, and
  - (b) supersedes the previous statement.

## **280 Statement of allocated disallowances: requirements**

- (1) This section applies in relation to a statement of allocated disallowances submitted under section 278 or 279.
- (2) The statement must be signed—
  - (a) if an appointment under section 276 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that section, or
  - (b) if such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Chapter applies.
- (3) The statement must show—
  - (a) the tested expense amount,
  - (b) the available amount, and
  - (c) the total disallowed amount.
- (4) The statement must—
  - (a) list one or more companies to which this Chapter applies, and
  - (b) in relation to each listed company, specify one or more financing expense amounts for the relevant period of account that are to be disallowed, and give the relevant details in relation to each such amount.
- (5) For this purpose “the relevant details”, in relation to a financing expense amount are—
  - (a) which of conditions A, B and C in section 313 is met in relation to the amount, and
  - (b) the relevant accounting period of the company in which the amount would, apart from this Part, be brought into account for the purposes of corporation tax.
- (6) The sum of the amounts specified under subsection (4)(b) must equal the total disallowed amount.
- (7) In this section “the appropriate person”, in relation to a company, means—
  - (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Part.
- (8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.
- (9) For the meaning of “financing expense amount”, see Chapter 7.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

## **[<sup>F26</sup>280A Statement of allocated disallowances: dual resident investing companies**

- (1) This section applies in relation to a statement of allocated disallowances submitted under section 278 or 279 that (pursuant to section 280(4)) lists, and specifies an amount or amounts in relation to, a dual resident investing company.
- (2) The statement does not comply with section 280(4) unless—
  - (a) the companies listed pursuant to paragraph (a) of that provision include each company to which this Chapter applies that—
    - (i) is not a dual resident investing company, and
    - (ii) has one or more financing expense amounts for the relevant period of account, and
  - (b) the financing expense amounts specified pursuant to paragraph (b) of that provision include, in relation to each such company, each such financing expense amount.]

### **Textual Amendments**

**F26** S. 280A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 14, 36\(1\)](#)

## **281 Statement of allocated disallowances: effect**

A financing expense amount of a company to which this Chapter applies that is specified in a statement of allocated disallowances under section 280(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

## **282 Company tax returns**

- (1) This section applies if—
  - (a) a company to which this Chapter applies has delivered a company tax return for a relevant accounting period, and
  - (b) as a result of the submission of a revised statement of allocated disallowances under section 279—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in subsection (1)(b)(i) or to correct the information mentioned in subsection (1)(b)(ii).

## **283 Power to make regulations about statement of allocated disallowances**

The Commissioners may by regulations make further provision about a statement of allocated disallowances including, in particular, provision—

- (a) about the form of a statement and the manner in which it is to be submitted,
- (b) requiring a person to give information to HMRC in connection with a statement,
- (c) as to circumstances in which a statement that is not received by the time specified in section 278(2) or 279(2) is to be treated as if it were so received, and



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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

- (d) as to circumstances in which a statement that does not comply with the requirements of section 280 is to be treated as if it did so comply.

## 284 Failure of reporting body to submit statement of allocated disallowances

- (1) This section applies if no statement of allocated disallowances is submitted under section 278 that complies with the requirements of section 280.
- (2) [<sup>F27</sup>Where a company to which this Chapter applies (“company A”) has a net financing deduction for the relevant period of account that is greater than nil, it] must reduce the amounts that it brings into account in relevant accounting periods in respect of financing expense amounts.
- [<sup>F28</sup>(2A) The total of the reductions required to be made by company A because of subsection (2) is—
- (a) where company A or any other company to which this Chapter applies is a dual resident investing company, the amount determined in accordance with section 284A, and
- (b) otherwise, the amount determined in accordance with subsection (3).]
- (3) The [<sup>F29</sup>amount referred to in subsection (2A)(b)] is—
- $$\frac{NFD}{TEA} \times TDA$$

where—

NFD is the net financing deduction of [<sup>F30</sup>company A] for the relevant period of account (see section 329(2)),

TEA is the tested expense amount for the relevant period of account (see section 329(1)), and

TDA is the total disallowed amount (see section 274(2)).

- (4) The particular financing expense amounts that must be reduced, and the amounts by which they must be reduced, must be determined in accordance with regulations made by the Commissioners.
- (5) Regulations under this section may, in particular, include any of the following—
- (a) provision conferring a discretion on a company required to make reductions under this section as to the particular financing expense amounts that are to be reduced,
- (b) provision requiring a company required to make reductions under this section to notify another relevant group company of the particular reductions made, and
- (c) provision as to the times by which such notices must be sent and as to information that must accompany such notices.

### Textual Amendments

**F27** Words in s. 284(2) substituted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 15(2), 36(1)

**F28** S. 284(2A) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 15(3), 36(1)

**F29** Words in s. 284(3) substituted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 15(4)(a), 36(1)

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

**F30** Words in s. 284(3) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 15\(4\)\(b\), 36\(1\)](#)

**[<sup>F31</sup>284A Section 284: supplementary**

- (1) This section contains provision for determining the total of the reductions required to be made by company A because of section 284(2) in a case in which company A, or any other company to which this Chapter applies, is a dual resident investing company.
- (2) If company A is not a dual resident investing company, the total of the reductions required to be made by company A is—

$$\frac{NFD}{TEA - X} \times TDA$$

or, if lower, NFD.

- (3) If company A is a dual resident investing company, the total of the reductions required to be made by company A is—

$$\frac{NFD}{X} \times (TDA - (TEA - X))$$

or, if that amount is negative or zero, nil.

- (4) In subsections (2) and (3)—  
 NFD, TEA and TDA have the same meaning as in section 284(3), and  
 X is the total of the net financing deductions of all the companies to which this Chapter applies that are dual resident investing companies.]

**Textual Amendments**

**F31** S. 284A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 16, 36\(1\)](#)

**285 Powers to make regulations in relation to reductions under section 284**

- (1) The Commissioners may by regulations make provision for the purpose of securing that a company required under section 284 to reduce the amounts that it brings into account in respect of financing expense amounts for the relevant period of account (“a company required to make default reductions”) has sufficient information to determine their amount.
- (2) Provision that may be made in regulations under subsection (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.
- (3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under subsection (1) or otherwise) a company required to make default reductions does not possess specified information.
- (4) Provision that may be made in regulations under subsection (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under section 284 of a financing expense amount.

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*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

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- (5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under section 284.
- (6) In this section “specified” means specified in regulations under this section.

## CHAPTER 4

### EXEMPTION OF FINANCING INCOME

#### **286 Application of Chapter and meaning of “total disallowed amount”**

- (1) This Chapter applies if, for a period of account of the worldwide group to which this Part applies (“the relevant period of account”)—
  - (a) the tested expense amount (see Chapter 8), exceeds
  - (b) the available amount (see Chapter 9).
- (2) In this Chapter the “total disallowed amount” means the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (1).

#### **287 Meaning of “company to which this Chapter applies”**

References in this Chapter to a company to which this Chapter applies are to a company that is a UK group company at any time during the relevant period of account.

#### **288 Appointment of authorised company for relevant period of account**

- (1) The companies to which this Chapter applies may appoint one of their number to exercise functions conferred under this Chapter on the reporting body in relation to the relevant period of account.
- (2) An appointment under this section is of no effect unless it is signed on behalf of each company to which this Chapter applies by the appropriate person.
- (3) The Commissioners may by regulations make further provision about an appointment under this section including, in particular, provision—
  - (a) about the form and manner in which an appointment may be made or revoked,
  - (b) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
  - (c) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
  - (d) imposing time limits in relation to making or revoking an appointment,
  - (e) that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
  - (f) about cases where a company does not meet condition A in section 345, or is not a member of the worldwide group, at all times during the relevant period of account.
- (4) In this section “the appropriate person”, in relation to a company, means—

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- (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Part.
- (5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.

### **289 Meaning of “the reporting body”**

In this Chapter “the reporting body” means—

- (a) if an appointment under section 288 has effect in relation to the relevant period of account, the company appointed under that section, and
- (b) if such an appointment does not have effect in relation to the relevant period of account, the companies to which this Chapter applies, acting jointly.

### **290 Statement of allocated exemptions: submission**

- (1) The reporting body must submit a statement (a “statement of allocated exemptions”) in relation to the relevant period of account to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 12 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 292.

### **291 Statement of allocated exemptions: submission of revised statement**

- (1) If the reporting body has submitted a statement of allocated exemptions under section 290 or this section, it may submit a revised statement to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 36 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 292.
- (4) A statement submitted under this section—
  - (a) must indicate the respects in which it differs from the previous statement, and
  - (b) supersedes the previous statement.

### **292 Statement of allocated exemptions: requirements**

- (1) This section applies in relation to a statement of allocated exemptions submitted under section 290 or 291.
- (2) The statement must be signed—
  - (a) if an appointment under section 288 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that section, or

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- (b) if such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Chapter applies.
- (3) The statement must show—
  - (a) the tested expense amount,
  - (b) the available amount, and
  - (c) the total disallowed amount.
- (4) The statement must—
  - (a) list one or more companies to which this Chapter applies, and
  - (b) in relation to each listed company, specify one or more financing income amounts for the relevant period of account that are to be exempted, and give the relevant details in relation to each such amount.
- (5) For this purpose “the relevant details” in relation to a financing income amount are—
  - (a) which of conditions A, B [<sup>F32</sup>, C and D] in section 314 is met in relation to the amount, and
  - (b) the relevant accounting period of the company in which the amount would, apart from this Part, be brought into account for the purposes of corporation tax.
- (6) The sum of the amounts specified under subsection (4)(b) must not exceed the lower of—
  - (a) the total disallowed amount, and
  - (b) the tested income amount (see Chapter 8).
- (7) In this section “the appropriate person”, in relation to a company, means—
  - (a) the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Part.
- (8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.
- (9) For the meaning of “financing income amount”, see Chapter 7.

#### Textual Amendments

**F32** Words in s. 292(5)(a) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 17, 36\(1\)](#)

### 293 Statement of allocated exemptions: effect

A financing income amount of a company to which this Chapter applies that is specified in a statement of allocated exemptions under section 292(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

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*Status: Point in time view as at 01/04/2010.*

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## 294 Company tax returns

- (1) This section applies if—
- (a) a company to which this Chapter applies has delivered a company tax return for a relevant accounting period, and
  - (b) as a result of the submission of a revised statement of allocated exemptions under section 291—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in subsection (1)(b)(i) or to correct the information mentioned in subsection (1)(b)(ii).

## 295 Power to make regulations about statement of allocated exemptions

The Commissioners may by regulations make further provision about a statement of allocated exemptions including, in particular, provision—

- (a) about the form of a statement and the manner in which it is to be submitted,
- (b) requiring a person to give information to HMRC in connection with a statement,
- (c) as to circumstances in which a statement that is not received by the time specified in section 290(2) or 291(2) is to be treated as if it were so received, and
- (d) as to circumstances in which a statement that does not comply with the requirements of section 292 is to be treated as if it did so comply.

## 296 Failure of reporting body to submit statement of allocated exemptions

- (1) This section applies if no statement of allocated exemptions is submitted under section 290 that complies with the requirements of section 292.
- (2) Subject to the following provisions of this section, each financing income amount for the relevant period of account of each company to which this Chapter applies is to be reduced to nil.
- (3) In this section “unrestricted reduction” means a reduction of a financing income amount for the relevant period of account of a company to which this Chapter applies, determined in accordance with subsection (2).
- (4) Subsection (5) applies if—
  - (a) the total of the unrestricted reductions, exceeds
  - (b) the lower of—
    - (i) the total disallowed amount, and
    - (ii) the tested income amount.
- (5) Each unrestricted reduction is to be reduced by—

$$\frac{UR}{TUR} \times X$$

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

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where—

UR is the unrestricted reduction in question,  
TUR is the total of the unrestricted reductions, and  
X is the excess mentioned in subsection (4).

## **297 Power to make regulations in relation to reductions under section 296**

- (1) The Commissioners may by regulations make provision for the purpose of securing that a company required under section 296 to reduce the amounts that it brings into account in respect of financing income amounts for the relevant period of account (“a company required to make default reductions”) has sufficient information to determine their amount.
- (2) Provision that may be made in regulations under subsection (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.
- (3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under subsection (1) or otherwise) a company required to make default reductions does not possess specified information.
- (4) Provision that may be made in regulations under subsection (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under section 296 of a financing income amount.
- (5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under section 296.
- (6) In this section “specified” means specified in regulations under this section.

## **298 Balancing payments between group companies: no tax charge or relief**

- (1) This section applies if—
  - (a) one or more financing income amounts of a company (“company A”) for the relevant period of account are—
    - (i) because of section 293, not brought into account, or
    - (ii) because of section 296, reduced,
  - (b) one or more financing expense amounts of another company (“company B”) for the relevant period of account are—
    - (i) because of section 281, not brought into account, or
    - (ii) because of section 284, reduced,
  - (c) company A makes one or more payments (“the balancing payments”) to company B, and
  - (d) the sole or main reason for making the balancing payments is that the conditions in paragraphs (a) and (b) are met.
- (2) To the extent that the sum of the balancing payments does not exceed the amount specified in subsection (3), those payments—
  - (a) are not to be taken into account in computing profits or losses of either company A or company B for the purposes of corporation tax, and

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- (b) are not to be regarded as distributions for any of the purposes of the Corporation Tax Acts.
- (3) The amount mentioned in subsection (2) is the lower of—
  - (a) the sum of the financing income amounts mentioned in subsection (1)(a), and
  - (b) the sum of the financing expense amounts mentioned in subsection (1)(b).

## CHAPTER 5

### INTRA-GROUP FINANCING INCOME WHERE PAYER DENIED DEDUCTION

#### **299 Tax exemption for certain financing income received from EEA companies**

- (1) A financing income amount of a company that is a member of the worldwide group (“the recipient”) is not to be brought into account for the purposes of corporation tax if—
  - (a) it arises as a result of a payment by another company that is a member of the worldwide group (“the payer”),
  - (b) the payment is received during a period of account of the worldwide group to which this Part applies, and
  - (c) conditions A, B and C are met.
- (2) Condition A is that, at the time the payment is received, the payer is a relevant associate of the recipient (see section 300).
- (3) Condition B is that, at the time the payment is received—
  - (a) the payer is tax-resident in an EEA territory (see section 301), and
  - (b) the payer is liable to a tax of that territory that is chargeable by reference to profits, income or gains arising to the payer.
- (4) Condition C is that—
  - (a) qualifying EEA tax relief for the payment is not available to the payer in the period in which the payment is made (“the current period”) or any previous period (see section 302), and
  - (b) qualifying EEA tax relief for the payment is not available to the payer in any period after the current period (see section 303).
- (5) For the meaning of “financing income amount”, see section 305.

#### **300 Meaning of “relevant associate”**

For the purposes of this Chapter, the payer is a “relevant associate” of the recipient if—

- (a) the payer is a parent of the recipient,
- (b) the payer is a 75% subsidiary of the recipient, or
- (c) the payer is a 75% subsidiary of a parent of the recipient.

#### **301 Meaning of “tax-resident” and “EEA territory”**

- (1) For the purposes of this Chapter, the payer is “tax-resident” in a territory if it is liable, under the law of that territory, to tax by reason of domicile, residence or place of management.



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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

- (2) In this Chapter “EEA territory” means a territory outside the United Kingdom that is within the European Economic Area.

### **302 Qualifying EEA tax relief for payment in current or previous period**

- (1) For the purposes of this Chapter, qualifying EEA tax relief for a payment is not available to the payer in the current period or a previous period if conditions A and B are met in relation to the payment.
- (2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—
- (a) arise to the payer in the current period or any previous period, and
  - (b) are chargeable to any tax of the United Kingdom or an EEA territory for the current period or any previous period.
- (3) Condition B is that no relief determined by reference to the payment can be given in the current period or any previous period for the purposes of any tax of the United Kingdom or an EEA territory by—
- (a) the payment of a credit,
  - (b) the elimination or reduction of a tax liability, or
  - (c) any other means of any kind.
- (4) Conditions A and B are not met in relation to the payment unless every step is taken (whether by the payer or any other person) to secure that deductions are taken into account as mentioned in subsection (2) and reliefs are given as mentioned in subsection (3).
- (5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief as a result of—
- (a) this Part, or
  - (b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).
- (6) For this purpose—
- (a) arrangements are “double taxation arrangements” if they are arrangements made between any two territories with a view to affording relief from double taxation, and
  - (b) “associated enterprise rules” means—
    - (i) rules that, on the passing of FA 2009, 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
    - (ii) any rules in the same or equivalent terms.

### **303 Qualifying EEA tax relief for payment in future period**

- (1) For the purposes of this Chapter, qualifying EEA tax relief for a payment is not available to the payer in a period after the current period if conditions A and B are met in relation to the payment.
- (2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—

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- (a) might arise to the payer in any period after the current period, and
  - (b) would, if they did so arise, be chargeable to any tax of the United Kingdom or an EEA territory for any period after the current period.
- (3) Condition B is that no relief determined by reference to the payment can be given in any period after the current period for the purposes of any tax of the United Kingdom or an EEA territory by—
- (a) the payment of a credit,
  - (b) the elimination or reduction of a tax liability, or
  - (c) any other means of any kind.
- (4) The question whether a deduction can be taken into account as mentioned in subsection (2) or a relief can be given as mentioned in subsection (3) is to be determined by reference to the position immediately after the end of the current period.
- (5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief as a result of—
- (a) this Part, or
  - (b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).
- (6) For this purpose—
- (a) arrangements are “double taxation arrangements” if they are arrangements made between any two territories with a view to affording relief from double taxation, and
  - (b) “associated enterprise rules” means—
    - (i) rules that, on the passing of FA 2009, 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
    - (ii) any rules in the same or equivalent terms.

### **304 References to tax of a territory**

- (1) References in this Chapter to a tax of the United Kingdom are to income tax or corporation tax.
- (2) References in this Chapter to a tax of a territory outside the United Kingdom are to a tax chargeable under the law of that territory that—
- (a) is charged on income and corresponds to income tax, or
  - (b) is charged on income or chargeable gains or both and corresponds to corporation tax.
- (3) For the purposes of this section, a tax chargeable under the law of a territory outside the United Kingdom does not fail to correspond to income tax or corporation tax just because—
- (a) it is chargeable under the law of a province, state or other part of a country, or
  - (b) it is levied by or on behalf of a municipality or other local body.

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### 305 Financing income amounts of a company

- (1) References in this Chapter to a “financing income amount” of a company are (subject to subsection (6)) to any amount that meets condition A, B [<sup>F33</sup>, C or D].
- (2) Condition A is that the amount is a credit that—
  - (a) would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax,
  - (b) would be so brought into account in respect of a loan relationship—
    - (i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded credit.
- (3) A credit is “excluded” if it is in respect of—
  - (a) the reversal of an impairment loss,
  - (b) an exchange gain, or
  - (c) a profit from a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax in respect of the financing income implicit in amounts received under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax in respect of the financing income receivable on debt factoring, or any similar transaction.
- [<sup>F34</sup>(5A) Condition D is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax 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.]
- (6) The provisions of Chapter 7 apply in relation to an amount that is a financing income amount of a company because of meeting condition A, B [<sup>F35</sup>, C or D] in this section as they apply in relation to an amount that is a financing income amount of a relevant group company because of meeting condition A, B [<sup>F35</sup>, C or D] in section 314.
- [<sup>F36</sup>(7) In this section the following expressions have the same meaning as they have in Part 5 of CTA 2009 (loan relationships)—

“exchange gain”,  
“impairment loss”, and  
“related transaction”.]

#### Textual Amendments

- F33** Words in s. 305(1) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 18\(2\), 36\(1\)](#)
- F34** S. 305(5A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 18\(3\), 36\(1\)](#)
- F35** Words in s. 305(6) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 18\(4\), 36\(1\)](#)

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**F36** S. 305(7) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 18(5), 36(1)

## CHAPTER 6

### TAX AVOIDANCE

#### 306 Schemes involving manipulation of rules in Chapter 2

- (1) A period of account of the worldwide group that, apart from this section, is not within section 261(1) is treated as within that provision if conditions A, B and C are met.
- (2) Condition A is that—
  - (a) at any time before the end of the period, a scheme is entered into, and
  - (b) if the scheme had not been entered into, the period would have been within section 261(1).
- (3) Condition B is that the main purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the period is not within section 261(1).
- (4) Condition C is that the scheme is not an excluded scheme.

#### 307 Schemes involving manipulation of rules in Chapters 3 and 4

- (1) If conditions A, B and C are met in relation to a period of account of the worldwide group (“the relevant period of account”), the tested expense amount, the tested income amount and the available amount for the period are to be calculated in accordance with section 309.
- (2) Condition A is that—
  - (a) at any time before the end of the relevant period of account, a scheme is entered into, and
  - (b) the main purpose, or one of the main purposes, of any party to the scheme on entering into it is to secure that the amount of the relevant net deduction (within the meaning given by section 308) is lower than it would be if that amount were calculated in accordance with section 309.
- (3) Condition B is that a result of the scheme is that—
  - (a) the sum of the profits of UK group companies that—
    - (i) arise in relevant accounting periods, and
    - (ii) are chargeable to corporation tax,
 is less than it would be if that sum were determined in accordance with section 309, or
  - (b) the sum of the losses of UK group companies that—
    - (i) arise in relevant accounting periods (other than any taken into account in calculating profits within paragraph (a)), and
    - (ii) are capable of being a carried-back amount or a carried-forward amount (see section 310),
 is higher than it would be if that sum were determined in accordance with section 309.

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- (4) Condition C is that the scheme is not an excluded scheme.
- (5) If—
- (a) a profit or loss arises in an accounting period of a UK group company, and
  - (b) a proportion of that period does not fall within the relevant period of account, the profit or loss is to be reduced, for the purposes of condition B, by the same proportion.

### **308 Meaning of “relevant net deduction”**

- (1) In section 307(2) the “relevant net deduction” means—
- (a) the amount by which the total disallowed amount exceeds the tested income amount, or
  - (b) if the total disallowed amount does not exceed the tested income amount, nil.
- (2) In this section the “total disallowed amount” means—
- (a) the amount by which the tested expense amount exceeds the available amount, or
  - (b) if the tested expense amount does not exceed the available amount, nil.

### **309 Calculation of amounts**

- (1) References in section 307 to the calculation of any amount or sum in accordance with this section are to the calculation of that amount or sum on the following assumptions.
- (2) The assumptions are that—
- (a) the scheme in question was not entered into, and
  - (b) instead, anything that it is more likely than not would have been done or not done had this Part not had effect in relation to the relevant period of account, was done or not done.

### **310 Meaning of “carried-back amount” and “carried-forward amount”**

- (1) In section 307 “carried-back amount” means—
- (a) an amount carried back under section 389(2) of CTA 2009 (deficits of insurance companies),
  - (b) an amount carried back as a result of a claim under section 459(1)(b) of CTA 2009 (non-trading deficits from loan relationships), or
  - (c) an amount carried back under section 37(3)(b) of CTA 2010 (relief for trade losses against total profits).
- (2) In section 307 “carried-forward amount” means—
- (a) an amount carried forward under section 76(12) or (13) of ICTA (certain expenses of insurance companies),
  - (b) an amount carried forward under section 436A(4) of ICTA (insurance companies: losses from gross roll-up business),
  - (c) an amount carried forward under section 8(1)(b) of TCGA 1992 (allowable losses),
  - (d) an amount carried forward under section 391(2) of CTA 2009 (deficits of insurance companies),

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- (e) an amount carried forward under section 457(3) of CTA 2009 (non-trading deficits from loan relationships),
- (f) an amount carried forward under section 753(3) of CTA 2009 (non-trading loss on intangible fixed assets),
- (g) an amount carried forward under section 925(3) of CTA 2009 (patent income: relief for expenses),
- (h) an amount carried forward under section 1223 of CTA 2009 (expenses of management and other amounts),
- (i) an amount carried forward under section 45(4) of CTA 2010 (carry forward of trade loss against subsequent trade profit),
- (j) an amount carried forward under section 62(5) of CTA 2010 (relief for losses made UK property business),
- (k) an amount carried forward under section 63(3) of CTA 2010 (company with investment business ceasing to carry on UK property business),
- (l) an amount carried forward under section 66(3) of CTA 2010 (relief for losses made in overseas property business), or
- (m) an amount carried forward under section 91(6) of CTA 2010 (relief for losses from miscellaneous transactions).

### **311 Schemes involving manipulation of rules in Chapter 5**

- (1) This section applies to a financing income amount of a company received during a period of account of the worldwide group if—
  - (a) apart from this section, the financing income amount would, because of section 299, not be brought into account for the purposes of corporation tax, and
  - (b) conditions A, B and C are met.
- (2) Condition A is that, at any time before the financing income amount is received, a scheme is entered into that secures that any of the conditions in subsections (2) to (4) of section 299 (“the relevant section 299 condition”) is met in relation to the amount.
- (3) Condition B is that the purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the relevant section 299 condition is met.
- (4) Condition C is that the scheme is not an excluded scheme.
- (5) If this section applies to a financing income amount, the relevant section 299 condition is treated as not met in relation to the amount.
- (6) Section 305 (meaning of references to a “financing income amount” of a company) applies for the purposes of this section.

### **312 Meaning of “scheme” and “excluded scheme”**

- (1) For the purposes of this Chapter, “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.
- (2) For the purposes of this Chapter, a scheme is “excluded” if it is of a description specified in regulations made by the Commissioners.
- (3) Regulations under subsection (2) may make different provision for different purposes.

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## CHAPTER 7

### “FINANCING EXPENSE AMOUNT” AND “FINANCING INCOME AMOUNT”

#### 313 The financing expense amounts of a company

- (1) References in this Part to a “financing expense amount” of a company for a period of account of the worldwide group are to any amount that meets condition A, B or C.
- (2) Condition A is that the amount is a debit that—
  - (a) would, apart from this Part, be brought into account in a relevant accounting period of the company,
  - (b) would be so brought into account in respect of a loan relationship—
    - (i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded debit.
- (3) A debit is “excluded” if it is in respect of—
  - (a) an impairment loss,
  - (b) an exchange loss, or
  - (c) a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing cost implicit in payments made under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing cost payable on debt factoring, or any similar transaction.
- (6) If—
  - (a) a debit or other amount would, apart from this Part, be brought into account in an accounting period, and
  - (b) a proportion of that period does not fall within the period of account of the worldwide group,the debit or other amount is to be reduced, for the purposes of this section, by the same proportion.
- (7) This section is subject to sections 316 to 327.

#### 314 The financing income amounts of a company

- (1) References in this Part (except in Chapter 5 and section 311) to a “financing income amount” of a company for a period of account of the worldwide group are to any amount that meets condition A, B <sup>[F37]</sup>, C or D].
- (2) Condition A is that the amount is a credit that—
  - (a) would, apart from this Part, be brought into account in a relevant accounting period of the company,
  - (b) would be so brought into account in respect of a loan relationship—

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- (i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
  - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded credit.
- (3) A credit is “excluded” if it is in respect of—
- (a) the reversal of an impairment loss,
  - (b) an exchange gain, or
  - (c) a profit from a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing income implicit in amounts received under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing income receivable on debt factoring, or any similar transaction.
- [<sup>F38</sup>(5A) Condition D is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company 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.]
- (6) If—
- (a) a credit or other amount would, apart from this Part, be brought into account in an accounting period, and
  - (b) a proportion of that period does not fall within the period of account of the worldwide group,
- the credit or other amount is to be reduced, for the purposes of this section, by the same proportion.
- (7) This section is subject to sections 316 to 327.

#### **Textual Amendments**

**F37** Words in s. 314(1) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 19\(2\), 36\(1\)](#)

**F38** S. 314(5A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 19\(3\), 36\(1\)](#)

### **315 Interpretation of sections 313 and 314**

In sections 313 and 314 the following expressions have the same meaning as they have in Part 5 of CTA 2009 (loan relationships)—

“exchange gain” and “exchange loss”,

<sup>F39</sup> ...

“impairment loss”, and

“related transaction”.



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### Textual Amendments

**F39** Word in s. 315 omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 20, 36\(1\)](#)

## 316 Group treasury companies

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
  - (a) a financing expense amount of a group treasury company because of meeting condition A, B or C in section 313, or
  - (b) a financing income amount of a group treasury company because of meeting condition A, B [<sup>F40</sup>, C or D] in section 314.
- (2) The relevant amount, and all other amounts that are relevant amounts in respect of the group treasury company and the relevant period, are treated as not being a financing expense amount or a financing income amount of the group treasury company, but only if that company makes an election for the purposes of this section in respect of the relevant period.
- (3) An election under this section must be made within 3 years after the end of the relevant period.
- (4) If two or more members of the worldwide group are group treasury companies in the relevant period, an election under this section made by any of them is not valid unless each of them makes such an election in respect of the relevant period before the end of the 3 year period mentioned in subsection (3).
- (5) A company is a group treasury company in the relevant period if conditions 1, 2 and 3 are met.
- (6) Condition 1 is that the company is a member of the worldwide group.
- (7) Condition 2 is that the company undertakes treasury activities for the worldwide group in the relevant period (whether or not it also undertakes other activities).
- [<sup>F41</sup>(8) Condition 3 is that at least 90% of the relevant income of the company for the relevant period is group treasury revenue.]
- (9) For the purposes of this section, a company undertakes treasury activities for the worldwide group in the relevant period if, in that period, it does one or more of the following things in relation to, or on behalf of, the worldwide 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 another company which is a UK group company and a group treasury company,
  - (e) investing in debt securities, and
  - (f) hedging assets, liabilities, income or expenses.
- (10) For the purposes of this section “group treasury revenue”, in relation to a company, means revenue—

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- (a) arising from the treasury activities that the company undertakes for the worldwide group, and
  - (b) accounted for as such under generally accepted accounting practice, before any deduction (whether for expenses or otherwise).
- (11) But revenue consisting of a dividend or other distribution is not group treasury revenue unless it is a dividend or distribution from a company that is, in the relevant period—
- (a) a UK group company, and
  - (b) a group treasury company.
- (12) In this section—
- “debt security” has the same meaning as in the FSA Handbook,
  - “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), and
- “relevant period” means the period of account of the worldwide group to which the relevant amount relates.

#### Textual Amendments

- F40** Words in s. 316(1)(b) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 21\(2\), 36\(1\)](#)
- F41** S. 316(8) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 21\(3\), 36\(1\)](#)

### 317 Real estate investment trusts

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company because of meeting condition A in section 313, or
  - (b) a financing income amount of a company because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if the finance arrangement is one to which section 211 of CTA 2009 does not apply because of section 599(3)(a) of CTA 2010.

### 318 Companies engaged in oil extraction activities

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company because of meeting condition A or condition B in section 313, or
  - (b) a financing income amount of a company because of meeting condition A or condition B in section 314.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if conditions 1 and 2 are met.

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- (3) Condition 1 is that the company is treated, in the accounting period in which the amount is brought into account, as carrying on a ring fence trade (see section 277 of CTA 2010).
- (4) Condition 2 is that the amount falls to be brought into account in calculating the profits of that trade for that accounting period.

#### [<sup>F42</sup>318A Industrial and provident societies

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
  - (a) a financing expense amount of a company because of meeting condition A in section 313, or
  - (b) a financing income amount of a company because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if it is such an amount only because of section 499 of CTA 2009 (industrial and provident society payments treated as interest under loan relationship).]

#### Textual Amendments

**F42** S. 318A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 22, 36\(1\)](#)

#### 319 Intra-group short-term finance: financing expense

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) because of meeting condition A in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless conditions 1 and 2 are met.
- (4) Condition 1 is that company A and the other party to the loan relationship (“company B”) are both members of the worldwide group.
- (5) Condition 2 is that the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group.
- (6) An election under this section may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.
- (7) An election under this section is irrevocable.
- (8) In this section “short-term loan relationship” has the meaning given in section 321.

#### 320 Intra-group short-term finance: financing income

- (1) This section applies if—

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- (a) under section 319, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this section “company A” and “company B” have the same meaning as in section 319.

### **321 Short-term loan relationships**

- (1) For the purposes of section 319, the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group (“the relevant period”) if—
- (a) regulations made by the Commissioners provide for it to be so, or
  - (b) condition A or B is met.
- (2) Condition A is that the finance arrangement does not terminate during the relevant period and—
- (a) to the extent that the finance arrangement provides for the creation of money debt, its terms require all money debt created under it to be settled within 12 months of money debt first being created under it, and
  - (b) to the extent that the finance arrangement is otherwise a loan relationship, its terms provide for it to terminate within 12 months of its coming into force.
- (3) Condition B is that the finance arrangement terminates during, or after the end of, the relevant period and—
- (a) to the extent that the relationship provided for the creation of money debt, all money debt created under it was settled within 12 months of money debt first being created under it, and
  - (b) to the extent that the relationship was otherwise a loan relationship, it terminated within 12 months of its coming into force.
- (4) The Treasury may, by regulations, make provision about <sup>F43</sup>... circumstances in which the finance arrangement is to be taken not to be a short-term loan relationship as respects—
- (a) the relevant period, or
  - (b) any part or parts of the relevant period.
- (5) Regulations under subsection (4) may include provision for the finance arrangement to be taken never to have been a short-term loan relationship as respects the relevant period or the part or parts of it.
- (6) Regulations under subsection (4) 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.

<sup>F44</sup>(7) .....

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### Textual Amendments

- F43** Word in s. 321(4) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 23\(a\)](#), 36(1)
- F44** S. 321(7) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 23\(b\)](#), 36(1)

## 322 Stranded deficits in non-trading loan relationships: financing expense

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) because of meeting condition A in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless each of conditions 1 to 4 is met.
- (4) Condition 1 is that company A and the other party to the loan relationship (“company B”) are both members of the worldwide group.
- (5) Condition 2 is that company B—
  - (a) is resident in the United Kingdom, or
  - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (6) Condition 3 is that, under section 457 of CTA 2009, company B carries forward an amount of non-trading deficit and sets it off against non-trading profits of an accounting period that falls wholly or partly within the period of account of the worldwide group.
- (7) Condition 4 is that the amount of non-trading deficit carried forward and set off is equal to, or greater than, the relevant amount.
- (8) An election under this section may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

## 323 Stranded deficits in non-trading loan relationships: financing income

- (1) This section applies if—
  - (a) under section 322, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this section “company A” and “company B” have the same meaning as in section 322.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### **324 Stranded management expenses in non-trading loan relationships: financing expense**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) because of meeting condition A in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless each of conditions 1 to 5 is met.
- (4) Condition 1 is that company A and the other party to the finance arrangement (“company B”) are both members of the worldwide group.
- (5) Condition 2 is that company B is a company with investment business (within the meaning of Part 16 of CTA 2009) and—
  - (a) is resident in the United Kingdom, or
  - (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (6) Condition 3 is that company B is allowed a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) in respect of an accounting period that falls wholly or partly within the period of account of the worldwide group (“the relevant period”).
- (7) Condition 4 is that the amount of the deduction allowed is equal to, or greater than, the relevant amount.
- (8) Condition 5 is that the calculation of company B's total profits for the relevant period for the purposes of corporation tax results in a loss if company B's credit is not included in that calculation.
- (9) An election under this section may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.
- (10) In this section “company B's credit” means the credit to company B that arises from the debit to company A as a result of which condition A in section 313 is met.

### **325 Stranded management expenses in non-trading loan relationships: financing income**

- (1) This section applies if—
  - (a) under section 324, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this section “company A” and “company B” have the same meaning as in section 324.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### 326 Charities

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company because of meeting condition A, B or C in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is a charity.
- (3) In this section—
  - “charity” means any body of persons or trust established for charitable purposes only, and
  - “creditor” means—
    - (a) if the relevant amount is a debit that meets condition A in section 313, the loan creditor who receives the payment in relation to which the relevant amount arises, and
    - (b) if the relevant amount meets condition B or C in section 313, the recipient of the payment in relation to which the relevant amount arises.

### 327 Educational and public bodies

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company because of meeting condition A, B or C in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is—
  - (a) a designated educational establishment,
  - (b) a health service body,
  - (c) a local authority,<sup>F45</sup> ...
  - [<sup>F46</sup>(ca) a relevant public body, or]
  - (d) a person that is prescribed, or is of a description of persons prescribed, in an order made by the Commissioners for the purposes of this section.
- (3) The Commissioners may not prescribe a person, or a description of persons, for the purposes of this section unless they are satisfied that the person, or each of the persons within the description, has functions some or all of which are of a public nature.
- (4) In this section—
  - “creditor” means—
    - (a) if the relevant amount is a debit that meets condition A in section 313, the loan creditor who receives the payment in relation to which the relevant amount arises, and
    - (b) if the relevant amount meets condition B or C in section 313, the recipient of the payment in relation to which the relevant amount arises,  
“designated educational establishment” has the same meaning as in section 105 of CTA 2009,<sup>F47</sup> ...  
“health service body” has the same meaning as in section 985 of CTA 2010 [<sup>F48</sup>, and  
“relevant public body” means a body that—
      - (a) is not within subsection (2)(a) to (c) and is not a government department,

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

(b) acts under any enactment for public purposes and not for its own profit, and

(c) is not within the charge to corporation tax.]

[<sup>F49</sup>(5) In this section “enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
- (b) an enactment contained in, or in an instrument made under—
  - (i) an Act of the Scottish Parliament,
  - (ii) Northern Ireland legislation, or
  - (iii) a Measure or Act of the National Assembly for Wales.]

#### Textual Amendments

- F45** Word in s. 327(2)(c) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(2\), 36\(1\)](#)
- F46** S. 327(2)(ca) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(2\), 36\(1\)](#)
- F47** Word in s. 327(4) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(3\), 36\(1\)](#)
- F48** Words in s. 327(4) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(3\), 36\(1\)](#)
- F49** S. 327(5) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(4\), 36\(1\)](#)

### 328 Interpretation of sections 316 to 327

In sections 316 to 327 “finance arrangement” means—

- (a) in the case of an amount that is a debit or credit that meets the condition in section 313(2) or 314(2), the loan relationship to which the debit or credit relates,
- (b) in the case of an amount that meets the condition in section 313(4) or 314(4), the finance lease to which the amount relates, and
- (c) in the case of an amount that meets the condition in section 313(5) or 314(5), the debt factoring or similar transaction to which the amount relates.

## CHAPTER 8

“TESTED EXPENSE AMOUNT” AND “TESTED INCOME AMOUNT”

### 329 The tested expense amount

- (1) References in this Part to the “tested expense amount” for a period of account of the worldwide group are to the sum of the net financing deductions of each relevant group company.
- (2) References in this Part to the “net financing deduction” of a company for a period of account of the worldwide group are to—
  - (a) the sum of the company's financing expense amounts for the period (see section 313), less



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*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

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- (b) the sum of the company's financing income amounts for the period (see section 314).
- (3) References in subsection (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that arises as a result of a transaction that takes place at a time at which the company is not a relevant group company.
- (4) If the amount determined in accordance with subsection (2) is negative, the net financing deduction of the company for the period is nil.
- (5) If the amount determined in accordance with subsection (2) is small (see section 331), the net financing deduction of the company for the period is nil.

### **330 The tested income amount**

- (1) References in this Part to the “tested income amount” for a period of account of the worldwide group are to the sum of the net financing incomes of each UK group company.
- (2) The reference in subsection (1) to the “net financing income” of a company for a period of account of the worldwide group is to—
  - (a) the sum of the company's financing income amounts for the period (see section 314), less
  - (b) the sum of the company's financing expense amounts for the period (see section 313).
- (3) References in subsection (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that arises as a result of a transaction that takes place at a time at which the company is not a UK group company.
- (4) If the amount determined in accordance with subsection (2) is negative, the net financing income of the company for the period is nil.
- (5) If the amount determined in accordance with subsection (2) is small (see section 331), the net financing income of the company for the period is nil.

### **331 Companies with net financing deduction or net financing income that is small**

- (1) An amount determined in accordance with section 329(2) or 330(2) is “small” if it is less than £500,000.
- (2) The Treasury may by order amend subsection (1) by substituting a higher or lower amount for the amount for the time being specified there.
- (3) An order under subsection (2) 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.
- (4) An order under subsection (2) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### **[<sup>F50</sup>331A Mismatches between tax treatment and accounting treatment**

- (1) The Commissioners may make regulations for the purpose of altering the way in which the tested expense amount or the tested income amount is calculated in a case in which an accounts amount in respect of a matter is not equal to the tax amount in respect of that matter.
- (2) For this purpose—
  - (a) the “accounts amount” in respect of a matter is—
    - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
    - (ii) if no amount is so disclosed, nil, and
  - (b) the “tax amount” in respect of a matter is—
    - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
    - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
    - (iii) if no member is entitled to such a deduction, nil.
- (3) Regulations under this section may amend any provision of this Part.
- (4) Regulations under this section may have effect in relation to periods of account of the worldwide group beginning on or after the beginning of the calendar year in which the regulations are made.
- (5) Regulations under this section may include provision for the worldwide group to elect that the regulations (or any of them)—
  - (a) are not to apply in relation to the group, or
  - (b) are not to apply in relation to periods of account of the worldwide group beginning before the date on which the regulations are made.]

#### **Textual Amendments**

**F50** S. 331A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 25, 36\(1\)](#)

## **CHAPTER 9**

### **“AVAILABLE AMOUNT”**

#### **332 The available amount**

- (1) References in this Part to the “available amount” for a period of account of the worldwide group are to the sum of the amounts disclosed in the financial statements of the group for that period in respect of—
  - (a) interest payable on [<sup>F51</sup>borrowing],
  - (b) amortisation of discounts relating to [<sup>F52</sup>borrowing],
  - (c) amortisation of premiums relating to [<sup>F53</sup>borrowing],
  - (d) amortisation of [<sup>F54</sup>expenses ancillary to borrowing],
  - (e) the financing [<sup>F55</sup>expense] implicit in payments made under finance leases,

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

- (f) the financing [<sup>F56</sup>expense] relating to debt factoring, or
- (g) matters of such other description as may be specified in regulations made by the Commissioners.

[<sup>F57</sup>(1A) For the purposes of this section, expenses are “ancillary” to borrowing if and only if they are incurred directly—

- (a) in bringing borrowing into existence or in altering its terms, or
- (b) in making payments in respect of borrowing.

(1B) Where—

- (a) a member of the group incurs expenses for the purpose of bringing borrowing into existence but the borrowing is not brought into existence, or
- (b) a member of the group incurs expenses for the purpose of altering the terms of borrowing but the terms are not altered,

the expenses are treated as falling within subsection (1A)(a) to the same extent as if the borrowing had been brought into existence or the terms had been altered.]

(2) An amount that falls within any of paragraphs (a) to (g) of subsection (1) is to be disregarded for the purposes of that subsection to the extent that—

- (a) the amount represents a dividend payable in respect of preference shares, and
- (b) those shares are recognised as a liability in the financial statements of the group for the period.

#### Textual Amendments

- F51** Word in s. 332(1)(a) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(a\)](#), 36(1)
- F52** Word in s. 332(1)(b) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(a\)](#), 36(1)
- F53** Word in s. 332(1)(c) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(a\)](#), 36(1)
- F54** Words in s. 332(1)(d) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(b\)](#), 36(1)
- F55** Word in s. 332(1)(e) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(c\)](#), 36(1)
- F56** Word in s. 332(1)(f) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(c\)](#), 36(1)
- F57** S. 332(1A)(1B) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(3\)](#), 36(1)

#### [<sup>F58</sup>332A Groups containing securitisation companies

- (1) This section applies where a member of the worldwide group is a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010 at any time during a period of account of the worldwide group.
- (2) The reference in section 332(1) to amounts disclosed in the financial statements of the worldwide group for the period are to the amounts that would have been disclosed in those statements had they been prepared on the assumption that the company mentioned in subsection (1) was not a member of the worldwide group.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### Textual Amendments

**F58** Ss. 332A-332C inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 27, 36\(1\)](#)

## 332B Partnerships: expenses of borrowing

- (1) This section applies where—
  - (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group, and
  - (b) at any time during the period of account, a liability of the partnership in respect of borrowing (“the partnership liability”) is outstanding.
- (2) For the purposes mentioned in subsection (7), the financial statements of the worldwide group for the period of account are to be treated as if—
  - (a) they did not disclose any amounts falling within section 332(1)(a) to (d) relating to the partnership liability, and
  - (b) they disclosed instead such amounts as would have fallen within that provision had the financial statements been prepared on the following two assumptions.
- (3) The first assumption is that, at each time during the period of account at which the partnership liability was outstanding, each member of the partnership owed the appropriate proportion of the partnership liability to the same person, and on the same terms, as it was in fact owed by the partnership.
- (4) In subsection (3) “ the appropriate proportion ”, in relation to a member of the partnership at any time, is the proportion of the partnership's profits to which the member is entitled at that time under the partnership's profit sharing arrangements.
- (5) The second assumption is that, during the period of account, each member of the partnership incurred the appropriate proportion of any expenses relating to the partnership liability.
- (6) In subsection (5) “ the appropriate proportion ” in relation to a member of the partnership, is the proportion of the partnership's profits to which the member is entitled, over the period of account of the worldwide group, under the partnership's profit sharing arrangements.
- (7) The purposes referred to in subsection (2) are the purposes of—
  - (a) this Chapter, and
  - (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.

### Textual Amendments

**F58** Ss. 332A-332C inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 27, 36\(1\)](#)

## 332C Partnerships: other expenses

- (1) This section applies where—
  - (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group, and

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

- (b) during the period of account, the partnership incurs expenses in relation to finance leases or debt factoring (“the relevant partnership expenses”).
- (2) For the purposes mentioned in subsection (5), the financial statements of the worldwide group for the period of account are to be treated as if—
  - (a) they did not disclose any of the relevant partnership expenses, and
  - (b) they disclosed instead such amounts as would have fallen within section 332(1)(e) or (f), had the financial statements been prepared on the following assumption.
- (3) The assumption is that, during the period of account, each member of the partnership incurred the appropriate proportion of the relevant partnership expenses.
- (4) In subsection (3) “ the appropriate proportion ”, in relation to a member of the partnership, is the proportion of the partnership's profits to which the member is entitled, over the period of account of the worldwide group, under the partnership's profit sharing arrangements.
- (5) The purposes referred to in subsection (2) are the purposes of—
  - (a) this Chapter, and
  - (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.]

#### **Textual Amendments**

**F58** Ss. 332A-332C inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 27, 36\(1\)](#)

### **333 Group members with income from oil extraction subject to particular tax treatment in UK**

- (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if conditions A and B are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a ring fence trade (see section 277 of CTA 2010).
- (3) Condition B is that the external finance amount falls to be brought into account for the purposes of corporation tax in calculating the profits of that trade for that accounting period.
- (4) In this section “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group.

### **334 Group members with income from shipping subject to particular tax treatment in UK**

- (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if conditions A and B are met.

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*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

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- (2) Condition A is that a member of the worldwide group is, for a relevant accounting period, a tonnage tax company for the purposes of Schedule 22 to FA 2000.
- (3) Condition B is that the external finance amount—
  - (a) is taken into account in computing relevant shipping profits of that company for that accounting period, or
  - (b) comprises deductible finance costs outside the ring fence, to the extent that they are adjusted under paragraph 61 or 62 of Schedule 22 to FA 2000.
- (4) In this section—
 

“relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group, and

“relevant shipping profits” has the same meaning as in Schedule 22 to FA 2000 (see Part 6 of that Schedule).

### **335 Group members with income from property rental subject to particular tax treatment in UK**

- (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if conditions A and B are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a separate business under section 541 of CTA 2010 (ring-fencing of property rental business).
- (3) Condition B is that the external finance amount falls to be brought into account in calculating the profits arising from that business in that accounting period.
- (4) In this section “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group.

### **336 Meaning of accounting expressions used in this Chapter**

Subject to any provision to the contrary, expressions used in this Chapter have the meaning for the time being given by international accounting standards.

### **[<sup>F59</sup>336A Mismatches between tax treatment and accounting treatment**

- (1) The Commissioners may make regulations for the purpose of altering the way in which the available amount is calculated in a case in which an accounts amount in respect of a matter is not equal to the tax amount in respect of that matter.
- (2) For this purpose—
  - (a) the “accounts amount” in respect of a matter is—
    - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
    - (ii) if no amount is so disclosed, nil, and
  - (b) the “tax amount” in respect of a matter is—

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

- (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
  - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
  - (iii) if no member is entitled to such a deduction, nil.
- (3) Regulations under this section may amend any provision of this Part.
- (4) Regulations under this section may have effect in relation to periods of account of the worldwide group beginning on or after the beginning of the calendar year in which the regulations are made.
- (5) Regulations under this section may include provision for the worldwide group to elect that the regulations (or any of them)—
  - (a) are not to apply in relation to the group, or
  - (b) are not to apply in relation to periods of account of the worldwide group beginning before the date on which the regulations are made.]

#### Textual Amendments

**F59** S. 336A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 28, 36\(1\)](#)

## CHAPTER 10

### OTHER INTERPRETATIVE <sup>F60</sup>AND SUPPLEMENTARY PROVISIONS]

#### Textual Amendments

**F60** Words in Pt. 7 Ch. 10 heading substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 29, 36\(1\)](#)

### 337 The worldwide group

In this Part “the worldwide group” means any group of entities that—

- (a) is large, and
- (b) contains one or more relevant group companies.

### 338 Meaning of “group”

- (1) Subject to subsections (2) and (3), in this Part “group” has the meaning for the time being given by international accounting standards.
- (2) If a group would (apart from this subsection) contain more than one ultimate parent, each of those ultimate parents, together with its subsidiaries, is to be treated as a separate group.
- (3) An entity that is a parent of the ultimate parent of a group is to be treated as not being a member of the group.
- (4) Subsections (2) and (3) do not apply for the purposes of section 339.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 7. (See end of Document for details)*

### 339 Meaning of “ultimate parent”

- (1) For the purposes of this Part, “ultimate parent”, in relation to a group, means an entity that—
- (a) is a member of the group,
  - [<sup>F61</sup>(b) is either—
    - (i) a corporate entity that is not a limited liability partnership in relation to which section 1273(1) of CTA 2009 (limited liability partnerships) applies, or
    - (ii) a relevant non-corporate entity,
  - (c) is not a collective investment scheme or an entity that would be a collective investment scheme but for the fact that it is a body corporate, and
  - (d) is not a subsidiary (whether direct or indirect) of an entity that meets each of the conditions in paragraphs (a) to (c).]
- (2) In this section “collective investment scheme” has the meaning given by section 235 of FISMA 2000.

#### Textual Amendments

**F61** S. 339(1)(b)-(d) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 30, 36\(1\)](#)

### 340 Meaning of “corporate entity”

- (1) In this Part “corporate entity” means (subject to subsection (4))—
- (a) a body corporate incorporated under the laws of any part of the United Kingdom or any other country or territory, or
  - (b) any other entity that meets conditions A and B.
- (2) Condition A is that the person or persons who have an interest in the entity hold shares in the entity, or interests corresponding to shares.
- (3) Condition B is that the amount of profits to which each person who has an interest in the entity is entitled depends upon a decision that—
- (a) is taken by the entity or members of the entity, and
  - (b) is taken after the period in which the profits arise.
- (4) The following are not corporate entities for the purposes of this Part—
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department, or
  - (e) a foreign sovereign power.

### 341 Meaning of “relevant non-corporate entity”

- (1) In this Part “relevant non-corporate entity” means an entity—
- (a) that is not a corporate entity, and
  - (b) in relation to which conditions A and B are met.



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- (2) Condition A is that shares or other interests in the entity are listed on a recognised stock exchange.
- (3) Condition B is that the shares or other interests in the entity are sufficiently widely held.
- (4) For this purpose 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.
- (5) Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this section.
- (6) In the application of that provision for those purposes, references to a company are to be treated as references to an entity.

### **342 Treatment of entities stapled to corporate, or relevant non-corporate, entities**

- (1) If a corporate entity is stapled to another entity, the two entities are treated for the purposes of this Part as if—
  - (a) they were one entity, and
  - (b) that one entity were a corporate entity.
- (2) If a relevant non-corporate entity is stapled to another entity, the two entities are treated as if—
  - (a) they were one entity, and
  - (b) that one entity were a relevant non-corporate entity.
- (3) For the purposes of this section, an entity (“entity A”) is “stapled” to another (“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, to dispose of or to acquire shares or other interests in entity B.

### **343 Treatment of business combinations**

- (1) This section applies if two corporate entities—
  - (a) are not subsidiaries of the same entity, but
  - (b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.
- (2) The two entities are treated for the purposes of this Part as if—
  - (a) they were one entity, and
  - (b) that one entity were a corporate entity.

### **344 Meaning of “large” in relation to a group**

- (1) For the purposes of this Part, a group is “large” at any time if (and only if) any member of the group is not at that time within the category of micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).

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- (2) In its application as a result of subsection (1), the Annex has effect subject to the following qualifications.
- (3) If a member of the group 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).
- (4) Article 3 has effect with the omission of paragraph (5) (declaration in good faith where control cannot be determined etc).
- (5) The first sentence of Article 4(1) has effect as if the reference to the latest approved accounting period of a member of the group were to the current accounting period of that member.
- (6) Article 4 has effect with the omission of—
  - (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) (estimate in case of newly established enterprise).

#### **345 Meaning of “UK group company” and “relevant group company”**

(1) This section applies for the purposes of this Part.

[<sup>F62</sup>(2) A company is a “UK group company” if—

- (a) it is a member of the worldwide group, and
- (b) it meets conditions A and B.

(3) A company is a “relevant group company” if—

- (a) it is a member of the worldwide group, and
- (b) it meets conditions A, B and C.]

(4) Condition A is that the company—

- (a) is resident in the United Kingdom, or
- (b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

[<sup>F63</sup>(4A) Condition B is that the company is not a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010.]

(5) Condition [<sup>F64</sup>C] is that the company is either—

- (a) the ultimate parent of the worldwide group, or
- (b) a relevant subsidiary of the ultimate parent of the worldwide group.

(6) A company is a “relevant subsidiary” of the ultimate parent of the worldwide group if the company is a member of the worldwide group and—

- (a) the company is a 75% subsidiary of the ultimate parent,
- (b) the ultimate parent is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the company, or
- (c) the ultimate parent would be beneficially entitled to at least 75% of any assets of the company available for distribution to its equity holders on a winding-up.

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- (7) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (6)(b) and (c) as it applies for the purposes of section 151(4) of that Act.

#### Textual Amendments

- F62** S. 345(2)(3) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(2\), 36\(1\)](#)
- F63** S. 345(4A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(3\), 36\(1\)](#)
- F64** Word in s. 345(5) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(4\), 36\(1\)](#)

### 346 Financial statements of the worldwide group

- (1) This section applies for the purposes of this Part.
- (2) References to financial statements of the worldwide group are to consolidated financial statements of the ultimate parent and its subsidiaries; and references to a balance sheet of the worldwide group are to be read accordingly.
- (3) References to a period of account of the worldwide group are to a period in respect of which financial statements of the worldwide group are drawn up.

### 347 Non-compliant financial statements of the worldwide group

- (1) This section applies if—
- financial statements of the worldwide group are drawn up in respect of a period,
  - those financial statements are not acceptable, and
  - the amounts disclosed in those financial statements are materially different from those that would be disclosed in IAS financial statements for the period.
- (2) This Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the period.
- (3) For the purposes of this section, financial statements are “acceptable” if—
- they are drawn up in accordance with international accounting standards,
  - they meet such conditions relating to accounting standards, or accounting principles or practice, as may be specified in regulations made by the Commissioners, or
  - conditions A, B and C are met.
- (4) Condition A is that—
- the companies whose results are included in the financial statements, and
  - the companies whose results would be included in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.
- (5) Condition B is that—
- the transactions whose results are reflected in the amounts mentioned in section 332(1)(a) to (g) in the financial statements, and

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- (b) the transactions whose results would be reflected in those amounts in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.
- (6) Condition C is that the amounts mentioned in section 332(1)(a) to (d) in the financial statements are calculated using the effective interest method.
- (7) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

### **348 Non-existent financial statements of the worldwide group**

- (1) This section applies if financial statements of the worldwide group are not drawn up in respect of a period (“the relevant period”).
- (2) If the relevant period is 12 months or less, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the relevant period.
- (3) If the relevant period is more than 12 months, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of each period to which subsection (4) applies.
- (4) This subsection applies to a period if—
  - (a) it is the first period of 12 months falling within the relevant period,
  - (b) it is a period of 12 months falling within the relevant period that begins immediately after the end of the period mentioned in paragraph (a), or immediately after the end of a period determined under this paragraph, or
  - (c) it is a period of less than 12 months that—
    - (i) begins immediately after the end of the period mentioned in paragraph (a) or after the end of a period determined under paragraph (b), and
    - (ii) ends at the end of the relevant period.
- (5) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

### **349 References to amounts disclosed in financial statements**

- (1) References in this Part to amounts disclosed in financial statements include an amount comprised in an amount so disclosed.
- (2) References in this Part to amounts disclosed in financial statements do not include, in the case of an amount that—
  - (a) is an amount mentioned in section 332(1)(a) to (g), and
  - (b) has been capitalised and is accordingly included in the balance sheet comprised in the financial statements,
 any part of that amount that was included in a balance sheet comprised in financial statements for an earlier period.
- (3) References in this Part to amounts disclosed in financial statements do not include—

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- (a) any amount disclosed in respect of a group pension scheme, or
- (b) any amount disclosed in respect of any entity that is not a member of the group.

### **350 Translation of amounts disclosed in financial statements**

- (1) References in this Part (except in Chapter 2) to an amount disclosed in financial statements for a period 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 the amount is to be translated is the average rate of exchange for the period calculated from daily spot rates.

### **351 Expressions taking their meaning from international accounting standards**

- (1) For the purposes of this Part, the following expressions have the meaning for the time being given by international accounting standards—
  - “effective interest method”,
  - “entity”,
  - “parent”, and
  - “subsidiary”.

[<sup>F65</sup>(1A) The definition of “subsidiary” in subsection (1) does not affect the meaning of the expression “75% subsidiary” (which is defined in section 1154 of CTA 2010).]

- (2) The Commissioners may by order amend this section.

#### **Textual Amendments**

**F65** S. 351(1A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 32, 36\(1\)](#)

### **352 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 the worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

### **353 Other expressions**

In this Part—

- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,
- “FISMA 2000” means the Financial Services and Markets Act 2000,
- “FSA Handbook” means the Handbook made by the Financial Services Authority under FISMA 2000, and
- “HMRC” means Her Majesty's Revenue and Customs.

### **[<sup>F66</sup>353A Effect of Part on parties to capital market arrangements**

- (1) This section applies in relation to cases in which a company (“company A”)—

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- (a) is a party to a capital market arrangement at any time during a period of account of the worldwide group, and
  - (b) is subject to a liability to corporation tax for a relevant accounting period as a result of the operation of this Part.
- (2) The Commissioners may by regulations make provision under which company A and a company that is a relevant group company at any time in the same period of account (“company B”) may jointly elect that company B is to take sole responsibility for discharging the liability.
- (3) Where an election has effect, the liability is treated for all purposes as if it were a liability of company B and not of company A.
- (4) The regulations may include provision about—
- (a) when an election may be made (which may, in particular, be before the accounting period for which the liability arises);
  - (b) circumstances in which HMRC may or must—
    - (i) accept or reject an election, or
    - (ii) terminate the effect of an election that has already been accepted;
  - (c) the effect of termination by virtue of paragraph (b)(ii);
  - (d) the transfer from company A to company B of liabilities to penalties.
- (5) The provision that may be made by virtue of subsection (4)(b)(i) or (ii) includes provision conferring a discretion on HMRC.
- (6) 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).

#### **Textual Amendments**

**F66** Ss. 353A, 353B inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 33, 36\(1\)](#) (with [Sch. 5 para. 36\(3\)](#))

### **353B Regulations and orders**

Regulations or orders 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.]

#### **Textual Amendments**

**F66** Ss. 353A, 353B inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 33, 36\(1\)](#) (with [Sch. 5 para. 36\(3\)](#))

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